

ANNEX D
Blackline showing changes to
PROPOSED NATIONAL INSTRUMENT 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES
Published February 12, 2015

PART 1
DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1. (1) In this Instrument,

~~“financial entity” means any of the following:~~

- ~~(a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under subsection 473(1) of that Act;~~
- ~~(b) a bank, loan corporation, loan company, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;~~
- ~~(c) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a pension commission or similar regulatory authority of a jurisdiction of Canada;~~
- ~~(d) an investment fund;~~
- ~~(e) a person or company, other than an individual, that under the securities legislation of a jurisdiction of Canada is any of the following:
 - ~~(i) subject to the registration requirement;~~
 - ~~(ii) registered;~~
 - ~~(iii) exempted from the registration requirement;~~~~
- ~~(f) a person or company organized under the laws of a foreign jurisdiction that is similar to an entity referred to in any of paragraphs (a) to (e);~~

~~“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) ~~(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, a derivative or a class of derivatives listed in Appendix A, and

(b) in Québec, a derivative or a class of derivatives that is determined by the Autorité des marchés financiers to be subject to the mandatory central counterparty clearing requirement;

“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 either any of the following:

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

(b) ~~the~~ a novation of a derivative, other than a novation resulting from submitting the derivative to a regulated clearing agency;

~~("regulated clearing agency" means,~~

~~(a) except in Québec, a person or company recognized or exempted from recognition as a clearing agency in the local jurisdiction, and~~

~~(b) in Québec, a person recognized or exempted from recognition as a clearing house.~~

~~Application~~ — Québec

~~2. —~~ 2. In Québec, this Instrument applies to derivatives that are not traded on an exchange and to derivatives that are traded on a derivatives trading facility.

~~Interpretation of the term affiliated entity~~

~~3. — (1) In this Instrument, a company will be deemed to be, a person or company is an affiliated entity of another person or company if one of them is the subsidiary of controls the other or if both are subsidiaries of the same company or if each of them is controlled by the same person or company.~~

~~(2)~~ (3) In this ~~section~~ instrument, a person or company ~~will be deemed~~ (the first party) is considered to be controlled by control another person or company ~~or by two or more companies if~~

~~(a) voting securities of the first mentioned company carrying more than 50 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company or by or for the benefit of the other companies, and~~

~~(b) the votes carried by such securities are entitled, if exercised, to elect a majority of the board of directors of the first mentioned company.~~

~~(3) In this section, a company will be deemed to be a subsidiary of another company if one of the following applies:~~

~~(a) it is controlled by,~~

~~(i) that other,~~

~~(ii) that other and one or more companies each of which is controlled by that other, or~~

~~(iii) two or more companies each of which is controlled by that other;~~

~~(b) it is a subsidiary of a company that is that other's subsidiary.~~

Interpretation of hedging or mitigating commercial risk

~~4. (1) In this Instrument, a counterparty's transaction is considered to be for the purpose of hedging or mitigating commercial risk if, at the time of the transaction, the transaction establishes a position which is intended to reduce risk relating to the commercial activity or treasury financing activity of the counterparty or of an affiliated entity of the counterparty and either (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.~~

~~(a) Application that derivative covers risk arising from the change in the value, price, rate or level of assets, services, inputs, products, commodities or liabilities that the counterparty or an affiliated entity of the counterparty owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business;~~

~~(b) that derivative covers the risk arising from the indirect impact on the value, price, rate or level of assets, services, inputs, products, commodities or liabilities referred to in paragraph (a), resulting from fluctuation of one or more interest rates, inflation rates, foreign exchange rates or credit risk;~~

~~(2) Despite subsection (1), a counterparty's transaction is not considered to be for the purpose of hedging or mitigating commercial risk if the position referred to in subsection (1) is held for either of the following purposes:~~

~~(a) to speculate;~~

~~(b) to offset or reduce the risk of another transaction, unless such position is itself held for the purpose of hedging or mitigating commercial risk.~~

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

53. (1) A local counterparty to a transaction in a mandatory clearable derivative must submit, or cause to be submitted, ~~that~~the transaction for clearing to a regulated clearing agency that provides clearing services ~~for that 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 submitting 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.

~~(3) A local counterparty must submit a transaction for clearing under subsection (1) not 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.~~

~~(4) In Newfoundland and Labrador, the Northwest Territories, Nunavut, Prince Edward Island and Yukon, a local counterparty satisfies subsection (1) if the transaction in a mandatory clearable derivative is submitted for clearing, or caused to be submitted, to a clearing agency or clearing house that is recognized or exempted from recognition pursuant to the securities legislation of another jurisdiction of Canada.~~

(5) A local counterparty that is a local counterparty solely ~~under~~pursuant to paragraph (b) of the definition of “local counterparty” satisfies subsection (1) ~~with respect to a transaction~~ 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.

~~Non-application~~

- ~~6. Section 5 does not apply to a transaction if any of the counterparties is one of the following:~~
- ~~(a) the government of Canada, the government of a jurisdiction of Canada or the government of a foreign jurisdiction;~~
 - ~~(b) a crown corporation whose obligations are guaranteed by the government of the jurisdiction in which the crown corporation was constituted;~~
 - ~~(c) an entity wholly owned by a government referred to in paragraph (a) whose obligations are guaranteed by that government;~~
 - ~~(d) the Bank of Canada or a central bank of a foreign jurisdiction;~~
 - ~~(e) the Bank for International Settlements.~~

Notice of rejection

- 74.** 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

- 85.** A regulated clearing agency must ~~publicly disclose on its~~ maintain a website, and on which it discloses a list, which must ~~allow access to that website at no cost~~ be accessible to the public, ~~a list at no cost,~~ of all derivatives or classes of derivatives for which it ~~will provide~~ provides clearing services and, for each derivative or class of derivatives listed, identify whether it is a mandatory clearable derivative.

PART 3

EXEMPTIONS AND APPLICATION

End-user exemption

- ~~9. (1) Section 5 does not apply to a transaction if both of the following apply:~~
- ~~at least one of the~~ **EXEMPTIONS FROM MANDATORY CENTRAL COUNTERPARTY CLEARING**

Non-application

- (a) 6. The following counterparties to the transaction is not a financial entity; are excluded from the application of this Instrument:
- (b) ~~a counterparty that is not a financial entity is entering into the transaction for the purpose of hedging or mitigating commercial risk.~~
- ~~(2) Section 5 does not apply to a transaction entered into by an affiliated entity of a counterparty that is not a financial entity if all of the following apply:~~
- (a) ~~the affiliated entity is acting on behalf of the counterparty that is not a financial entity;~~
- (b) ~~the transaction is entered into for the purpose of hedging or mitigating commercial risk;~~
- (c) ~~(a) the affiliated entity is not subject to, registered under or exempted from the registration requirement under the securities legislation 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

- ~~10.~~ 7. (1) In this ~~Despite any other section, “intragroup of this Instrument, a local counterparty is under no obligation to clear a transaction” means a~~ in a mandatory clearable derivative if all of the following apply:
- (a) the transaction is between either of the following:

(ai) two counterparties that are prudentially supervised on a consolidated basis;

(bii) a counterparty and its affiliated entity if the financial statements for the counterparty and ~~its~~the affiliated entity are prepared on a consolidated basis in accordance with “accounting principles” as defined ~~by~~in the National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

~~(2) Section 5 does not apply to an intragroup transaction if all of the following conditions apply:~~

~~(a)~~(b) both counterparties to the transaction agree to rely on this exemption;

~~(b)~~(c) the transaction is subject to centralized risk evaluation, measurement and control procedures reasonably designed to identify and manage risks;

~~(c)~~(d) there is a written agreement between the counterparties setting out the terms of the transaction between the counterparties.

(32) No later than the 30th day after a local counterparty ~~to an intragroup transaction~~first relies on ~~the exemption in~~ subsection (2),1) with each affiliated entity, the local counterparty must ~~submit~~deliver or cause to be delivered to the regulator, in an electronic format, a completed Form 94-101F1 *Intragroup Exemption*.

(43) No later than the 10th day after a local counterparty becomes aware that the information in a previously ~~submitted~~delivered Form 94-101F1 *Intragroup Exemption* is no longer accurate, the local counterparty must ~~submit~~deliver to the regulator, in an electronic format, an amended Form 94-101F1 *Intragroup Exemption*.

Record keeping

11 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 97 or section 108 must ~~maintain, for a period of 7 years following the date on which the transaction expires or terminates,~~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, ~~and~~
- (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.

(b)

PART 4 MANDATORY CLEARABLE DERIVATIVES

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

12-10. 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 ~~submit~~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

- 13-11.** (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

- 1412.** No later than the 30th day after the coming into force of this Instrument, a regulated clearing agency must ~~submit~~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 ~~provided~~provides clearing services as of the date of the coming into force of this Instrument.

Effective date

- 1513.** This Instrument comes into force on *[insert date]*.

APPENDIX A

MANDATORY CLEARABLE DERIVATIVES

Interest Rate Swaps

| <u>Type</u> | <u>Floating index</u> | <u>Settlement currency</u> | <u>Maturity</u> | <u>Settlement Currency Type</u> | <u>Optionality</u> | <u>Notional type</u> |
|---|-----------------------|----------------------------|---|---------------------------------|--------------------|--|
| {Derivative or} Class of derivative Fixed-to-float | <u>CDOR</u> | <u>CAD</u> | Date on which section 5 applies to a transaction involving a local counter party <u>28 days to 30 years</u> | <u>Single currency</u> | <u>No</u> | <u>Constant or variable</u> |
| {description of derivative} Fixed-to-float | <u>LIBOR</u> | <u>USD</u> | <u>28 days to 50 years</u> | <u>Single currency</u> | <u>No</u> | {Insert date} for a local counterparty that is a member of a regulated clearing agency that offers clearing services for the derivative or class of derivatives and |

| | | | | | |
|--|--|--|--|--|---|
| | | | | | <p>subscribe to such service;</p> <p><i>{Insert the date which is 6 months after •}</i> for a local counterparty that is a financial entity which <i>{insert specific threshold }</i></p> <p><i>{Insert the date which is 12 months after •}</i> for a local counterparty that is a financial entity, other than a financial entity which <i>{insert specific threshold }</i></p> |
|--|--|--|--|--|---|

| | | | | | | |
|-----------------------|----------------|------------|----------------------------|------------------------|-----------|--|
| | | | | | | <p>{Insert the date which is 18 months after •} for a local counterparty that is not one of the following: a member of a regulated clearing agency that offers clearing services for the derivative or class of derivatives and subscribes to such service, or a financial entity.</p> <p><u>Constant or variable</u></p> |
| <u>Fixed-to-float</u> | <u>EURIBOR</u> | <u>EUR</u> | <u>28 days to 50 years</u> | <u>Single currency</u> | <u>No</u> | <u>Constant or variable</u> |
| <u>Fixed-to-float</u> | <u>LIBOR</u> | <u>GBP</u> | <u>28 days to 50 years</u> | <u>Single currency</u> | <u>No</u> | <u>Constant or</u> |

| | | | | | | |
|-----------------------------|-----------------|------------|----------------------------|------------------------|-----------|-----------------------------|
| | | | | | | <u>variable</u> |
| <u>Basis</u> | <u>LIBOR</u> | <u>USD</u> | <u>28 days to 50 years</u> | <u>Single currency</u> | <u>No</u> | <u>Constant or variable</u> |
| <u>Basis</u> | <u>EURIBOR</u> | <u>EUR</u> | <u>28 days to 50 years</u> | <u>Single currency</u> | <u>No</u> | <u>Constant or variable</u> |
| <u>Basis</u> | <u>LIBOR</u> | <u>GBP</u> | <u>28 days to 50 years</u> | <u>Single currency</u> | <u>No</u> | <u>Constant or variable</u> |
| <u>Overnight index swap</u> | <u>CORRA</u> | <u>CAD</u> | <u>7 days to 2 years</u> | <u>Single currency</u> | <u>No</u> | <u>Constant or variable</u> |
| <u>Overnight index swap</u> | <u>FedFunds</u> | <u>USD</u> | <u>7 days to 30 years</u> | <u>Single currency</u> | <u>No</u> | <u>Constant or variable</u> |
| <u>Overnight index swap</u> | <u>EONIA</u> | <u>EUR</u> | <u>7 days to 30 years</u> | <u>Single currency</u> | <u>No</u> | <u>Constant or variable</u> |
| <u>Overnight index swap</u> | <u>SONIA</u> | <u>GBP</u> | <u>7 days to 30 years</u> | <u>Single currency</u> | <u>No</u> | <u>Constant or variable</u> |

Forward Rate Agreements

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

APPENDIX B

**EQUIVALENT CLEARING LAWS OF FOREIGN JURISDICTIONS
PURSUANT TO PARAGRAPH 53(5)(a)**

~~The laws and regulations of each of the following jurisdictions outside of Canada are considered equivalent for the purposes of paragraph 5(5)(a).~~

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

FORM 94-101F1

INTRAGROUP EXEMPTION

Type of Filing: INITIAL AMENDMENT

Section 1 – Notifying Information on the counterparty delivering this Form

Provide the following information

~~1. _____~~ 1. ~~State the full legal name of the notifying with respect to the~~ counterparty
~~that relied on the exemption~~delivering this Form ~~for an intragroup a~~
~~transaction.;~~

~~2. _____~~ ~~Disclose the~~ _____
~~Full legal~~ name:
~~Name~~ under which it conducts business, if different ~~from item 1.;~~

~~3. _____~~ ~~If this Form is used to report a name change on behalf of the counterparty referred~~
~~to in item 1 or item 2, enter the previous name and the new name:~~

~~_____~~ ~~Previous name:~~

~~_____~~ ~~New name:~~

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 ~~notifying~~ counterparty delivering this Form belongs

1. Provide a statement confirming that both counterparties to each transaction to which this ~~report~~Form relates ~~choose~~agree to rely on the ~~intragroup~~exemption in section 7 of the Instrument and describe ~~the basis on which~~how the exemption ~~is available to them~~.counterparties comply with paragraph 7(1)(a).
2. Provide a statement confirming that each transaction between the pair of counterparties to which this ~~report~~Form relates is subject to appropriate 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 ~~report~~Form relates in the same manner as required under ~~the~~ securities legislation.
4. For each transaction between the pair of counterparties to which this ~~report~~Form relates, describe the ownership and control structure of the counterparties ~~that are affiliated entities~~.
5. For each transaction between the pair of counterparties to which this ~~report~~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 ~~submit~~deliver this Form on behalf of the ~~notifying~~ counterparty delivering this Form and, where applicable, on behalf of the other ~~affiliated entities~~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)