CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice of Publication
Amendments to
National Instrument 94-101
Mandatory Central Counterparty Clearing of Derivatives
and
Changes to Companion Policy 94-101 *Mandatory Central Counterparty Clearing of Derivatives*

January 27, 2022

Introduction

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

- amendments to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the **National Instrument)**, and

- changes to Companion Policy 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the **CP**).

Collectively, the amendments to the National Instrument (the **Rule Amendments**) and the changes to the CP are referred to as the **Amendments**.

In some jurisdictions, government ministerial approvals are required for the implementation of the Rule Amendments. Provided all necessary approvals are obtained, the Amendments will come into force on **September 1, 2022**.

The CSA is of the view that the Amendments are necessary to address issues raised by market participants following the CSA's publications for comment of proposed amendments and changes to the National Instrument and the CP on October 12, 2017 (the **2017 Proposed Amendments**) and on September 3, 2020 (the **2020 Proposed Amendments**). The issues relate largely to the scope of market participants that are required to clear an over-the-counter (**OTC**) derivative prescribed in Appendix A to the National Instrument through a central clearing counterparty (the **Clearing Requirement**).

Background

The Amendments are a response to feedback received from various market participants and are intended to more effectively and efficiently promote the underlying policy aims of the National Instrument.

The National Instrument was published on January 19, 2017 and came into force on April 4, 2017 (except in Saskatchewan where it came into force on April 5, 2017). The purpose of the National Instrument is to reduce counterparty risk in the OTC derivatives market by

requiring certain counterparties to clear certain prescribed derivatives through a central clearing counterparty.

The Clearing Requirement became effective for certain counterparties specified in paragraph 3(1)(a) of the National Instrument (*i.e.*, a local counterparty that is a participant of a regulated clearing agency that subscribes for clearing services for the applicable class of derivatives) on the coming-into-force date of the National Instrument, and was initially scheduled to become effective for certain other counterparties specified in paragraphs 3(1)(b) and 3(1)(c) on October 4, 2017.

However, in order to facilitate the rule-making process in respect of the 2017 Proposed Amendments published for comment on October 12, 2017 and to refine the scope of market participants that are subject to the Clearing Requirement, the CSA jurisdictions (except Ontario) exempted counterparties specified in paragraphs 3(1)(b) and (c) of the National Instrument from the Clearing Requirement.[1]

The Ontario Securities Commission (the **OSC**) similarly amended the National Instrument to extend the effective date of the Clearing Requirement for those counterparties until August 20, 2018.[2]

While the Clearing Requirement took effect in Ontario on August 20, 2018 for all categories of counterparties specified in subsection 3(1) of the National Instrument, OSC staff expressed the view that only counterparties specified under paragraph 3(1)(a) are expected to comply with the Clearing Requirement until the CSA finalizes the amendments to the National Instrument to narrow the scope of market participants that would be subject to the Clearing Requirement[3].

On September 3, 2020 the CSA published for comment the 2020 Proposed Amendments that reflect both the comments received on the 2017 Proposed Amendments and further amendments to the National Instrument.

We are monitoring changes to benchmark reference rates, including recent updates relating to GBP LIBOR and EONIA, which are currently subject to the Clearing Requirement. We will continue to monitor these developments as they affect trading liquidity and availability of products for clearing, and will assess whether other products are suitable as mandatory clearable derivatives, necessitating resulting changes to the Clearing Requirement.

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

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

[3] As explained further in CSA Staff Notice 94-303, on May 31st 2018 the CSA jurisdictions (except Ontario) extended the blanket order relief under Blanket Order 94-501 until the earlier of its revocation or the coming into force of amendments to the National Instrument with respect to the scope of counterparties subject to the Clearing Requirement. Since blanket orders were not authorized under Ontario securities law, the OSC was unable to follow the approach of the other CSA jurisdictions.

Summary of changes to the 2020 Proposed Amendments

Further to the comments received on the 2020 Proposed Amendments, the CSA is adopting the Amendments. The Amendments reflect our consideration of the comments received, as well as our ongoing review of the National Instrument's impact on market participants. Minor non-material changes are also being adopted.

(a) Transition period

The Amendments will come into force on September 1, 2022. The transition period will allow participants to amend the relevant documentation relating to the Clearing Requirement and aligns with the commencement of the reference period with respect to the $1 billion threshold under paragraphs 3(1)(b) and (c).

(b) Removal of the requirement to agree to rely on the intragroup exemption

Because the condition in paragraph 7(1)(b) to have both affiliated entities agree to rely on the intragroup exemption could represent an unnecessary burden for participants, the CSA has taken the view that it is reasonable to consider that reliance on this exemption will be the default position for participants.

(c) Multilateral portfolio compression

The CSA added guidance in the CP to clarify our expectations regarding the multilateral portfolio compression exemption in the National Instrument.

(d) Appendix B Laws, regulations or instruments of foreign jurisdiction applicable for substituted compliance

Appendix B includes the relevant laws and regulations of the United Kingdom to ensure the substituted compliance provision reflects the regulatory changes that have followed the Brexit.

Contents of Annexes

The following annexes form part of this CSA Notice:

Annex A Amendments to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*

Annex B Changes to Companion Policy 94-101 *Mandatory Central Counterparty Clearing of Derivatives*

Annex C Summary of comments and CSA responses

Annex D Local Matters, where applicable

Questions

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ANNEX A

AMENDMENTS TO
NATIONAL INSTRUMENT 94-101 *MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES*

1. National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives is amended by this Instrument.

2. Section 1 is amended

(a) in subsection (1), by adding the following definitions:

"investment fund" has the meaning ascribed to it in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

"prudentially regulated entity" means a person or company that is subject to the laws of Canada, a jurisdiction of Canada or a foreign jurisdiction where the head office or principal place of business of an authorized foreign bank named in Schedule III of the *Bank Act* (Canada) is located, and a political subdivision of that foreign jurisdiction, relating to minimum capital requirements, financial soundness and risk management, or the guidelines of a regulatory authority of Canada or a jurisdiction of Canada relating to minimum capital requirements, financial soundness and risk management;

"reference period" means the period beginning on September 1 in a given year and ending on August 31 of the following year;**,**

(b) by replacing subsection (2) with the following:

(2) In this Instrument, a person or company (the first party) is an affiliated entity of another person or company (the second party) if any of the following apply:

(a) the first party and the second party are consolidated in consolidated financial statements prepared in accordance with one of the following:

(i) IFRS;

(ii) generally accepted accounting principles in the United States of America;

(b) all of the following apply:

(i) the first party and the second party would have been, at the relevant time, required to be consolidated in consolidated

financial statements prepared by the first party, the second party or another person or company, if the consolidated financial statements were prepared in accordance with the principles or standards referred to in subparagraph (a)(i) or (ii);

(ii) neither the first party's nor the second party's financial statements, nor the financial statements of the other person or company, were prepared in accordance with the principles or standards referred to in subparagraph (a)(i) or (ii);

(c) except in British Columbia, the first party and the second party are both prudentially regulated entities and are consolidated for that purpose;

(d) in British Columbia, the first party and the second party are prudentially regulated entities that are required to report, on a consolidated basis, information relating to minimum capital requirements, financial soundness and risk management.***, and***

(c) by repealing subsection (3).

3. Section 3 is amended

(a) by adding the following subsections:

(0.1) Despite subsection 1(2), an investment fund is not an affiliated entity of another person or company for the purposes of paragraphs (1)(b) and (c) of this section.

(0.2) Despite subsection 1(2), a person or company is not an affiliated entity of another person or company for the purposes of paragraphs (1)(b) and (c) of this section if the following apply:

(a) the person or company has, as its primary purpose, one of the following:

(i) financing a specific pool or pools of assets;

(ii) providing investors with exposure to a specific set of risks;

(iii) acquiring or investing in real estate or other physical assets;

(b) all the indebtedness incurred by the person or company whose primary purpose is one set out in subparagraph (a)(i) or (ii), including obligations owing to its counterparty to a derivative, are secured solely by the assets of that person or company.**,**

(b) by replacing subparagraph (1)(b)(ii) with the following:

(ii) had, for the months of March, April and May preceding the reference period in which the transaction was executed, an average month-end gross notional amount under all outstanding derivatives exceeding $1 000 000 000 excluding derivatives referred to in paragraph 7(1)(a);**,**

(c) by replacing paragraph (1)(c) with the following:

(c) the counterparty

(i) is a local counterparty in any jurisdiction of Canada,

(ii) had, during the previous 12-month period, 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 referred to in paragraph 7(1)(a), and

(iii) had, for the months of March, April and May preceding the reference period in which the transaction was executed, an average month-end gross notional amount under all outstanding derivatives exceeding $1 000 000 000 excluding derivatives referred to in paragraph 7(1)(a).***, and***

(d) in subsection (2), by deleting "(1)(b) or***", "***(b)(ii) or (1)***" and "***, as applicable***".***

4. Section 6 is amended by replacing "the following counterparties***" with "***a counterparty in respect of a mandatory clearable derivative if any counterparty to the mandatory clearable derivative is any of the following***".***

5. Section 7 is amended

(a) in subsection (1), by deleting "the application of***",***

(b) in paragraph (1)(a), by deleting "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**”,***

(c) by repealing paragraph (1)(b), and

(d) by repealing subsections (2) and (3).

6. Section 8 is amended

(a) by deleting “the application of***”,***

(b) by replacing paragraph (d) with the following:

(d) the multilateral portfolio compression exercise involved both counterparties to the mandatory clearable derivative;***, and***

(c) in paragraph (e), by replacing “is***” with “***was***”.***

7. Part 4 is repealed.

8. Appendix A and Appendix B are replaced with the following:

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

MANDATORY CLEARABLE DERIVATIVES
(Subsection 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
Overnight index swap	FedFunds	USD	7 days to 3 years	Single currency	No	Constant
Overnight index swap	EONIA	EUR	7 days to 3 years	Single currency	No	Constant
Overnight index swap	SONIA	GBP	7 days to 3 years	Single currency	No	Constant

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
Forward rate agreement	EURIBOR	EUR	3 days to 3 years	Single currency	No	Constant
Forward rate agreement	LIBOR	GBP	3 days to 3 years	Single currency	No	Constant

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, as amended by Regulation (EU) 2019/2099
United Kingdom	Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment etc., and Transitional Provision) (EU Exit) (No 2) Regulations 2019 The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 The Technical Standards (European Market Infrastructure Regulation) (EU Exit) (No 2) Instrument 2019 The Technical Standards (European Market Infrastructure Regulation) (EU Exit) (No 3) Instrument 2019
United States of America	Clearing Requirement and Related Rules, 17 CFR Part 50

9. ***Form 94-101F1 Intragroup Exemption and Form 94-101F2 Derivatives Clearing Services are repealed.***

10. (1) Section 8 of this Instrument comes into force on April 12, 2022 and the remaining sections come into force on September 1, 2022.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after:

(a) April 12, 2022, but before September 1, 2022, then Section 8 of this Instrument comes into force on the day on which it is filed with the Registrar of Regulations; or

(b) September 1, 2022, then this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX B

PROPOSED CHANGES TO COMPANION POLICY 94-101 MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

1. Companion Policy 94-101 Mandatory Central Counterparty Clearing of Derivatives is changed by this document.

2. Part 1 is changed by adding the following subsection:

Subsection 1(2) – Interpretation of "affiliated entity"

To determine whether two entities are affiliates, the Instrument uses an approach based on the concept of consolidated financial statements under IFRS or U.S. Generally Accepted Accounting Principles (U.S. GAAP). Consequently, two entities whose financial statements are consolidated, or would be consolidated if any financial statements were required, would be considered affiliated entities under the Instrument. We expect corporate groups that do not prepare financial statements in accordance with IFRS or U.S. GAAP to apply the consolidation test under either IFRS or U.S. GAAP to determine whether entities within the corporate group meet the "affiliated entity" interpretation.

3. Part 2 is replaced with the following:

PART 2 MANDATORY CENTRAL COUNTERPARTY CLEARING

Subsections 3(0.1) and (0.2) – Exclusion of investment funds and certain entities

An investment fund whose financial statements are consolidated with those of another entity should not be considered an affiliated entity of the other entity for the application of paragraphs 3(1)(b) and (c). Accordingly, the month-end exposure of an investment fund should not be considered when calculating the month-end gross notional amount in accordance with those paragraphs.

However, an investment fund will be subject to the clearing requirements if it, on its own, exceeds the $500 000 000 000 month-end gross notional amount for all outstanding derivatives.

Similarly, certain structured entities (commonly known as special purpose entities) should not be considered as affiliates for the purpose of paragraphs 3(1)(b) and (c) if they meet the conditions stated in subsection 3(0.2). An entity, including an entity such as a credit card securitization vehicle or an entity created to guarantee interest and principal payments under a covered bond program, that meets the conditions in subsection 3(0.2) would not be an affiliated entity. All obligations of such entities are required to be exclusively secured by their own assets to meet the condition in paragraph 3(0.2)(b). Also, a vehicle created to invest in real estate or an infrastructure that meets the conditions in subparagraph 3(0.2)(a)(iii) would not be an affiliated entity of another entity even if its financial statements are consolidated with the other entity.

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 date on which the requirement to submit a mandatory clearable derivative for clearing is applicable to that counterparty 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 date on which the requirement to submit a mandatory

clearable derivative for clearing is applicable to that counterparty 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 meet the criteria under paragraph (b).

Pursuant to paragraph (c) a local counterparty that had a month-end gross notional amount of outstanding derivatives exceeding the $500 000 000 000 threshold in subparagraph (c)(ii) must clear a mandatory clearable derivative entered into with another counterparty that meets the criteria under paragraph (a), (b) or (c). In order to determine whether the $500 000 000 000 threshold in subparagraph (c)(ii) is exceeded, a local counterparty must add the gross notional amount of all outstanding derivatives of its affiliated entities that are also local counterparties, to its own. However, investments funds and consolidated structured entities that meet the criteria under subsections 3(0.1) and (0.2) are not included in the calculation.

Where a local counterparty is a member of a group of affiliated entities that exceeds the $500 000 000 000 threshold but is not itself a counterparty to derivatives that have an average month-end gross notional amount exceeding the $1 000 000 000 threshold, calculated in accordance with subparagraph (c)(iii), it is not required to clear a mandatory clearable derivative.

A person or company that exceeds the $1 000 000 000 notional exposure, calculated according to paragraphs (b) and (c), is required to fulfill the mandatory clearing requirement from September 1 of a given year until August 31 of the next year. This is referred to as the "reference period" in the Instrument.

For example, local counterparty XYZ had an average month-end gross notional amount under all outstanding derivatives of $75 000 000 000 for the months of March, April and

May of 2022. Counterparty XYZ also had, combined with each of its affiliated entities that are local counterparties, a month-end gross notional amount for all derivatives of $525 000 000 000 at the end of November 2021. Considering that (i) the aggregated month-end gross notional amount outstanding of $525 000 000 000 exceeds the $500 000 000 000 threshold, (ii) it occurred during the previous 12 months, and (iii) the average month-end gross notional amount of $75 000 000 000 for March, April and May of 2022 exceeds the $1 000 000 000 threshold, counterparty XYZ will need to comply with the Instrument in respect of mandatory clearable derivatives entered into during the reference period starting September 1, 2022. Conversely, if local counterparty XYZ does not exceed, on its own, the $1 000 000 000 threshold, it is not subject to clearance even if the aggregated month-end gross notional amount outstanding with all of its affiliated entities exceeds the $500 000 000 000 threshold.

Furthermore, in the example, even if local counterparty XYZ is subject to mandatory clearing from September 1, 2022 until August 31, 2023, but no longer exceeds the $1 000 000 000 threshold for the months of March, April and May of 2023, it will no longer be required to comply with section 3 for the next reference period starting September 1, 2023. However, the local counterparty will have to evaluate its application every year. Consequently, if local counterparty XYZ exceeds the $1 000 000 000 threshold again in a future year, it will become subject to the requirements of the Instrument until the following year.

The calculation of the gross notional amount outstanding under paragraphs (b) and (c) excludes derivatives with affiliated entities, 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 subparagraph (c)(ii) 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 date on which the requirement to submit a mandatory clearable derivative for clearing is applicable to that counterparty, 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 after the date that both counterparties are so captured.

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 set out in subparagraph 3(1)(c)(ii) 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. This includes the retention period for the record keeping requirement.

4. Part 3, subsection 7(1) is changed by

(a) deleting the third paragraph, and

(b) replacing the seventh paragraph with the following:

Paragraph (d) refers to the terms of the mandatory clearable derivative that is not cleared. A trade confirmation, for instance, would be acceptable.**.**

5. Part 3, subsections 7(2) and (3) are deleted.

6. Part 3, section 8 is changed by

(a) adding, at the end of the second paragraph, the following:

We expect each amended derivative or replacement derivative generated by the multilateral portfolio compression exercise to be entered into for the sole purpose of reducing operational or counterparty credit risk and that such derivative(s) is (are) entered into between the same two counterparties as the original derivative(s). ***, and***

(b) replacing the fifth paragraph with the following:

We would expect that a mandatory clearable derivative resulting from the multilateral portfolio compression exercise would have the same material terms (including the floating index, the maximum maturity of the derivative and the weighted average maturity of the derivative) as the derivatives that were replaced with the exception of reducing the number or notional amount of outstanding derivatives**.**

7. The title "PART 4 MANDATORY CLEARABLE DERIVATIVES and PART 6 TRANSITION AND EFFECTIVE DATE" is deleted.

8. The heading "Section 10 – Submission of Form 94-101F2 & Section 12 – Transition for the submission of Form 94-101F2" is replaced with the heading APPENDIX A MANDATORY CLEARABLE DERIVATIVES, and the first two paragraphs are deleted.

9. Form 94-101F1 Intragroup Exemption and Form 94-101F2 Derivatives Clearing Services are deleted.

10. These changes become effective on September 1, 2022.

ANNEX C

SUMMARY OF COMMENTS AND CSA RESPONSES

Section Reference	Issue/Comment	Response
S. 1 – Definitions: Affiliated entity	Two commenters pointed out that an implementation period will be needed to amend the existing ISDA Canadian Clearing Classification Letter and to allow for its exchange between market participants.	Change made. The Amendments will come into force on September 1, 2022.
S. 3 – Duty to clear	A commenter suggested to make drafting changes to the section 3(1) and 3(2) of the CP.	Changes made.
S. 7 – Intragroup exemption	Two commenters pointed out that the required agreements in paragraphs 7(1)(b) and 7(1)(d) are unnecessary and create an additional burden.	Change made in paragraph 7(1)(b). The CSA agrees that the reliance on the intragroup exemption should be viewed as the default position for the affiliated counterparties.
	One commenter suggested that if the required agreement in paragraph 7(1)(d) was to be kept, the CSA should clarify its expectations.	Change made to the CP. No change made to paragraph 7(1)(d) of the National Instrument. The CSA's intent is that affiliated entities should have their transactions in mandatory clearable derivatives documented. Trade confirmations, for instance, would satisfy this requirement.

List of Commenters

1. Canadian Market Infrastructure Committee
2. International Swaps and Derivatives Association