

Note: [12 Apr 2022] – Amendments to NI 94-101. Refer to Annex A of the CSA Notice announcing amendments to NI 94-101 dated 27 Jan 2022

**AMENDMENTS TO
NATIONAL INSTRUMENT 94-101 MANDATORY CENTRAL COUNTERPARTY
CLEARING OF DERIVATIVES**

- 1. *National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives is amended by this Instrument.***
- 2. *Section 1 is amended***

(a) in subsection (1), by adding the following definitions:

“investment fund” has the meaning ascribed to it in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“prudentially regulated entity” means a person or company that is subject to the laws of Canada, a jurisdiction of Canada or a foreign jurisdiction where the head office or principal place of business of an authorized foreign bank named in Schedule III of the *Bank Act* (Canada) is located, and a political subdivision of that foreign jurisdiction, relating to minimum capital requirements, financial soundness and risk management, or the guidelines of a regulatory authority of Canada or a jurisdiction of Canada relating to minimum capital requirements, financial soundness and risk management;

“reference period” means the period beginning on September 1 in a given year and ending on August 31 of the following year,;

(b) by replacing subsection (2) with the following:

(2) In this Instrument, a person or company (the first party) is an affiliated entity of another person or company (the second party) if any of the following apply:

(a) the first party and the second party are consolidated in consolidated financial statements prepared in accordance with one of the following:

(i) IFRS;

(ii) generally accepted accounting principles in the United States of America;

(b) all of the following apply:

(i) the first party and the second party would have been, at the relevant time, required to be consolidated in consolidated financial statements

prepared by the first party, the second party or another person or company, if the consolidated financial statements were prepared in accordance with the principles or standards referred to in subparagraph (a)(i) or (ii);

- (ii) neither the first party's nor the second party's financial statements, nor the financial statements of the other person or company, were prepared in accordance with the principles or standards referred to in subparagraph (a)(i) or (ii);
- (c) except in British Columbia, the first party and the second party are both prudentially regulated entities and are consolidated for that purpose;
- (d) in British Columbia, the first party and the second party are prudentially regulated entities that are required to report, on a consolidated basis, information relating to minimum capital requirements, financial soundness and risk management., *and*

(c) by repealing subsection (3).

3. Section 3 is amended

(a) by adding the following subsections:

- (0.1)** Despite subsection 1(2), an investment fund is not an affiliated entity of another person or company for the purposes of paragraphs (1)(b) and (c) of this section.
- (0.2)** Despite subsection 1(2), a person or company is not an affiliated entity of another person or company for the purposes of paragraphs (1)(b) and (c) of this section if the following apply:
 - (a) the person or company has, as its primary purpose, one of the following:
 - (i) financing a specific pool or pools of assets;
 - (ii) providing investors with exposure to a specific set of risks;
 - (iii) acquiring or investing in real estate or other physical assets;
 - (b) all the indebtedness incurred by the person or company whose primary purpose is one set out in subparagraph (a)(i) or (ii), including

obligations owing to its counterparty to a derivative, are secured solely by the assets of that person or company.,

(b) by replacing subparagraph (1)(b)(ii) with the following:

(ii) had, for the months of March, April and May preceding the reference period in which the transaction was executed, an average month-end gross notional amount under all outstanding derivatives exceeding \$1 000 000 000 excluding derivatives referred to in paragraph 7(1)(a);,

(c) by replacing paragraph (1)(c) with the following:

(c) the counterparty

(i) is a local counterparty in any jurisdiction of Canada,

(ii) had, during the previous 12-month period, 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 referred to in paragraph 7(1)(a), and

(iii) had, for the months of March, April and May preceding the reference period in which the transaction was executed, an average month-end gross notional amount under all outstanding derivatives exceeding \$1 000 000 000 excluding derivatives referred to in paragraph 7(1)(a), *and*

(d) in subsection (2), by deleting “(1)(b) or”, “(b)(ii) or (1)” and “, as applicable”.

4. Section 6 is amended by replacing “the following counterparties” with “a counterparty in respect of a mandatory clearable derivative if any counterparty to the mandatory clearable derivative is any of the following”.

5. Section 7 is amended

(a) in subsection (1), by deleting “the application of”,

(b) in paragraph (1)(a), by deleting “if each of the counterparty and the affiliated entity are consolidated as part of the same audited consolidated financial statements prepared in accordance with “accounting principles” as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*”,

(c) by repealing paragraph (1)(b), and

(d) by repealing subsections (2) and (3).

6. Section 8 is amended

(a) *by deleting* “the application of”,

(b) *by replacing paragraph (d) with the following:*

(d) the multilateral portfolio compression exercise involved both counterparties to the mandatory clearable derivative; *and*

(c) *in paragraph (e), by replacing* “is” *with* “was”.

7. Part 4 is repealed.

8. Appendix A and Appendix B are replaced with the following:

**APPENDIX A
TO
NATIONAL INSTRUMENT 94-101 MANDATORY CENTRAL COUNTERPARTY
CLEARING OF DERIVATIVES**

**MANDATORY CLEARABLE DERIVATIVES
(Subsection 1(1))**

Interest Rate Swaps

Type	Floating index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
Fixed-to-float	CDOR	CAD	28 days to 30 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable

Basis	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Overnight index swap	CORRA	CAD	7 days to 2 years	Single currency	No	Constant
Overnight index swap	FedFunds	USD	7 days to 3 years	Single currency	No	Constant
Overnight index swap	EONIA	EUR	7 days to 3 years	Single currency	No	Constant
Overnight index swap	SONIA	GBP	7 days to 3 years	Single currency	No	Constant

Forward Rate Agreements

Type	Floating index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
Forward rate agreement	LIBOR	USD	3 days to 3 years	Single currency	No	Constant
Forward rate agreement	EURIBOR	EUR	3 days to 3 years	Single currency	No	Constant
Forward rate agreement	LIBOR	GBP	3 days to 3 years	Single currency	No	Constant

**APPENDIX B
TO
NATIONAL INSTRUMENT 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES**

**LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS
APPLICABLE FOR SUBSTITUTED COMPLIANCE
(Subsection 3(5))**

Foreign jurisdiction	Laws, regulations or instruments
European Union	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended by Regulation (EU) 2019/2099
United Kingdom	<p>Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013</p> <p>The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020</p> <p>The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment etc., and Transitional Provision) (EU Exit) (No 2) Regulations 2019</p> <p>The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019</p> <p>The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018</p> <p>The Technical Standards (European Market Infrastructure Regulation) (EU Exit) (No 2) Instrument 2019</p> <p>The Technical Standards (European Market Infrastructure Regulation) (EU Exit) (No 3) Instrument 2019</p>
United States of America	Clearing Requirement and Related Rules, 17 CFR Part 50

9. ***Form 94-101F1 Intragroup Exemption and Form 94-101F2 Derivatives Clearing Services are repealed.***

10. (1) Section 8 of this Instrument comes into force on April 12, 2022 and the remaining sections come into force on September 1, 2022.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after:

(a) April 12, 2022, but before September 1, 2022, then Section 8 of this Instrument comes into force on the day on which it is filed with the Registrar of Regulations;
or

(b) September 1, 2022, then this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.