

CSA Notice and Request for Comment

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

September 16, 2021

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing the proposed amendments (the **Proposed Amendments**) to National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (**NI 94-102**), for a 60-day comment period expiring on November 15, 2021.

We are issuing this notice to solicit comments on the Proposed Amendments.

Background

On May 20 2021, in order to facilitate the rule-making process for the Proposed 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 Ontario Securities Commission (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

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

The CSA, except the OSC, are now proposing to amend NI 94-102 to reduce the frequency of the requirement to deliver Form 94-102F3.

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.

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).

Substance and Purpose of the Proposed Amendments

As detailed in Notice 94-304, the Proposed 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 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* or Form 94-102F2 *Customer Collateral Report: Indirect Intermediary*, 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.

Furthermore, reporting Form 94-102F3, together with Form 94-102F1 and Form 94-102F2, allows for data reconciliation, and allows the CSA to detect and respond to major changes in the derivatives clearing market, as well as to monitor customer collateral arrangements in support of the development and implementation of rules that protect customer assets and are responsive to market practices.

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 Proposed 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.

The CSA is proposing to amend NI 94-102 to reduce the frequency of the requirement to deliver Form 94-102F3 from monthly to quarterly. As a result of the Proposed Amendments, a regulated clearing agency will be required to electronically deliver a completed Form 94-102F3 within 10 days of the end of each calendar quarter.

Contents of Annexes

The following annexes form part of this notice:

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

Request for Comments

Please provide your comments in writing by **November 15, 2021**. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

In addition, all comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com and the Autorité des marchés financiers at www.lautorite.qc.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Please address your comments to each of the following:

Alberta Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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

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Corporate Secretary and Executive Director,
Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514 864-6381
consultation-en-cours@lautorite.qc.ca

Grace Knakowski
Secretary
Ontario Securities Commission
20 Queen Street West
22nd floor
Toronto (Ontario) M5H 3S8
Fax : 416 593-2318
comments@osc.gov.on.ca

Questions

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ANNEX A

**PROPOSED 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 13 with the following:

¹³ The Reporting Period is the calendar quarter for which the form is submitted.

4. This Instrument comes into force on [insert date].