

CSA Notice 94-304***Frequency of the requirement to deliver Form 94-102F3 Customer Collateral Report: Regulated Clearing Agency***

May 20, 2021

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are reducing the frequency of the requirement to deliver Form 94-102F3 *Customer Collateral Report: Regulated Clearing Agency* (**Form 94-102F3**).

The CSA, except the Ontario Securities Commission (the **OSC**), are each making/issuing, as applicable in the local jurisdiction, parallel orders of general application (the **Orders**) reducing the frequency of the requirement to deliver Form 94-102F3.

The OSC is making amendments to National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (**NI 94-102**) (the **Amendments**), which have the same effect as the Orders. Other CSA members will proceed to amend NI 94-102 in the near future.

Substance and Purpose

Currently, section 43 of NI 94-102 requires a regulated clearing agency¹ that receives customer collateral to electronically deliver a completed Form 94-102F3 to the relevant regulator or securities regulatory authority, within 10 business days of the end of each calendar month.

The Orders and the Amendments reduce the frequency of the requirement to deliver Form 94-102F3 from monthly to quarterly. As a result of the Orders and the Amendments, a regulated clearing agency will be required to electronically deliver a completed Form 94-102F3 within 10 days of the end of each calendar quarter.

Background

The Orders and the Amendments were developed by the CSA as a way to reduce regulatory burden without compromising investor protection or adversely impacting systemic risk. The Orders and the Amendments address one of the burden reduction initiatives identified in the OSC's Reducing Regulatory Burden in Ontario's Capital Markets Report that was published on November 19, 2019 (the **OSC Burden Reduction Report**). Specifically, the Amendments relate to the following Decision and Recommendation discussed in the OSC Burden Reduction Report:

¹ A regulated clearing agency as defined in NI 94-102 is “(a) in British Columbia, Manitoba and Ontario, a person recognized or exempt from recognition as a clearing agency in the local jurisdiction, and (b) in Alberta, Newfoundland and Labrador, New Brunswick, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon, a person recognized or exempt from recognition as a clearing agency or clearing house pursuant to the securities legislation of any jurisdiction of Canada”.

- D-15 – Review the requirement for regulated clearing agencies to deliver monthly filings relating to their holdings of customer collateral.

Item D-15 in the OSC Burden Reduction Report was requested by a stakeholder who commented that the information provided in Form 94-102F3 can generally be sourced elsewhere, including through clearing intermediaries, and should therefore no longer be required.

The CSA recognize that clearing intermediaries that receive customer collateral are also required to deliver information to the securities regulatory authority in either Form 94-102F1 *Customer Collateral Report: Direct Intermediary* or Form 94-102F2 *Customer Collateral Report: Indirect Intermediary*, as applicable, each of which presents a snapshot of the value of collateral held or posted by each reporting clearing intermediary. The CSA note, however, that Form 94-102F3 provides a snapshot of the value of customer collateral received by the regulated clearing agency from each clearing intermediary and the location where the regulated clearing agency holds this customer collateral and its value. This information is not otherwise available to the CSA.

Furthermore, reporting Form 94-102F3, together with Form 94-102F1 and Form 94-102F2, allows for data reconciliation, and allows the CSA to detect and respond to major changes in the derivatives clearing market, as well as to monitor customer collateral arrangements in support of the development and implementation of rules that protect customer assets and are responsive to market practices.

Reducing the frequency of the requirement to deliver Form 94-102F3 from monthly to quarterly generates time and cost savings for regulated clearing agencies, without compromising the CSA's ability to detect major changes in the derivatives clearing market and to ensure the proper identification of customer collateral and the clearing intermediaries, regulated clearing agencies and permitted depositories that hold it.

The Orders

The Orders come into effect on August 1, 2021 and are available on the following websites of CSA members:

www.lautorite.qc.ca

www.albertasecurities.com

www.bcsc.bc.ca

www.mbsecurities.ca

nssc.novascotia.ca

www.fcnb.ca

www.fcaa.gov.sk.ca

The Amendments

The OSC delivered the Amendments to the Minister of Finance (Ontario) on May 18, 2021. If the Minister approves the Amendments within 60 days after delivery, they will come into force fifteen days after the Minister's approval. If no action under subsection 143.3(3) of the *Securities Act* (Ontario) (**OSA**) is taken by the Minister, the Amendments will come into force on August 1, 2021 (being 75 days after the above delivery date, pursuant to clause 143.4(2)(b) of the OSA).

Contents of Annexes

The following annexes form part of this CSA Notice:

- Annex A – Ontario Amendments to National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*
- Annex B – Local Matters, where applicable

Questions

Please refer your questions to any of the following:

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ANNEX A
ONTARIO AMENDMENTS TO NATIONAL INSTRUMENT 94-102 *DERIVATIVES:*
CUSTOMER CLEARING AND PROTECTION OF CUSTOMER COLLATERAL AND
POSITIONS

1. National Instrument 94-102 Derivatives: Customer Clearing and Protection of Customer Collateral and Positions is amended by this Instrument.

2. Section 43 is replaced with the following:

Customer collateral report – regulatory

43. A regulated clearing agency that receives customer collateral must electronically deliver to the regulator or securities regulatory authority, within 10 business days of the end of each calendar quarter, a completed Form 94-102F3 *Customer Collateral Report: Regulated Clearing Agency*.

3. Form 94-102F3 Customer Collateral Report: Regulated Clearing Agency is amended by replacing footnote 3 with the following:

³ The Reporting Period is the calendar quarter for which the form is submitted.

4. This Instrument comes into force on •.

**ANNEX B
LOCAL MATTERS – ONTARIO**

Authority for Amendments

Paragraphs 11, 12 and 35 of subsection 143(1) of the *Securities Act (Ontario)* (OSA) provide the authority for making the Amendments.

The Amendments, which do not include any new requirements, were made by the OSC on an expedited basis, and without prior publication for comment, as permitted under paragraph 143.2(5)(b) of the OSA.