

## CSA Staff Notice 91-303

Proposed Model Provincial Rule on Mandatory Central  
Counterparty Clearing of Derivatives

December 19, 2013

## Introduction

We, the Canadian Securities Administrators OTC Derivatives Committee (the “Committee”) are publishing for a comment period expiring on **March 19, 2014**:

- Proposed Model Provincial Rule on Mandatory Central Counterparty Clearing of Derivatives (the “Central Counterparty Clearing Rule”), and
- Proposed Model Explanatory Guidance to Model Provincial Rule on Mandatory Central Counterparty Clearing of Derivatives (the “Central Counterparty Clearing EG”).

Collectively the Central Counterparty Clearing Rule and the Central Counterparty Clearing EG will be referred to as the “Proposed Model Rule”.

We are issuing this notice to provide interim guidance and solicit comments on the Proposed Model Rule. Once we have considered comments received on the Proposed Model Rule and made appropriate changes, each jurisdiction will publish its own rule, explanatory guidance and forms, with necessary local modifications.<sup>1</sup>

The Committee would also like to draw your attention to a recent publication by certain members of the Canadian Securities Administrators respecting clearing agencies requirements, draft *Rule 24-503* and a forthcoming publication, *Provincial Model Rule 91-304 -Derivatives Customer Clearing and Protection of Customer Positions and Collateral*. These publications, including the current one, all relate to central counterparty clearing and we therefore invite the public to consider these comprehensively.

## Background

In order to implement the G-20 commitments<sup>2</sup> that relate to the regulation of the trading of derivatives in Canada, the Committee has been working on recommendations both independently and in collaboration with the Canadian OTC Derivatives Working Group.<sup>3</sup> Since

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<sup>1</sup> In some cases, jurisdictions with substantively similar securities legislation may consider developing and publishing multi-lateral instruments.

<sup>2</sup> The G-20 commitments include requirements that all standardized over-the-counter derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. Moreover, over-the-counter derivative contracts should be reported to trade repositories. Also, non-centrally cleared contracts should be subject to higher capital requirements.

<sup>3</sup> The Canadian OTC Derivatives Working Group consists of the Bank of Canada, the federal Department of Finance, the Office of the Superintendent of Financial Institutions, the Alberta Securities Commission, the Autorité des marchés financiers, the British Columbia Securities Commission and the Ontario Securities Commission.

November 2010, the Committee has published a series of derivatives consultation papers outlining policy recommendations for the regulation of derivatives in Canada.<sup>4</sup> In formulating these recommendations, the Committee has sought to strike a balance between proposing regulation that does not unduly burden participants in the derivatives market, while at the same time addressing the need to introduce effective regulatory oversight of derivatives and derivatives market activities.

The regulatory framework will be implemented through provincial rules that are intended to impose specific regulatory requirements tailored to address the unique characteristics of derivatives products, how they are marketed and traded, the sophistication of the counterparties, existing regulation in other areas (such as the regulation of financial institution), and the risks they present to the derivatives and financial markets. To the greatest extent appropriate, the derivatives rules will be harmonized with international standards and be consistent across Canada.

### **Rule-making process**

Continuing the process initiated for Rule 91-506 *Derivatives: Product Determination* and Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, the Committee's rule-making process is the publication for comment of "model" rules covering a variety of areas of regulation that together will create a regime for the regulation of derivatives markets. The "model" rules will reflect the public commentary on the consultation papers and are the Committee's recommendations for specific proposals to regulate the derivatives market in Canada. Due to variations in provincial securities legislation, the final provincial rules will contain differences. However, it is the intention of the Committee that the substance of the rules will be the same across jurisdictions, and market participants and derivative products will receive the same treatment across Canada.

Each of the "model" rules will be published for a consultation period after which the Committee will evaluate comments received and recommend appropriate amendments to the proposed rule. Once this process is completed, each province will publish province-specific rules for comment in accordance with the legislative requirements of the province. In a number of provinces legislative amendments will need to be implemented before province-specific rules can be published for consultation. Because of this, publication dates of province-specific rules may vary. Once each province's comment period has been completed, final rules will be implemented by that province.

### **Substance and purpose of the Central Counterparty Clearing Rule**

The Central Counterparty Clearing Rule describes proposed requirements for central counterparty clearing of OTC derivatives transactions. The purpose of the Central Counterparty Clearing Rule is to improve transparency in the derivatives market to regulators and the public, and enhance the overall mitigation of risks.

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<sup>4</sup> 91-401 *Over-the-Counter Derivatives Regulation in Canada*, 91-402 *Derivatives: Trade Repositories*, 91-403 *Derivatives: Surveillance and Enforcement*, 91-404 *Segregation and Portability in OTC Derivatives Clearing*, 91-405 *Derivatives: End User Exemption*, and 91-406 *Derivatives: OTC Central Counterparty Clearing*.

The Central Counterparty Clearing Rule is divided into two rule-making areas (i) those relating to mandatory central counterparty clearing (including proposed end-user and intragroup exemptions), and (ii) those relating to the determination of derivatives subject to mandatory central counterparty clearing. To the greatest extent appropriate, the determination process will be coordinated between the local provincial regulators to be consistent across Canada and it will also be harmonized with international standards.

Note that section (d) of the financial entity definition will be adapted by each jurisdiction to reflect local financial entities.

Finally, note that Appendix A and B are not part of this publication. At the time of this publication, no derivative or class of derivative has yet been determined to be centrally cleared.

### **Application of Rule 91-506 *Derivatives: Product Determination***

Rule 91-506 *Derivatives: Product Determination* will be made applicable to the Central Counterparty Clearing Rule.

### **Comments**

We request your comments on the Proposed Model Rule. The Committee also seeks specific feedback on subsection 7(1) of the Central Counterparty Clearing Rule that proposes an exemption from mandatory central counterparty clearing for an end-user that is not a financial entity and that is entering into a derivative transaction to hedge or mitigate commercial risk related to the operation of its business.

The purpose of this exemption is to relieve market participants that are not in the business of derivatives trading but trade in OTC derivatives to mitigate commercial risks related to their business from the mandatory central counterparty clearing.

The Committee seeks guidance as to whether the proposed non-eligibility of small financial entities for purpose of this exemption is appropriate.

You may provide written comments in hard copy or electronic form. The comment period expires **March 19, 2014**.

The Committee will publish all responses received on the websites of the Autorité des marchés financiers ([www.lautorite.qc.ca](http://www.lautorite.qc.ca)) and the Ontario Securities Commission ([www.osc.gov.on.ca](http://www.osc.gov.on.ca)).

Please address your comments to each of the following:

Alberta Securities Commission  
Autorité des marchés financiers  
British Columbia Securities Commission  
Manitoba Securities Commission  
Financial and Consumer Services Commission (New Brunswick)  
Nova Scotia Securities Commission  
Ontario Securities Commission

Please send your comments only to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

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## Questions

Please refer your questions to any of:

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