

ANNEX B

PROPOSED NATIONAL INSTRUMENT 94-101 MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

PART 1 DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1. (1) In this Instrument

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

- (a) the counterparty is a person or company, other than an individual, to which one or more of the following apply:
 - (i) it is organized 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;
- (b) the counterparty is an affiliated entity of a person or company referred to in paragraph (a) and the person or company is responsible for all or substantially all the liabilities of the counterparty;

“mandatory clearable derivative” means a derivative or class of derivatives that is offered for clearing at a regulated clearing agency and is

- (a) except in Québec, listed in Appendix A, and
- (b) in Québec, determined by the Autorité des marchés financiers to be subject to mandatory central counterparty clearing;

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

“regulated clearing agency” means

- (a) in 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 a clearing house, and
- (c) in Alberta, New Brunswick, Newfoundland and Labrador, 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;

“transaction” means any of the following:

- (a) entering into, making a material amendment to, assigning, selling or otherwise acquiring or disposing of a derivative;
 - (b) a novation of a derivative, other than a novation resulting from submitting the derivative to a regulated 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:
- (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 specified in Regulation 91-506 respecting derivatives determination.
- (2) 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 MANDATORY CENTRAL COUNTERPARTY CLEARING

Duty to submit for clearing

3. (1) A local counterparty to a transaction in a mandatory clearable derivative must submit, or cause to be submitted, the transaction for clearing to a regulated clearing agency that provides clearing services in respect of the mandatory clearable derivative if one or more of the following applies to each counterparty to the transaction:
- (a) it is a participant of a regulated clearing agency that offers clearing services in respect of the mandatory clearable derivative and it subscribes for clearing services for the class of derivative to which the mandatory clearable derivative belongs;
 - (b) it is an affiliated entity of a participant referred to in paragraph (a);
 - (c) it is a local counterparty in any jurisdiction of Canada that has or has had a month-end gross notional amount under all outstanding derivatives, of the local counterparty and each affiliated entity that is a local counterparty in any jurisdiction of Canada, exceeding \$500 000 000 000 after excluding transactions to which section 7 applies.
- (2) Unless subsection (3) applies, a local counterparty must submit a transaction for clearing under subsection (1) no later than
- (a) if the transaction is executed during the business hours of the regulated clearing agency, the end of the day of execution, or
 - (b) if the transaction is executed after the business hours of the regulated clearing agency, the end of the next business day.
- (3) A local counterparty that exceeds the month-end outstanding gross notional amount specified in paragraph (1)(c) is not required to comply with subsection (1) until the 90th day after the end of the month in which the amount was first

exceeded unless paragraphs (1)(a) or (b) apply.

- (4) A local counterparty required to submit a transaction for clearing under subsection (1) must submit the transaction in accordance with the rules of the regulated clearing agency, as amended from time to time.
- (5) A local counterparty that is a local counterparty solely pursuant to paragraph (b) of the definition of “local counterparty” satisfies subsection (1) if the transaction is submitted for clearing in accordance with the laws of a foreign jurisdiction that
 - (a) except in Québec, is listed in Appendix B, and
 - (b) in Québec, appears on a list determined by the Autorité des marchés financiers.

Notice of rejection

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

Public disclosure of clearable and mandatory clearable derivatives

5. A regulated clearing agency must maintain a website on which it discloses a list, which must be accessible to the public at no cost, of all derivatives or classes of derivatives for which it provides clearing services and, for each derivative or class of derivatives listed, identify whether it is a mandatory clearable derivative.

PART 3 EXEMPTIONS FROM MANDATORY CENTRAL COUNTERPARTY CLEARING

Non-application

6. The following counterparties are excluded from the application of this Instrument:
 - (a) the government of Canada, the government of a jurisdiction of Canada or the government of a foreign jurisdiction;
 - (b) a crown corporation for which the government of the jurisdiction where the crown corporation was constituted is responsible for all or substantially all the liabilities;

- (c) an entity wholly owned by one or more governments, referred to in paragraph (a), that are responsible for all or substantially all the liabilities of the entity;
- (d) the Bank of Canada or a central bank of a foreign jurisdiction;
- (e) the Bank for International Settlements;
- (f) the International Monetary Fund.

Intragroup exemption

- 7. (1)** Despite any other section of this Instrument, a local counterparty is under no obligation to clear a transaction in a mandatory clearable derivative if all of the following apply:
- (a) the transaction is between either of the following:
 - (i) two counterparties that are prudentially supervised on a consolidated basis;
 - (ii) a counterparty and its affiliated entity if the financial statements for the counterparty and the affiliated entity are prepared on a consolidated basis in accordance with “accounting principles” as defined in the National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;
 - (b) both counterparties to the transaction agree to rely on this exemption;
 - (c) the transaction is subject to centralized risk evaluation, measurement and control procedures reasonably designed to identify and manage risks;
 - (d) there is a written agreement between the counterparties setting out the terms of the transaction between the counterparties.
- (2)** No later than the 30th day after a local counterparty first relies on subsection (1) with each affiliated entity, the local counterparty must deliver or cause to be delivered to the regulator, in an electronic format, a completed Form 94-101F1 *Intragroup Exemption*.
- (3)** No later than the 10th day after a local counterparty becomes aware that the information in a previously delivered Form 94-101F1 *Intragroup Exemption* is no longer accurate, the local counterparty must deliver to the regulator, in an electronic format, an amended Form 94-101F1 *Intragroup Exemption*.

Multilateral portfolio compression exemption

- 8.** Despite any other section of this Instrument, a local counterparty to a mandatory clearable derivative resulting from a multilateral portfolio compression exercise is under no obligation to clear the resulting transaction if all of the following apply:
- (a) the resulting transaction is entered into as a result of more than two counterparties changing or terminating and replacing prior transactions;
 - (b) the prior transactions do not include a transaction entered into after the effective date on which the derivative or class of derivatives became a mandatory clearable derivative;
 - (c) the prior transactions were not cleared by a regulated clearing agency;
 - (d) the resulting transaction is entered into by the same counterparties as the prior transactions;
 - (e) the multilateral portfolio compression exercise is conducted by a third-party provider.

Recordkeeping

- 9. (1)** A local counterparty to a transaction that relies on section 7 or section 8 must keep records demonstrating that the conditions referred to in those sections, as applicable, were satisfied.
- (2)** The records required to be maintained under subsection (1) must be
- (a) kept in a safe location and in a durable form,
 - (b) provided to the regulator within a reasonable time following request,
 - (c) except in Manitoba, kept for a period of 7 years following the date on which the transaction expires or terminates, and
 - (d) in Manitoba, kept for a period of 8 years following the date on which the transaction expires or terminates.

PART 4
MANDATORY CLEARABLE DERIVATIVES

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

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

PART 5
EXEMPTION

Exemption

11. (1) The regulator or the securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.
- (3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 6
TRANSITION AND EFFECTIVE DATE

Transition – regulated clearing agency filing requirement

12. No later than the 30th day after the coming into force of this Instrument, a regulated clearing agency must deliver to the regulator, in an electronic format, a completed Form 94-101F2 *Derivatives Clearing Services*, identifying all derivatives or classes of derivatives for which it provides clearing services as of the date of the coming into force of this Instrument.

Effective date

13. This Instrument comes into force on *[insert date]*.

APPENDIX A

MANDATORY CLEARABLE DERIVATIVES

Interest Rate Swaps

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

Forward Rate Agreements

| | | | | | | |
|------------------------|---------|-----|-------------------|-----------------|----|----------------------|
| Forward rate agreement | LIBOR | USD | 3 days to 3 years | Single currency | No | Constant or variable |
| Forward rate agreement | EURIBOR | EUR | 3 days to 3 years | Single currency | No | Constant or variable |
| Forward rate agreement | LIBOR | GBP | 3 days to 3 years | Single currency | No | Constant or variable |

APPENDIX B

**EQUIVALENT CLEARING LAWS OF FOREIGN JURISDICTIONS
PURSUANT TO PARAGRAPH 3(5)(a)**

| Jurisdiction | Law, Regulation and/or Instrument |
|---------------------|--|
| | |

FORM 94-101F1

INTRAGROUP EXEMPTION

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

Section 1 – Information on the counterparty delivering this Form

1. Provide the following information with respect to the counterparty delivering this Form for a transaction:

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

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

Contact employee:
Name and title:
Telephone:
E-mail:

Other offices:
Address:
Telephone:
Email:

Canadian counsel (if applicable)
Firm name:
Contact name:
Telephone:
E-mail:

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

Previous full legal name:
Previous name under which the counterparty conducts business:

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

1. Provide a statement confirming that both counterparties to each transaction to which this Form relates agree to rely on the exemption in section 7 of the Instrument and describe how the counterparties comply with paragraph 7(1)(a).
2. Provide a statement confirming that each transaction between the pair of counterparties to which this Form relates is subject to centralized risk evaluation, measurement and control procedures reasonably designed to identify and manage risks. Describe those procedures.
3. State the legal entity identifier of both counterparties to each transaction to which this Form relates in the same manner as required under securities legislation.
4. For each transaction between the pair of counterparties to which this Form relates, describe the ownership and control structure of the counterparties.
5. For each transaction between the pair of counterparties to which this Form relates, state whether there is a written agreement setting out the terms of the transaction and, if so, state the date of the agreement and the signatories to the agreement and describe the agreement.

Section 3 – Certification

I certify that I am authorised to deliver this Form on behalf of the counterparty delivering this Form and, where applicable, on behalf of the other counterparties listed above in Section 2 and that the information in this Form is true and correct.

DATED at _____ this _____ day of _____, 20____

(Print name of authorized person)

(Print title of authorized person)

(Signature of authorized person)

(Email)

(Phone number)

Instructions: Deliver this form to the regulator in the local jurisdiction as follows:

[Insert names of each jurisdiction and email or other address by which submission is to be made.]

FORM 94-101F2
DERIVATIVES CLEARING SERVICES

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

Section 1 – Regulated clearing agency information

1. Full name of regulated clearing agency:
2. Contact information of person authorized to deliver this form:

Name and title:

Telephone:

E-mail:

Section 2 – Description of derivatives

1. Identify each derivative or class of derivatives for which the regulated clearing agency provides clearing services, for which a Form 94-101F2 has not previously been delivered.
2. For each derivative or class of derivatives referred to in item 1, describe all significant attributes of the derivative or class of derivative including
 - (a) the standard practices for managing any life-cycle events, as defined in the securities legislation, associated with the derivative or class of derivative,
 - (b) the extent to which the transaction is electronically confirmable,
 - (c) the degree of standardization of the contractual terms and operational processes,
 - (d) the market for the derivative or class of derivatives, including its participants, and
 - (e) data supporting the availability of pricing and liquidity of the derivative or class of derivatives within Canada and internationally.
3. Describe the impact of providing clearing services for each derivative or class of derivatives referred to in item 1 on the regulated clearing agency's risk management framework and financial resources, including the protection of the regulated clearing agency upon the default of a participant and the effect of such a default on the other participants.
4. Describe the extent to which the regulated clearing agency would face difficulties complying with its regulatory obligations should the regulator or securities regulatory

authority determine any derivative or class of derivatives referred to in item 1 to be a mandatory clearable derivative.

5. Describe the clearing services provided for each derivative or class of derivatives referred to in item 1.
6. If applicable, attach a copy of any notice the regulated clearing agency provided to its participants for consultation in connection with the launch of the clearing service for a derivative or class of derivative referred to in item 1 and a summary of any concerns received in response to any such notice.

Section 3 – Certification

CERTIFICATE OF REGULATED CLEARING AGENCY

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

DATED at _____ this _____ day of _____, 20_____

(Print name of regulated clearing agency)

(Print name of authorized person)

(Print title of authorized person)

(Signature of authorized person)

Instructions: Deliver this form to the regulator in the local jurisdiction as follows:

[Insert names of each jurisdiction and email or other address by which submission is to be made.]