

ANNEX B

NATIONAL INSTRUMENT 94-102 *DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER COLLATERAL AND POSITIONS*

PART 1 DEFINITIONS, INTERPRETATION AND APPLICATION

Definitions and Interpretation

1. (1) In this Instrument,

“Canadian financial institution” means a Canadian financial institution as defined in National Instrument 45-106 *Prospectus Exemptions*;

“cleared derivative” means a transaction in a derivative that is, directly or indirectly, submitted to and cleared by a clearing agency;

“clearing intermediary” means a direct intermediary or an indirect intermediary;

“customer” means a counterparty to a cleared derivative other than a clearing intermediary or a regulated clearing agency;

“customer collateral” means all cash, securities and other property if either of the following applies:

- (a) they are received or held by a clearing intermediary or regulated clearing agency from, for or on behalf of a customer, and are intended to or does margin, guarantee, secure, settle or adjust a cleared derivative of the customer;
- (b) they are deposited on behalf of a customer by a clearing intermediary to satisfy the margin requirements of the customer’s cleared derivatives at a regulated clearing agency;

“direct intermediary” means a person or company that

- (a) with respect to a cleared derivative, is a participant of the regulated clearing agency at which the cleared derivative is cleared,
- (b) provides clearing services for a customer in respect of a cleared derivative entered into by, for or on behalf of the customer, and
- (c) requires, receives or holds collateral from, for or on behalf of the customer in providing clearing services;

“excess margin” means customer collateral in respect of a customer’s cleared derivatives that

- (a) is delivered to a regulated clearing agency or clearing intermediary from, for or on behalf of the customer, and
- (b) has a value in excess of the amount required by the regulated clearing agency to clear and settle the cleared derivatives of the customer;

“indirect intermediary” means a person or company that

- (a) provides indirect clearing services for a customer in respect of a cleared derivative entered into by, for or on behalf of the customer, and
- (b) requires, receives or holds collateral from, for or on behalf of the customer in providing clearing services;

“initial margin” means, in relation to a regulated clearing agency’s margin system that manages credit exposures to its participants, collateral that is required by the regulated clearing agency to cover potential changes in the value of a customer’s cleared derivatives positions over an appropriate close-out period in the event of default;

“local customer” means a customer that, in respect of a local jurisdiction, is either of the following:

- (a) an individual who is resident in the local jurisdiction;
- (b) a person or company to which one or more of the following applies:
 - (i) it is organized or incorporated under the laws of the local jurisdiction;
 - (ii) its head office is in the local jurisdiction;
 - (iii) its principal place of business is in the local jurisdiction;

“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;

“permitted depository” means a person or company that is any of the following:

- (a) a Canadian financial institution or Schedule III bank;
- (b) a regulated clearing agency;
- (c) a foreign entity that
 - (i) is incorporated or organized under the laws of a permitted jurisdiction,

- (ii) is regulated as a banking institution or trust company by the government, or an agency of the government, of a permitted jurisdiction, and
 - (iii) has shareholders' equity, as reported in its most recent audited financial statements, of not less than the equivalent of \$100,000,000;
- (d) either of the following, but only with respect to customer collateral that it receives from a customer or a clearing intermediary for which it provides clearing services:
- (i) a registered investment dealer as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
 - (ii) a prudentially regulated foreign entity, other than a foreign entity listed in paragraph (c) that is registered, licensed or otherwise permitted to perform the services of a clearing intermediary in accordance with the laws and regulations of a permitted jurisdiction;

“permitted investment” means cash or a highly liquid financial instrument with minimal market and credit risk that is capable of being liquidated rapidly with minimal adverse price effect;

“permitted jurisdiction” means a foreign jurisdiction that is any of the following:

- (a) a country where the primary regulator of a Schedule III bank is located, or a political subdivision thereof;
- (b) if a customer has provided express written consent to a cleared derivative in a foreign currency, the country of origin of the foreign currency used to denominate the rights and obligations under the cleared derivative entered into by, for or on behalf of the customer, or a political subdivision thereof;
- (c) a jurisdiction approved by the regulator or the securities regulatory authority from time to time, subject to such conditions or restrictions as may be imposed in the approval;

“qualifying central counterparty” means an entity to which each of the following applies:

- (a) it is licensed to operate as a central counterparty in a jurisdiction of Canada or a foreign jurisdiction by a government or regulatory authority;
- (b) it is subject to regulation that is generally consistent with the *Principles for market infrastructures* published by the Bank for International Settlements' Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions in April 2012, as amended from time to time;

“regulated clearing agency” means

- (a) in British Columbia, Manitoba, Ontario and Saskatchewan, a person or company recognized or exempted from recognition as a clearing agency in the local jurisdiction,
- (b) in Québec, a person recognized or exempted from recognition as clearing house or as a central securities depository under the Securities Act (Québec), and
- (c) in Alberta, Newfoundland and Labrador, New Brunswick, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island 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;

“Schedule III bank” means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

“segregate” means to separately hold or account for customer collateral and customer positions;

“transaction” means any of the following:

- (a) entering into a derivative or making a material amendment to, terminating, assigning, selling or otherwise acquiring or disposing of a derivative;
 - (b) the novation of a derivative, other than a novation with a clearing agency.
- (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.

Application

2. (1) This Instrument applies to all of the following:

- (a) a regulated clearing agency located in a local jurisdiction that clears a cleared derivative entered into by, for or on behalf of a customer;
- (b) a regulated clearing agency located in a foreign jurisdiction that clears a cleared derivative entered into by, for or on behalf of a local customer, but only in respect of that derivative;
- (c) a clearing intermediary that provides clearing services for a cleared derivative entered into by, for or on behalf of a local customer, but only in respect of that derivative.

(2) This Instrument applies to each of the following:

- (a) in Manitoba, a derivative as prescribed in Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination*;
- (b) in Ontario, a derivative as prescribed in Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination*;
- (c) in Québec, a derivative as specified in Regulation 91-506 respecting derivatives determination.

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

PART 2

TREATMENT OF CUSTOMER COLLATERAL BY A CLEARING INTERMEDIARY

Segregation of customer collateral – clearing intermediary

3. (1) A clearing intermediary must segregate customer collateral from the property of other persons or companies including the property of the clearing intermediary.
- (2) A clearing intermediary must segregate the customer collateral of the customer of an indirect intermediary from any property of the indirect intermediary.

Holding of customer collateral – clearing intermediary

4. A clearing intermediary must hold all customer collateral in one or more accounts at a permitted depository and clearly identify such accounts as holding customer collateral.

Excess margin – clearing intermediary

5. A clearing intermediary must have rules, policies or procedures in place with respect to identifying and recording, at least once each business day, the value of excess margin that it holds that is attributable to each customer for which the clearing intermediary provides clearing services.

Use of customer collateral – clearing intermediary

6. (1) A clearing intermediary must not use or permit the use of customer collateral except in accordance with this section and sections 7 and 8.
 - (2) A clearing intermediary may use or permit the use of customer collateral of a customer to do either of the following:
 - (a) margin, guarantee, secure, settle or adjust cleared derivatives of the customer;
 - (b) with respect to excess margin, secure or extend the credit of the customer.
 - (3) Other than with respect to excess margin used in accordance with paragraph (2)(b), a clearing intermediary must not impose or permit the imposition of a lien or claim on a customer's positions or customer collateral except to secure a claim resulting from a cleared derivative in favour of any of the following:
 - (a) the customer;
 - (b) the regulated clearing agency or clearing intermediary responsible for clearing the cleared derivatives of the customer to which the positions or customer collateral relate.

Investment of customer collateral – clearing intermediary

7. (1) A clearing intermediary must not invest customer collateral except in accordance with subsection (2).
 - (2) Subject to subsection (3), a clearing intermediary may
 - (a) invest property received as customer collateral in a permitted investment, and
 - (b) use customer collateral to buy or sell a permitted investment pursuant to an agreement for resale or repurchase if all of the following apply:
 - (i) the agreement is in writing;
 - (ii) the term of the agreement is no more than one business day;
 - (iii) written confirmation specifying the terms of the agreement is delivered to the customer immediately upon entering into the transaction;

(iv) the agreement is not entered into with an affiliated entity of the clearing intermediary.

- (3) A loss resulting from an investment of customer collateral by the clearing intermediary must be borne by the clearing intermediary making the investment and not by the customer.

Use of customer collateral - indirect intermediary default

8. (1) Except as provided in subsection (2), a clearing intermediary must not apply customer collateral of a customer of an indirect intermediary for which the clearing intermediary provides clearing services to satisfy the obligations of that indirect intermediary.

(2) A clearing intermediary may apply the customer collateral of a customer in full or partial satisfaction of an indirect intermediary's obligations that arise or are accelerated as a consequence of the indirect intermediary's default only to the extent that those obligations are attributable to the cleared derivatives of the customer.

Acting as a clearing intermediary

9. (1) A person or company must not provide clearing services for a customer as a clearing intermediary unless the person or company is one of the following:

- (a) prudentially regulated by an appropriate regulatory authority in Canada;
- (b) prudentially regulated by an appropriate regulatory authority in a permitted jurisdiction and registered, licensed or otherwise permitted to perform the services of a clearing intermediary in accordance with the laws and regulations of that permitted jurisdiction.

(2) A clearing intermediary must not provide clearing services for a customer unless the clearing services are provided in respect of derivatives that are cleared through

- (a) except in Alberta, a regulated clearing agency, and
- (b) in Alberta, a regulated clearing agency or a qualifying central counterparty.

Risk management – clearing intermediary

10. A clearing intermediary that provides or proposes to provide clearing services for an indirect intermediary must have rules, policies or procedures reasonably designed to

- (a) identify, monitor and manage material risks arising from the provision of clearing services, and
- (b) manage a default of the indirect intermediary.

Risk management – indirect intermediary

11. (1) An indirect intermediary must have rules, policies or procedures reasonably designed to identify, monitor and manage the material risks arising from the provision of indirect clearing services for a customer.
- (2) An indirect intermediary that receives clearing services by a clearing intermediary must provide the clearing intermediary with all information reasonably required to identify, monitor and manage any material risks arising from the provision of indirect clearing services for customers.

PART 3 RECORD KEEPING BY A CLEARING INTERMEDIARY

Retention of records – clearing intermediary

12. A clearing intermediary must keep the records required under this Part and Part 4, and all supporting documentation, in a readily accessible location for at least 7 years after the date upon which the cleared derivative expires or terminates.

Books and records – clearing intermediary

13. (1) A clearing intermediary that receives customer collateral must calculate and record all of the following, at least once each business day, in its books and records for each customer:
- (a) the amount of customer collateral it requires from, for or on behalf of each customer;
 - (b) the total amount of customer collateral it requires from, for or on behalf of all customers.
- (2) For each indirect intermediary that a clearing intermediary provides clearing services for, the clearing intermediary must calculate and record all of the following, at least once each business day:
- (a) the amount of customer collateral it requires from, for or on behalf of each customer of each indirect intermediary;
 - (b) the total amount of customer collateral it requires from, for or on behalf of all customers of each indirect intermediary.
- (3) A clearing intermediary must record all of the following in its books and records for each customer:
- (a) each permitted depository at which it holds customer collateral of the customer;
 - (b) a description of the customer collateral held at each permitted depository;

(c) the current value of any customer collateral received from, for or on behalf of the customer, including, without limitation, all of the following at least once each business day:

(i) any accruals on the customer collateral creditable to the customer;

(ii) any gains or losses in respect of the customer collateral;

(iii) any charges lawfully accruing to the customer;

(iv) any distributions or transfers of the customer collateral.

Books and records – direct intermediary

14. A direct intermediary must record all of the following, at least once each business day, in its books and records for each customer:

(a) the total amount of customer collateral required for the cleared derivatives of the customer by each regulated clearing agency;

(b) the total amount of the customer's excess margin held by the direct intermediary.

Books and records – indirect intermediary

15. An indirect intermediary must record all of the following, at least once each business day, in its books and records for each customer:

(a) the total amount of collateral required for the cleared derivatives of the customer by each clearing intermediary through which the indirect intermediary clears;

(b) the aggregate sum of the amounts in paragraph (a);

(c) the total amount of the customer's excess margin held by the indirect intermediary.

Separate records – direct intermediary

16. A direct intermediary must keep separate books and records that, at any time, enable it to distinguish all of the following in its own accounts and in the accounts held with the regulated clearing agency:

(a) the positions and property of the direct intermediary;

(b) the positions and value of customer collateral held for or on behalf of each of the direct intermediary's customers.

Separate records – indirect intermediary

17. An indirect intermediary must keep separate books and records that, at any time, enable it to distinguish all of the following in its own accounts and in the accounts held with each clearing intermediary through which it provides clearing services:
- (a) the positions and property of the indirect intermediary;
 - (b) the positions and value of customer collateral held for or on behalf of each of the indirect intermediary's customers.

Separate records – multiple clearing intermediaries

18. A clearing intermediary that provides clearing services in respect of a cleared derivative for an indirect intermediary must keep separate books and records that, at any time, enable it and each of its indirect intermediaries to distinguish all of the following in the accounts held with the clearing intermediary:
- (a) the positions and property of the indirect intermediary;
 - (b) the positions and value of customer collateral held for, or on behalf of the indirect intermediary's customers.

Records of investment of customer collateral – clearing intermediary

19. A clearing intermediary that invests customer collateral must keep records of all of the following with respect to each investment of customer collateral:
- (a) the date of the investment;
 - (b) the name of each person or company through which the investment was made;
 - (c) a daily market valuation of the investment, any unrealized gain or loss on that investment and related supporting documentation;
 - (d) a description of each asset or instrument in which the investment was made;
 - (e) the identity of each permitted depository where each asset, as applicable, or instrument is deposited;
 - (f) the date on which the investment was liquidated or otherwise disposed of and the realized gain or loss;
 - (g) the name of each person or company liquidating or disposing of the investment.

Records of currency conversion – clearing intermediary

20. A clearing intermediary must keep a record of each conversion of customer collateral from one currency to another.

PART 4
REPORTING AND DISCLOSURE BY A CLEARING INTERMEDIARY

Clearing intermediary delivery of disclosure by regulated clearing agency

- 21.** Before receiving the first cleared derivative from, for or on behalf of a customer, a clearing intermediary must provide the customer, or an indirect intermediary for which it provides clearing services, with all of the following:
- (a) the written disclosure provided under section 41 by each regulated clearing agency through which the direct intermediary clears a transaction for the customer or indirect intermediary;
 - (b) the investment guidelines and policy and any changes to such investment guidelines and policy provided under section 45 by each regulated clearing agency that invests customer collateral attributable to the customer.

Disclosure to customer by clearing intermediary

- 22. (1)** Before receiving the first cleared derivative from, for or on behalf of a customer, a clearing intermediary must provide written disclosure to the customer describing the treatment of customer collateral not held at a regulated clearing agency, including the impact of relevant bankruptcy and insolvency laws, in the event of a default by the clearing intermediary.
- (2)** After accepting the first cleared derivative from, for or on behalf of a customer of, each time there is a change to the treatment of customer collateral not held at a regulated clearing agency, the clearing intermediary must provide written disclosure to the customer, within a reasonable period of time, describing the change.

Disclosure to customer by indirect intermediary

- 23. (1)** Before receiving the first cleared derivative from, for or on behalf of a customer, an indirect intermediary must provide written disclosure including a description of all of the following to the customer:
- (a) the risks associated with receiving clearing services through an indirect intermediary;
 - (b) the rules, policies or procedures for transferring positions and customer collateral, in the event of the indirect intermediary's default, to another clearing intermediary.
- (2)** After accepting the first cleared derivative from, for or on behalf of a customer of, each time there is a change to the rules, policies or procedures referred to in paragraph (1)(b), the indirect intermediary must provide written disclosure to the customer, within a reasonable period of time, describing the change made to the rules, policies or procedures.

Customer information – clearing intermediary

24. (1) A direct intermediary must provide all of the following to a regulated clearing agency:

- (a) before submitting to the regulated clearing agency the first cleared derivative for or on behalf of a customer of the direct intermediary, or of an indirect intermediary for which the direct intermediary provides clearing services, information sufficient to identify the customer and the customer's positions and customer collateral;
- (b) at least once each business day after providing the information referred to in paragraph (a), information that identifies the customer's positions and customer collateral.

(2) An indirect intermediary must provide all of the following to a clearing intermediary through which it provides clearing services:

- (a) before submitting to the clearing intermediary the first cleared derivative for or on behalf of a customer, information sufficient to identify the customer and the customer's positions and customer collateral;
- (b) at least once each business day after providing the information referred to in paragraph (a), information that identifies the customer's positions and customer collateral.

Customer collateral report - regulatory

25. (1) A direct intermediary that receives customer collateral must electronically submit to the regulator or securities regulatory authority, within 10 business days of the end of each calendar month, a completed Form 94-102F1 *Customer Collateral Report: Direct Intermediary*.

(2) An indirect intermediary that receives customer collateral must electronically submit to the regulator or securities regulatory authority, within 10 business days of the end of each calendar month, a completed Form 94-102F2 *Customer Collateral Report: Indirect Intermediary*.

Customer collateral report - customer

26. (1) A clearing intermediary must make available to each customer from, for or on behalf of whom it receives customer collateral, a report, calculated and available on a daily basis, setting out all of the following:

- (a) the current value of the cleared derivative positions of the customer;
- (b) the current value, asset type and quantity of customer collateral received from, for or on behalf of the customer that is held by the clearing intermediary and the location of each permitted depository at which the customer collateral is held;
- (c) the current value of the customer collateral received from, for or on behalf of the customer that is posted with any of the following:

- (i) a regulated clearing agency;
 - (ii) another clearing intermediary.
- (2) A clearing intermediary must make available to each indirect intermediary from which it receives customer collateral for or on behalf of a customer, a report, calculated and available on a daily basis, setting out all of the following:
 - (a) the current value of the cleared derivative positions of the customer;
 - (b) the current value, asset type and quantity of customer collateral received from the indirect intermediary on behalf of the customer that is held by the clearing intermediary and the location of each permitted depository at which the customer collateral is held;
 - (c) the current value of the customer collateral received from the indirect intermediary on behalf of the customer that is posted with any of the following:
 - (i) a regulated clearing agency;
 - (ii) another clearing intermediary.

Disclosure of investment of customer collateral

- 27. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, a clearing intermediary that invests customer collateral must disclose in writing its investment guidelines and policy directly to the customer, or, if applicable, to the indirect intermediary that is providing clearing services to the customer.
- (2) A clearing intermediary that invests customer collateral must promptly disclose in writing any change to its investment guidelines and policy directly to the customer, or, if applicable, to the indirect intermediary that is providing clearing services to the customer.

PART 5 TREATMENT OF CUSTOMER COLLATERAL BY A REGULATED CLEARING AGENCY

Collection of initial margin

- 28. A regulated clearing agency must collect initial margin for each customer on a gross basis.

Segregation of customer collateral – regulated clearing agency

- 29. A regulated clearing agency must segregate customer collateral from the property of other persons or companies including the property of the regulated clearing agency.

Holding of customer collateral – regulated clearing agency

- 30. (1)** A regulated clearing agency must hold all customer collateral in one or more accounts at a permitted depository and clearly identify such accounts as holding customer collateral.
- (2)** A regulated clearing agency must hold all customer collateral of each customer separately from all other property of such customer that is not customer collateral.

Excess margin – regulated clearing agency

- 31.** A regulated clearing agency must have rules, policies or procedures in place with respect to identifying and recording, at least each business day, the value of excess margin that it holds for or on behalf of each customer.

Use of customer collateral – regulated clearing agency

- 32. (1)** A regulated clearing agency must not use or permit the use of customer collateral except in accordance with this section and sections 33 and 34.
- (2)** A regulated clearing agency may use or permit the use of customer collateral of a customer to do either of the following:
- (a)** margin, guarantee, secure, settle or adjust cleared derivatives of the customer;
 - (b)** with respect to excess margin, secure or extend the credit of the customer.
- (3)** Other than with respect to excess margin used in accordance with paragraph (2)(b), a regulated clearing agency must not impose or permit the imposition of a lien or claim on a customer's positions or customer collateral except to secure a claim resulting from a cleared derivative in favour of any of the following:
- (a)** the customer;
 - (b)** the regulated clearing agency or a clearing intermediary responsible for clearing the cleared derivatives of the customer to which the positions or customer collateral relate.

Investment of customer collateral – regulated clearing agency

- 33. (1)** A regulated clearing agency must not invest customer collateral except in accordance with subsection (2).
- (2)** Subject to subsection (3), a regulated clearing agency may
- (a)** invest property received as customer collateral in a permitted investment, and
 - (b)** use customer collateral to buy or sell a permitted investment pursuant to an agreement for resale or repurchase to which all of the following apply:
 - (i)** the agreement is in writing;

- (ii) the term of the agreement is no more than one business day;
 - (iii) written confirmation specifying the terms of the agreement is delivered to the customer immediately upon entering into the transaction;
 - (iv) the agreement is not entered into with an affiliated entity of the regulated clearing agency.
- (3) Any loss resulting from an investment of customer collateral by the regulated clearing agency must be borne by the regulated clearing agency making the investment and not by any customer.

Use of customer collateral - clearing intermediary default

34. (1) Except as otherwise provided in subsection (2), a regulated clearing agency must not apply customer collateral to satisfy the obligations of a clearing intermediary to which the regulated clearing agency provides clearing services.
- (2) A regulated clearing agency may apply the customer collateral of a customer in full or partial satisfaction of a clearing intermediary's obligations that arise or are accelerated as a consequence of the clearing intermediary's default only to the extent that those obligations are attributable to the cleared derivatives of the customer.

Risk management –NI 24-102 applies

35. Part 3 of National Instrument 24-102 *Clearing Agency Requirements* apply to a regulated clearing agency and, for that purpose, a reference in that instrument to a “recognized clearing agency” is to be read as a reference to a “regulated clearing agency”.

PART 6 RECORD KEEPING BY A REGULATED CLEARING AGENCY

Retention of records – regulated clearing agency

36. A regulated clearing agency must keep the records required under this Part and Part 7, and all supporting documentation, in a readily accessible location for at least 7 years after the date upon which the cleared derivative expires or terminates.

Books and records – regulated clearing agency

37. (1) A regulated clearing agency that receives customer collateral must calculate and record all of the following, at least once each business day, in its books and records for each customer:
- (a) the amount of customer collateral it requires from, for or on behalf of each customer;

- (b) the total amount of customer collateral it requires from, for or on behalf of all customers.
- (2) A regulated clearing agency must record all of the following in its books and records for each customer:
- (a) each permitted depository at which it holds customer collateral of the customer;
 - (b) a description of the customer collateral held at each permitted depository;
 - (c) the current value of any customer collateral received from, for or on behalf of the customer, including, without limitation, all of the following at least once each business day:
 - (i) any accruals on the customer collateral creditable to the customer;
 - (ii) any gains or losses in respect of the customer collateral;
 - (iii) any charges lawfully accruing to the customer;
 - (iv) any distributions or transfers of the customer collateral.

Separate records – regulated clearing agency

38. A regulated clearing agency must keep separate books and records that, at any time, enable it and each of its direct intermediaries to distinguish all of the following in the accounts held at the regulated clearing agency:
- (a) the positions and property held for the account of the direct intermediary;
 - (b) the positions and value of customer collateral held for or on behalf of the direct intermediary's customers;
 - (c) the positions and value of customer collateral held for or on behalf of customers of each indirect intermediary for which the direct intermediary provides clearing services.

Records of investment of customer collateral – regulated clearing agency

39. A regulated clearing agency that invests customer collateral must keep records of all of the following with respect to each investment of customer collateral:
- (a) the date of the investment;
 - (b) the name of each person or company through which the investment was made;
 - (c) a daily market valuation of the investment, any unrealized gain or loss of the investment and related supporting documentation;
 - (d) a description of each asset or instrument in which the investment was made;

- (e) the identity of each permitted depository where each asset, as applicable, or instrument is deposited;
- (f) the date on which the investment was liquidated or otherwise disposed of and the realized gain or loss;
- (g) the name of each person or company liquidating or disposing of the investment.

Records of currency conversion – regulated clearing agency

- 40.** A regulated clearing agency must keep a record of each conversion of customer collateral from one currency to another.

PART 7 REPORTING AND DISCLOSURE BY A REGULATED CLEARING AGENCY

Disclosure to direct intermediaries by regulated clearing agency

- 41. (1)** Before receiving the first cleared derivative from, for or on behalf of a customer, a regulated clearing agency must provide written disclosure describing all of the following to the direct intermediary through which the derivative is cleared:
- (a) the rules, policies or procedures of the regulated clearing agency that govern the segregation and use of customer collateral and the transfer or liquidation of a cleared derivative of a customer in the event of a direct intermediary's default;
 - (b) the impact of laws, including bankruptcy and insolvency laws, on the customer, its positions and customer collateral in the event of a direct intermediary's default;
 - (c) the circumstances under which an interest or ownership rights in the customer collateral may be enforced by the regulated clearing agency, direct intermediary or the customer.
- (2)** After accepting the first cleared derivative from, for or on behalf of a customer, each time that the regulated clearing agency makes any change to the rules, policies or procedures referred to in paragraph (1)(a), the regulated clearing agency must provide written disclosure to the direct intermediary through which the derivative is cleared, within a reasonable period of time, describing the changes made to the rules, policies or procedures.

Customer information – regulated clearing agency

- 42.** A regulated clearing agency must have rules, policies or procedures reasonably designed to confirm that the information it receives from a direct intermediary in accordance with subsection 24(1) is complete and received in a timely manner.

Customer collateral report - regulatory

43. A regulated clearing agency that receives customer collateral must electronically submit to the regulator or securities regulatory authority, within 10 business days of the end of each calendar month, a completed Form 94-102F3 *Customer Collateral Report: Regulated Clearing Agency*.

Customer collateral report – direct intermediary

44. A regulated clearing agency that receives customer collateral must make available to each of its direct intermediaries a report, calculated and available on a daily basis, setting out all of the following:
- (a) the current value of the cleared derivative positions of each customer of the direct intermediary;
 - (b) the current value, asset type and quantity of customer collateral received from the direct intermediary for or on behalf of each customer of the direct intermediary that is held by the regulated clearing agency;
 - (c) the total current value of customer collateral received from the direct intermediary that is held at a permitted depository;
 - (d) the location of each permitted depository at which the customer collateral is held.

Disclosure of investment of customer collateral

45. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, a regulated clearing agency that invests customer collateral must disclose in writing its investment guidelines and policy to the direct intermediary through which the derivative is cleared.
- (2) A regulated clearing agency that invests customer collateral must promptly disclose in writing any change to its investment guidelines and policy to the direct intermediary through which the derivative is cleared.

PART 8 TRANSFER OF POSITIONS

Transfer of customer collateral and positions

46. (1) Subject to subsection (3), a regulated clearing agency and a defaulting direct intermediary must facilitate a transfer of customer positions and customer collateral or their liquidation proceeds from the defaulting direct intermediary to one or more non-defaulting direct intermediaries.
- (2) Subject to subsection (3), a regulated clearing agency and a non-defaulting direct intermediary must facilitate a transfer of the customer's positions and customer collateral

from the non-defaulting direct intermediary to one or more non-defaulting direct intermediaries.

- (3) Each of a regulated clearing agency and a direct intermediary may facilitate a transfer described in subsection (1) or (2) in respect of a customer only if all of the following apply:
- (a) the customer has requested or consented to the transfer;
 - (b) the customer's account is not currently in default;
 - (c) the transferred positions will have appropriate margin at the receiving direct intermediary;
 - (d) any remaining positions will have appropriate margin at the transferring direct intermediary;
 - (e) the receiving direct intermediary has consented to the transfer.

Transfer from a clearing intermediary

47. A clearing intermediary that provides clearing services for an indirect intermediary must have rules, policies or procedures in respect of the portability and transfer of customer positions and customer collateral in the event of a default by the clearing intermediary that include a credible mechanism for transferring the positions and customer collateral of the indirect intermediary's customers, upon a default by the indirect intermediary or at the request of the indirect intermediary's customer, to one or more non-defaulting clearing intermediaries.

PART 9 SUBSTITUTED COMPLIANCE

48. (1) A clearing intermediary located in a foreign jurisdiction is deemed to satisfy the Parts and sections of this Instrument listed in Appendix A in respect of a cleared derivative entered into by, for or on behalf of a local customer if
- (a) the cleared derivative is cleared at a regulated clearing agency, and
 - (b) the clearing intermediary is all of the following:
 - (i) registered, licensed or otherwise permitted to perform the services of a clearing intermediary in the jurisdiction where its primary regulator is located;
 - (ii) in compliance with the requirements of the laws of a foreign jurisdiction as set out in Appendix A.

(2) A regulated clearing agency located in a foreign jurisdiction is deemed to satisfy the Parts and sections of this Instrument listed in Appendix A in respect of a cleared derivative entered into by, for or on behalf of a local customer if the regulated clearing agency is in compliance with all of the following:

- (a) the terms and conditions of any recognition or exemption decision made by a securities regulatory authority in respect of the regulated clearing agency;
- (b) the requirements of the laws of a foreign jurisdiction as set out in Appendix A.

PART 10 EXEMPTIONS

49. (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 11 EFFECTIVE DATE

Effective date

50. This Instrument comes into force on [•].

APPENDIX A

**PART A
EQUIVALENT REQUIREMENTS FOR PARTS AND SECTIONS
RELATING TO CLEARING INTERMEDIARIES**

Further to section 48(1) of this Instrument, a clearing intermediary that satisfies the requirements of section 48(1) is deemed to satisfy the Parts and sections of this Instrument listed in the table below where the clearing intermediary is in compliance with the provisions of the laws of the foreign jurisdiction as set out opposite the Part or section of this Instrument.

Parts and sections of this Instrument applicable to a clearing intermediary	Compliance with foreign customer protection regime required to permit substituted compliance

**PART B
EQUIVALENT REQUIREMENTS FOR PARTS AND SECTIONS
RELATING TO REGULATED CLEARING AGENCIES**

Further to section 48(2) of this Instrument, a regulated clearing agency that satisfies the requirements of section 48(2) is deemed to satisfy the Parts and sections of this Instrument listed in the table below where the regulated clearing agency is in compliance with the provisions of the laws of the foreign jurisdiction as set out opposite the Part or section of this Instrument.

Parts and sections of this Instrument applicable to a regulated clearing agency	Compliance with foreign customer protection regime required to permit substituted compliance