

CSA Staff Notice 94-303***Variation, Amendment, or Revocation and Replacement of Blanket Orders Exempting Certain Counterparties from the Requirement to Submit a Mandatory Clearable Derivative for Clearing and Update on Proposed Amendments to National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives*****May 31, 2018****Introduction**

The members of the Canadian Securities Administrators (the **CSA** or **we**), except the Ontario Securities Commission (the **OSC**), are each varying, amending, or revoking and replacing, as applicable in the local jurisdiction, parallel orders of general application (in each jurisdiction, the **2018 Order**) to extend relief for certain counterparties from the clearing requirement under National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the **National Instrument**), effective August 20, 2018.

Substance and Purpose

On July 6, 2017, the CSA published CSA Staff Notice 94-301 *Blanket Orders Exempting Certain Counterparties from the Requirement to Submit a Mandatory Clearable Derivative for Clearing* indicating that amendments to the National Instrument may be necessary to clarify the scope of market participants that are subject to the requirement to clear an over-the-counter (**OTC**) derivative prescribed in Appendix A to the National Instrument.

To facilitate the rule-making process relating to those amendments, CSA members, except the OSC, issued on that day parallel orders of general application, effective October 4, 2017 (the **2017 Orders**). The 2017 Orders exempt from the clearing requirement under the National Instrument the counterparties specified in paragraphs 3(1)(b) or (c) of the National Instrument that are not already subject to the clearing requirement under paragraph 3(1)(a) on a temporary basis. The effect of the 2017 Orders extends the effective date of the clearing requirement from October 4, 2017 to August 20, 2018. In parallel, the OSC amended the National Instrument to extend the effective date of the clearing requirement until August 20, 2018 for the same counterparties as in the 2017 Orders.

Subsequently, on October 12, 2017, the CSA published *Proposed Amendments to National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives* (the **Proposed Amendments**), and *Proposed Changes to Companion Policy 94-101 Mandatory Central Counterparty Clearing of Derivatives* for a 90-day comment period that expired on January 10, 2018. The purpose of the Proposed Amendments was to refine the scope of counterparties to which the clearing requirement applies and the types of OTC derivatives that are subject to the clearing requirement.

Three comment letters were received and can be found on the websites of the Alberta Securities Commission, the Autorité des marchés financiers and the OSC. In general, the commenters suggested modifications to the interpretation of the term “*affiliated entity*” and called for a harmonized interpretation of that term throughout the OTC derivatives rules.

In view of the comments received, the CSA is considering alternative solutions to address the aims of the Proposed Amendments with respect to the scope of counterparties subject to the clearing requirement, while also addressing commenters’ calls for a harmonized interpretation of the term “*affiliated entity*” throughout the OTC derivatives rules. The CSA currently anticipates publishing for comment revised proposed amendments to the National Instrument for a second consultation period at a later date.

2018 Orders

Accordingly, CSA members, except the OSC, are extending the relief from the clearing requirement under the National Instrument for those counterparties specified in paragraphs 3(1)(b) or (c) of the National Instrument that are not already subject to the clearing requirement under paragraph 3(1)(a), until the revocation of the 2018 Orders or the coming into force of amendments to the National Instrument with respect to the scope of counterparties subject to the clearing requirement, whichever is earlier.

OSC staff position

The OSC will not be issuing an order of this nature given that orders of general application are not authorized under Ontario securities law. However, OSC staff are of the view that, while work in this area is ongoing, there is no public interest in recommending or pursuing an enforcement action against the counterparties specified in paragraphs 3(1)(b) or (c) of the National Instrument that are not already subject to the clearing requirement under paragraph 3(1)(a), for failure to comply with the clearing requirement contained in the National Instrument.

The above position of OSC staff may be withdrawn after further consideration of this matter. OSC staff expects that this position will be withdrawn on the coming into force of amendments to the National Instrument with respect to the scope of counterparties subject to the clearing requirement.

The 2018 Orders are available on the following websites of CSA members:

www.lautorite.qc.ca

www.albertasecurities.com

www.bcsc.bc.ca

www.mbsecurities.ca

nssc.novascotia.ca

www.fcnb.ca

www.fcaa.gov.sk.ca

Questions

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IN THE MATTER OF THE *SECURITIES ACT*, S.N.B. 2004, C. S-5.5 (the “*Act*”)

AND

IN THE MATTER OF

EXEMPTING CERTAIN COUNTERPARTIES FROM MANDATORY CLEARING, 2018

Blanket Order 94-501 (as amended and restated)

Section 208

WHEREAS the Executive Director of Securities (**Executive Director**) issued a Blanket Order effective 4 October 2017 on behalf of the Financial and Consumer Services Commission (**Commission**), which provided exemptions for certain counterparties from mandatory clearing requirements in National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives (MI 94-101)* (**Previous Blanket Order**);

AND WHEREAS the exemptions in the Previous Blanket Order were available in respect of a transaction in a mandatory clearable derivative that occurred on or before 20 August 2018;

AND WHEREAS the Executive Director has determined that it is not prejudicial to the public interest to issue a blanket order that amends and restates the Previous Blanket Order;

IT IS ORDERED pursuant to section 208(1) of the *Act* that the Previous Blanket Order be amended and restated as follows:

Definitions

1. Terms defined in the *Act*, in National Instrument 14-101 *Definitions* or in NI 94-101 have the same meaning in this Blanket Order.

Background

2. Section 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 4 October 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 comes into force, a month-end gross notional amount under all outstanding derivatives exceeding \$1 000 000 000 excluding derivatives to which section 7(1)(a) of NI 94-101 applies;
 - (c) effective 4 October 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 comes 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.
3. On 12 October 2017, the Commission published for comment proposed amendments to NI 94-101 (the **Proposed Amendments**). The Commission 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.
4. Some counterparties that would have been subject to the Clearing Requirement effective 4 October 2017 may not be subject to the Clearing Requirement as a result of the Proposed Amendments. Therefore, exemptive relief is required.

Order

5. The Commission has delegated to the Executive Director the Commission's power under section 208 of the *Act* to exempt, in whole or in part, a person or class of persons from any requirement of any National Instrument, Multilateral Instrument or Local Instrument, subject to such terms and conditions considered appropriate.
6. Considering that it would not be prejudicial to the public interest to do so, the Executive Director orders under section 208(1) of the *Act* that a counterparty, to which section 3(1)(a) of NI 94-101 does not apply and that is required under section 3(1)(b) or (c) of NI 94-101 to clear a mandatory clearable derivative is exempt from that requirement.
7. The exemption under paragraph 6 of this Blanket 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 Blanket 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 (c) of NI 94-101 come into effect.

This Blanket Order takes effect on 20 August 2018.

“Original signed by”

Kevin Hoyt
Executive Director