

ANNEX B

This Annex sets out a blackline showing the proposed amendments to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*, as set out in Annex A.

NATIONAL INSTRUMENT 94-101 MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

PART 1 DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1. (1) In this Instrument

“investment fund” has the meaning ascribed to it in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“local counterparty” means a counterparty to a derivative 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) the person or company is organized under the laws of the local jurisdiction;
 - (ii) the head office of the person or company is in the local jurisdiction;
 - (iii) the principal place of business of the person or company 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 liable for all or substantially all the liabilities of the counterparty;

“mandatory clearable derivative” means a derivative within a class of derivatives listed in Appendix A;

“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;

“prudentially regulated entity” means a person or company that is subject to and in compliance with the laws of Canada, a jurisdiction of Canada or a foreign jurisdiction where the head office or principal place of business of a Schedule III bank is located, and a political subdivision of that foreign jurisdiction, relating to minimum capital requirements, financial soundness and risk management, or the guidelines of a regulatory authority of Canada or a jurisdiction of Canada relating to minimum capital requirements, financial soundness and risk management;

“reference period” means, for a given year after 2019, the period beginning on September 1 in a year and ending on August 31 of the following year;

“regulated clearing agency” means,

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

“transaction” means any of the following:

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

(2) In this Instrument, a person or company (the first party) 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 and the second party are consolidated in consolidated financial statements prepared in accordance with one of the following:

(i) IFRS;

(ii) generally accepted accounting principles in the United States of America;

(b) all of the following apply:

(i) 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;~~and the second party would have been, at the relevant time, required to be consolidated in consolidated financial statements prepared by the first party, the second party or another person or company, if the consolidated financial statements were prepared in accordance with the principles or standards referred to in subparagraphs (a)(i) or (ii);

~~(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;~~

(ii) neither the first party's nor the second party's financial statements, nor the financial statements of the other person or company, were prepared in accordance with the principles or standards referred to in subparagraph (a)(i) or (ii);

(c) the ~~second party is a trust and a trustee of the trust is the first party.~~first party and second party are both prudentially regulated entities supervised together on a consolidated basis.

~~(3) (Repealed).~~

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

Application

2. This Instrument applies to,
- (a) in Manitoba,
 - (i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and
 - (ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security,
 - (b) in Ontario,
 - (i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and
 - (ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security, and
 - (c) in Québec, a derivative specified in section 1.2 of Regulation 91-506 respecting derivatives determination, other than a contract or instrument specified in section 2 of that regulation.

In each other local jurisdiction, this Instrument applies to a derivative as defined in subsection 1(4) of this Instrument. This text box does not form part of this Instrument and has no official status.

PART 2

MANDATORY CENTRAL COUNTERPARTY CLEARING

Duty to submit for clearing

[3. \(0.1\) Despite subsection 1\(2\), an investment fund is not an affiliated entity of another person or company for the purposes of paragraphs 3\(1\)\(b\) and \(c\);](#)

(0.2) Despite subsection 1(2), a person or company is not an affiliated entity of another person or company for the purposes of paragraphs 3(1)(b) and (c) if the following apply:

(a) the person or company has, as its primary purpose, one of the following:

(i) financing a specific pool or pools of assets;

(ii) providing investors with exposure to a specific set of risks;

(iii) acquiring or investing in real estate or other physical assets;

(b) all the incurred indebtedness by the person or company whose primary purpose is one set out in subparagraphs (a)(i) or (ii), including obligations owing to its counterparty to a derivative, are solely secured by the assets of that person or company.

(1) A local counterparty to a transaction in a mandatory clearable derivative must submit, or cause to be submitted, the mandatory clearable derivative for clearing to a regulated clearing agency that offers clearing services in respect of the mandatory clearable derivative, if one or more of the following applies to each counterparty:

(a) the counterparty

(i) is a participant of a regulated clearing agency that offers clearing services in respect of the mandatory clearable derivative, and

(ii) subscribes to clearing services for the class of derivatives to which the mandatory clearable derivative belongs;

(b) the counterparty

(i) is an affiliated entity of a participant referred to in paragraph (a), and ~~(ii) has~~

(ii) had, at any time after the date on which this Instrument comes into force, a for the months of March, April and May preceding the reference period in which the transaction was executed, an average month-end gross notional amount under all outstanding derivatives exceeding \$1 000 000 000 excluding derivatives to which paragraph 7(1)(a) applies;

(c) the counterparty

- (i) is a local counterparty in any jurisdiction of Canada, ~~other than a counterparty to which paragraph (b) applies, and~~
 - (ii) ~~has had, at any time after the date on which this Instrument comes into force~~had, during the previous 12-month period, a month-end gross notional amount under all outstanding derivatives, combined with each affiliated entity that is a local counterparty in any jurisdiction of Canada, exceeding \$500 000 000 000 excluding derivatives to which paragraph 7(1)(a) applies, and
 - (iii) had, for the months of March, April and May preceding the reference period in which the transaction was executed, an average month-end gross notional amount under all outstanding derivatives exceeding \$1 000 000 000 excluding derivatives to which paragraph 7(1)(a) applies.
- (2) Unless paragraph (1)(a) applies, a local counterparty to which ~~paragraph (1)(b) or (1)(c) applies~~ is not required to submit a mandatory clearable derivative for clearing to a regulated clearing agency if the transaction in the mandatory clearable derivative was executed before the 90th day after the end of the month in which the month-end gross notional amount first exceeded the amount specified in subparagraph (1)~~(b)(ii) or (1)(c)(ii)~~, ~~as applicable~~.
- (3) Unless subsection (2) applies, a local counterparty to which subsection (1) applies must submit a mandatory clearable derivative for clearing no later than
 - (a) the end of the day of execution if the transaction is executed during the business hours of the regulated clearing agency, or
 - (b) the end of the next business day if the transaction is executed after the business hours of the regulated clearing agency.
- (4) A local counterparty to which subsection (1) applies must submit the mandatory clearable derivative for clearing in accordance with the rules of the regulated clearing agency, as amended from time to time.
- (5) A counterparty that is a local counterparty solely pursuant to paragraph (b) of the definition of “local counterparty” in section 1 is exempt from this section if the mandatory clearable derivative is submitted for clearing in accordance with the law of a foreign jurisdiction to which the counterparty is subject, set out in Appendix B.

Notice of rejection

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

Public disclosure of clearable and mandatory clearable derivatives

5. A regulated clearing agency must do all of the following:
 - (a) publish a list of each derivative or class of derivatives for which the regulated clearing agency offers clearing services and state whether each derivative or class of derivatives is a mandatory clearable derivative;
 - (b) make the list accessible to the public at no cost on its website.

PART 3

EXEMPTIONS FROM MANDATORY CENTRAL COUNTERPARTY CLEARING

Non-application

6. This Instrument does not apply to [a counterparty in respect of a mandatory clearable derivative if any counterparty to the mandatory clearable derivative is one of the following counterparties:](#)
 - (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 liable for all or substantially all the liabilities;
 - (c) a person or company wholly owned by one or more governments referred to in paragraph (a) if the government or governments are liable for all or substantially all the liabilities of the person or company;
 - (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) A local counterparty is exempt from ~~the application of~~ section 3, with respect to a mandatory clearable derivative, if all of the following apply:

- (a) the mandatory clearable derivative is between a counterparty and an affiliated entity of the counterparty ~~if each of the counterparty and the affiliated entity are consolidated as part of the same audited consolidated financial statements prepared in accordance with “accounting principles” as defined in National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards;~~
 - (b) both counterparties to the mandatory clearable derivative agree to rely on this exemption;
 - (c) the mandatory clearable derivative is subject to a centralized risk management program reasonably designed to assist in monitoring and managing the risks associated with the derivative between the counterparties through evaluation, measurement and control procedures;
 - (d) there is a written agreement between the counterparties setting out the terms of the mandatory clearable derivative between the counterparties.
- ~~(2) — No later than the 30th day after a local counterparty first relies on subsection (1) in respect of a mandatory clearable derivative with a counterparty, the local counterparty must deliver electronically to the regulator or securities regulatory authority 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 or cause to be delivered electronically to the regulator or securities regulatory authority an amended Form 94-101F1 *Intragroup Exemption*.~~

(2) (Repealed).

(3) (Repealed).

Multilateral portfolio compression exemption

8. A local counterparty is exempt from ~~the application of~~ section 3, with respect to a mandatory clearable derivative resulting from a multilateral portfolio compression exercise, if all of the following apply:
- (a) the mandatory clearable derivative is entered into as a result of more than 2 counterparties changing or terminating and replacing existing derivatives;
 - (b) the existing derivatives do not include a mandatory clearable derivative entered into after the effective date on which the class of derivatives became a mandatory clearable derivative;
 - (c) the existing derivatives were not cleared by a clearing agency or clearing house;
 - (d) the multilateral portfolio compression exercise involved both counterparties to the mandatory clearable derivative ~~is entered into by the same counterparties as the existing derivatives~~;
 - (e) the multilateral portfolio compression exercise ~~is~~was conducted by an independent third-party.

Recordkeeping

9. (1) A local counterparty to a mandatory clearable derivative that relied on section 7 or 8 with respect to a mandatory clearable derivative 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 kept in a safe location and in a durable form for a period of
- (a) except in Manitoba, 7 years following the date on which the mandatory clearable derivative expires or is terminated, and
 - (b) in Manitoba, 8 years following the date on which the mandatory clearable derivative expires or is terminated.

**PART 4
MANDATORY CLEARABLE DERIVATIVES**

~~Submission of information on derivatives clearing services provided by a regulated clearing agency~~

- ~~10. — No later than the 10th day after a regulated clearing agency first offers clearing services for a derivative or class of derivatives, the regulated clearing agency must deliver electronically to the regulator or securities regulatory authority a completed Form 94-101F2 *Derivatives Clearing Services*, identifying the derivative or class of derivatives.~~

~~(Repealed)~~

**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 May 4, 2017, a regulated clearing agency must deliver electronically to the regulator or securities regulatory authority a completed Form 94-101F2 *Derivatives Clearing Services*, identifying all derivatives or classes of derivatives for which it offers clearing services on April 4, 2017.

Transition – certain counterparties’ submission for clearing

- 13.** A counterparty specified in paragraphs 3(1)(b) or (c) to which paragraph (3)(1)(a) does not apply is not required to submit a mandatory clearable derivative for clearing to a regulated clearing agency until October 4, 2017.

Effective date

- 14. (1)** This Instrument comes into force on April 4, 2017.
- (2)** In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after April 4, 2017, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

**APPENDIX A
TO
NATIONAL INSTRUMENT 94-101 MANDATORY CENTRAL COUNTERPARTY
CLEARING OF DERIVATIVES**

**MANDATORY CLEARABLE DERIVATIVES
(Section 1(1))**

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 3 years | Single currency | No | Constant or variable |
| Overnight index swap | EONIA | EUR | 7 days to 3 years | Single currency | No | Constant or variable |
| Overnight index swap | SONIA | GBP | 7 days to 3 years | Single currency | No | Constant or variable |

Forward Rate Agreements

| Type | Floating index | Settlement currency | Maturity | Settlement currency type | Optionality | Notional type |
|------------------------|----------------|---------------------|-------------------|--------------------------|-------------|---------------------------------------|
| 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
TO
NATIONAL INSTRUMENT 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

**LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN
JURISDICTIONS APPLICABLE FOR SUBSTITUTED COMPLIANCE
(Subsection 3(5))**

| Foreign jurisdiction | Laws, regulations or instruments |
|-----------------------------|--|
| European Union | 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 |
| United States of America | Clearing Requirement and Related Rules, 17 C.F.R. pt. 50 |