

General Order 94-501

Exempting Certain Counterparties from Mandatory Clearing of Derivatives

In the Matter of *The Securities Act, 1988*

ORDER

WHEREAS the Financial and Consumer Affairs Authority of Saskatchewan (FCAA) has assigned to the Director of the Securities Division, FCAA (the **Director**) the power to make exemption orders under the provision of *The Securities Act, 1988* (the **Act**) including orders of general application;

AND WHEREAS in this Order, terms defined in the Act, in National Instrument 14-101 *Definitions*, or in National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (**NI 94-101**) have the same meaning in this Order, unless otherwise defined;

AND WHEREAS staff of the FCAA have applied to the Director for an Order pursuant to section 160 of the Act exempting a counterparty to which paragraph 3(1)(a) of NI 94-101 does not apply and that is required under paragraph 3(1)(b) or 3(1)(c) of NI 94-101 to clear a mandatory clearable derivative from that requirement in respect of a mandatory clearable derivative;

AND WHEREAS it has been represented to the Director that:

1. Paragraph 3(1) of NI 94-101 requires a local counterparty to a transaction in a mandatory clearable derivative to submit, or cause to be submitted, the mandatory clearable derivative to a regulated clearing agency that offers clearing services in respect of the mandatory clearable derivative (the **Clearing Requirement**), 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) effective October 4, 2017, the counterparty
 - (i) is, at the date of the transaction in the mandatory clearable derivative, an affiliated entity of a participant referred to in paragraph (a), and

- (ii) has had, at any time after the date on which NI 94-101 came into force, a month-end gross notional amount under all outstanding derivatives exceeding \$1,000,000,000 excluding derivatives to which paragraph 7(1)(a) of NI 94-101 applies;
 - (c) effective October 4, 2017, the counterparty
 - (i) is, at the date of the transaction in the mandatory clearable derivative, 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 NI 94-101 came into force, 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 section 7(1)(a) of NI 94-101 applies;
2. On October 12, 2017 the FCAA published for comment proposed amendments to NI 94-101 (the **Proposed Amendments**). The FCAA is considering the comments received on the Proposed Amendments. If implemented, the Proposed Amendments would change the scope of application of the Clearing Requirement so that certain counterparties will not be subject to the Clearing Requirement under sections 3(1)(b) and (c) of NI 94-101;
3. Some counterparties that would have been subject to the Clearing Requirement effective October 4, 2017 may not be subject to the Clearing Requirement as a result of the Proposed Amendments. Therefore, exemptive relief is required;

AND WHEREAS the current General Order 94-501 *Exempting Certain Counterparties from Mandatory Clearing of Derivatives* expires on August 20, 2018 and this Order becomes effective on August 20, 2018;

AND WHEREAS the Director is of the opinion that it would not be prejudicial to the public interest to make this Order;

IT IS HEREBY ORDERED under section 160 of the Act that:

- 1. A counterparty to which paragraph 3(1)(a) of NI 94-101 does not apply and that is required under paragraph 3(1)(b) or 3(1)(c) of NI 94-101 to clear a mandatory clearable derivative is exempt from that requirement;
- 2. The exemption under paragraph 1 of this Order is available in respect of a transaction in a mandatory clearable derivative that occurs on or before the earlier of:
 - (a) the date on which this Order is revoked, and

- (b) the date on which amendments that change the scope of the application of the Clearing Requirement under paragraphs 3(1)(b) or 3(1)(c) of NI 94-101 come into effect; and

3. This Order takes effect on August 20, 2018.

Dated at the City of Regina, in the Province of Saskatchewan, this 31 day of May, 2018



Dean Murrison
Director, Securities Division
Financial and Consumer Affairs
Authority of Saskatchewan