

ANNEX A
COMMENT SUMMARY AND CSA RESPONSES

Section Reference	Issue/Comment	Response
General Comment	A commenter suggested that the rule use a more principles-based approach.	No change. A clearing requirement is necessary to ensure the objective of enhancing central clearing is accomplished.
S. 1 – Definitions	A commenter requested that we define derivative to be harmonized with Proposed Multilateral Instrument 96-101 <i>Trade Repositories and Derivatives Data Reporting</i> .	Change made. An application section was added to explain that derivative has the same meaning as in securities legislation and the local Rule 91-506 <i>Derivatives: Product Determination</i> and Proposed Multilateral Instrument 91-101 <i>Derivatives: Product Determination</i> .
S. 1 – Definitions: Financial entity	Several commenters pointed out that, until there is a registration regime in place, it would be difficult for a participant to determine if it is a financial entity or not.	Change made. The definition of “financial entity” was removed since the distinction between a financial and non-financial entity was solely for the purpose of the end-user exemption which was deleted.
S.1 – Definitions: Local counterparty	A number of commenters requested additional guidance on concepts such as “head office”, “principal place of business” and “affiliate”.	Partial change. We note that the interpretation of “affiliated entity” was changed to harmonize with other Canadian derivatives rules. The other concepts are commonly used terms with judicially considered definitions.
	A few commenters asked what is meant by “responsible for the liabilities of that affiliated party”.	Change made. The Clearing Rule now specifies that the responsibility is for all or substantially all the liabilities of the affiliated entity.
S.1 – Definitions: Mandatory Clearable Derivatives	A commenter requested that the definition should be harmonized across Canada and internationally.	No change. Although the definition provides that mandatory clearable derivatives will be determined in a decision in Québec, while other jurisdictions of Canada will list

		them in Appendix A of the Clearing Rule, the intent of the Committee is to harmonize the determinations across Canada. When proposing mandatory clearable derivatives, the Committee intends to take into account whether the derivatives are mandated to be cleared in foreign jurisdictions.
S.1 – Definitions: Regulated clearing agency	A commenter suggested that the definition be restricted to a person or company that acts as a central counterparty.	The Clearing CP now explains that a regulated clearing agency acts as a central counterparty.
Former S.3 – Interpretation of the term affiliated entity	Two commenters opined that definitions should be the same across rules. Another commenter requested that partnerships and unincorporated entities be included in the definition.	Change made. We included a broader definition of affiliated entity that includes partnerships and trusts for greater harmonization with other derivatives rules.
Former S. 4 – Interpretation of hedging	Many commenters expressed the need for clarification regarding the meaning of “speculating”, the “intent to reduce risk”, the “list of risks” and the “normal course of business”.	This section was deleted since non-financial entities are no longer required to clear their transactions unless they fall into the scope of revised subsection 3(1).
Former S. 5 – Duty to clear	A few commenters highlighted the difficulties relating to access to clearing for certain market participants. Many commenters requested an exemption or an exclusion from the scope of the duty to clear for smaller financial entities or non-systemic entities such as pension schemes.	Change made. See revised subsection 3(1) where the scope of the duty to clear was narrowed to capture only the largest entities, and those with direct access to a regulated clearing agency.
	A commenter expressed the concern that the Clearing Rule would not provide for situations where a local counterparty accesses a regulated clearing agency directly without being a clearing member.	Change made. The definition of “participant” referring to a person or company in a contractual relationship with a regulated clearing agency and bound by its rules has been added to the Clearing Rule.

	<p>A commenter proposed to extend the clearing requirement to foreign entities whose transactions have a direct, substantial and foreseeable effect in Canada or are aimed at evading the clearing requirement.</p>	<p>No change. We note that, although the obligation to clear rests on local counterparties, a transaction with a foreign counterparty must be cleared if the foreign counterparty is also subject to subsection 3(1).</p>
	<p>Three commenters were concerned about the lack of substituted compliance within Canada and with foreign jurisdictions available for a counterparty subject to the duty to clear in more than one jurisdiction.</p>	<p>Partial change. Regarding substituted compliance within Canada, Alberta, New Brunswick and Nova Scotia were added to the list of jurisdictions which provide substituted compliance where a transaction is cleared at a clearing agency regulated in any jurisdiction of Canada. It is the Committee's view that an application for exemptive relief may be made in a local jurisdiction that do not provide substituted compliance.</p> <p>With regard to equivalence with foreign jurisdictions, we note that only local counterparties under paragraph (b) of that definition should benefit from substituted compliance, since the Clearing Rule would only apply when there is a local counterparty in scope involved in the transaction if the Clearing Rule is the stricter rule applicable to the transaction.</p>
	<p>A commenter submitted that the requirement to submit transactions for clearing before the end of the day of execution is too short since it does not allow the overnight file transfer and could impact liquidity.</p>	<p>No change. We note that this requirement is consistent with foreign regulation.</p>
Former S. 6 – Non-application	<p>Several commenters expressed their concern that this section confers an advantage to crown corporations over their competitors.</p> <p>Some commenters added that the</p>	<p>No change. We note that the regulators retain the right to modify the applicability of all exemptions.</p>

	non-application section should provide objective criteria.	
	Two commenters requested that the non-application section be available for entities wholly-owned by or acting as agent for the government and who do not benefit from a guarantee of its obligations by that government.	No change. The non-application section includes a crown corporation for which the government where the crown corporation was constituted is responsible for all or substantially all of the crown corporation's liabilities. We note that crown corporations are not required to clear their transactions unless they fall into the scope of revised subsection 3(1).
	A commenter suggested adding the International Monetary Fund to the list of entities.	Change made. The International Monetary Fund was added to the non-application section. We note that the non-application section has not been extended to recognize other supra-national agencies. The Committee anticipates exemption requests would be sent to regulators as required.
	A commenter suggested that former section 6 apply to a financial entity that is wholly owned by one or more government(s) as long as all or substantially all the liabilities of the entity are guaranteed by one or more of that or these government(s). It was also noted that a government of a foreign jurisdiction in former paragraph 6(a) should include both sovereign and subsovereign governments.	Change made. The language in the non-application section has been adapted to include entities wholly-owned by more than one government. The Clearing CP now includes guidance on the interpretation of a foreign government.
Former Part 3 - Exemptions	A commenter suggested that an exemption should be available for a transaction resulting from a multilateral portfolio compression exercise where the previous transactions were not cleared and were entered into	Change made. An exemption was added in section 8 of the Clearing Rule for certain transactions resulting from a multilateral portfolio compression exercise.

	prior to the effective date of the clearing requirement for the derivative.	
Former S. 9 – End-user exemption	<p>Many commenters requested that the exemption be broadened to be available for small financial entities, pension funds and property and casualty insurers.</p> <p>Three commenters believed this exemption should be available to a registrant hedging the risk of a non-financial affiliated entity.</p>	This section was deleted in consideration of the new scope of application.
Former S. 10 – Intragroup exemption	<p>Many commenters thought that the intragroup exemption should be available for entities that are not prudentially supervised on a consolidated basis or that do not have consolidated financial statements.</p>	No change. The Committee notes that the approach used in the Clearing Rule is harmonized with exemptions found in foreign regulations.
	<p>A commenter asked that financial statements using Canadian or U.S. GAAP or GAAP of the local jurisdiction be allowed.</p>	No change. The Committee notes that Canadian and U.S. GAAP are included in National Instrument 52-107 <i>Acceptable Accounting Principles and Auditing Standards</i> .
	<p>Two commenters expressed the need for clarification as to the agreement between the affiliated entities.</p>	No change. The Committee notes that the requirement that the counterparties agree to rely on the exemption provides sufficient flexibility for them to choose in which form to express their intent to rely on the exemption.
	<p>Four commenters asked for clarification on the level of detail of the written agreement required and whether written confirmations are required for each transaction.</p>	No change. The Committee notes that the written agreement required provides flexibility.
	<p>A commenter urged that former subsection 10(3) include “or cause to be submitted” to allow a counterparty that centralizes its compliance and reporting functions to another entity to</p>	Change made. See revised subsection 7(2) where “or cause to be delivered” was added.

	submit the form through this entity.	
	A commenter requested clarification regarding whether Form 94-101F1 should be submitted for every transaction between two affiliated entities.	Change made. See revised subsection 7(2). We are of the view that Form 94-101F1 must be delivered only once per pair of counterparties to be valid for all transactions between the pair.
	A commenter suggested the elimination of a form filing requirement.	No change. The Committee notes that regulators could review filed Forms 94-101F1 to determine whether the exemption was properly relied on.
	A commenter proposed that a corporate group be permitted to file only one Form 94-101F1.	No change. We note that the exemption is available on a bilateral basis and not on a group basis.
	Two commenters proposed that Form 94-101F1 be submitted to a trade repository. A commenter suggested that only one regulator should receive the form and share it with the other regulators.	No change. The regulators do not have arrangements in place with trade repositories regarding the Clearing Rule. The Committee notes that there is no agreement in place between regulators for sharing the information received on Form 94-101F1. Furthermore, it is the Committee's view that it would not be overly burdensome for market participants to send the same form to several regulators.
Former S. 11 – Recordkeeping	Some commenters sought clarification on the requirements for the end-user exemption regarding factual representations and documentation on a portfolio level.	The end-user exemption and related requirements were deleted.
Former S. 12 – Submission of information on clearing services for derivatives by a regulated clearing agency	Two commenters asked about the authority to make top-down determinations.	Change made. See revised sections 10 and 12 of the Clearing CP that discuss top-down determinations.
Former S. 13 –	A commenter requested	No change. We believe that

Other exemption	clarification on the impact of the clearing requirement on a market participant who submitted an application for an exemption.	market participants will have sufficient time ahead of a determination to submit an application for a discretionary exemption. However, a transition period was added to section 3.
Former S. 14 – Transition – regulated clearing agency filing requirement	A commenter proposed that products already offered for clearing by a clearing agency be presumed eligible for clearing.	No change. It is the Committee’s view that the information required in Form 94-101F2 is an important element for regulators in making or proposing a determination as to which derivatives should be mandatory clearable derivatives.
Form 94-101F1	A commenter requested that Form 94-101F1 be kept confidential	Change made. The Clearing CP includes a provision about the confidentiality of this form.
Form 94-101F2	A commenter requested that regulated clearing agencies provide specific information on the end-to-end testing conducted with its participants.	No change. We note that the information requested from regulated clearing agencies is only one part of the determination process which considers multiple factors as set out in the notice.
Appendix A – Mandatory clearable derivatives	<p><u>Determination</u></p> <p>Many commenters provided their insight on which types of derivatives should or should not be mandatory clearable derivatives.</p> <p>Several commenters suggested that the process for the determination of mandatory clearable derivatives should be harmonized with international standards and across all jurisdictions of Canada.</p> <p>Two commenters asked that the list of mandatory clearable derivatives be kept in one place. Some commenters also suggested that mandatory clearable derivatives and derivatives excluded from the scope should be harmonized with foreign</p>	<p>No change. It is the Committee’s intention that the mandatory clearable derivatives will not include derivatives that are outside the scope of the Scope Rule.</p> <p>Other than in Québec, all mandatory clearable derivatives will be listed in Appendix A to the Clearing Rule. In Québec, the same mandatory clearable derivatives would be determined in a decision by the Autorité des marchés financiers.</p> <p>The timing for implementation of each determination will be aligned across all jurisdictions of Canada.</p> <p>It is the Committee’s view that foreign determinations of derivatives mandated to be cleared are important criteria</p>

	jurisdictions.	when determining what derivatives should be a mandatory clearable derivative under the Clearing Rule.
	<p><u>Consultation</u></p> <p>Many commenters requested that either the Clearing Rule or the Clearing CP contain a statement to insure that the regulators will seek public comment prior to determining a mandatory clearable derivative.</p> <p>A commenter suggested that the determinations follow a simplified approach that does not follow the full rulemaking process and that is harmonized in all jurisdictions of Canada.</p>	<p>No change. Any subsequent determinations of a mandatory clearable derivative will require that Appendix A of the Clearing Rule be amended to include the new derivative or class of derivatives. In some jurisdictions of Canada, such an amendment would be a material change requiring a public consultation. Since the Clearing Rule is a national instrument, every jurisdiction of Canada would align with the longest public consultation period. It is the Committee’s view that the public consultation required to make an amendment will allow sufficient time for market participants to comment and prepare for the new clearing requirements.</p>
	<p><u>Timing</u></p> <p>A commenter was concerned that a derivative would be determined a mandatory clearable derivative before mutual recognition across Canada and substituted compliance are provided.</p> <p>Another commenter raised the concern that no timing is provided for when determinations are made which makes it difficult for market participants to predict when they can expect a determination to be published.</p> <p>Several commenters mentioned that the clearing requirement should not become effective until the registration regime for OTC derivatives is finalized.</p>	<p>No change. We note that the regulators intend to adopt a “stricter rule applies” principle in the case of cross-border discrepancies. As a result, when a foreign counterparty transacts with a local counterparty in a derivative that is subject to mandatory clearing under the Clearing Rule, the transaction must be cleared even if an exemption exists in the foreign counterparty’s jurisdiction.</p> <p>We also note that the Committee continues to monitor the development of cross-border guidance with respect to substituted compliance on clearing requirements.</p> <p>Considering the changes to the</p>

		Clearing Rule, qualification as a registrant is no longer a criteria.
	<p><u>Phase-in</u></p> <p>A few commenters provided comments on the phase-in approach and which market participants should be caught and when.</p>	<p>The phase-in approach was deleted as client clearing services are not readily available yet. We intend to monitor the situation and reassess in the future whether the application of the Clearing Rule should be made broader.</p>

List of Commenters

1. ATCO Power Canada Ltd.
2. Canadian Advocacy Council
3. Capital Power Corporation
4. Canadian Commercial Energy Working Group
5. Canadian Market Infrastructure Committee
6. Canadian Life and Health Insurance Association Inc.
7. Canadian Pension Fund Managers
8. Central 1 Credit Union
9. CLS Bank International
10. Concentra Financial Services Association
11. Dentons Canada LLP
12. Enbridge, Inc.
13. Global Foreign Exchange Division, GFMA
14. Investment Industry Association of Canada
15. Insurance Bureau of Canada
16. International Energy Credit Association
17. International Swaps and Derivatives Association, Inc.
18. KFW Bankengruppe
19. LCH.Clearnet Group Limited
20. Pension Investment Association of Canada
21. SaskEnergy Incorporated
22. TMX Group Limited
23. TransCanada Corporation
24. TriOptima AB
25. Western Union Business Solutions