

CSA Notice of Consultation

Proposed Amendments to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*

September 19, 2024

Introduction

The members of the Canadian Securities Administrators (the **CSA** or **we**) are publishing for comment proposed amendments to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (**National Instrument 94-101**). The proposed amendments to National Instrument 94-101 (the **Proposed Amendments**) aim to update the list of mandatory clearable derivatives to reflect the transition to a new interest rate benchmarks regime based on overnight risk-free interest rate benchmarks. Specifically, the Proposed Amendments reflect the cessation of certain inter-bank offered rates (**IBORs**) and the Canadian dollar offered rate (**CDOR**) interest rate benchmarks. The Proposed Amendments also contemplate adding credit default swaps (**CDS**) referencing certain indexes as mandatory clearable derivatives.

The Proposed Amendments will be available on the websites of CSA jurisdictions, including:

www.lautorite.qc.ca

www.albertasecurities.ca

<https://mbsecurities.ca>

www.nssc.novascotia.ca

www.fcnb.ca

www.osc.ca

www.fcaa.gov.sk.ca

We are publishing the Proposed Amendments for comment for 90 days. The comment period will expire on December 19, 2024. See below under “Request for Comments” section.

The British Columbia Securities Commission (BCSC) did not publish the Proposed Amendments for comment at this time. BCSC staff anticipates doing so following the British Columbia election.

Background of National Instrument 94-101

National Instrument 94-101 came into force in 2017. Its main purposes are to reduce counterparty risk in the over-the-counter (OTC) derivatives market and increase financial stability by requiring certain counterparties to clear certain prescribed derivatives through a central clearing counterparty. An overview of this regime was provided in the January 19, 2017, CSA Notice of Publication: National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives and related Companion Policy¹.

¹ Available online at: https://www.osc.ca/sites/default/files/pdfs/irps/csa_20170119_94-101_derivatives.pdf

National Instrument 94-101 is divided into two parts: (i) mandatory central counterparty clearing for prescribed derivatives by certain counterparties (including exemptions), and (ii) the determination of derivatives subject to mandatory central counterparty clearing. The list of mandatory clearable derivatives is included as Appendix A to National Instrument 94-101.

Purpose of Proposed Amendments

1. Transition to risk-free interest rate benchmarks

In 2012, allegations of manipulation of the London inter-bank offered rate (LIBOR) led to the loss of market confidence in the credibility and integrity of not only LIBOR, but also in financial benchmarks in general. In response to concerns regarding IBORs, the Financial Stability Board called for the cessation of the IBORs and the implementation of alternative reference rates. Publication of several IBORs has stopped and CDOR has ceased to be published on June 28, 2024².

As a result, the use of interest rate swaps referencing these benchmarks has significantly decreased and, in several cases, has disappeared.

Conversely, the adoption of risk-free interest rate benchmarks, as an alternative for certain IBORs and CDOR, has led to an increase in the liquidity of interest rate swaps referencing these benchmarks. Consequently, their systemic importance in financial markets globally and in Canada has also increased.

Other international regulators have recognized the systemic importance of interest rate swaps referencing riskfree interest rate benchmarks and have required these swaps to be mandatorily cleared in their respective jurisdictions³.

The CSA contributes to and follows international regulatory proposals and legislative developments on an ongoing basis. Among the latest proposals, the CSA have closely monitored the replacement of IBORs and CDOR with risk-free interest rate benchmarks and the impact of this development on Appendix A of National Instrument 94-101.

As a result, the list of derivatives required to be cleared needs to be updated to reflect the transition to risk-free interest rate benchmarks, such as the Canadian Overnight Repo Rate Average (**CORRA**) and Secured Overnight Financing Rate (**SOFR**). This update accounts for the shift in trading activity and systemic importance. Consequently, the Proposed Amendments remove the requirement to clear certain classes of OTC derivatives referencing certain IBORs or CDOR that are no longer of systemic importance, and replace them with overnight interest rate swaps (OIS) referencing risk-free interest rate benchmarks.

² See CSA Multilateral Staff Notice 25-312 *Reminder of Cessation of CDOR on June 28, 2024*.

³ For example, you may consult the Commodity Futures Trading Commission (CFTC) amendments adopted in 2022 available online at : <https://www.cftc.gov/sites/default/files/2022/08/2022-17736a.pdf>

2. *Addition of certain OTC derivatives*

In addition to updating the list of mandatory clearable derivatives to reflect the transition, the CSA has also reviewed the suitability of adding certain OTC derivatives to be mandatorily cleared.

To determine which OTC derivatives or classes of OTC derivatives will be subject to the mandatory central counterparty clearing requirements, the CSA used most of the factors listed in Companion Policy 94-101 Mandatory Central Counterparty Clearing of Derivatives⁴. Such factors include the following:

- the availability of the derivative to be cleared by a regulated clearing agency;
- the level of standardization of the derivative;
- the effect of central clearing of the derivative on the mitigation of systemic risk, taking into account the size of the market for the derivative and the available resources of the regulated clearing agency to clear the derivative;
- whether mandating the derivative or class of derivatives to be cleared would bring undue risk to regulated clearing agencies;
- the current liquidity in the market for the derivative or class of derivatives. Specifically, for the review period of April 2023 to September 2023 (the **reference period**), we analyzed monthly volume by assessing the number of transactions and the gross notional amount outstanding for certain OTC derivatives, including the gross notional by maturity, and the percentage of outstanding notional cleared during each month of the reference period;
- with regards to a regulated clearing agency, the existence of capacity, operational expertise and resources; and
- international harmonization.

To conduct our analysis, we have relied upon data reported by market participants to designated or recognized trade repositories in accordance with applicable regulations, as well as discussions with recognized central counterparties and requirements in foreign jurisdictions.

Summary of Proposed Amendments

1. *Amendments to reflect the cessation of certain IBORs and CDOR and the transition to risk-free interest rate benchmarks*

The Proposed Amendments will remove mandatory central counterparty clearing of certain interest rate swaps and forward rate agreements (FRA) referencing the following interest rate benchmarks listed in Appendix A of National Instrument 94-101:

- Canadian dollar (**CAD**) CDOR;
- United States dollar (**USD**) LIBOR;
- British pound (**GBP**) LIBOR; and
- Euro (EUR) Euro Overnight Index Average (EONIA).

These derivatives will be removed in each of the fixed-to-float swap, basis swap, OIS, and FRA classes, as applicable.

⁴ Available online at: https://www.osc.ca/sites/default/files/2022-09/csa_20220901_94-101cp_unofficial-consolidation.pdf

Furthermore, we propose to amend Appendix A of National Instrument 94-101 by adding OIS referencing USD SOFR with a maturity between 7 days to 50 years and EUR Euro Short-Term Rate (€STR) with a maturity between 7 days to 3 years.

For reasons of liquidity and international harmonization, we are also proposing to expand the maturity of OIS referencing GBP SONIA subject to mandatory clearing to include maturity between 7 days to 50 years. Likewise, given the significant liquidity for the reference period, we propose to expand the maturity of OIS referencing CAD CORRA to include maturity between 7 days to 30 years.

2. *Addition of new classes of OTC derivatives*

Based on the factors listed above, we concluded that the following classes of OTC derivatives should be added to the list of mandatory clearable derivatives provided in Appendix A of National Instrument 94-101:

- Fixed-to-float interest rate swaps referencing Australian dollar (AUD) Bank Bill Swap rates (BBSW) with a maturity including 28 days to 30 years;
- CDS index CDX.NA.IG⁵ with tenors of 5 and 10 years (Series 46 and all subsequent Series);
- CDS index CDX.NA.HY⁶ with a tenor of 5 years (Series 46 and all subsequent Series); and
- CDS index iTraxx Europe with a tenor of 5 years (Series 45 and all subsequent Series).

We concluded that the addition of the above listed derivatives would be in the public interest.

Local Matters

An annex is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Alternatives Considered to the Proposed Amendments

The alternative to the Proposed Amendments would be not to proceed with making amendments to National Instrument 94-101 to reflect the cessation of certain IBORs and CDOR, or not adding certain liquid and standardized classes of products to the list of mandatory clearable derivatives. However, not proceeding with the removal of derivatives referencing certain IBORs and CDOR would be inconsistent with the desire to align with both the implementation of Canada's commitments in relation to global OTC derivatives markets reforms stemming from the G20 commitments of 2009⁷ and the Financial Stability Board's recommendations for reforming major interest rate benchmarks⁸. Furthermore, not proceeding with the Proposed Amendments would result in certain liquid and standardized OTC derivatives remaining uncleared by a central counterparty potentially increasing systemic risks in Canada.

⁵ North American Investment Grade CDX Index

⁶ North American High Yield CDX Index

⁷ For more information relating to the G20 Summit of Pittsburgh, please see:

<http://www.g20.utoronto.ca/2009/2009communique0925.html>

⁸ For more information relating to the Financial Stability Board's recommendations published in July 2014, please see:

https://www.fsb.org/2014/07/r_140722/

Anticipated Costs and Benefits of the Proposed Amendments

The Proposed Amendments would only apply to certain counterparties executing OTC derivatives which are subject to mandatory central counterparty clearing. Overall, the CSA is of the view that the regulatory costs of the Proposed Amendments are proportionate to the benefits that would be gained by reducing the credit risk of counterparties and increasing financial stability in the Canadian OTC derivatives market.

Contents of Annexes

This Notice includes the following Annexes:

- Annex A – Proposed Amendments to National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives
- Annex B – Specific question of the CSA relating to the Proposed Amendments

Request for Comments

We welcome your comments on the Proposed Amendments and also invite comments on the specific question set out in Annex B of this Notice. Please submit your comments in writing on or before December 19, 2024. Please send your comments by email. Your submissions should be provided in Microsoft Word format.

Please address your submission to all of the CSA members as follows:

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

Please deliver your comments only to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
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2640, boulevard Laurier, bureau 400
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Fax: 514 864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

The Secretary Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416 593-2318
E-mail: comments@osc.gov.on.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.asc.ca, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.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.

Questions with respect to this Notice and the Proposed Amendments may be referred to:

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Annex A

**PROPOSED 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. *Appendix A is 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

Fixed-to-float swaps					
Floating rate index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
BBSW	AUD	28 days to 30 years	Single currency	No	Constant or variable

Basis swaps					
Floating rate index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable

Overnight index swaps					
Floating rate index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
CORRA	CAD	7 days to 30 years	Single currency	No	Constant
FedFunds	USD	7 days to 3 years	Single currency	No	Constant
SOFR	USD	7 days to 50 years	Single currency	No	Constant
€STR	EUR	7 days to 3 years	Single currency	No	Constant
SONIA	GBP	7 days to 50 years	Single currency	No	Constant

Forward rate agreements

Floating rate index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
EURIBOR	EUR	3 days to 3 years	Single currency	No	Constant

Credit default swaps

Index	Region	Maturity	Applicable series	Tranched
CDX.NA.IG	North America	5 years and 10 years	Series 46 and subsequent series.	No
CDX.NA.HY	North America	5 years	Series 46 and subsequent series.	No
iTraxx Europe	Europe	5 years	Series 45 and subsequent series.	No

3. This Instrument comes into force on [●].

Annex B

Would adding some single-name CDS to the list of mandatory clearable derivatives be beneficial for market participants? Please explain the reasons why it would be appropriate or not.