

Multilateral CSA Notice of Publication

Amendments to National Instrument 94-102 Derivatives: Customer Clearing and Protection of Customer Collateral and Positions

May 12, 2022

Introduction

The Canadian Securities Administrators (the **CSA** or **we**), except the Ontario Securities Commission (**OSC**), are adopting amendments to National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (**NI 94-102**) (the **Amendments**).

The Amendments reduce the frequency of the requirement that regulated clearing agencies deliver Form 94-102F3. Specific information about the Amendments is described in the “Substance and Purpose” section below.

Provided all necessary government ministerial approvals are obtained, the Amendments will come into force on July 26, 2022.

This Notice, including its annexes, is available on the websites of the CSA jurisdictions, including:

www.albertasecurities.com

www.bcsc.bc.ca

www.fcaa.gov.sk.ca

www.fcnb.ca

www.lautorite.qc.ca

www.mbsecurities.ca

nssc.novascotia.ca

Background

On May 20, 2021, in order to facilitate the rule-making process for the Amendments, the CSA published Notice 94-304 - *Frequency of the requirement to deliver Form 94-102F3 Customer Collateral Report: Regulated Clearing Agency* (**Notice 94-304**) announcing that all jurisdictions, except the **OSC**, were making/issuing, as applicable in the local jurisdiction, parallel orders of general application (the **Orders**) reducing the frequency of the requirement for regulated clearing agencies¹ to deliver Form 94-102F3 *Customer Collateral Report: Regulated Clearing Agency* (**Form 94-102F3**). The Orders came into effect on August 1, 2021.²

¹ A regulated clearing agency is defined in NI 94-102 as “(a) in British Columbia, Manitoba and Ontario, a person or company 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 or company recognized or exempt from recognition as a clearing agency or clearing house pursuant to the securities legislation of any jurisdiction of Canada”.

² Blanket Order 94-502, available on the website of the securities regulatory authority in the local jurisdiction.

The OSC made amendments to NI 94-102, which have the same substantive effect as the Orders. These amendments came into force on August 1, 2021³.

The CSA, except the OSC, published for comment on September 16, 2021 proposed amendments to NI 94-102 to reduce the frequency of the requirement to deliver Form 94-102F3.

Substance and Purpose

The Amendments were developed by the CSA as a way to reduce regulatory burden without compromising investor protection or adversely impacting systemic risk.

The CSA recognize that, in addition to the obligation of a regulated clearing agency to file Form 94-102F3, 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 (Form 94-102F1)* or Form 94-102F2 *Customer Collateral Report: Indirect Intermediary (Form 94-102F2)*, 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.

Hence, while Form 94-102F1 and Form 94-102F2 provide us with data relating to customer collateral held or posted by clearing intermediaries, Form 94-102F3 provides additional data relating to collateral posted by clearing intermediaries. This additional data allows for the reconciliation of data received from clearing intermediaries.

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.

Summary of the Amendments

Except in Ontario and subject to the Orders, section 43 of NI 94-102 currently requires a regulated clearing agency 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.

To accord with the Orders, the CSA, except the OSC, is amending NI 94-102 to reduce the frequency of the requirement to deliver Form 94-102F3 from monthly to quarterly. As a result of the Amendments, NI 94-102 will require a regulated clearing agency to electronically deliver a

³ See, in Ontario, Amendment to National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*, published May 20, 2021. 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 *Securities Act* (Ontario).

completed Form 94-102F3 within 10 business days of the end of each calendar **quarter**, and the Orders will expire on the date of coming into force of the Amendments.

Summary of Comments Received by the CSA

During the consultation period, we did not receive any comments.

Contents of Annexes

The following annexes form part of this Notice:

- Annex A –Amendments to National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*
- Annex B - Blackline of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* showing the Amendments

Questions

If you have questions about this Notice or the Amendments, please contact any of the following:

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ANNEX A
**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. (1) This Instrument comes into force on July 26, 2022.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after July 26, 2022, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX B
BLACKLINE OF NATIONAL INSTRUMENT 94-102 *DERIVATIVES: CUSTOMER*
CLEARING AND PROTECTION OF CUSTOMER COLLATERAL AND POSITIONS