ANNEX A
COMMENT SUMMARY AND CSA RESPONSES

Section Reference	Issue/Comment	Response
General comment: Personal property security legislation	A commenter argued that provincial personal property security laws in the common law provinces should be amended to allow the perfection of security interests in cash collateral by way of control.	No change. We note that federal bankruptcy and provincial personal property security legislation are outside of the jurisdiction of the provincial securities regulatory authorities. The Committee is seeking to implement requirements which protect customer collateral, to the extent possible, under existing Canadian federal and provincial legal frameworks.
Subsection 3(1) – General comments	Several commenters expressed strong support for the narrowing of the scope of the National Instrument to only the largest participants in the OTC market. One commenter recommended that the CSA continue to monitor the data and, once participants have easier access to clearing, a lower threshold may be possible.	No change. The scope of application addresses concerns of market participants regarding access to clearing. The Committee intends to reassess this scope when more market participants reasonably have access to clearing services for OTC derivatives.
Subsection 3(1) – Counterparties subject to mandatory central counterparty clearing	Two commenters expressed concern with respect to the identification of counterparties under paragraphs 3(1)(b) and (c). The commenters requested the addition of a requirement for local counterparties entering into mandatory clearable derivatives to notify their counterparties if they satisfy the requirements under paragraph 3(1)(a), (b) or (c). They further suggested that the Committee expressly provide that counterparties can rely on self-declaration, or lack of a self-declaration if one is not received by the trade date, in determining	Change made. Guidance has been added in the CP to explain that we are flexible as to how market participants declare their status to each other. We provided guidance that a counterparty in scope must solicit confirmation from its counterparty where there is a reasonable basis to believe that the counterparty may be near or above any of the thresholds in paragraph 3(1)(b) or (c).

	whether subsection 3(1) of the National Instrument applies to a mandatory clearable derivative. Since the pricing of a trade will vary depending on whether it will be cleared, the National Instrument should also expressly provide that such reliance on self-declaration, or lack thereof, remains in effect for the entire term of the trade. Any change in status should only apply to trades entered into after the change in status is disclosed to the relevant counterparty.	
	Two commenters recommended that the scope of counterparties included under paragraph 3(1)(b) be narrowed considering that the National Instrument would result in additional operational burden and cost for smaller affiliates of clearing participants, some of whom may be end-users. They recommended excluding an affiliate of a clearing participant with *de minimis* trading activity.	Change made. The Instrument now applies only to affiliated entities of clearing participants if the affiliated entity's month-end gross notional amount under all outstanding OTC derivatives is above $ 1 000 000 000. The Instrument now also provides a 90-day transition period for an affiliated entity of a clearing participant after the date on which it first exceeds this threshold in order to prepare for clearing.
	A commenter asked for the Committee to confirm that the Instrument would not apply to a local counterparty that has foreign affiliated entities that are participants of clearing agencies or clearing houses that are not regulated in Canada. Specifically, the commenter sought confirmation that the clearing requirement would not apply unless both (i) the clearing agency of which the foreign affiliated entity is a clearing participant is a "regulated clearing agency"; and (ii) the products that the foreign affiliate	No change. An entity affiliated with a clearing participant of a regulated clearing agency is subject to mandatory central counterparty clearing if it is entering into a mandatory clearable derivative. The Committee intends to respect the Product Determination Rules in making product determinations.

	clears are "specified derivatives" (as defined in MI 91-101).	
Subsection 3(5) – Substituted compliance for some local counterparties	One commenter fully supported the substituted compliance provisions under subsection 3(5) of the National Instrument, which would allow a foreign affiliate to clear a mandatory clearable derivative pursuant to comparable foreign rules. As well, this commenter fully supported that, at a minimum, the U.S. *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("Dodd-Frank") and *Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories* ("EMIR") be listed in Appendix B to the National Instrument as foreign rules which are comparable to the National Instrument.	Change made. Appendix B includes laws and regulations from the U.S. Commodity Futures Trading Commission (the "CFTC") and European Securities and Markets Authority ("ESMA") regarding mandatory central counterparty clearing.
Section 7 – Intragroup exemption	A commenter expressed concern regarding what agreement is required between affiliated entities to satisfy the conditions of the intragroup exemption. The commenter requested clarification in the CP that a master agreement between the counterparties would satisfy the exemption. The commenter does not believe it is industry standard or practice to require transaction confirmations (and in some cases even a master agreement) between affiliated entities. As well, the commenter recommended amending the Form 94-101F1 to remove the transaction level requirement or add further clarification that the	Change made. Section 7 provides flexibility to accommodate different types of transaction agreements. The CP provides that an International Swaps and Derivatives Association ("ISDA") master agreement would be acceptable if it is dated and signed by the affiliated entities and comprises the material terms of the trading relationship between the affiliated entities for the mandatory clearable derivative. We have reduced the information required under Form 94-101F1, focusing on the relationship between the counterparties rather than on their transaction. All pairings of affiliated entities

	form only needs to be delivered once per pair of counterparties for it to cover all transactions between the pair.	relying on the intragroup exemption may be included in one single form sent to the regulator or securities regulatory authority.
	One commenter sought clarification as to which one of the affiliated entities should agree to rely on the exemption.	No change. The agreement must be provided by a person authorized to agree on behalf of each counterparty.
	Two commenters felt that submitting the form directly to the regulator, rather than to a trade repository (which is the case under Dodd-Frank), is overly burdensome as this would require submission to multiple provincial regulators. They recommended that Form 94-101F1 be submitted to an approved trade repository.	No change. One Form 94-101F1 can be completed per group and sent to all appropriate regulators or securities regulatory authorities.
Section 9 – Recordkeeping	A commenter requested clarification in the record keeping section of the CP regarding the use of the terms 'analysis' and 'appropriate legal documentation' in respect of records relating to the intragroup exemption.	No change. The CP provides that counterparties must keep records demonstrating that they meet the necessary criteria to rely on the intragroup exemption. Counterparties have flexibility as to what documentation would be required to show that they meet such criteria.
Former section 13 – Effective date	A commenter supported a simultaneous effective date for both the National Instrument and the determination of mandatory clearable derivatives since they are already required to be cleared by mandates of other jurisdictions. Another commenter suggested that the requirement to clear could come into effect simultaneously only for clearing participants described in paragraph 3(1)(a) of the National Instrument. For the other two	Change made. A transition period of 6 months after the Instrument is in force was included for market participants that are not clearing participants in order to set up clearing relationships.

	categories of counterparties described in paragraphs 3(1)(b) and (c), the commenter recommended a transition period of 12 months from the time the Instrument becomes effective.	
Appendix A – Mandatory clearable derivatives: General Comments	Several commenters agree that the Determination is consistent with international standards and appropriate for Canadian markets.	No change. The mandatory clearable derivatives are also subject to clearing mandates in some foreign jurisdictions.
	Two commenters agreed that the characteristics used in Appendix A are considered adequate to define mandatory clearable derivatives.	No change. We appreciate the commenters' submissions.
	A commenter expressed that the CSA's approach to rule-making or amendments to the National Instrument would not be sufficiently agile to respond to market events that require swift regulatory actions, as consensus with multiple regulatory authorities (both provincial and federal) could be required to suspend or terminate a mandatory clearing mandate.	No change. Members of the CSA have the power to suspend or terminate mandatory central counterparty clearing through decisions such as blanket orders or discretionary relief.
	A commenter requested that the CSA make clear that NGX's clearing model would not cause market participants using the NGX clearing platform to be "participants" under the Instrument in the event NGX did offer clearing services for a derivative that could be subjected to mandatory clearing.	No change. All product determination analysis will take into consideration the CCPs offering clearing services in those products and the operational structures of such CCPs.
Appendix A – Mandatory clearable derivatives	A commenter noted that the stated maturity for Overnight Index Swaps ("OIS") in USD, EUR and GBP of 7 days to 30 years is inconsistent with the CFTC clearing requirements for OIS in USD, EUR and GBP, and	Change made. The stated maturity has been aligned with the clearing mandates under foreign regulations. Accordingly, the maturity of OIS was changed to 7 days to 3 years for EUR, USD and GBP.

	recommended that the CSA change the maturity for these currencies to 7 days to 2 years.	
	A commenter noted that if an interest rate swaption or extendible swap is entered into prior to the effective date of the Proposed National Instrument, even if the swaption is physically settled by entering into an IRS after this effective date or the extendible swap is extended after this effective date, mandatory clearing should not apply to the interest rate swap or extended swap as the cost of clearing the underlying swap may not have been reflected in the price of the swaption or extendible swap. On the other hand, if a cash-settled swaption is entered into before the effective date of the National Instrument, but is amended after the effective date to switch to physical settlement, mandatory clearing could apply to the interest rate swap entered into upon settlement of the swaption as this is a material change to the terms of the contract.	Change made. Clarifications are provided in the CP consistent with the approach taken by the U.S. CFTC such that mandatory central counterparty clearing only applies to swaps resulting from the exercise of a swaption entered into after the Instrument is in force unless the swaption is amended after the effective date. The same rationale would apply to the extension of an extendible swap entered into before the Instrument was in force.

	One commenter requested guidance with respect to swaps (listed in Appendix A to the Instrument) that a clearing agency cannot accept for clearing due to non-standard terms. One commenter asked for guidance regarding complex swaps (such as bespoke products, for example, an extendible swap which has an embedded optionality) and packaged transactions, similar to the approach taken under Dodd-Frank.	Change made. The CP has been changed to clarify that market participants need not disentangle a complex transaction in order to clear a component of that transaction which is a mandatory clearable derivative. For packaged transactions, if they contain a component that is a mandatory clearable derivative, that component should be cleared even if the balance of the packaged transaction is not cleared.
	Several commenters recommended, where a CAD IRS is entered into and one of the counterparties is not a local counterparty, delaying mandatory central counterparty clearing for such product until it becomes a subject to mandatory clearing under either EMIR or Dodd-Frank. One commenter stated that, without international harmonization requiring the clearing of CAD IRS, Canadian banks and counterparties would be negatively impacted if foreign counterparties withdraw from the market, thereby reducing the ability of Canadian banks and counterparties to hedge their risks. Another commenter recognized the importance of CAD IRS to the financial stability of the Canadian market.	No change. The CFTC has announced that CAD IRS is a mandatory clearable derivative under Dodd-Frank, effective 60 days following the date on which the Instrument enters into force. The National Instrument is harmonized on this point, thus limiting any potential for regulatory arbitrage.

List of Commenters

1. Canadian Advocacy Council
2. Canadian Commercial Energy Working Group
3. Canadian Market Infrastructure Committee
4. Canadian Bankers Association
5. International Energy Credit Association
6. LCH.Clearnet Group Limited