



Canadian Market  
Infrastructure Committee

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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

December 19, 2024

Dear Sirs/Mesdames:

**Re: Proposed Amendments (the “Proposed Amendments”)<sup>1</sup> to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (“NI 94-101”) Published September 19, 2024**

## INTRODUCTION

The Canadian Market Infrastructure Committee (“**CMIC**”) is pleased to provide this comment letter on the Proposed Amendments.

CMIC’s purpose is to assist regulatory and legislative authorities in Canada by providing the consolidated views of key Canadian market participants on proposed Canadian regulatory and legislative changes having an impact on over-the-counter (“**OTC**”) derivatives, with the goal being to ensure that the regulation of the OTC derivatives markets in Canada does not have detrimental effects on the Canadian market. CMIC was formed in 2010 at the request of representatives from the Bank of Canada, Canadian Securities Administrators (the “**CSA**”), and the Federal Department of Finance, and since then, CMIC has been providing commentary on proposed rules and consultation papers with respect to the regulation of the OTC derivatives market in Canada. CMIC brings a unique voice to the dialogue regarding the appropriate framework for regulating the Canadian OTC derivatives market as its membership has been intentionally designed to present the views of both the “buy” side and the “sell” side of the Canadian OTC derivatives market, including, but not limited to, both domestic and foreign owned banks operating in Canada, as well as major Canadian institutional market participants. A list of the CMIC members who have endorsed this letter appears at the end of this letter.

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<sup>1</sup> See *CSA Notice of Consultation*, (2024), 47 OSCB 7409, available [here](#) (the “**Notice**”)

## COMMENTS

CMIC members fully support the changes to the list of mandatory clearable derivatives in Appendix A to NI 94-101 to reflect the transition to risk-free interest rate benchmarks. As the classes of OTC derivatives referencing certain IBORs or CDOR are no longer of systemic importance, the removal of the requirement to clear those OTC derivatives is appropriate.

With respect to the addition of certain classes of OTC derivatives referencing Australian dollar Bank Bill Swap rates, and referencing certain credit default swap indices, those trades are already being cleared by CMIC members that are in-scope under section 3(1) of NI 94-101. Accordingly, CMIC members support the inclusion of those classes of OTC derivatives in Appendix A to NI 94-101.

CMIC has one additional recommendation with respect to the implementation of the Proposed Amendments. CMIC members require sufficient notice to prepare for implementing a change to the scope of mandatory clearable derivatives and would recommend a six-month period from the time the Proposed Amendments are finalized before these changes become effective.

Finally, with respect to the CSA's specific question relating to the Proposed Amendments set out in Annex B to the Notice<sup>2</sup>, CMIC does not support including any single-name credit default swap transaction to the list of mandatory clearable derivatives. While there may be benefits associated with clearing these trades, such as reduced counterparty risk (which is a benefit to clearing any trade), no data has been provided to support the proposition that material multilateral netting benefits would result if these trades were added to the list of mandatory clearable derivatives<sup>3</sup>. Accordingly, the benefits of expanding the mandatory clearable derivatives list to include single-name credit default swaps appears limited. There would in fact be significant disadvantages to doing so. The most significant disadvantage to including any single-name credit default swap to the list of mandatory clearable derivatives is the fact that currently, no other jurisdiction requires the clearing of such trades. Given the relative small size of Canada's OTC derivatives market as compared with the global OTC derivatives market, Canada should not be the first jurisdiction to require the clearing of these types of transactions as this could negatively impact liquidity for Canadian market participants and increase the margin requirements for these types of transactions with little benefit. The implementation of such requirement would also impose significant business and technology costs, which would create a burden upon regulated entities (subject to NI 94-101) to build out infrastructure that their competitors (not subject to NI 94-101) would not be required to do. To the extent a market participant believes that the benefits associated with clearing these trades outweigh the increased margin costs, and provided those transactions are sufficiently standardized (which is not always the case), such market participants could voluntarily clear those transactions. Finally, no compelling reason has been provided by the CSA, nor can CMIC members articulate any reason, to justify regulatory intervention and require the clearing of these types of transactions.

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CMIC welcomes the opportunity to discuss this response with you.

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<sup>2</sup> The specific question is as follows: "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."

<sup>3</sup> The academic literature explains the issue as follows: "most single-name CDSs are too illiquid, not sufficiently standardized, and too opaque to be suitable for mandatory central clearing, at least in the short term. They would lead to a considerable prudential risk to CCPs without the latter being able to provide many multilateral netting benefits. Based on existing empirical literature, it is not perfectly possible to straightforwardly predict what the impact of central clearing would be given that it is still in its infancy and provides inconclusive results." (Priem, Randy, Single-Name Credit Default Swaps: To Clear or Not to Clear? (8 February 2024), available at <https://ssrn.com/abstract=4721103>).

The views expressed in this letter are the views of the following members of CMIC:

Alberta Investment Management Corporation  
Bank of America  
Bank of Montreal  
BNP Paribas  
Caisse de dépôt et placement du Québec  
Canada Pension Plan Investment Board  
Canadian Imperial Bank of Commerce  
Citigroup Global Markets Inc.  
Deutsche Bank A.G., Canada Branch  
Fédération des Caisses Desjardins du Québec  
Healthcare of Ontario Pension Plan Trust Fund  
Investment Management Corporation of Ontario  
Intact Financial Corporation  
JPMorgan Chase Bank, N.A., Toronto Branch  
Manulife Financial Corporation  
Morgan Stanley  
MUFG Securities EMEA plc  
National Bank of Canada  
OMERS Administration Corporation  
Royal Bank of Canada  
Sun Life Financial  
The Bank of Nova Scotia  
The Toronto-Dominion Bank