

**MODEL PROVINCIAL RULE  
DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER  
COLLATERAL AND POSITIONS**

**PART 1  
DEFINITIONS**

**Definitions**

**1. (1) In this Rule**

“cleared derivative” means a transaction that is cleared by a derivatives clearing agency;

“clearing intermediary” means a person or company that provides clearing services to a customer in respect of a cleared derivative by intermediating the relationship between the customer and a clearing member;

“clearing member” means a person or company that has entered into a membership agreement with, and thereby agrees to be bound by the rules and procedures of, a derivatives clearing agency;

“customer” means a party to a cleared derivative from whom or on whose behalf a derivatives clearing agency, clearing member or clearing intermediary has received or holds property with respect to the cleared derivative if, at the time of the transaction, the party, the derivatives clearing agency, the clearing member or the clearing intermediary is:

- (i) a person or company organized under the laws of [Province X];
- (ii) a person or company that has its head office or principal place of business in [Province X]; or
- (iii) an individual that resides in [Province X].

“customer account” means an account maintained by a clearing member, a clearing intermediary or derivatives clearing agency for or on behalf of one or more customers that records customer positions in cleared derivatives and holds the related customer collateral;

“customer collateral” means all property received or held by a clearing member, clearing intermediary or derivatives clearing agency from or on behalf of a customer, that is intended to or does margin, guarantee, secure, settle or adjust a cleared derivative, and includes initial margin, variation margin and excess margin;

“derivatives clearing agency” means a person or company described in paragraph (b) of the definition of “clearing agency” in [subsection 1(1)<sup>1</sup> of the Act] and recognized under [section 21.2 of the Act] or exempt from the recognition requirement under [section 147 of the Act];

“excess margin” means the customer collateral required by a clearing member or clearing intermediary in excess of the amount required by the derivatives clearing agency for the cleared derivatives of a customer;

“initial margin” in relation to a derivatives clearing agency’s margin system to manage credit exposures to its participants, means collateral that is required by the derivatives clearing agency to cover potential changes in the value of each customer’s position (that is, potential future exposure) over an appropriate close-out period in the event of default;

“permitted depository” means any of the following:

- (a) a bank listed in Schedule I, II or III to the *Bank Act* (Canada);
- (b) a company to which the *Trust and Loan Companies Act* (Canada) applies;
- (c) a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* (Ontario) or a similar statute of a jurisdiction of Canada (other than Ontario);
- (d) a financial services cooperative within the meaning of the *Act respecting financial services cooperatives* (Quebec);
- (e) a clearing agency recognized under [section 21.2 of the Act] or exempt from the recognition requirement under [section 147 of the Act];
- (f) a foreign entity that carries on business similar to the entities listed in paragraph (a), (b) or (c), provided that the foreign entity is regulated in the foreign entity’s

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<sup>1</sup> Ontario *Securities Act*, s.1(1) “clearing agency” means, (b) with respect to derivatives, a person or company that provides centralized facilities for the clearing and settlement of trades in derivatives that, with respect to a contract, instrument or transaction,

- (i) enables each party to the contract, instrument or transaction to substitute, through novation or otherwise, the credit of the clearing agency for the credit of the parties,
- (ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such contracts, instruments or transactions executed by participants in the clearing agency, or
- (iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the clearing agency the credit risk arising from such contracts, instruments or transactions executed by the participants,

but does not include a person or company solely because the person or company arranges or provides for,

- (iv) settlement, netting or novation of obligations resulting from agreements, contracts or transactions on a bilateral basis and without a central counterparty,
- (v) settlement or netting of cash payments through the Automated Clearing Settlement System or the Large Value Transfer System, or
- (vi) settlement, netting or novation of obligations resulting from a sale of a commodity in a transaction in the spot market.

home jurisdiction in a similar manner to the entities listed in paragraph (a), (b) or (c);

“permitted investment” means cash or highly liquid financial instruments with minimal market and credit risk that are capable of being liquidated rapidly with minimal adverse price effect;

“transaction” means entering into, assigning, selling or otherwise acquiring or disposing of a derivative or the novation of a derivative, other than a novation resulting from the submission of a derivative to a derivatives clearing agency;

“variation margin” in relation to a derivatives clearing agency’s margin system to manage credit exposures for all products it clears, means funds that are collected and paid out on a regular and *ad hoc* basis to reflect current exposures resulting from actual changes in market prices.

(2) Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* applies to this Rule.

## **PART 2 TREATMENT OF CUSTOMER COLLATERAL**

### **Collection of initial margin**

**2.** (1) A derivatives clearing agency must collect initial margin for each customer of its clearing members on a gross basis.

(2) A clearing member must collect initial margin for each cleared derivative of a customer, including each customer of a clearing intermediary, in an amount that is no less than the initial margin requirement imposed by the relevant derivatives clearing agency.

### **Segregation of customer collateral**

**3.** (1) A derivatives clearing agency, clearing member and clearing intermediary must keep customer collateral segregated from its own property.

(2) Subject to the requirements in Part 3, a derivatives clearing agency, clearing member and clearing intermediary may commingle customer collateral received from or on behalf of multiple customers but must not otherwise commingle customer collateral with the property of any other person or company.

(3) A derivatives clearing agency must not commingle customer collateral of a particular customer with any other property of that customer that is not customer collateral.

## **Holding of customer collateral**

4. (1) A derivatives clearing agency, clearing member and clearing intermediary must hold customer collateral either directly or through one or more customer accounts at a permitted depository.

(2) If a derivatives clearing agency, clearing member or clearing intermediary holds customer collateral directly, it must provide reasonable protection for the customer collateral.

(3) If a derivatives clearing agency, clearing member or clearing intermediary holds customer collateral at a permitted depository, it must

- (a) maintain one or more customer accounts with the permitted depository;
- (b) ensure that the customer account clearly identifies the name of each customer or otherwise shows that the customer account is segregated for and on behalf of one or more customers and indicates that the property in the account is customer collateral; and
- (c) ensure that the permitted depository treats all property in the customer account as customer collateral.

## **Excess margin**

5. A derivatives clearing agency, clearing member and clearing intermediary must have rules, policies and procedures in place to record and identify, at least each business day, for each customer, the excess margin held by the derivatives clearing agency, clearing member and clearing intermediary.

## **Clearing member maintenance of customer account balance**

6. A clearing member must at all times maintain property in one or more customer accounts at the derivatives clearing agency that is at least equal to the total amount of collateral required by the derivatives clearing agency for the cleared derivatives of its customer(s).

## **Clearing member and clearing intermediary deposits in customer accounts**

7. (1) A clearing member or clearing intermediary may deposit its own property in a customer account.

(2) Property deposited in a customer account under subsection (1) is deemed, for the purposes of this Rule, to be customer collateral.

(3) A clearing member or clearing intermediary may withdraw property deposited by it under subsection (1) from a customer account only if it has reflected in its accounts and records immediately prior to the withdrawal the excess values set out in subsection 18(1) or subsection 19(1).

### **Use of customer collateral**

- 8.** (1) A derivatives clearing agency, clearing member and clearing intermediary must not use or permit the use of customer collateral of a customer to:
- (a) margin, guarantee, secure, settle or adjust cleared derivatives of a person or company other than the customer; or
  - (b) secure or extend the credit of a person or company other than the customer.
- (2) A derivatives clearing agency, clearing member and clearing intermediary must not use or permit the use of customer collateral to margin, guarantee, secure, settle or adjust a trade of the customer that is not a cleared derivative.
- (3) A derivatives clearing agency, clearing member and clearing intermediary must not otherwise use or permit the use of customer collateral except in accordance with section 9.
- (4) A derivatives clearing agency, clearing member or clearing intermediary must not impose or permit the imposition of a lien or claim on a customer's positions or customer collateral, except a claim resulting from a cleared derivative in the customer account in favour of:
- (a) the customer; or
  - (b) the clearing member, clearing intermediary or derivatives clearing agency responsible for clearing the cleared derivatives of the customer.

### **Investment of customer collateral**

- 9.** (1) A derivatives clearing agency, clearing member and clearing intermediary may invest customer collateral only in a permitted investment.
- (2) A loss resulting from an investment made under subsection (1) must be borne solely by the investing derivatives clearing agency, clearing member or clearing intermediary.

### **Acting as a clearing intermediary**

- 10.** (1) A clearing member may not provide clearing services to a clearing intermediary unless the clearing member and the derivatives clearing agency determine that the arrangement does not expose the derivatives clearing agency and the clearing member to material additional risk.
- (2) A clearing intermediary must open a segregated account with each clearing member for which it is an intermediary for the exclusive purpose of holding and recording the positions and customer collateral of its customers.

(3) A clearing intermediary must provide each clearing member for which it is an intermediary with sufficient information to identify, monitor and manage any material risks arising from its clearing intermediary activity.

### **Risk management**

**11.** A derivatives clearing agency must identify, monitor and manage any material risks attributable to clearing members or clearing intermediaries which could affect the risk exposure of the derivatives clearing agency.

### **Same**

**12.** A clearing member that permits a person or company to act as a clearing intermediary must identify, monitor and manage material risks arising from permitting the person or company to act as a clearing intermediary.

### **Same**

**13.** No person or company may provide clearing services to a customer as a clearing member or clearing intermediary unless the person or company is prudentially regulated by an appropriate regulatory authority.

### **Clearing member default**

**14.** (1) A derivatives clearing agency must not apply customer collateral to satisfy the obligations of a clearing member of the derivatives clearing agency that arise as a consequence of the clearing member's default.

(2) Despite subsection (1), a derivatives clearing agency may apply the customer collateral of a customer in full or partial satisfaction of a clearing member's obligations that arise as a consequence of the clearing member's default, to the extent that those obligations are attributable to the customer's obligations.

### **Clearing intermediary default**

**15.** (1) A clearing member that permits a person or company to act as a clearing intermediary must establish policies and procedures to manage the default of the clearing intermediary.

(2) Customer collateral must not be applied by a clearing member to satisfy the clearing intermediary's obligations.

## **PART 3 RECORD-KEEPING**

### **Retention of records**

**16.** A derivatives clearing agency, clearing member and clearing intermediary must keep the records required under Part 3 and Part 4, and all supporting documentation in a readily accessible location, for the life of the cleared derivative and for a further 7 years after the date on which the cleared derivative expires or terminates.

### **Books and records**

**17.** (1) A derivatives clearing agency, clearing member and clearing intermediary receiving customer collateral must, at least once each business day, calculate and record:

- (a) the amount of customer collateral it requires from each customer; and
- (b) the total amount of customer collateral it requires from all customers.

(2) A clearing member must separately calculate and record the collateral amounts referenced in subsection (1) with respect to the customers of each of its clearing intermediaries.

(3) A clearing member and clearing intermediary must calculate and record as of the close of each business day the total market value of all customer collateral in its customer accounts.

(4) A derivatives clearing agency, clearing member and clearing intermediary must reflect in the books and records it maintains for a customer the market value of any customer collateral that it receives from the customer, adjusted on a daily basis for:

- (a) any accruals on the customer collateral creditable to the customer;
- (b) any gains or losses in respect of the customer collateral;
- (c) any charges lawfully accruing to the customer;
- (d) any authorized distributions or transfers of the customer collateral; and
- (e) the name of each person or company holding the customer collateral.

### **Same**

**18.** (1) For each customer, a clearing member must reflect in its books and records

- (a) the total amount of customer collateral required for the cleared derivatives of the customer by each derivatives clearing agency; and
- (b) the total sum of the required customer collateral amounts, including any excess or deficit.

**Same**

- 19.** (1) For each customer, a clearing intermediary must reflect in its books and records
- (a) the total amount of collateral required for the cleared derivatives of the customer by each clearing member through which the clearing intermediary clears; and
  - (b) the total sum of the required collateral amounts, including any excess or deficit.

**Separate records – Derivatives Clearing Agency**

**20.** A derivatives clearing agency shall keep separate books and records that, at any time and without delay, enable the derivatives clearing agency and each clearing member to distinguish in the accounts held with the derivatives clearing agency the positions and property held for the account of the clearing member and the positions and customer collateral held for the account of each customer, including each customer of a clearing intermediary.

**Separate records – clearing members and clearing intermediaries**

**21.** (1) A clearing member shall keep separate books and records that enable it to distinguish in its own accounts and in accounts held with the derivatives clearing agency the positions and property of the clearing member and the positions and customer collateral held for the account of each of its customers.

(2) A clearing member that permits a person or company to act as a clearing intermediary must keep separate books and records that, at any time and without delay, enable:

- (a) the clearing member to distinguish in its own accounts and in accounts held with the derivatives clearing agency the positions and customer collateral held for the account of each customer of the clearing member and the positions and customer collateral held for the account of each customer who clears through a clearing intermediary; and
- (b) each clearing intermediary to distinguish in accounts held with the clearing member and with the derivatives clearing agency the positions and property of the clearing intermediary and the positions and customer collateral held for the account of each customer of the clearing intermediary.

(3) A clearing intermediary must keep separate books and records that enable it to distinguish in its own accounts and in accounts held with each clearing member through which it



provides clearing intermediary services its positions and property and the positions and customer collateral held for the account of each of its customers.

### **Records of customer collateral**

**22.** (1) A derivatives clearing agency, clearing member and clearing intermediary that holds customer collateral itself must keep records that

- (a) identify each location where it holds the customer collateral,
- (b) describe the customer collateral held at each such location,
- (c) identify the protections provided by each such location relevant to the customer collateral held at such location, and
- (d) confirm compliance with all applicable policies and procedures relating to holding of customer collateral.

(2) A derivatives clearing agency, clearing member and clearing intermediary that holds customer collateral in a permitted depository must

- (a) prior to depositing customer collateral in a permitted depository, obtain and retain a written acknowledgement from the relevant permitted depository that the deposited property will be treated as customer collateral, and
- (b) keep records identifying each permitted depository at which it holds customer collateral and the amount of customer collateral held by the permitted depository, reflected on a daily basis.

### **Records of investment of customer collateral**

**23.** (1) A derivatives clearing agency, clearing member and clearing intermediary that invests customer collateral must keep the following records:

- (a) the dates of the investments;
- (b) the names of the persons and companies through which the investments were made;
- (c) daily market valuations of the investments and related supporting documentation;
- (d) the descriptions of the instruments in which the investments were made;
- (e) the identities of the depositories or other places where the instruments are segregated;
- (f) the dates on which the investments are liquidated or otherwise disposed of; and

- (g) the names of the persons and companies liquidating or disposing of the investments.

### **Records of currency conversion**

**24.** A derivatives clearing agency, clearing member and clearing intermediary must keep a record of each conversion of customer collateral from one currency to another.

## **PART 4 REPORTING AND DISCLOSURE**

### **Disclosure to clearing members and customers**

**25.** (1) The following prior written disclosure must be provided by a derivatives clearing agency to all of its clearing members:

- (a) the derivatives clearing agency's rules, policies, and procedures that govern the segregation and use of customer collateral and the transfer or liquidation of a cleared derivative of a customer in the event of a default by the clearing member, and any changes to the rules, policies and procedures;
- (b) the impact of laws, including bankruptcy and insolvency laws, on the derivatives clearing agency's ability to fully segregate or transfer customer collateral; and
- (c) the circumstances under which the interest or ownership rights in the customer collateral may be enforced by the derivatives clearing agency or customer.

(2) A clearing member must provide the written disclosure required under subsection (1) to all clearing intermediaries and customers with respect to each derivatives clearing agency through which the clearing member will clear derivatives for the customers.

(3) A clearing member and clearing intermediary must provide written disclosure to all customers outlining the treatment of excess margin in the event of a default by the clearing member or clearing intermediary.

(4) A derivatives clearing agency, clearing member and clearing intermediary must receive confirmation that a customer has acknowledged in writing the receipt of disclosure made under subsections (1), (2) and (3) prior to accepting a cleared derivative from or for that customer.

### **Disclosure to customers of a clearing intermediary**

**26.** (1) A clearing intermediary must provide prior written disclosure to its customers regarding:

- (a) the risks associated with clearing indirectly through a clearing intermediary; and
  - (b) details of arrangements for transferring positions and customer collateral, in the event of the clearing intermediary's default, to a clearing member or to another clearing intermediary.
- (2) Prior to accepting a cleared derivative for a customer from a clearing intermediary, a clearing member must receive confirmation that the customer has acknowledged in writing the receipt of the disclosure described in subsection (1).

### **Customer information**

**27.** (1) A clearing member must:

- (a) at or prior to the first time that the clearing member submits a cleared derivative to the derivatives clearing agency for its customer, provide information to the derivatives clearing agency identifying the customer and the customer's positions and customer collateral; and
  - (b) at least once each business day thereafter, provide sufficient information to the derivatives clearing agency for it to identify the positions and customer collateral of each customer.
- (2) A derivatives clearing agency must confirm that the information it receives from a clearing member in accordance with subsection (1) from a clearing member is complete and received in a timely manner.

### **Customer collateral report**

**28.** (1) A clearing member that receives customer collateral must electronically submit to the **[applicable local securities regulator]**, within two business days of the end of each calendar month, a completed Form F1(A) *Customer Collateral Report: Clearing Member*.

(2) A clearing intermediary that receives customer collateral must electronically submit to the **[applicable local securities regulator]**, within two business days of the end of each calendar month, a completed Form F1(B) *Customer Collateral Report: Clearing Intermediary*.

(3) A derivatives clearing agency that receives customer collateral must electronically submit to the **[applicable local securities regulator]**, within two business days of the end of each calendar month, a completed Form F1(C) *Customer Collateral Report: Derivatives Clearing Agency*.

(4) A derivatives clearing agency that receives customer collateral must make available to each of its clearing members a report, calculated on a daily basis, setting out

- (a) the mark-to-market value of each customer's cleared derivative positions;

- (b) the total market value of customer collateral received from the clearing member for the account of each customer of the clearing member; and
  - (c) the total market value of customer collateral received from the clearing member that is held by the derivatives clearing agency, and the location or permitted depository where the customer collateral is held.
- (5) A clearing member and clearing intermediary that receives customer collateral must make available to each of its customers a report, calculated on a daily basis, setting out
- (a) the mark-to-market value of the customer's cleared derivative positions;
  - (b) the market value of customer collateral received from that customer;
  - (c) the market value of the customer collateral that is held by the clearing member or clearing intermediary, and the location or permitted depository where the customer collateral is held; and
  - (d) the market value of the customer collateral that is posted
    - (i) by the clearing member with a derivatives clearing agency, or
    - (ii) by the clearing intermediary with a clearing member.

### **Disclosure of customer collateral investment**

**29.** (1) A derivatives clearing agency, clearing member and clearing intermediary that invests customer collateral must publicly disclose its investment guidelines and policy on its website, in a freely accessible form.

(2) A derivatives clearing agency, clearing member and clearing intermediary must receive confirmation that a customer has acknowledged in writing the receipt of the information under subsection (1) prior to investing customer collateral of that customer.

(3) A derivatives clearing agency, clearing member and clearing intermediary that invests customer collateral must electronically submit a report to the **[applicable local securities regulator]**, in a usable form, as of each calendar quarter end, of the records required to be kept pursuant to section 23.

**PART 5**  
**TRANSFER OF POSITIONS**

**Transfer of customer collateral and positions**

**30.** (1) Subject to subsection (3) a derivatives clearing agency must facilitate the transfer of customer positions and customer collateral from a defaulting clearing member to one or more non-defaulting clearing members.

(2) At the request of a customer, subject to subsection (3), a derivatives clearing agency must facilitate the transfer of the customer's positions and customer collateral from a non-defaulting clearing member to one or more non-defaulting clearing members.

(3) A derivatives clearing agency must facilitate the transfer of positions and customer collateral under subsection (1) or (2), in respect of a customer only if:

- (a) the customer has consented to the transfer;
- (b) the customer is not currently in default;
- (c) the transferred position will have appropriate margin at the receiving clearing member;
- (d) any remaining positions will have appropriate margin at the transferring clearing member; and
- (e) the receiving clearing member has consented to the transfer(s).

**Clearing intermediaries**

**31.** A clearing member that permits a person or company to act as a clearing intermediary must establish policies and procedures that include a credible mechanism for transferring the positions and customer collateral of a clearing intermediary's customers, upon a default by the clearing member or clearing intermediary or at the request of a clearing intermediary's customer, to one or more non-defaulting clearing members or one or more non-defaulting clearing intermediaries.

**PART 6  
EXEMPTIONS**

**32.** A Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

**PART 7  
EFFECTIVE DATE**

**Effective date**

**33.** This Rule comes into force on [•].