Chapter 5

Rules and Policies

5.1.1 National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives and Related Companion Policy

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice of
National Instrument 94-101
Mandatory Central Counterparty Clearing of Derivatives
and
Related Companion Policy

January 19, 2017

Introduction

We, the Canadian Securities Administrators (**CSA** or **we**), are adopting:

- National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the **Instrument**), including:
  - Form 94-101F1 *Intragroup Exemption*
  - Form 94-101F2 *Derivatives Clearing Services*
- Companion Policy 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the **CP**)

(together, the **National Instrument**).

In some jurisdictions, government ministerial approvals are required for the implementation of the Instrument. Provided all necessary approvals are obtained, the National Instrument will come into force on **April 4, 2017**.

This Instrument is part of the ongoing implementation of Canada's commitments in relation to global OTC derivatives markets reforms stemming from the G20 commitments of 2009 in response to the financial crisis.[1]

The CSA Derivatives Committee (the **Committee**) has consulted and collaborated with the Bank of Canada, the Office of the Superintendent of Financial Institutions (Canada), the Department of Finance Canada, and market participants on the determination of certain classes of OTC derivatives as mandatory clearable derivatives. The Committee also continues to contribute to and follow international regulatory developments. In particular, members of the Committee work with international regulators and bodies such as the International Organization of Securities Commissions and the OTC Derivatives Regulators' Group in the development of international standards and regulatory practices.

Although a significant market in Canada, the Canadian OTC derivatives market comprises a relatively small share of the global market, and a substantial portion of derivatives entered into by Canadian market participants involve foreign counterparties. The CSA endeavours to develop rules for the Canadian market that are aligned with international practices to ensure that Canadian market participants have access to the international market and are regulated in accordance with international principles.

We would like to draw your attention to another publication: CSA Notice of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions,* which is being published concurrently with this Notice. This publication and the National Instrument both relate to central counterparty clearing.

[1] The G20 agreement states that all standardized OTC derivative contracts should be cleared through central counterparties.

Substance and Purpose

The purpose of the Instrument is to impose mandatory central counterparty clearing of certain standardized OTC derivatives in order to reduce counterparty risk in the derivatives market and increase financial stability.

The Instrument is divided into two areas: (i) mandatory central counterparty clearing for certain derivatives by certain counterparties (including exemptions), and (ii) the determination of derivatives subject to mandatory central counterparty clearing (each a mandatory clearable derivative).

Background and Summary of Written Comments Received by the CSA

The CSA published Proposed National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* on February 24, 2016 (the **Proposed National Instrument**), inviting public comment on all aspects of the Proposed National Instrument. Six comment letters were received. A list of those who submitted comments as well as a chart summarizing the comments received and the Committee's responses are attached as Annex A to this Notice. Copies of the comment letters can be found on the websites of the Alberta Securities Commission, Ontario Securities Commission and Autorité des marchés financiers.

Summary of Changes to the Proposed National Instrument

We reviewed the comments received and made changes to the Instrument in response. In particular, the Instrument now applies only to an affiliated entity of a clearing participant if the affiliated entity's month-end gross notional amount of outstanding OTC derivatives exceeds $1 000 000 000 excluding intragroup transactions. A transition period of 90 days following the date on which the affiliated entity first reaches this threshold was also added.

Considering the current scope of application of the Instrument, the availability of the intragroup exemption to entities that are unable to make consolidated financial statements, but that are prudentially supervised, such as cooperatives, is no longer necessary and, therefore, was deleted.

In addition, we received comments on the importance of providing substituted compliance with foreign rules. We have determined that the rules and regulations of the U.S. Commodity Futures Trading Commission and the European Parliament regarding mandatory central counterparty clearing are substantially equivalent, on an outcomes-based approach, to the requirements in the Instrument. As such, counterparties established in a foreign jurisdiction but for whom a local counterparty is responsible for all or substantially all their liabilities may comply with such equivalent foreign rules when submitting their mandatory clearable derivatives to a clearing agency. The other requirements under the Instrument, however, still apply.

Also, a 6-month transition period, as of the effective date, is provided to market participants that are not clearing participants, but are subject to the Instrument, to set up clearing relationships.

Finally, we have simplified the information required in Form 94-101F1. A single form per group, containing each pairing of counterparties availing of the intragroup exemption, must now be sent to the regulator or securities regulatory authority.

We intend to reassess the scope of the Instrument when more market participants reasonably have access to clearing services for OTC derivatives.

Summary of the Instrument

a) Mandatory central counterparty clearing and exemptions

The Instrument provides that a local counterparty to a transaction in a mandatory clearable derivative must submit that derivative for clearing to a regulated clearing agency when both itself and the other counterparty are one or more of the following:

(i) a participant subscribing to the services of a regulated clearing agency for a mandatory clearable derivative;

(ii) an affiliated entity of a participant described in (i) if it has an aggregate gross notional amount exceeding $1 billion in outstanding OTC derivatives, excluding intragroup transactions ;

(iii) a local counterparty that, together with its local affiliated entities, has an aggregate gross notional amount exceeding $500 billion in outstanding OTC derivatives, excluding intragroup transactions.

A non-application section lists counterparties which are not subject to the Instrument. Two exemptions are also provided in the Instrument for some transactions. Subject to certain conditions, the Instrument exempts mandatory clearable derivatives between affiliated entities that have consolidated financial statements. A counterparty relying on this intragroup exemption must

deliver a Form 94-101F1 to the regulator or securities regulatory authority identifying the other counterparty and the basis for relying on the exemption.

Subject to certain conditions, the Instrument also exempts mandatory clearable derivatives that result from a multilateral portfolio compression exercise.

A counterparty relying on either exemption must keep records to demonstrate its eligibility for the exemption.

b) Determination of mandatory clearable derivatives

We have determined certain classes of interest rate derivatives (**IRD**) denominated in U.S. dollars (**USD**), euros (**EUR**), British pounds (**GBP**) and Canadian dollars (**CAD**) as mandatory clearable derivatives (collectively, the **Determination**). In making the Determination, we have considered factors including:

- information on OTC derivatives cleared by regulated clearing agencies,
- markets of importance to Canadian financial stability, and
- foreign central clearing mandates.

Regulated clearing agencies have notified the Committee of all the OTC derivatives or classes of OTC derivatives for which they provide clearing services. For each of these derivatives or classes of derivatives, the Committee has assessed whether it is suitable for mandatory central clearing by examining the criteria set out in the CP.

We have also considered publicly available data, derivatives data reported pursuant to local derivatives data reporting rules[2] and foreign regulators' proposals, including their analysis of the standardization and risk profile of the mandatory clearable derivatives and the liquidity and characteristics of their market.

International harmonization is also an important factor considered by the Committee when making a determination on whether a type or class of derivatives should be a mandatory clearable derivative. In the absence of broadly harmonized requirements, there may be potential for regulatory arbitrage or other distortions in market participants' choices as to where to conduct business or book trades.

The following list of mandatory clearable derivatives for all jurisdictions of Canada is included in the Instrument as Appendix A.

Interest Rate Swaps

Type	Floating index	Settlement currency	Maturity	Settlement Currency Type	Optionality	Notional type
Fixed-to-float	CDOR	CAD	28 days to 30 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Basis	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable

[2] Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting (Québec); Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*; Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*; and Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* .

Type	Floating index	Settlement currency	Maturity	Settlement Currency Type	Optionality	Notional type
Overnight index swap	CORRA	CAD	7 days to 2 years	Single currency	No	Constant or variable
Overnight index swap	FedFunds	USD	7 days to 3 years	Single currency	No	Constant or variable
Overnight index swap	EONIA	EUR	7 days to 3 years	Single currency	No	Constant or variable
Overnight index swap	SONIA	GBP	7 days to 3 years	Single currency	No	Constant or variable

Forward Rate Agreements

Type	Floating index	Settlement currency	Maturity	Settlement Currency Type	Optionality	Notional type
Forward rate agreement	LIBOR	USD	3 days to 3 years	Single currency	No	Constant or variable
Forward rate agreement	EURIBOR	EUR	3 days to 3 years	Single currency	No	Constant or variable
Forward rate agreement	LIBOR	GBP	3 days to 3 years	Single currency	No	Constant or variable

In particular, IRD represent more than 80% of the aggregate gross notional amount in outstanding OTC derivatives reported in Ontario and Québec. Among the types of IRD traded, single currency interest rate swaps (**IRS**) are most relevant. IRD are also highly standardized, thus posing minimal operational concerns for clearing unlike more complex and exotic products. There is also sufficient liquidity for clearing in IRD. IRD are not only traded by local participants, but also by local branches and affiliates of foreign participants. Furthermore, the majority of local counterparties that are subject to the Instrument have already begun clearing IRS on regulated clearing agencies.

The Determination is harmonized across Canada and, to the greatest extent possible, with international practices. Certain classes of IRD denominated in USD, GBP, EUR and CAD are already mandated to be cleared in the United States, in Australia, and in Europe.

Although the European Parliament has not determined CAD IRS as mandatory clearable derivatives under its regulation, local counterparties complying with European laws under the substituted compliance provision of the Instrument must clear CAD IRS.

Anticipated Costs and Benefits of the Instrument

We believe that the impact of the Instrument, including anticipated compliance costs for market participants, is proportional to the benefits we seek to achieve. The G20 has agreed that requiring standardized and sufficiently liquid OTC derivatives to be cleared through central counterparties will result in more effective management of counterparty credit risk through multilateral netting of derivatives positions and mutualisation of losses through a default fund. As such, central counterparty clearing of the derivatives included in the Determination contributes to greater stability of our financial markets and reduced systemic risk.

We recognize that counterparties may incur additional costs in order to comply with the Instrument due to the increase in derivatives that are centrally cleared. However, we note that the G20 has also committed to imposing margin requirements on OTC derivatives that are not centrally cleared; the related costs may well exceed the costs associated with clearing OTC derivatives. The intragroup and multilateral portfolio compression exemptions in the Instrument will help mitigate the costs borne by counterparties as a result of the Instrument.

Moreover, the narrow scope of application of the Instrument will provide relief for certain categories of market participants. We will continue to monitor trade repository data to assess the characteristics of the markets for OTC derivatives mandated to be cleared to inform whether the $500 billion threshold for a local counterparty and its local affiliated entities to be subject to mandatory clearing should be lowered and, if so, whether carve-outs might be appropriate for certain types of entities.

Local Matters

The scope of derivatives subject to the Instrument in each local jurisdiction is set out in the applicable local product determination rule, i.e., Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination*, Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination*, Regulation 91-506 respecting Derivatives Determination (**Regulation 91-506**) and Multilateral Instrument 91-101 *Derivatives: Product Determination* (collectively, the **Product Determination Rules**).

Concurrently with the publication of this Notice, the Autorité des marchés financiers is publishing consequential amendments in respect of the National Instrument to Regulation 91-506.

Contents of Annexes

The following annexes form part of this CSA Notice:

- Annex A – Comments Summary and CSA Responses;
- Annex B – National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*; and
- Annex C – Companion Policy 94-101 *Mandatory Central Counterparty Clearing of Derivatives*.

Questions

Please refer your questions to any of the following:

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ANNEX A

COMMENT SUMMARY AND CSA RESPONSES

Section Reference	Issue/Comment	Response
General comment: Personal property security legislation	A commenter argued that provincial personal property security laws in the common law provinces should be amended to allow the perfection of security interests in cash collateral by way of control.	No change. We note that federal bankruptcy and provincial personal property security legislation are outside of the jurisdiction of the provincial securities regulatory authorities. The Committee is seeking to implement requirements which protect customer collateral, to the extent possible, under existing Canadian federal and provincial legal frameworks.
Subsection 3(1) – General comments	Several commenters expressed strong support for the narrowing of the scope of the National Instrument to only the largest participants in the OTC market. One commenter recommended that the CSA continue to monitor the data and, once participants have easier access to clearing, a lower threshold may be possible.	No change. The scope of application addresses concerns of market participants regarding access to clearing. The Committee intends to reassess this scope when more market participants reasonably have access to clearing services for OTC derivatives.
Subsection 3(1) – Counterparties subject to mandatory central counterparty clearing	Two commenters expressed concern with respect to the identification of counterparties under paragraphs 3(1)(b) and (c). The commenters requested the addition of a requirement for local counterparties entering into mandatory clearable derivatives to notify their counterparties if they satisfy the requirements under paragraph 3(1)(a), (b) or (c). They further suggested that the Committee expressly provide that counterparties can rely on self-declaration, or lack of a self-declaration if one is not received by the trade date, in determining whether subsection 3(1) of the National Instrument applies to a mandatory clearable derivative. Since the pricing of a trade will vary depending on whether it will be cleared, the National Instrument should also expressly provide that such reliance on self-declaration, or lack thereof, remains in effect for the entire term of the trade. Any change in status should only apply to trades entered into after the change in status is disclosed to the relevant counterparty.	Change made. Guidance has been added in the CP to explain that we are flexible as to how market participants declare their status to each other. We provided guidance that a counterparty in scope must solicit confirmation from its counterparty where there is a reasonable basis to believe that the counterparty may be near or above any of the thresholds in paragraph 3(1)(b) or (c).
	Two commenters recommended that the scope of counterparties included under paragraph 3(1)(b) be narrowed considering that the National Instrument would result in additional operational burden and cost for smaller affiliates of clearing participants, some of whom may be end-users. They recommended excluding an affiliate of a clearing participant with *de minimis* trading activity.	Change made. The Instrument now applies only to affiliated entities of clearing participants if the affiliated entity's month-end gross notional amount under all outstanding OTC derivatives is above $ 1 000 000 000. The Instrument now also provides a 90-day transition period for an affiliated entity of a clearing participant after the date on which it first exceeds this threshold in order to prepare for clearing.
	A commenter asked for the Committee to confirm that the Instrument would not apply to a local counterparty that has foreign affiliated entities that are participants of clearing	No change. An entity affiliated with a clearing participant of a regulated clearing agency is subject to mandatory central counterparty clearing if it is entering into a mandatory

Section Reference	Issue/Comment	Response
	agencies or clearing houses that are not regulated in Canada. Specifically, the commenter sought confirmation that the clearing requirement would not apply unless both (i) the clearing agency of which the foreign affiliated entity is a clearing participant is a "regulated clearing agency"; and (ii) the products that the foreign affiliate clears are "specified derivatives" (as defined in MI 91-101).	clearable derivative. The Committee intends to respect the Product Determination Rules in making product determinations.
Subsection 3(5) – Substituted compliance for some local counterparties	One commenter fully supported the substituted compliance provisions under subsection 3(5) of the National Instrument, which would allow a foreign affiliate to clear a mandatory clearable derivative pursuant to comparable foreign rules. As well, this commenter fully supported that, at a minimum, the U.S. *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("Dodd-Frank") and *Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories* ("EMIR") be listed in Appendix B to the National Instrument as foreign rules which are comparable to the National Instrument.	Change made. Appendix B includes laws and regulations from the U.S. Commodity Futures Trading Commission (the "CFTC") and European Securities and Markets Authority ("ESMA") regarding mandatory central counterparty clearing.
Section 7 – Intragroup exemption	A commenter expressed concern regarding what agreement is required between affiliated entities to satisfy the conditions of the intragroup exemption. The commenter requested clarification in the CP that a master agreement between the counterparties would satisfy the exemption. The commenter does not believe it is industry standard or practice to require transaction confirmations (and in some cases even a master agreement) between affiliated entities. As well, the commenter recommended amending the Form 94-101F1 to remove the transaction level requirement or add further clarification that the form only needs to be delivered once per pair of counterparties for it to cover all transactions between the pair.	Change made. Section 7 provides flexibility to accommodate different types of transaction agreements. The CP provides that an International Swaps and Derivatives Association ("ISDA") master agreement would be acceptable if it is dated and signed by the affiliated entities and comprises the material terms of the trading relationship between the affiliated entities for the mandatory clearable derivative. We have reduced the information required under Form 94-101F1, focusing on the relationship between the counterparties rather than on their transaction. All pairings of affiliated entities relying on the intragroup exemption may be included in one single form sent to the regulator or securities regulatory authority.
	One commenter sought clarification as to which one of the affiliated entities should agree to rely on the exemption.	No change. The agreement must be provided by a person authorized to agree on behalf of each counterparty.
	Two commenters felt that submitting the form directly to the regulator, rather than to a trade repository (which is the case under Dodd-Frank), is overly burdensome as this would require submission to multiple provincial regulators. They recommended that Form 94-101F1 be submitted to an approved trade repository.	No change. One Form 94-101F1 can be completed per group and sent to all appropriate regulators or securities regulatory authorities.

Section Reference	Issue/Comment	Response
Section 9 – Recordkeeping	A commenter requested clarification in the record keeping section of the CP regarding the use of the terms 'analysis' and 'appropriate legal documentation' in respect of records relating to the intragroup exemption.	No change. The CP provides that counterparties must keep records demonstrating that they meet the necessary criteria to rely on the intragroup exemption. Counterparties have flexibility as to what documentation would be required to show that they meet such criteria.
Former section 13 – Effective date	A commenter supported a simultaneous effective date for both the National Instrument and the determination of mandatory clearable derivatives since they are already required to be cleared by mandates of other jurisdictions. Another commenter suggested that the requirement to clear could come into effect simultaneously only for clearing participants described in paragraph 3(1)(a) of the National Instrument. For the other two categories of counterparties described in paragraphs 3(1)(b) and (c), the commenter recommended a transition period of 12 months from the time the Instrument becomes effective.	Change made. A transition period of 6 months after the Instrument is in force was included for market participants that are not clearing participants in order to set up clearing relationships.
Appendix A – Mandatory clearable derivatives: General Comments	Several commenters agree that the Determination is consistent with international standards and appropriate for Canadian markets.	No change. The mandatory clearable derivatives are also subject to clearing mandates in some foreign jurisdictions.
	Two commenters agreed that the characteristics used in Appendix A are considered adequate to define mandatory clearable derivatives.	No change. We appreciate the commenters' submissions.
	A commenter expressed that the CSA's approach to rule-making or amendments to the National Instrument would not be sufficiently agile to respond to market events that require swift regulatory actions, as consensus with multiple regulatory authorities (both provincial and federal) could be required to suspend or terminate a mandatory clearing mandate.	No change. Members of the CSA have the power to suspend or terminate mandatory central counterparty clearing through decisions such as blanket orders or discretionary relief.
	A commenter requested that the CSA make clear that NGX's clearing model would not cause market participants using the NGX clearing platform to be "participants" under the Instrument in the event NGX did offer clearing services for a derivative that could be subjected to mandatory clearing.	No change. All product determination analysis will take into consideration the CCPs offering clearing services in those products and the operational structures of such CCPs.
Appendix A – Mandatory clearable derivatives	A commenter noted that the stated maturity for Overnight Index Swaps ("OIS") in USD, EUR and GBP of 7 days to 30 years is inconsistent with the CFTC clearing requirements for OIS in USD, EUR and GBP, and recommended that the CSA change the maturity for these currencies to 7 days to 2 years.	Change made. The stated maturity has been aligned with the clearing mandates under foreign regulations. Accordingly, the maturity of OIS was changed to 7 days to 3 years for EUR, USD and GBP.

Section Reference	Issue/Comment	Response
	A commenter noted that if an interest rate swaption or extendible swap is entered into prior to the effective date of the Proposed National Instrument, even if the swaption is physically settled by entering into an IRS after this effective date or the extendible swap is extended after this effective date, mandatory clearing should not apply to the interest rate swap or extended swap as the cost of clearing the underlying swap may not have been reflected in the price of the swaption or extendible swap. On the other hand, if a cash-settled swaption is entered into before the effective date of the National Instrument, but is amended after the effective date to switch to physical settlement, mandatory clearing could apply to the interest rate swap entered into upon settlement of the swaption as this is a material change to the terms of the contract.	Change made. Clarifications are provided in the CP consistent with the approach taken by the U.S. CFTC such that mandatory central counterparty clearing only applies to swaps resulting from the exercise of a swaption entered into after the Instrument is in force unless the swaption is amended after the effective date. The same rationale would apply to the extension of an extendible swap entered into before the Instrument was in force.
	One commenter requested guidance with respect to swaps (listed in Appendix A to the Instrument) that a clearing agency cannot accept for clearing due to non-standard terms. One commenter asked for guidance regarding complex swaps (such as bespoke products, for example, an extendible swap which has an embedded optionality) and packaged transactions, similar to the approach taken under Dodd-Frank.	Change made. The CP has been changed to clarify that market participants need not disentangle a complex transaction in order to clear a component of that transaction which is a mandatory clearable derivative. For packaged transactions, if they contain a component that is a mandatory clearable derivative, that component should be cleared even if the balance of the packaged transaction is not cleared.
	Several commenters recommended, where a CAD IRS is entered into and one of the counterparties is not a local counterparty, delaying mandatory central counterparty clearing for such product until it becomes a subject to mandatory clearing under either EMIR or Dodd-Frank. One commenter stated that, without international harmonization requiring the clearing of CAD IRS, Canadian banks and counterparties would be negatively impacted if foreign counterparties withdraw from the market, thereby reducing the ability of Canadian banks and counterparties to hedge their risks. Another commenter recognized the importance of CAD IRS to the financial stability of the Canadian market.	No change. The CFTC has announced that CAD IRS is a mandatory clearable derivative under Dodd-Frank, effective 60 days following the date on which the Instrument enters into force. The National Instrument is harmonized on this point, thus limiting any potential for regulatory arbitrage.

List of Commenters

1. Canadian Advocacy Council
2. Canadian Commercial Energy Working Group
3. Canadian Market Infrastructure Committee
4. Canadian Bankers Association
5. International Energy Credit Association
6. LCH.Clearnet Group Limited

ANNEX B

NATIONAL INSTRUMENT 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

PART 1
DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1. (1) In this Instrument

"local counterparty" means a counterparty to a derivative if, at the time of execution of the transaction, either of the following applies:

(a) the counterparty is a person or company, other than an individual, to which one or more of the following apply:

(i) the person or company is organized under the laws of the local jurisdiction;

(ii) the head office of the person or company is in the local jurisdiction;

(iii) the principal place of business of the person or company is in the local jurisdiction;

(b) the counterparty is an affiliated entity of a person or company referred to in paragraph (a) and the person or company is liable for all or substantially all the liabilities of the counterparty;

"mandatory clearable derivative" means a derivative within a class of derivatives listed in Appendix A;

"participant" means a person or company that has entered into an agreement with a regulated clearing agency to access the services of the regulated clearing agency and is bound by the regulated clearing agency's rules and procedures;

"regulated clearing agency" means,

(a) in Alberta, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, a person or company recognized or exempted from recognition as a clearing agency or clearing house pursuant to the securities legislation of any jurisdiction of Canada,

(b) in British Columbia, Manitoba and Ontario, a person or company recognized or exempted from recognition as a clearing agency in the local jurisdiction, and

(c) in Québec, a person recognized or exempted from recognition as a clearing house;

"transaction" means any of the following:

(a) entering into a derivative or making a material amendment to, assigning, selling or otherwise acquiring or disposing of a derivative;

(b) the novation of a derivative, other than a novation with a clearing agency or clearing house.

(2) In this Instrument, a person or company is an affiliated entity of another person or company if one of them controls the other or each of them is controlled by the same person or company.

(3) In this Instrument, a person or company (the first party) is considered to control another person or company (the second party) if any of the following apply:

(a) the first party beneficially owns or directly or indirectly exercises control or direction over securities of the second party carrying votes which, if exercised, would entitle the first party to elect a majority of the directors of the second party unless the first party holds the voting securities only to secure an obligation;

(b) the second party is a partnership, other than a limited partnership, and the first party holds more than 50% of the interests of the partnership;

(c) the second party is a limited partnership and the general partner of the limited partnership is the first party;

(d) the second party is a trust and a trustee of the trust is the first party.

(4) In this Instrument, in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, "derivative" means a "specified derivative" as defined in Multilateral Instrument 91-101 *Derivatives: Product Determination*.

Application

2. This Instrument applies to,

(a) in Manitoba,

(i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and

(ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security,

(b) in Ontario,

(i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and

(ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security, and

(c) in Québec, a derivative specified in section 1.2 of Regulation 91-506 respecting derivatives determination, other than a contract or instrument specified in section 2 of that regulation.

In each other local jurisdiction, this Instrument applies to a derivative as defined in subsection 1(4) of this Instrument. This text box does not form part of this Instrument and has no official status.

PART 2
MANDATORY CENTRAL COUNTERPARTY CLEARING

Duty to submit for clearing

3. (1) A local counterparty to a transaction in a mandatory clearable derivative must submit, or cause to be submitted, the mandatory clearable derivative for clearing to a regulated clearing agency that offers clearing services in respect of the mandatory clearable derivative, if one or more of the following applies to each counterparty:

(a) the counterparty

(i) is a participant of a regulated clearing agency that offers clearing services in respect of the mandatory clearable derivative, and

(ii) subscribes to clearing services for the class of derivatives to which the mandatory clearable derivative belongs;

(b) the counterparty

(i) is an affiliated entity of a participant referred to in paragraph (a), and

(ii) has had, at any time after the date on which this Instrument comes into force, a month-end gross notional amount under all outstanding derivatives exceeding $1 000 000 000 excluding derivatives to which paragraph 7(1)(a) applies;

(c) the counterparty

(i) is a local counterparty in any jurisdiction of Canada, other than a counterparty to which paragraph (b) applies, and

(ii) has had, at any time after the date on which this Instrument comes into force, a month-end gross notional amount under all outstanding derivatives, combined with each affiliated entity that is a local counterparty in any jurisdiction of Canada, exceeding $500 000 000 000 excluding derivatives to which paragraph 7(1)(a) applies.

(2) Unless paragraph (1)(a) applies, a local counterparty to which paragraph (1)(b) or (1)(c) applies is not required to submit a mandatory clearable derivative for clearing to a regulated clearing agency if the transaction in the mandatory clearable derivative was executed before the 90th day after the end of the month in which the month-end gross notional amount first exceeded the amount specified in subparagraph (1)(b)(ii) or (1)(c)(ii), as applicable.

(3) Unless subsection (2) applies, a local counterparty to which subsection (1) applies must submit a mandatory clearable derivative for clearing no later than

(a) the end of the day of execution if the transaction is executed during the business hours of the regulated clearing agency, or

(b) the end of the next business day if the transaction is executed after the business hours of the regulated clearing agency.

(4) A local counterparty to which subsection (1) applies must submit the mandatory clearable derivative for clearing in accordance with the rules of the regulated clearing agency, as amended from time to time.

(5) A counterparty that is a local counterparty solely pursuant to paragraph (b) of the definition of "local counterparty" in section 1 is exempt from this section if the mandatory clearable derivative is submitted for clearing in accordance with the law of a foreign jurisdiction to which the counterparty is subject, set out in Appendix B.

Notice of rejection

4. If a regulated clearing agency rejects a mandatory clearable derivative submitted for clearing, the regulated clearing agency must immediately notify each local counterparty to the mandatory clearable derivative.

Public disclosure of clearable and mandatory clearable derivatives

5. A regulated clearing agency must do all of the following:

(a) publish a list of each derivative or class of derivatives for which the regulated clearing agency offers clearing services and state whether each derivative or class of derivatives is a mandatory clearable derivative;

(b) make the list accessible to the public at no cost on its website.

PART 3
EXEMPTIONS FROM MANDATORY CENTRAL COUNTERPARTY CLEARING

Non-application

6. This Instrument does not apply to the following counterparties:

(a) the government of Canada, the government of a jurisdiction of Canada or the government of a foreign jurisdiction;

(b) a crown corporation for which the government of the jurisdiction where the crown corporation was constituted is liable for all or substantially all the liabilities;

(c) a person or company wholly owned by one or more governments referred to in paragraph (a) if the government or governments are liable for all or substantially all the liabilities of the person or company;

(d) the Bank of Canada or a central bank of a foreign jurisdiction;

(e) the Bank for International Settlements;

(f) the International Monetary Fund.

Intragroup exemption

7. (1) A local counterparty is exempt from the application of section 3, with respect to a mandatory clearable derivative, if all of the following apply:

(a) the mandatory clearable derivative is between a counterparty and an affiliated entity of the counterparty if each of the counterparty and the affiliated entity are consolidated as part of the same audited consolidated financial statements prepared in accordance with "accounting principles" as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

(b) both counterparties to the mandatory clearable derivative agree to rely on this exemption;

(c) the mandatory clearable derivative is subject to a centralized risk management program reasonably designed to assist in monitoring and managing the risks associated with the derivative between the counterparties through evaluation, measurement and control procedures;

(d) there is a written agreement between the counterparties setting out the terms of the mandatory clearable derivative between the counterparties.

(2) No later than the 30th day after a local counterparty first relies on subsection (1) in respect of a mandatory clearable derivative with a counterparty, the local counterparty must deliver electronically to the regulator or securities regulatory authority a completed Form 94-101F1 *Intragroup Exemption*.

(3) No later than the 10th day after a local counterparty becomes aware that the information in a previously delivered Form 94-101F1 *Intragroup Exemption* is no longer accurate, the local counterparty must deliver or cause to be delivered electronically to the regulator or securities regulatory authority an amended Form 94-101F1 *Intragroup Exemption*.

Multilateral portfolio compression exemption

8. A local counterparty is exempt from the application of section 3, with respect to a mandatory clearable derivative resulting from a multilateral portfolio compression exercise, if all of the following apply:

(a) the mandatory clearable derivative is entered into as a result of more than 2 counterparties changing or terminating and replacing existing derivatives;

(b) the existing derivatives do not include a mandatory clearable derivative entered into after the effective date on which the class of derivatives became a mandatory clearable derivative;

(c) the existing derivatives were not cleared by a clearing agency or clearing house;

(d) the mandatory clearable derivative is entered into by the same counterparties as the existing derivatives;

(e) the multilateral portfolio compression exercise is conducted by an independent third-party.

Recordkeeping

9. (1) A local counterparty to a mandatory clearable derivative that relied on section 7 or 8 with respect to a mandatory clearable derivative must keep records demonstrating that the conditions referred to in those sections, as applicable, were satisfied.

(2) The records required to be maintained under subsection (1) must be kept in a safe location and in a durable form for a period of

(a) except in Manitoba, 7 years following the date on which the mandatory clearable derivative expires or is terminated, and

(b) in Manitoba, 8 years following the date on which the mandatory clearable derivative expires or is terminated.

PART 4
MANDATORY CLEARABLE DERIVATIVES

Submission of information on derivatives clearing services provided by a regulated clearing agency

10. No later than the 10th day after a regulated clearing agency first offers clearing services for a derivative or class of derivatives, the regulated clearing agency must deliver electronically to the regulator or securities regulatory authority a completed Form 94-101F2 *Derivatives Clearing Services*, identifying the derivative or class of derivatives.

PART 5
EXEMPTION

Exemption

11. (1) The regulator or the securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 6
TRANSITION AND EFFECTIVE DATE

Transition – regulated clearing agency filing requirement

12. No later than May 4, 2017, a regulated clearing agency must deliver electronically to the regulator or securities regulatory authority a completed Form 94-101F2 *Derivatives Clearing Services*, identifying all derivatives or classes of derivatives for which it offers clearing services on April 4, 2017.

Transition – certain counterparties' submission for clearing

13. A counterparty specified in paragraphs 3(1)(b) or (c) to which paragraph (3)(1)(a) does not apply is not required to submit a mandatory clearable derivative for clearing to a regulated clearing agency until October 4, 2017.

Effective date

14. (1) This Instrument comes into force on April 4, 2017.

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after April 4, 2017, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

APPENDIX A
TO
NATIONAL INSTRUMENT 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

MANDATORY CLEARABLE DERIVATIVES
(Section 1(1))

Interest Rate Swaps

Type	Floating index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
Fixed-to-float	CDOR	CAD	28 days to 30 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Basis	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Overnight index swap	CORRA	CAD	7 days to 2 years	Single currency	No	Constant or variable
Overnight index swap	FedFunds	USD	7 days to 3 years	Single currency	No	Constant or variable
Overnight index swap	EONIA	EUR	7 days to 3 years	Single currency	No	Constant or variable
Overnight index swap	SONIA	GBP	7 days to 3 years	Single currency	No	Constant or variable

Forward Rate Agreements

Type	Floating index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
Forward rate agreement	LIBOR	USD	3 days to 3 years	Single currency	No	Constant or variable
Forward rate agreement	EURIBOR	EUR	3 days to 3 years	Single currency	No	Constant or variable
Forward rate agreement	LIBOR	GBP	3 days to 3 years	Single currency	No	Constant or variable

APPENDIX B
TO
NATIONAL INSTRUMENT 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS APPLICABLE FOR SUBSTITUTED COMPLIANCE
(Subsection 3(5))

Foreign jurisdiction	Laws, regulations or instruments
European Union	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories
United States of America	Clearing Requirement and Related Rules, 17 C.F.R. pt. 50

FORM 94-101F1
INTRAGROUP EXEMPTION

Type of Filing: ☐ **INITIAL** ☐ **AMENDMENT**

Section 1 – Information on the entity delivering this Form

1. Provide the following information with respect to the entity delivering this Form:

Full legal name:
Name under which it conducts business, if different:

Head office
Address:
Mailing address (if different):
Telephone:
Website:

Contact employee
Name and title:
Telephone:
Email:

Other offices
Address:
Telephone:
Email:

Canadian counsel (if applicable)
Firm name:
Contact name:
Telephone:
Email:

2. In addition to providing the information required in item 1, if this Form is delivered for the purpose of reporting a name change on behalf of the entity referred to in item 1, provide the following information:

Previous full legal name:
Previous name under which the entity conducted business:

Section 2 – Combined notification on behalf of counterparties within the group to which the entity delivering this Form belongs

1. For the mandatory clearable derivatives to which this Form relates, provide all of the following information in the table below:

(a) the legal entity identifier of each counterparty in the same manner as required under the following instruments:

(i) 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*,

(ii) in Manitoba, Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*,

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

(iv) in Québec, *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting*;

(b) whether each counterparty is a local counterparty in a jurisdiction of Canada.

Pairs	LEI of counterparty 1	Jurisdiction(s) of Canada in which counterparty 1 is a local counterparty	LEI of counterparty 2	Jurisdiction(s) of Canada in which counterparty 2 is a local counterparty
1				

2. Describe the ownership and control structure of the counterparties identified in item 1.

Section 3 – Certification

I certify that I am authorized to deliver this Form on behalf of the entity delivering this Form and on behalf of the counterparties identified in Section 2 of this Form and that the information in this Form is true and correct.

DATED at _____ this _____ day of _____, 20____

_____
(Print name of authorized person)

_____
(Print title of authorized person)

_____
(Signature of authorized person)

_____
(Email)

_____
(Phone number)

FORM 94-101F2
DERIVATIVES CLEARING SERVICES

Type of Filing: ☐ **INITIAL** ☐ **AMENDMENT**

Section 1 – Regulated clearing agency information

1. Full name of regulated clearing agency:

2. Contact information of person authorized to deliver this form

   Name and title:
   Telephone:
   Email:

Section 2 – Description of derivatives

1. Identify each derivative or class of derivatives for which the regulated clearing agency offers clearing services in respect of which a Form 94-101F2 has not previously been delivered.

2. For each derivative or class of derivatives referred to in item 1, describe all significant attributes of the derivative or class of derivatives including

   (a) the standard practices for managing life-cycle events associated with the derivative or class of derivatives, as defined in the following instruments:

      (i) 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*;

      (ii) in Manitoba, Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*;

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

      (iv) in Québec, *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting*,

   (b) the extent to which the transaction is confirmable electronically,

   (c) the degree of standardization of the contractual terms and operational processes,

   (d) the market for the derivative or class of derivatives, including its participants, and

   (e) the availability of pricing and liquidity of the derivative or class of derivatives within Canada and internationally.

3. Describe the impact of providing clearing services for each derivative or class of derivatives referred to in item 1 on the regulated clearing agency's risk management framework and financial resources, including the protection of the regulated clearing agency on the default of a participant and the effect of the default on the other participants.

4. Describe the impact, if any, on the regulated clearing agency's ability to comply with its regulatory obligations should the regulator or securities regulatory authority determine a derivative or class of derivatives referred to in item 1 to be a mandatory clearable derivative.

5. Describe the clearing services offered for each derivative or class of derivatives referred to in item 1.

6. If applicable, attach a copy of every notice the regulated clearing agency provided to its participants for consultation on the launch of the clearing service for a derivative or class of derivatives referred to in item 1 and a summary of concerns received in response to the notice.

Section 3 – Certification

CERTIFICATE OF REGULATED CLEARING AGENCY

I certify that I am authorized to deliver this form on behalf of the regulated clearing agency named below and that the information in this form is true and correct.

DATED at _____ this _____ day of _____, 20____

_____
(Print name of regulated clearing agency)

_____
(Print name of authorized person)

_____
(Print title of authorized person)

_____
(Signature of authorized person)

ANNEX C

COMPANION POLICY 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

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 the jurisdiction including National Instrument 14-101 *Definitions*.

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 T*rade Repositories and Derivatives Data Reporting*,
>
> in Manitoba, 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*.

PART 1
DEFINITIONS AND INTERPRETATION

Subsection 1(1) – Definition of "participant"

A "participant" of a regulated clearing agency is bound by the rules and procedures of the regulated clearing agency due to the contractual agreement with the regulated clearing agency.

Subsection 1(1) – Definition of "regulated clearing agency"

It is intended that only a "regulated clearing agency" that acts as a central counterparty for over-the-counter derivatives be subject to the Instrument. The purpose of paragraph (a) of this definition is to allow, for certain enumerated jurisdictions, a mandatory clearable derivative involving a local counterparty in one of the listed jurisdictions to be submitted to a clearing agency that is not yet recognized or exempted in the local jurisdiction, but that is recognized or exempted in another jurisdiction of Canada. Paragraph (a) does not supersede any provision of the securities legislation of a 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.

Subsection 1(1) – Definition of "transaction"

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 mandatory central counterparty clearing. Similarly, the definition of transaction in NI 94-101 excludes a novation resulting from the submission of a derivative to a clearing agency or clearing house 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.

In the definition of "transaction", the expression "material amendment" is used to determine whether there is a new transaction, considering 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 central counterparty clearing requirement, if applicable, as it would be considered a new transaction. 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 notional amount, the terms and conditions of the contract evidencing the derivative, the trading methods or the risks related to its use, but 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 derivative is a material amendment. Examples of a modification to an existing derivative that would be a material amendment include any modification which would result in a significant change in the value of the derivative, differing cash flows, a change to the method of settlement or the creation of upfront payments.

PART 2
MANDATORY CENTRAL COUNTERPARTY CLEARING

Subsection 3(1) – Duty to submit for clearing

The duty to submit a mandatory clearable derivative for clearing to a regulated clearing agency 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, we would not expect a local counterparty to submit the mandatory clearable derivative for clearing. Therefore, we would not expect a local counterparty to clear a mandatory clearable derivative entered into as a result of a counterparty exercising a swaption that was entered into before the effective date of the Instrument or the date on which the derivative became a mandatory clearable derivative. Similarly, we would not expect a local counterparty to clear an extendible swap that was entered into before the effective date of the Instrument or the date on which the derivative became a mandatory clearable derivative and extended in accordance with the terms of the contract after such date.

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 derivative will be subject to the mandatory central counterparty clearing requirement.

Where a derivative is not subject to the mandatory central counterparty 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 complex swap with non-standard terms that regulated clearing agencies cannot accept for clearing, adherence to the Instrument would not require market participants to structure such derivative in a particular manner or disentangle the derivative in order to clear the component which is a mandatory clearable derivative if it serves legitimate business purposes. However, considering that it would not require disentangling, we would expect the component of a packaged transaction that is a mandatory clearable derivative to be cleared.

For a local counterparty that is not a participant of a regulated clearing agency, we have used the phrase "cause to be submitted" to refer to the local counterparty's obligation. In order to comply with subsection (1), a local counterparty would need to have arrangements in place with a participant for clearing services in advance of entering into 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. For example, a local counterparty under any of paragraphs (a), (b) or (c) must clear a mandatory clearable derivative entered into with another local counterparty under any of paragraphs (a), (b) or (c). As a further example, a local counterparty under any of paragraphs (a), (b) or (c) must also clear a mandatory clearable derivative with a foreign counterparty under paragraphs (a) or (b). For instance, a local counterparty that is an affiliated entity of a foreign participant would be subject to mandatory central counterparty clearing for a mandatory clearable derivative with a foreign counterparty that is an affiliated entity of another foreign participant considering that there is one local counterparty to the transaction and both counterparties respect the criteria under paragraph (b).

A local counterparty that has had a month-end gross notional amount of outstanding derivatives exceeding the threshold in paragraphs (b) or (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 under one or more of paragraphs (a), (b), or (c).

The calculation of the gross notional amount outstanding under paragraphs (b) and (c) excludes derivatives with affiliated entities whose financial statements are prepared on a consolidated basis, which would be exempted under section 7 if they were mandatory clearable derivatives.

In addition, a local counterparty determines whether it exceeds the threshold in paragraph (c) by adding the gross notional amount of all outstanding derivatives of its affiliated entities that are also local counterparties, to its own.

A local counterparty that is a participant at a regulated clearing agency, but does not subscribe to clearing services for the class of derivatives to which the mandatory clearable derivative belongs would still be required to clear if it is subject to paragraph (c).

A local counterparty subject to mandatory central counterparty clearing that engages in a mandatory clearable derivative is responsible for determining whether the other counterparty is also subject to mandatory central counterparty clearing. To do so, the local counterparty may rely on the factual statements made by the other counterparty, provided that it does not have reasonable grounds to believe that such statements are false.

We would not expect that all the counterparties of a local counterparty provide their status as most counterparties would not be subject to the Instrument. However, a local counterparty cannot rely on the absence of a declaration from a counterparty to avoid the requirement to clear. Instead, when no information is provided by a counterparty, the local counterparty may use factual statements or available information to assess whether the mandatory clearable derivative is required to be cleared in accordance with the Instrument.

We would expect counterparties subject to the Instrument to exercise reasonable judgement in determining whether a person or company may be near or above the thresholds set out in paragraphs (b) and (c). We would expect a counterparty subject to the Instrument to solicit confirmation from its counterparty where there is reasonable basis to believe that the counterparty may be near or above any of the thresholds.

The status of a counterparty under this subsection should be determined before entering into a mandatory clearable derivative. We would not expect a local counterparty to clear a mandatory clearable derivative entered into after the Instrument came into effect, but before one of the counterparties was captured under one of paragraphs (a), (b) or (c) unless there is a material amendment to the derivative.

Subsection 3(2) – 90-day transition

This subsection provides that only transactions in mandatory clearable derivatives executed on or after the 90th day after the end of the month in which the local counterparty first exceeded the threshold are subject to subsection 3(1). We do not intend that transactions executed between the 1st day on which the local counterparty became subject to subsection 3(1) and the 90th day be back-loaded after the 90th day.

Subsection 3(3) – Submission to a regulated clearing agency

We would expect that a transaction subject to mandatory central counterparty 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 regulated clearing agency, the next business day.

Subsection 3(5) – Substituted compliance

Substituted compliance is only available to a local counterparty that is a foreign affiliated entity of a counterparty organized under the laws of the local jurisdiction or with a head office or principal place of business in the local jurisdiction and that is responsible for all or substantially all the liabilities of the affiliated entity. The local counterparty would still be subject to the Instrument, but its mandatory clearable derivatives, as per the definition under the Instrument, may be cleared at a clearing agency pursuant to a foreign law listed in Appendix B if the counterparty is subject to and compliant with that foreign law.

Despite the ability to clear pursuant to a foreign law listed in Appendix B, the local counterparty is still required to fulfill the other requirements in the Instrument, as applicable. These include the retention period for the record keeping requirement and the submission of a completed Form 94-101F1 *Intragroup Exemption* to the regulator or securities regulatory authority in a jurisdiction of Canada when relying on an exemption regarding mandatory clearable derivatives entered into with an affiliated entity.

PART 3
EXEMPTIONS FROM MANDATORY CENTRAL COUNTERPARTY CLEARING

Section 6 – Non-application

A mandatory clearable derivative involving a counterparty that is an entity referred to in section 6 is not subject to the requirement under section 3 to submit a mandatory clearable derivative for clearing even if the other counterparty is otherwise subject to it.

The expression "government of a foreign jurisdiction" in paragraph (a) is interpreted as including sovereign and sub-sovereign governments.

Section 7 – Intragroup exemption

The Instrument does not require an outward-facing transaction in a mandatory clearable derivative entered into by a foreign counterparty that meets paragraph 3(1)(a) or (b) to be cleared in order for the foreign counterparty and its affiliated entity that is a local counterparty subject to the Instrument to rely on this exemption. However, we would expect a local counterparty to not abuse this exemption in order to evade mandatory central counterparty clearing. It would be considered evasion if the local counterparty uses a foreign affiliated entity or another member of its group to enter into a mandatory clearable derivative with a foreign counterparty that meets paragraph 3(1)(a) or (b) and then do a back-to-back transaction or enter into the same derivative relying on the intragroup exemption where the local counterparty would otherwise have been required to clear the mandatory clearable derivative if it had entered into it directly with the non-affiliated counterparty.

Subsection 7(1) – Requisite conditions for intragroup exemption

The intragroup exemption is based on the premise that the risk created by mandatory clearable derivatives entered into between counterparties in the same group is expected to be managed in a centralized manner to allow for the risk to be identified and managed appropriately.

This subsection sets out the conditions that must be met for the counterparties to use the intragroup exemption for a mandatory clearable derivative.

The expression "consolidated financial statements" in paragraph (a) is interpreted as financial statements in which the assets, liabilities, equity, income, expenses and cash flows of each of the counterparty and the affiliated entity are consolidated as part of a single economic entity.

Affiliated entities may rely on paragraph (a) for a mandatory clearable derivative as soon as they meet the criteria to consolidate their financial statements together. Indeed, we would not expect affiliated entities to wait until their next financial statements are produced to benefit from this exemption if they will be consolidated.

If the consolidated financial statements referred to in paragraph 7(1)(a) are not prepared in accordance with IFRS, Canadian GAAP or U.S. GAAP, we would expect that the consolidated financial statements be prepared in accordance with the generally accepted accounting principles of a foreign jurisdiction where one or more of the affiliated entities has a significant connection, such as where the head office or principal place of business of one or both of the affiliated entities, or their parent, is located.

Paragraph (c) refers to a system of risk management policies and procedures designed to monitor and manage the risks associated with a mandatory clearable derivative. We expect that such procedures would be regularly reviewed. We are of the view that counterparties relying on this exemption may structure their centralized risk management according to their unique needs, provided that the program reasonably monitors and manages risks associated with non-centrally cleared derivatives. We would expect that, for a risk management program to be considered centralized, the evaluation, measurement and control procedures would be applied by a counterparty to the mandatory clearable derivative or an affiliated entity of both counterparties to the derivative.

Paragraph (d) refers to the terms governing the trading relationship between the affiliated entities for the mandatory clearable derivative that is not cleared as a result of the intragroup exemption. We would expect that the written agreement be dated and signed by the affiliated entities. An ISDA master agreement, for instance, would be acceptable.

Subsection 7(2) – Submission of Form 94-101F1

Within 30 days after two affiliated entities first rely on the intragroup exemption in respect of a mandatory clearable derivative, a local counterparty must deliver, or cause to be delivered, to the regulator or securities regulatory authority a completed Form 94-101F1 *Intragroup Exemption* ("Form 94-101F1") to notify the regulator or securities regulatory authority that the exemption is being relied upon. The information provided in the Form 94-101F1 will aid the regulator or securities regulatory authority in better

understanding the legal and operational structure allowing counterparties to benefit from the intragroup exemption. The parent or the entity responsible to perform the centralized risk management for the affiliated entities using the intragroup exemption may deliver the completed Form 94-101F1 on behalf of the affiliated entities. For greater clarity, a completed Form 94-101F1 could be delivered for the group by including each pairing of counterparties that seek to rely on the intragroup exemption. One completed Form 94-101F1 is valid for every mandatory clearable derivative between any pair of counterparties listed on the completed Form 94-101F1 provided that the requirements set out in subsection (1) are complied with.

Subsection 7(3) – Amendments to Form 94-101F1

Examples of changes to the information provided that would require an amended Form 94-101F1 include: (i) a change in the control structure of one or more of the counterparties listed in Form 94-101F1, and (ii) the addition of a new local jurisdiction for a counterparty. This form may also be delivered by an agent.

Section 8 – Multilateral portfolio compression exemption

A multilateral portfolio compression exercise involves more than two counterparties who wholly change or terminate some or all of their existing derivatives submitted for inclusion in the exercise and replace those derivatives with, depending on the methodology employed, 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 replaced by 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 the aggregate gross number or notional amounts of outstanding derivatives.

Under paragraph (c), the existing derivatives submitted for inclusion in the exercise were not cleared either because they did not include a mandatory clearable derivative or because they were entered into before the class of derivatives became a mandatory clearable derivative or because the counterparty was not subject to the Instrument.

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 a participant to the 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, we would expect existing derivatives that would be reasonably likely to significantly increase the risk exposure of the participant to not be included in the multilateral portfolio compression exercise in order for this exemption to be available.

We would generally expect that a mandatory clearable derivative resulting from the multilateral portfolio compression exercise would have the same material terms as the derivatives that were replaced with the exception of reducing the number or notional amount of outstanding derivatives.

Section 9 – Recordkeeping

We would generally expect that reasonable supporting documentation kept in accordance with section 9 would include complete records of any analysis undertaken by the local counterparty to demonstrate it satisfies the conditions necessary to rely on the intragroup exemption under section 7 or the multilateral portfolio compression exemption under section 8, as applicable.

A local counterparty subject to the mandatory central counterparty clearing requirement is responsible for determining whether, given the facts available, an 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 mandatory clearable derivatives benefiting from the exemption.

PART 4
MANDATORY CLEARABLE DERIVATIVES

and

PART 6
TRANSITION AND EFFECTIVE DATE

Section 10 – Submission of Form 94-101F2 & Section 12 – Transition for the submission of Form 94-101F2

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 offering 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 regulator or securities regulatory authority has the power to determine by rule or otherwise which derivative or class of derivatives will be subject to mandatory central counterparty clearing. Furthermore, the CSA may consider the information required by Form 94-101F2 to determine whether a derivative or class of derivatives will be subject to mandatory central counterparty clearing.

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

- the derivative is available to be cleared on a regulated clearing agency;
- 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 or class of derivatives to be cleared would bring undue risk to regulated clearing agencies;
- the outstanding notional amount of the counterparties transacting in the derivative or class of derivatives, the current liquidity in the market for the derivative or class of derivatives, the concentration of participants active 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 traded;
- whether a regulated clearing agency would be able to manage the risk of the additional derivatives that might be submitted due to the mandatory central counterparty 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 public interest.

FORM 94-101F1
INTRAGROUP EXEMPTION

Submission of information on intragroup transactions by a local counterparty

In paragraph (a) of item 1 in section 2, we refer to information required under section 28 of the TR Instrument.

We intend to keep the forms delivered by or on behalf of a local counterparty under the Instrument 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 we intend for Form 94-101F1 and any amendments to it to be kept generally confidential, if the regulator or securities regulatory authority 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 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 economic terms is a key input in the determination process.

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

Paragraphs (d) and (e) of item 2 in section 2 provide details to assist in assessing the market characteristics such as the 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 its determination as a mandatory clearable derivative could have on market participants, including the regulated clearing agency. Assessing whether a derivative or class of derivatives should be a mandatory clearable derivative may involve, in terms of liquidity and price availability, considerations that are different from, or in addition to, the considerations used by the regulator or securities regulatory authority in permitting a regulated clearing agency to offer clearing services for a derivative or class of derivatives. Stability in the 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. We expect that the data presented cover a reasonable period of time of no less than 6 months. Suggested information to be provided on the market includes:

- 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 mandatory clearable derivatives directly or indirectly, and
- average trading activity and concentration of trading activity among participants by type of market participant submitting mandatory clearable derivatives directly or indirectly to the regulated clearing agency.