The Ontario Securities Commission

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Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

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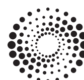 THOMSON REUTERS

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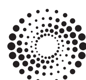
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Chapter 1

Notices / News Releases

1.5 Notices from the Office of the Secretary

1.5.1 Welcome Place Inc. et al.

FOR IMMEDIATE RELEASE
January 18, 2016

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
WELCOME PLACE INC.,
DANIEL MAXSOOD also known as MUHAMMAD M. KHAN,
TAO ZHANG, and TALAT ASHRAF

TORONTO – The Commission issued an Order in the above named matter which provides that:

1. the dates for the hearing on the merits previously scheduled to commence on January 25 and continue on January 27, 28, and 29, and February 1, 2, 3, 4, 5, 8, and 10, 2016 are vacated; and

2. the hearing on the merits shall commence on February 11, 2016 at 10:00 a.m. and shall continue on February 12, 2016, or on such further or other dates as may be ordered by the Commission.

A copy of the Order dated January 15, 2016 is available at www.osc.gov.on.ca.

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SECRETARY

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 NAPEC Inc.

Headnote

Regulation 11-102 Passport System and Policy Statement 11-203 Process for Exemptive Relief applications in Multiple Jurisdictions – BAR – Exemption from the requirement to file a BAR under Part 8 of Regulation 51-102 Continuous Disclosure Obligations (Regulation 51-102) – The acquisition is non-significant applying the asset and investment tests; applying the profit or loss test produces an anomalous result because the significance of the acquisition under this test is disproportionate to its significance on an objective basis in comparison to the results of the other significance tests and all other business, commercial, financial and practical factors; the Filer has provided additional measures that demonstrate the non-significance of the Acquisition to the Filer and that are generally consistent with the results when applying the asset and investment tests.

Applicable Legislative Provisions

Regulation 51-102 Continuous Disclosure Obligations, ss. 8.4, 13.1(1).

December 9, 2015

Translation

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUÉBEC AND ONTARIO
(the Jurisdictions)**

AND

**IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS**

AND

**IN THE MATTER OF
NAPEC INC.
(the Filer)**

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) granting relief from the requirement in Part 8 of *Regulation 51-102 respecting Continuous Disclosure Obligations* (Regulation 51-102) to file a business acquisition report (BAR) in connection with the Filer’s acquisition, by its U.S. wholly-owned subsidiary, of Bemis, LLC (the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

a) the Autorité des marchés financiers is the principal regulator for this application;

b) the Filer has provided notice that Subsection 4.7(1) of *Regulation 11-102 respecting Passport System* (Regulation 11-102) is intended to be relied upon in British Columbia and Alberta; and

c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, Regulation 11-102 and Regulation 51-102 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

This decision is based on the following facts represented by the Filer:

The Filer

1. The Filer is a corporation existing under the *Canada Business Corporations Act*.

2. The Filer's head office is located at 1975 rue Jean-Berchmans-Michaud, Drummondville, Québec, J2C 0H2.

3. The Filer is a reporting issuer in British Columbia, Alberta, Ontario and Québec and is not in default of securities legislation in any of the jurisdictions.

4. The Filer's common shares are listed for trading on the Toronto Stock Exchange under the ticker symbol NPC.

The Acquisition

5. On October 9, 2015, the Filer announced that its wholly-owned U.S. subsidiary, Riggs Distler & Company, Inc., had acquired Bemis, LLC (the Acquired Business) for a purchase price of US$19.2 million, subject to certain customary adjustments (the Acquisition).

6. The Acquisition constitutes a significant acquisition of the Filer for the purposes of Part 8 of Regulation 51-102, requiring the Filer to file a BAR within 75 days of the Acquisition pursuant to section 8.2(1) of Regulation 51-102

Significance Tests for the BAR

7. Under Part 8 of Regulation 51-102, the Filer is required to file a BAR for any completed acquisition that is determined to be a significant acquisition based on the acquisition satisfying any of the three significance tests set out in section 8.3(2) of Regulation 51-102.

8. The Acquisition is not a significant acquisition under the asset test in Subsection 8.3(2)(a) as the value of the consolidated assets of the Acquired Business as of December 31, 2014 represented approximately 4.0% of the consolidated assets of the Filer as of December 31, 2014.

9. The Acquisition is not a significant acquisition under the investment test in Subsection 8.3(2)(b) as the Filer's acquisition costs for the Acquired Business represents approximately 13.45% of the consolidated assets of the Filer as of December 31, 2014.

10. The Acquisition is, however, a significant acquisition under the profit or loss test in Subsection 8.3(2)(c) of Regulation 51-102; in particular, the Filer's proportionate share of the consolidated specified profit or loss of the Acquired Business exceeds 20% of the consolidated specified profit or loss of the Filer calculated using the audited annual financial statements of the Filer for the year ended December 31, 2014.

11. When applying the optional signification tests or the alternative applications available under Subsections 8.3(3) and 8.3(4) of Regulation 51-102, the Acquisition still represents a significant acquisition requiring the filing of a BAR under Part 8 or Regulation 51-102.

12. The application of the profit or loss test produces an anomalous result for the Filer because it exaggerates the significance of the Acquisition on an objective basis in comparison to the results of the asset and investment tests.

De Minimis Acquisition

13. The Filer does not believe (nor did it believe at the time it made the Acquisition) that the Acquisition is significant to it from a commercial, business, practical or financial perspective.

14. The Filer has provided the principal regulator with additional financial and operational measures, all of which are generally important metrics for the Filer and the industry in which it operates, which further demonstrate the non-significance of the Acquisition to the Filer; these additional financial and operational measures include revenues, working capital, number of employees, and inventory of equipment and automotive equipment of the Filer and the Acquired Business, and the results of those measures are generally consistent with the results of the asset test and the investment test.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted.

"Lucie J. Roy"
Senior Director, Corporate Finance
Autorité des marchés financiers

2.1.2 1784354 Ontario Inc. (operating as Excel Private Wealth) and Certika Investments Ltd.

Headnote

Multilateral Instrument 11-102 Passport System – National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 33-109 Registration Information (NI 33-109) – relief from certain filing requirements of NI 33-109 and Derivatives Regulation (Québec) in connection with a bulk transfer of business locations and registered individuals pursuant to an asset purchase in accordance with section 3.4 of Companion Policy 33-109CP to NI 33-109.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System.
National Instrument 33-109 Registration Information, ss. 2.2, 2.3, 2.5, 3.2, 4.2.
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

January 15, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATON OF
QUEBEC AND ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
1784354 ONTARIO INC. (operating as EXCEL PRIVATE WEALTH)
(EXCEL)

AND

CERTIKA INVESTMENTS LTD.
(CERTIKA) (the Filers)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Makers**) has received an application from the Filers, on behalf of Excel and the continuing corporation (the **Amalgamated Corporation**) resulting from the proposed amalgamation (the **Amalgamation**) of Certika and Excel for a decision under the securities legislation of each of the Jurisdictions (the **Legislation**) providing exemptions from the requirements contained in sections 2.2, 2.3, 2.5, 3.2 and 4.2 of National Instrument 33-109 *Registration Information* (**NI 33-109**) pursuant to section 7.1 of NI 33-109 to allow the bulk transfer (the **Bulk Transfer**) of registered individuals and permitted individuals (the **Certika Individuals**) and all business locations (the **Locations**) of Certika (branches and sub-branches) from Certika to the Amalgamated Corporation, in accordance with section 3.4 of Companion Policy to NI 33-109 (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

(a) The Autorité des marchés financiers (**AMF**) is the principal regulator for this application

(b) The decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in Multilateral Instrument 11-102 *Passport System* (MI 11-102) and National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filers:

Excel

1. Excel is a corporation continued under the laws of Ontario with its registered office in Toronto, Ontario and its principal place of business in Sherbrooke, Quebec. The AMF is the principal regulator of Excel.

2. Excel was incorporated under the laws of Quebec and pursuant to the Amalgamation, on September 17, 2015, Excel filed articles of continuance to continue the corporation under the laws of Ontario.

3. Excel is registered as a dealer in the category of mutual fund dealer in each Jurisdiction, and as a dealer in the categories of exempt market dealer and scholarship plan dealer in Quebec. Excel is a member of the Mutual Fund Dealers Association of Canada (**MFDA**).

4. Financial Horizons Inc. (**Financial Horizons**) owns all of the issued and outstanding securities of Excel.

5. Excel is not in default of any requirements of securities legislation in any of the jurisdictions of Canada.

Certika

6. Certika is a corporation existing under the laws of Ontario with its registered office and principal place of business in Perth, Ontario. The Ontario Securities Commission is the principal regulator of Certika.

7. Certika is registered as a dealer in the category of mutual fund dealer in each Jurisdiction. Certika is a member of the MFDA.

8. Financial Horizons owns all of the issued and outstanding securities of Certika.

9. Certika is not in default of any requirements of securities legislation in any jurisdiction of Canada.

The Proposed Amalgamation

10. Financial Horizons acquired all of the issued and outstanding securities of Certika on February 28, 2015 and all of the issued and outstanding securities of Excel on June 1, 2015. As anticipated at the time of the acquisitions, the Filers now wish to amalgamate.

11. After the Amalgamation, Excel and Certika will continue as one legal entity. The name of the Amalgamated Corporation will be "Excel Private Wealth Inc." (with the French version being "Excel Gestion Privée Inc.").

12. The sole shareholder of the Amalgamated Corporation will be Financial Horizons.

13. The registered office location of the Amalgamated Corporation will be the same as the current registered office of Financial Horizons. The National Registration Database (**NRD**) number for the Amalgamated Corporation will be the same as the current NRD number of Excel.

14. The Amalgamation is anticipated to occur on or about February 1, 2016 (the **Amalgamation Date**).

15. MFDA issued a letter approving the Amalgamation on October 20, 2015.

Submissions in support of the Exemption Sought

16. As of and from the Amalgamation Date, the Certika Individuals will carry on the same registerable activities at the Amalgamated Corporation as they conducted with Certika.

17. Effective on the Amalgamation Date, the Amalgamated Corporation will carry on the same business as the Filers and all of the registerable activities of the Filers will be carried out by the Amalgamated Corporation.

18. Subject to obtaining the Exemption Sought, no disruption in the services provided by the Filers to their clients is anticipated as a result of the Amalgamation.

19. Given the number of Certika Individuals and Locations to be transferred from Certika to the Amalgamated Corporation on the Amalgamation Date, it would be unduly time-consuming and difficult to transfer each of the Certika Individuals and Locations through NRD in accordance with the requirements of NI 33-109 if the Exemption Sought is not granted.

20. The Bulk Transfer will ensure that the transfer of the Certika Individuals and Locations occur effective as of the same date as the Amalgamation Date in order to ensure that there is no interruption in registration and service to clients.

21. The Exemption Sought complies with the requirements of, and the reasons for, a bulk transfer as set out in section 3.4 of the Companion Policy to NI 33-109 and Appendix C thereto.

22. It would not be prejudicial to the public interest to grant the Exemption Sought.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted.

"Eric Stevenson"
Superintendent, Client Services and Distribution Oversight

2.1.3 Hamilton Capital Partners Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted to exchange traded mutual funds for initial and continuous distribution of units – relief to permit funds' prospectus to include a modified statement of investor rights – relief to permit funds' prospectus to not include an underwriter's certificate – relief from take-over bid requirements for normal course purchases of units on the Toronto Stock Exchange – prospectus form and underwriting certificate relief granted subject to manager filing a prescribed summary document for each fund on SEDAR and other terms and conditions set out in decision document and subject to sunset clause tied to the implementation of proposed amendments to create new ETF Facts document to replace summary document.

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., ss. 59(1), 71(1), 95-100, 104(2)(c), 147.
National Instrument 41-101 General Prospectus Requirements, s. 19.1.
Item 36.2 of Form 41-101F2 Information Required in an Investment Funds Prospectus.

January 15, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE JURISDICTION)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
HAMILTON CAPITAL PARTNERS INC.
(THE FILER)

AND

IN THE MATTER OF
HAMILTON CAPITAL GLOBAL BANK ETF

AND

HAMILTON CAPITAL GLOBAL FINANCIALS YIELD ETF
(THE EXISTING ETFS)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Existing ETFs and additional exchange-traded mutual funds (the **Future ETFs**, and together with the Existing ETFs, the **ETFs** and each, an **ETF**) established in the future of which the Filer, or an affiliate of the Filer, may be the manager, for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that:

(a) exempts each ETF Manager and each ETF from the requirement to include a certificate of an underwriter in an ETF's prospectus (the **Underwriter's Certificate Requirement**);

(b) exempts each ETF Manager and each ETF from the requirement to include in an ETF's prospectus the statement respecting purchasers' statutory rights of withdrawal and remedies of rescission or damages in substantially the form prescribed in item 36.2 of Form 41-101F2 – *Information Required in an Investment Fund Prospectus* (the **Prospectus Form Requirement**); and

(c) exempts all purchasers and holders of Units (as defined below) from the Take-over Bid Requirements (as defined below).

(collectively, the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in all of the other provinces and territories of Canada (together with the Jurisdiction, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 Definitions, MI 11-102 and National Instrument 81-102 *Investment Funds* (**NI 81-102**) have the same meaning if used in this decision, unless otherwise defined.

The following terms shall also have the following meanings:

(a) **Affiliate Dealer** means a registered dealer that is an affiliate of an Authorized Dealer or Designated Broker and that participates in the re-sale of Creation Units of an ETF from time to time.

(b) **Authorized Dealer** means a registered dealer that has entered, or intends to enter, into an agreement with an ETF Manager authorizing the dealer to subscribe for, purchase and redeem Creation Units from one or more ETFs on a continuous basis from time to time.

(c) **Basket of Securities** means a group of securities determined by an ETF Manager from time to time representing the constituents of the investment portfolio then held by certain ETFs.

(d) **Creation Unit** means, in relation to an ETF, the number of Units of an ETF determined by an ETF Manager from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

(e) **Dealers** means, collectively, an Affiliate Dealer, Authorized Dealer, or Other Dealer and Dealer means any of them.

(f) **Designated Broker** means a registered dealer that has entered, or intends to enter, into an agreement with an ETF Manager to perform certain duties in relation to the ETF, including posting a liquid two-way market for the trading of the ETF's Units on the TSX or another Marketplace.

(g) **ETF Facts** means a prescribed summary disclosure document required pursuant to amendments to the Legislation expected to be made after the date of this decision, in respect of one or more classes or series of Units being distributed under a prospectus.

(h) **ETF Manager** means the Filer or an affiliate of the Filer.

(i) **Marketplace** means a "marketplace" as defined in National Instrument 21-101 *Marketplace Operations*, in Canada.

(j) **Other Dealer** means a registered dealer that acts as an authorized dealer or designated broker to other exchange-traded funds that are not managed by an ETF Manager and that has received relief under a Prospectus Delivery Decision.

(k) **Prospectus Delivery Decision** means a decision granting relief from the Prospectus Delivery Requirement to a Designated Broker or Dealer dated July 19, 2013 or any subsequent decision granting similar relief to a Designated Broker or Dealer, and in each case, that is in effect at the relevant time.

(l) **Prospectus Delivery Requirement** means the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement of the Legislation applies, send or deliver to the purchaser or its agent, unless the dealer has previously done so, the latest prospectus and any amendment either before entering into an agreement of purchase and sale resulting from the order or subscription, or not later than midnight on the second business day after entering into that agreement.

(m) **Summary Document** means a document, in respect of a class or series of Units of an ETF being distributed under a prospectus, prepared in accordance with Appendix A.

(n) **Take-Over Bid Requirements** means the requirements of the Legislation relating to take-over bids, including the requirement to file a report of a take-over bid and to pay the accompanying fee, in the Jurisdiction.

(o) **TSX** means the Toronto Stock Exchange.

(p) **Unitholder** means a beneficial and registered holder of a Unit or Units of an ETF.

(q) **Unit** means a unit of an ETF.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation organized under the laws of Ontario with a head office in Toronto.

2. The Filer is registered as: (i) an investment fund manager in Ontario, Québec and Newfoundland & Labrador; (ii) an exempt market dealer in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland & Labrador, Northwest Territories, Nova Scotia, Ontario, Prince Edward Island, Québec and Saskatchewan; and (iii) a portfolio manager in Ontario.

3. The Filer is the trustee, portfolio manager and investment fund manager of the Existing ETFs. An ETF Manager will be the manager of the Future ETFs.

4. The ETFs are, and will be, mutual fund trusts governed by the laws of Ontario and reporting issuers under the laws of one or more of the Jurisdictions.

5. Each ETF is, or will be, subject to NI 81-102, subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities.

6. The Filer has filed, and an ETF Manager will file, a long-form prospectus in accordance with National Instrument 41-101 *General Prospectus Requirements* on behalf of the ETFs, subject to any exemptions that have been or may be granted by the applicable securities regulatory authorities.

7. The Filer and each Existing ETF are not in default of securities legislation in any of the Jurisdictions.

8. Each ETF will be in continuous distribution. The Units of each ETF will be listed on the TSX or another Marketplace in Canada.

9. Units of an ETF are, or will be, distributed on a continuous basis in one or more of the Jurisdictions under a long-form prospectus. Units of an ETF may generally only be subscribed for or purchased directly from the ETF in an amount equal to a Creation Unit by Authorized Dealers or Designated Brokers. Authorized Dealers or Designated Brokers will subscribe for Creation Units of an ETF for the purpose of facilitating investor purchases of Units of the ETF on the TSX or another Marketplace in Canada.

10. In addition to subscribing for and re-selling Creation Units of an ETF, Authorized Dealers, Designated Brokers and Affiliate Dealers are also generally engaged in purchasing and selling Units of an ETF of the same class or series as the Creation Units in the secondary market. Other Dealers may also be engaged in purchasing and selling Units of an ETF of the same class or series as the Creation Units of the ETF in the secondary market despite not being an Authorized Dealer, Designated Broker or Affiliate Dealer.

11. According to the Authorized Dealers and Designated Brokers, Creation Units of an ETF are generally commingled with other Units of the ETF purchased by the Authorized Dealers, Designated Brokers and Affiliate Dealers in the secondary market. As such, it is not practicable for the Authorized Dealers, Designated Brokers or Affiliate Dealers to determine whether a particular re-sale of Units of an ETF involves Creation Units or Units of the ETF purchased in the secondary market.

12. Designated Brokers perform certain other functions, which include standing in the market with a bid and ask price for Units of an ETF for the purpose of maintaining liquidity for the Units of the ETF.

13. Except for Authorized Dealer and Designated Broker subscriptions for a Creation Units of an ETF, as described above, and other distributions that are exempt from the Prospectus Delivery Requirement under the Legislation, Units of the ETF generally may not be purchased directly from the ETF. Investors are generally expected to purchase and sell Units of an ETF, directly or indirectly, through dealers executing trades through the facilities of the TSX or another Marketplace in Canada. Units of an ETF may also be issued directly to ETF investors upon the reinvestment of distributions of income or capital gains.

Exemption from the Prospectus Form Requirement

14. The Filer understands that the Canadian securities administrators have taken the view that the first re-sale of a Creation Unit of an ETF on the TSX or another Marketplace in Canada will generally constitute a distribution of Creation Units of an ETF under the Legislation and that the Authorized Dealers, Designated Brokers and Affiliate Dealers are subject to the Prospectus Delivery Requirement in connection with such re-sales. Re-sales of Units of an ETF in the secondary market that are not Creation Units of the ETF would not ordinarily constitute a distribution of such Units.

15. Under a Prospectus Delivery Decision, Authorized Dealers, Designated Brokers and Affiliate Dealers are exempt from the Prospectus Delivery Requirement in connection with the re-sale of Creation Units of an ETF to investors on the TSX or another Marketplace in Canada. Under a Prospectus Delivery Decision, Other Dealers are also exempt from the Prospectus Delivery Requirement in connection with the re-sale of creation units of other exchange-traded funds that are not managed by an ETF Manager.

16. A Prospectus Delivery Decision includes a condition that the Designated Broker or Dealer undertakes that it will send or deliver to each purchaser of Units of an ETF who is a customer of the Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer, and to whom a trade confirmation is required under the Legislation to be sent or delivered by the Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer in connection with the purchase, the latest Summary Document filed in respect of the Units of the ETF, not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after the purchase of the Units of the ETF.

17. An ETF Manager will file with the applicable Jurisdictions on the System for Electronic Document Analysis and Retrieval (**SEDAR**) a Summary Document for each class or series of Units of an ETF and will make available to the applicable Dealers and Designated Brokers the requisite number of copies of the Summary Document for the purpose of facilitating their compliance with the Prospectus Delivery Decision.

18. An ETF Manager will file a Summary Document for each class or series of Units of an ETF within the timeframe necessary to allow Dealers and Designated Brokers to effect delivery of the Summary Document as contemplated in the Prospectus Delivery Decision.

19. The Exemption Sought from the Prospectus Form Requirement is required to reflect the relief provided in the Prospectus Delivery Decision. Accordingly, an ETF Manager will include language in each ETF's prospectus explaining the impact on a purchaser's statutory rights as a result of the Prospectus Delivery Decision in replacement of the language prescribed by the Prospectus Form Requirement.

Exemption from the Underwriter's Certificate Requirement

20. The Authorized Dealers and Designated Brokers do not provide the same services in connection with a distribution of Creation Units of an ETF as would typically be provided by an underwriter in a conventional underwriting.

21. The Authorized Dealers and Designated Brokers generally seek to profit from their ability to create and redeem Units of an ETF by engaging in arbitrage trading to capture spreads between the trading prices of Units of the ETF and their underlying securities and by making markets for their clients to facilitate client trading in Units of the ETF.

22. The Filer generally conducts its own marketing, advertising and promotion of the ETFs. The Filer may, at its discretion, charge an administration fee on the issuance of Creation Units of an ETF to Authorized Dealers or Designated Brokers.

23. The Authorized Dealers and Designated Brokers are not involved in the preparation of an ETF's prospectus, do not incur any marketing costs or receive any underwriting fees or commissions from the ETFs or the ETF Managers in connection with the distribution of Creation Units of an ETF. Furthermore, the Authorized Dealers will change from time to time. Accordingly, it is not practical to provide an underwriters' certificate in the prospectus of the ETFs.

Exemption from the Take-Over Bid Requirements

24. Although Units of an ETF will trade on the TSX and the acquisition of Units of the ETF can therefore be subject to the Take-Over Bid Requirements:

    (a) it will be difficult for purchasers of Units of the ETF to monitor compliance with the Take-Over Bid Requirements because the number of outstanding Units of the ETF will always be in flux as a result of the ongoing issuance and redemption of Units by the ETF; and

    (b) the way in which Units of the ETF will be priced deters anyone from either seeking to acquire control, or offering to pay a control premium, for outstanding Units of the ETF because pricing for each Unit of the ETF will generally reflect the net asset value of the Units of the ETF.

25. The application of the Take-Over Bid Requirements to an ETF would have an adverse impact upon the liquidity of a Unit of the ETF because they could cause Dealers, Designated Brokers and other large Unitholders of the ETF to cease trading Units of the ETF once prescribed take-over bid thresholds are reached. This, in turn, could serve to provide conventional mutual funds with a competitive advantage over an ETF.

Generally

26. The Filer understands that the securities regulatory authorities are developing proposed rule amendments that will require an ETF Manager to file an ETF Facts on behalf of an ETF in connection with the filing of a prospectus. If the amendments are adopted, the requirement to file an ETF Facts will supersede the requirement to file a Summary Document. Since the introduction of the ETF Facts will likely be subject to a transition period, there may be a period of time where some ETFs have an ETF Facts while others have a Summary Document. If the ETF Manager files an ETF Facts with respect to a class or series of Units of an ETF, the ETF Manager will use such ETF Facts instead of a Summary Document to satisfy its obligations with respect to the Exemption Sought in respect of any purchase of such class or series of Units that occurs after the filing of such ETF Facts.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

1. The decision of the principal regulator is that the Exemption Sought in respect of the Underwriter's Certificate Requirement and the Prospectus Form Requirement is granted, provided that each ETF Manager will be in compliance with the following conditions:

    (a) the ETF Manager files with the applicable Jurisdictions on SEDAR the Summary Document for a class or series of Units of an ETF when filing the final prospectus for that ETF;

    (b) the ETF Manager displays on its website in a manner that would be considered prominent to a reasonable investor such Summary Document for a class or series of Units of each ETF;

    (c) the ETF Manager amends the Summary Document at the same time it files any amendments to the ETF's prospectus that affect the disclosure in the Summary Document and files the amended Summary Document with the applicable Jurisdictions on SEDAR and makes it available on its website in a manner that would be considered prominent to a reasonable investor;

    (d) the ETF Manager provides or makes available to each Dealer or Designated Broker, the number of copies of the Summary Document of the class or series of Units of the ETF that the Dealer or Designated Broker reasonably requests in support of compliance with its respective Prospectus Delivery Decision;

    (e) each ETF's prospectus, pro forma prospectus or any amendment:

        (i) incorporates the relevant Summary Document by reference;

        (ii) contains the disclosure referred to in paragraph 19 above; and

        (iii) discloses both this decision and the Prospectus Delivery Decision under Item 34.1 of Form 41-101F2 Exemptions and Approvals;

(f) the ETF Manager obtains an executed acknowledgement from each Authorized Dealer, Designated Broker and Affiliate Dealer, and uses its best efforts to obtain an acknowledgment from each Other Dealer:

(i) indicating its election, in connection with the re-sale of Creation Units of the ETF on the TSX or another Marketplace in Canada, to send or deliver the Summary Document in accordance with a Prospectus Delivery Decision or, alternatively, to comply with the Prospectus Delivery Requirement; and

(ii) if a Dealer or Designated Broker agrees to deliver the Summary Document in accordance with a Prospectus Delivery Decision:

(A) an undertaking that the Dealer or Designated Broker will attach or bind one ETF's Summary Document with another ETF's Summary Document only if the documents are being sent or delivered under the Prospectus Delivery Decision at the same time to an investor purchasing Units of each such ETF; and

(B) confirming that the Dealer or Designated Broker has in place written policies and procedures to ensure that it is in compliance with the conditions of the Prospectus Delivery Decision;

(g) the ETF Manager will keep records of which Designated Brokers and Dealers have provided it with an acknowledgement under a Prospectus Delivery Decision, and which intend to rely on and comply with the Prospectus Delivery Decision or intend to comply with the Prospectus Delivery Requirement;

(h) the ETF Manager files with its principal regulator, to the attention of the Director, Investment Funds and Structured Products Branch, on or before January 31st in each calendar year, a certificate signed by its ultimate designated person certifying that, to the best of the knowledge of such officer, after making due inquiry, the ETF Manager has complied with the terms and conditions of this decision during the previous calendar year;

(i) if the ETF Manager files an ETF Facts instead of a Summary Document with respect to a class or series of Units, the latest ETF Facts filed in respect of such class or series of Units must be substituted for a Summary Document in order to satisfy the foregoing conditions with respect to any purchase in such class or series of Units that occurs after the date of filing of such ETF Facts;

(j) conditions (a), (b), (c) and (e)(i) above do not apply to the Exemption Sought with respect to a class or series of Units of an ETF if the ETF Manager files an ETF Facts; and

(k) conditions (d), (e)(ii), (e)(iii), (f), (g) and (h) do not apply to the Exemption Sought after any new legislation or rule dealing with the Prospectus Delivery Decision takes effect and any applicable transition period has expired.

2. The decision of the principal regulator is that the Exemption Sought in respect of the Take-over Bid Requirements is granted.

The Exemption Sought from the Prospectus Form Requirement as it relates to one or more of the Jurisdictions will terminate on the latest of (i) the coming into force of any legislation or rule dealing with the Exemption Sought from the Prospectus Form Requirement or (ii) the end date of any applicable transition period for any legislation or rule dealing with the Exemption Sought from the Prospectus Form Requirement.

As to the Exemption Sought from the Underwriter's Certificate Requirements and the Take-Over Bid Requirements

"Edward P. Kerwin"
Commissioner

"Deborah Leckman"
Commissioner

As to the Exemption Sought from the Prospectus Requirement

"Stephen Paglia"
Acting Manager, Investment Funds and Structured Products Branch
Ontario Securities Commission

APPENDIX A

CONTENTS OF SUMMARY DOCUMENT

General Instructions:

1. *Items 1 to 10 represent the minimum disclosure required in a Summary Document for a fund. The inclusion of additional information is not precluded so long as the Summary Document does not exceed a total of four pages in length (two pages double-sided).*

2. *Terms defined in National Instrument 81-102 Investment Funds, National Instrument 81-105 Mutual Fund Sales Practices or National Instrument 81-106 Investment Fund Continuous Disclosure and used in this Summary Document have the meanings that they have in those national instruments.*

3. *Information in the Summary Document must be clear and concise and presented in plain language.*

4. *The format and presentation of information in the Summary Document is not prescribed but the information must be presented in a manner that assists in readability and comprehension.*

5. *The order of the Items outlined below is not prescribed, except for Items 1 and 2, which must be presented as the first 2 items in the Summary Document.*

6. *Each reference to a fund in this Appendix A refers to an ETF as defined in the decision above.*

Item 1 – Introduction

Include at the top of the first page a heading consisting of:

(a) the title “Summary Document”;

(b) the name of the manager of the fund;

(c) the name of the fund to which the Summary Document pertains; and

(d) the date of the document.

Item 2 – Cautionary Language

Include a statement in italics in substantially the following form:

“The following is a summary of the principal features of this fund. You can find more detailed information about the fund in the prospectus. The prospectus is available on [insert name of the manager of the fund] website at [insert manager of the fund website], or by contacting [insert name of the manager of the fund] at [insert manager of the fund’s email address], or by calling [insert telephone number of the manager of the fund”].

Item 3 – Fund Details

Include the following disclosure:

(a) ticker symbol;

(b) fund identification code(s);

(c) index ticker (as applicable);

(d) exchange;

(e) currency;

(f) inception date;

(g) RSP eligibility;

(h) DRIP eligibility;

(i) expected frequency and timing of distributions, and if applicable, the targeted amount for distributions;

(j) management expense ratio, if available; and

(k) portfolio manager, when the fund is actively managed.

Item 4 – Investment Objectives

Include a description of the fundamental nature of the fund, or the fundamental features of the fund that distinguishes it from other funds.

INSTRUCTIONS:

Include a description of what the fund primarily invests in, or intends to primarily invest in, such as

(a) a description of the fund, including what the fund invests in, and if it is trying to replicate an index, the name of the index, and an overview of the nature of securities covered by the index or the purpose of the index; and

(b) the key investment strategies of the fund.

Item 5 – Investments of the Fund

1. Include a table disclosing:

   (a) the top 10 positions held by the fund; and

   (b) the percentage of net asset value of the fund represented by the top 10 positions.

2. Include at least one, and up to two, charts or tables that illustrate the investment mix of the fund's investment portfolio.

INSTRUCTIONS:

(a) The information required under this Item is intended to give a snapshot of the composition of the fund's investment portfolio. The information required to be disclosed under this Item must be as at a date within 60 days before the date of the Summary Document.

(b) The information required under Item 5(2) must show a breakdown of the fund's investment portfolio into appropriate subgroups and the percentage of the aggregate net asset value of the fund constituted by each subgroup. The names of the subgroups are not prescribed and can include security type, industry segment or geographic location. The fund should use the most appropriate categories given the nature of the fund. The choices made must be consistent with disclosure provided under "Summary of Investment Portfolio" in the fund's MRFP.

(c) For new funds where the information required to be disclosed under this Item is not available, provide a brief statement explaining why the required information is not available.

Item 6 – Risk

1. Include a statement in italics in substantially the following form:

   "All investments involve risk. When you invest in the fund the value of your investment can go down as well as up. For a description of the specific risks of this fund, see the fund's prospectus."

2. If the cover page of the fund's prospectus contains text box risk disclosure, also include a description of those risk factors in the Summary Document.

Item 7 – Fund Expenses

1. Include an introduction using wording similar to the following:

"You don't pay these expenses directly. They affect you because they reduce the fund's returns."

2. Provide information about the expenses of the fund in the form of the following table:

	Annual rate (as a % of the fund's value)
Management expense ratio (MER) This is the total of the fund's management fee and operating expenses.	
Trading expense ratio (TER) These are the fund's trading costs.	
Fund expenses The amount included for fund expenses is the amount arrived at by adding the MER and the TER.	

3. If the information in (2) is unavailable because the fund is new including wording similar to the following:

"The fund's expenses are made up of the management fee, operating expenses and trading costs. The fund's annual management fee is [ ]% of the fund's value. Because this fund is new, its operating expenses and trading costs are not yet available."

INSTRUCTIONS:

Use a bold font or other formatting to indicate that fund expenses is the total of all ongoing expenses set out in the chart and is not a separate expense charged to the fund.

Item 8 – Trailing Commissions

1. If the manager of the fund or another member of the fund's organization pays trailing commissions, include a brief description of these commissions.

2. The description of any trailing commission must include a statement in substantially the following words:

"The trailing commission is paid out of the management fee. The trailing commission is paid for as long as you own the fund."

Item 9 – Other Fees

1. Provide information about the amount of fees payable by an investor, other than those already described or payable by designated brokers and underwriters.

2. Include a statement using wording similar to the following:

"You may pay brokerage fees to your dealer when you purchase and sell units of the fund."

INSTRUCTIONS:

(a) Examples include any redemption charges, sales charges or other fees, if any, associated with buying and selling securities of the fund.

(b) Provide a brief description of each fee disclosing the amount to be paid as a percentage (or, if applicable, a fixed dollar amount) and state who charges the fee.

Item 10 – Statement of Rights

State in substantially the following words:

Under securities law in some provinces and territories, you have:

- *the right to cancel your purchase within 48 hours after you receive confirmation of the purchase, or*
- *other rights and remedies if this document or the fund's prospectus contains a misrepresentation. You must act within the time limit set by the securities law in your province or territory.*

For more information, see the securities law of your province or territory or ask a lawyer.

Item 11 – Past Performance

If the fund includes past performance:

1. Include an introduction using wording similar to the following:

   This section tells you how the fund has performed over the past [insert the lesser of 10 years or the number of completed calendar years] years. Returns are after expenses have been deducted. These expenses reduce the fund's returns.

   It's important to note that this doesn't tell you how the fund will perform in the future as past performance may not be repeated. Also, your actual after-tax return will depend on your personal tax situation.

2. Show the annual total return of the fund, in chronological order for the lesser of:

   (a) each of the 10 most recently completed calendar years; and

   (b) each of the completed calendar years in which the fund has been in existence and which the fund was a reporting issuer.

3. Show the

   (a) final value, of a hypothetical $1,000 investment in the fund as at the end of the period that ends within 60 days before the date of the Summary Document and consists of the lesser of:

      (i) 10 years, or

      (ii) the time since inception of the fund,

   and

   (b) the annual compounded rate of return that would equate the initial $1,000 investment to the final value.

   INSTRUCTIONS:

   In responding to the requirements of this Item, a fund must comply with the relevant sections of Part 15 of National Instrument 81-102 Investment Funds as if those sections applied to a Summary Document.

Item 12 – Benchmark Information

If the Summary Document includes benchmark information, ensure this information is consistent with the fund's MRFP and presented in the same format as Item 11.

2.2 Orders

2.2.1 Welcome Place Inc. et al. – s. 127

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
WELCOME PLACE INC.,
DANIEL MAXSOOD also known as MUHAMMAD M. KHAN,
TAO ZHANG, and TALAT ASHRAF

ORDER
(Section 127)

WHEREAS:

1. on July 2, 2013, the Ontario Securities Commission (the "Commission") issued a temporary order (the "Temporary Order"), pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), ordering that:

    a. all trading in any securities by Welcome Place Inc. ("Welcome Place"), Daniel Maxsood also known as Muhammad M. Khan ("Maxsood"), Tao Zhang ("Zhang"), and Talat Ashraf ("Ashraf") (collectively, the "Respondents") shall cease;

    b. the exemptions contained in Ontario securities law do not apply to any of Welcome Place, Maxsood, Zhang, and Ashraf; and

    c. the Temporary Order shall expire on the 15th day after its making unless extended by the Commission;

2. on July 2, 2013, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on July 12, 2013 at 11:30 a.m.;

3. on July 12, 2013, the Commission held a Hearing at which counsel for Welcome Place and Maxsood attended and no one attended on behalf of Zhang or Ashraf, although properly served. Upon reviewing the evidence, hearing submissions from Staff and counsel for Welcome Place and Maxsood, and upon being advised that Welcome Place and Maxsood consented to the extension of the Temporary Order to January 31, 2014, the Commission ordered that:

    a. pursuant to subsections 127(7) and (8) of the Act, the Temporary Order is extended to January 31, 2014, and specifically:

        i. all trading in any securities by Welcome Place, Maxsood, Zhang, and Ashraf shall cease;

        ii. the exemptions contained in Ontario securities law do not apply to any of Welcome Place, Maxsood, Zhang, and Ashraf; and

        iii. this Order shall not affect the right of any Respondent to apply to the Commission to clarify, amend, or revoke this Order upon seven days written notice to Staff of the Commission; and

    b. the Hearing is adjourned to Monday, January 27, 2014 at 10:00 a.m.;

4. on January 27, 2014, the Commission held a Hearing with respect to the extension of the Temporary Cease Trade Order, and Staff appeared and made submissions. No one appeared for the Respondents, but a written consent to the extension of the Temporary Order was filed and considered by the Commission. The Commission ordered pursuant to subsections 127(7) and (8) of the Act that the Temporary Order is extended until the final disposition of the proceeding resulting from Staff's investigation in this matter, including, if appropriate, any final determination with respect to sanctions and costs, or further Order of the Commission, and specifically that:

    a. all trading in any securities by Welcome Place, Maxsood, Zhang, and Ashraf shall cease;

b. the exemptions contained in Ontario securities law do not apply to any of Welcome Place, Maxsood, Zhang, and Ashraf; and

c. this Order shall not affect the right of any Respondent to apply to the Commission to clarify, amend, or revoke this Order upon seven days written notice to Staff of the Commission;

5. on December 18, 2014, the Commission issued a Notice of Hearing pursuant to sections 127 and 127.1 of the Act, providing that a hearing would be held at the Commission on February 2, 2015. The Notice of Hearing was accompanied by a Statement of Allegations dated December 18, 2014, issued by Staff with respect to the Respondents;

6. on December 19, 2014, the Respondents were served with the Notice of Hearing and Statement of Allegations;

7. on February 2, 2015, a first appearance was held before the Commission at which Staff appeared and counsel appeared and confirmed his attendance on behalf of each of the Respondents. The Commission determined that the parties should return for a second attendance after disclosure was provided to the Respondents, and ordered that the hearing of this matter was adjourned and shall continue on May 27, 2015 at 11:00 a.m. or on such other date or time set by the Office of the Secretary and agreed to by the parties;

8. on May 27, 2015, a second appearance was held before the Commission at which Staff appeared in person and counsel participated by telephone, confirming his attendance on behalf of each of the Respondents. The Panel heard submissions from Staff indicating that disclosure of Staff's documents and Staff's witness list had been made, and Staff requested dates for similar disclosure by the Respondents. The Panel heard submissions from counsel for the Respondents with respect to these requests, and ordered that:

a. the Respondents will make disclosure to Staff of their witness lists and summaries, and indicate any intent to call an expert by June 22, 2015; and

b. the hearing of this matter is adjourned and shall continue on July 22, 2015 at 11:00 a.m. or on such other date or time set by the Office of the Secretary and agreed to by the parties;

9. on July 22, 2015, a third appearance was held before the Commission at which Staff appeared and counsel appeared on behalf of each of the Respondents. The Panel heard submissions from Staff indicating that the Respondents have now made disclosure to Staff of their witness lists and summaries, and no intent to call an expert has been disclosed. Staff requested dates be set for the hearing of the merits and a final interlocutory attendance. The Panel heard submissions from counsel for the Respondents with respect to these requests, and ordered that:

a. the hearing on the merits shall commence on January 25, 2016 at 10:00 a.m. and shall continue on January 27, 28, 29, February 1, 2, 3, 4, 5, 8, 10, 11, and 12, 2016, or on such further or other dates as may be agreed upon by the parties and fixed by the Office of the Secretary;

b. a final interlocutory attendance shall take place on January 7, 2016 at 10:00 a.m; and

c. the parties shall deliver Hearing Briefs to every other party by December 18, 2015;

10. on January 15, 2016, a confidential pre-hearing conference was held before the Commission at which Staff and counsel for the Respondents appeared;

11. Staff and the Respondents requested that the hearing scheduled in this matter be adjourned to a later date; and

12. the Commission is of the opinion that it is in the public interest to make this Order.

IT IS ORDERED that:

1. the dates for the hearing on the merits previously scheduled to commence on January 25 and continue on January 27, 28, and 29, and February 1, 2, 3, 4, 5, 8, and 10, 2016 are vacated; and

2. the hearing on the merits shall commence on February 11, 2016 at 10:00 a.m. and shall continue on February 12, 2016, or on such further or other dates as may be ordered by the Commission.

DATED at Toronto this 15th day of January, 2016.

"Edward P. Kerwin"

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke

THERE ARE NO ITEMS TO REPORT THIS WEEK.

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Nevada Iron Ltd.	14 January 2016	
Moshi Mountain Industries Ltd.	8 January 2016	14 January 2016

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
BitRush Corp.	13 November 2015	25 November 2015	25 November 2015	19 January 2016	

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
BitRush Corp.	13 November 2015	25 November 2015	25 November 2015	19 January 2016	
Enerdynamic Hybrid Technologies Corp.	4 November 2015	16 November 2015	16 November 2015		
Enerdynamic Hybrid Technologies Corp.	22 October 2015	4 November 2015	4 November 2015		
Enerdynamic Hybrid Technologies Corp.	15 October 2015	28 October 2015	28 October 2015		
Nobilis Health Corp.	23 November 2015	4 December 2015	4 December 2015		
Starrex International Ltd.	30 December 2015	11 January 2016	11 January 2016		
Tango Mining Limited	7 January 2016	20 January 2016			
West Red Lake Gold Mines Inc.	24 December 2015	6 January 2016	6 January 2016		

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Chapter 6

Request for Comments

6.1.1 Proposed NI 94-102 Derivatives: Customer Clearing and Protection of Customer Collateral and Positions and Proposed Companion Policy 94-102CP Derivatives: Customer Clearing and Protection of Customer Collateral and Positions

Canadian Securities Administrators

Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment

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

Proposed Companion Policy 94-102CP
Derivatives: Customer Clearing and Protection of Customer Collateral and Positions

January 21, 2016

I. Introduction

We, the Canadian Securities Administrators (the **CSA**) are publishing the following for a ninety (90) day comment period, expiring on April 19, 2016:

- Proposed National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Positions and Collateral* (the **Instrument**);
- Proposed Companion Policy 94-102CP *Derivatives: Customer Clearing and Protection of Customer Positions and Collateral* (the **CP**).

Collectively, the Instrument and the CP will be referred to as the Proposed National Instrument.

We are issuing this notice to provide interim guidance and solicit comments on the **Proposed National Instrument**.

We would also like to draw your attention to the recent publication of National Instrument 24-102 *Clearing Agency Requirements* and the upcoming publication of Proposed National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* and in particular the scope of application of mandatory clearing requirements. These publications, including the Proposed National Instrument, relate to central counterparty clearing. We therefore encourage the public to consider these publications comprehensively.

II. Background

On January 16, 2014, the CSA OTC Derivatives Committee (the **Committee**) published CSA Notice 91-304 *Proposed Model Provincial Rule on Derivatives: Customer Clearing and Protection of Customer Positions and Collateral* (the **Model Rule**). The Committee invited public comments on all aspects of the Model Rule. Twenty-two comment letters were received. A list of those who submitted comments, as well as a chart summarizing the comments received and the Committee's responses are attached in Annex A to this Notice. Copies of the comment letters can be found on the CSA members' websites.[1]

The Committee has carefully reviewed the comments received and has made determinations on appropriate revisions to the Model Rule, which has been transformed into the Proposed National Instrument for the purpose of adopting a harmonized instrument across Canada.

[1] Available at http://www.osc.gov.on.ca/en/43833.htm.

Following the expiry of the comment period, the Committee will review all comment letters received in respect of the Proposed National Instrument to make recommendations on changes at a Committee level.

III. Substance and Purpose of the Proposed National Instrument

Canadian and international initiatives promoting the clearing of over-the-counter (OTC) derivative transactions will cause certain market participants, who are not clearing members at a derivatives clearing agency, to clear their OTC derivatives transactions indirectly through market participants that are clearing members or otherwise provide clearing services. The purpose of the Instrument is to ensure that customer clearing is carried out in a manner that protects customer collateral and positions and improves derivatives clearing agencies' resilience to a clearing member default. For a more detailed explanation of customer clearing please see CSA Consultation Paper 91-404 *Derivatives: Segregation and Portability in OTC Derivatives Clearing*.[2]

The Instrument contains requirements for the treatment of customer collateral by clearing intermediaries and derivatives clearing agencies, including requirements relating to the segregation and use of customer collateral. These requirements are intended to ensure that customer collateral is protected, particularly in the case of financial difficulties of a clearing intermediary. The Instrument includes detailed record-keeping, reporting and disclosure requirements intended to ensure that customer collateral and positions are readily identifiable. The Instrument also contains requirements relating to the transfer or porting of customer collateral and positions intended to ensure that, in the event of default or insolvency of a clearing intermediary, customer collateral and positions can be transferred to one or more non-defaulting clearing intermediaries without having to liquidate and re-establish the positions.

IV. Summary of the Instrument

Part 1 of the Instrument sets out relevant definitions, and specifies that the Instrument applies only to trades in derivatives where a customer, regulated clearing agency member or clearing intermediary has a specified nexus to a local jurisdiction.

Part 2 to Part 4 of the Instrument set out requirements applicable to clearing intermediaries with respect to treatment of customer collateral, record keeping and disclosure.

Part 2 of the Instrument sets out the manner in which customer margin and collateral is to be treated by clearing intermediaries. This Part sets out requirements in respect of the collection, holding and maintenance of customer collateral, the identification of excess margin as well as the segregation, use and investment of customer collateral. Part 2 also sets out requirements for a clearing intermediary to be able to provide clearing services to a customer, and for appropriate risk management in respect of those services.

Under Part 3 of the Instrument, clearing intermediaries are required to keep and retain certain records and supporting documentation, and keep adequate and appropriately updated books and records that will facilitate the identification and protection of customer positions and collateral.

Part 4 of the Instrument sets out disclosure requirements for clearing intermediaries as well as reports required to be submitted to the regulator or the securities regulatory authority.

Part 5 to Part 7 of the Instrument are parallel to Part 2 to Part 4 of the Instrument, and set out similar requirements as they apply to regulated clearing agencies.

Part 5 of the Instrument sets out how customer margin and collateral is to be treated by regulated clearing agencies. This Part sets out requirements in respect of the collection, holding and maintenance of customer collateral, the identification of excess margin as well as the segregation, use and investment of customer collateral.

Under Part 6 of the Instrument, regulated clearing agencies are required to keep certain records and supporting documentation as well as keep adequate and appropriately updated books and records that will facilitate the identification and protection of customer positions and collateral.

Part 7 of the Instrument sets out disclosure requirements for regulated clearing agencies as well as reports required to be submitted to the regulator or the securities regulatory authority.

Part 8 of the Instrument sets out the requirements for a regulated clearing agency to facilitate the transfer of customer positions and collateral in the context of a clearing intermediary's default, or at the request of a customer, under certain specified conditions. Part 8 also requires a clearing intermediary to have policies and procedures for transferring of customer positions and collateral, when the clearing intermediary provides clearing services to an indirect intermediary.

[2] Available at www.osc.gov.on.ca.

Under Part 9 of the Instrument, clearing intermediaries and regulated clearing agencies located in foreign jurisdictions may be exempted from compliance with the Instrument where they meet certain requirements set out in the Instrument, including by complying with similar legislation in their home jurisdiction.

Part 10 of the Instrument contains provisions authorizing the regulator or the securities regulatory authority, as the case may be, to grant an exemption from any provision of the Instrument.

Part 11 of the Instrument sets out relevant effective dates for the Instrument.

V. Changes Reflected in the Proposed National Instrument

(a) Fundamental Changes to Model Rule

Acceptable Clearing Models

There are various customer clearing models available in the global OTC derivatives market.[3] The Committee believes that it is important for local customers to have the option to use the model or models that are most suitable for their needs, provided that each model available provides adequate protection for customer positions and collateral. A fundamental comment received during the consultation process was that the Model Rule did not facilitate the operation of certain widely used customer clearing models.[4] In response, the Committee has made significant revisions to the Instrument that make a broader range of clearing models available to local customers. This revised approach has led to revisions throughout the Instrument.

Due to the variety of customer clearing models and legal frameworks supporting these models, the Instrument, as revised, potentially permits a wider range of clearing agencies to offer their customer clearing models in Canada. To enhance customer protection, the approval and oversight process for recognized or exempt clearing agencies will involve a thorough review of the customer safeguards provided by each clearing agency offering customer clearing in a jurisdiction of Canada.

Scope of Application of the Instrument

The Model Rule was drafted in a broad manner to apply where any participant in the customer clearing chain (i.e., the customer, a clearing intermediary and/or the clearing agency) was located in a jurisdiction of Canada. Comments were received that this application was overly broad. The Instrument has been revised to apply to a clearing intermediary or foreign clearing agency only where it is involved in a transaction with a local customer. The requirements applicable to regulated clearing agencies apply to any regulated clearing agency located in a jurisdiction of Canada for transactions with both local and foreign customers.

(b) Other changes to the Model Rule

(i) Clearing Intermediaries

The Model Rule was designed such that only one clearing intermediary was permitted to be involved in a customer cleared transaction. The Committee acknowledges that this approach is not consistent with international market structures. Therefore, the Instrument has been revised to permit the involvement of multiple clearing intermediaries in a transaction. Each clearing intermediary involved in a transaction is therefore subject to the full requirements of the Instrument in order to ensure that no significant additional risk is introduced to the customer clearing chain.

(ii) Substituted Compliance

Currently, OTC derivative clearing infrastructure and service providers are largely concentrated outside of Canada. Therefore, it is likely that many local customers' cleared transactions will involve foreign infrastructure or market participants. As a result, the Committee has carefully considered the interaction of the Instrument with other foreign customer clearing regimes that may also impact a transaction involving local market participants or infrastructures. The Committee is proposing substituted compliance in specified circumstances where a foreign entity is involved in a transaction and appropriate foreign laws apply.

(c) Miscellaneous drafting clarifications

There are a number of non-substantive drafting changes, including a re-ordering of the Parts to separate requirements applicable to clearing intermediaries from those applicable to regulated clearing agencies.

[3] For example, the futures commission merchant model is available in the U.S. and the principal-to-principal model is available in the EU.

[4] In particular the comments received indicated that the Model Rule was not compatible with the principal-to-principal model.

VI. Application of local rules for Derivatives: Product Determination

The Committee intends that Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination*,[5] Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination*,[6] Québec *Regulation 91-506 respecting Derivatives Determination*[7] and the Multilateral Instrument 91-101 *Derivatives: Product Determination*[8] (collectively, the **Product Determination Rules**) will be applicable to the Instrument. Therefore, in all local jurisdictions, transactions that are cleared on behalf of a customer that fall within the scope of the applicable Product Determination Rules would be subject to the Instrument. We note that once the Proposed National Instrument is in force, Regulation 91-506 respecting Derivatives Determination will be amended to apply to the Instrument. Accordingly, in Québec, *Regulation to amend Regulation 91-506 respecting Derivative Determination* is published by the *Autorité des marchés financiers* for consultation concurrently with the Proposed National Instrument.

VII. Anticipated Costs and Benefits

The Proposed National Instrument seeks to ensure that the Canadian market for clearing customer OTC derivatives develops in a safe and efficient manner. It proposes a robust investor protection regime for Canadian clearing customers equivalent to the protections offered in major international markets and should also provide systemic benefits to the Canadian market. There will be compliance costs for clearing service providers that may increase the cost of clearing for market participants. In the Committee's view, the benefits to the Canadian market of implementing the Proposed National Instrument significantly outweigh the compliance costs to market participants. The major benefits and costs of the Proposed National Instrument are described below.

(a) Benefits

The two major benefits of the Proposed National Instrument are the reduction of systemic risk and the protection of customers and their assets when they indirectly clear OTC derivatives through clearing agencies.

(i) Mitigation of Systemic Risk

The G20 has agreed that requiring standardized and sufficiently liquid OTC derivatives transactions to be cleared through central counterparties will result in more effective management of counterparty credit risk. In addition, the clearing of derivatives may also contribute to greater stability of our financial markets and to a reduction in systemic risk.

The Proposed National Instrument is designed to create a framework for customer clearing that promotes stability of the OTC derivatives market by facilitating, to the greatest extent possible, the porting of customer positions and collateral. Portability of customer positions and related collateral is a key mechanism to ensure that in the event of a clearing intermediary default or insolvency, customer positions are not terminated and customer positions and collateral can be transferred to one or more non-defaulting clearing intermediaries without having to liquidate and re-establish a customer's positions. Portability can mitigate difficulties associated with stressed market conditions such as a market-wide reduction in liquidity and price dislocation, allow customers to maintain continuous clearing access and generally promotes efficient financial markets.

(ii) Customer Protection

The Proposed National Instrument is aimed at significantly reducing the likelihood that customers will suffer major financial losses in the event of a clearing service provider's insolvency. In general, customer clearing offers risk mitigation benefits to customers. However, if a robust customer protection regime is not in effect, there can be risks in the indirect clearing process, particularly if a clearing intermediary becomes insolvent. The Proposed National Instrument provides customer protections that should significantly reduce the likelihood of a range of negative potential consequences, that could occur in the event of a clearing intermediary's insolvency, including:

- forced liquidation of positions;
- loss or inaccessibility of collateral;
- loss of hedge positions necessitating re-entry into the market at time of stress to re-establish positions; and
- market uncertainty.

[5] Available at https://www.osc.gov.on.ca/en/SecuritiesLaw_91-506.htm.

[6] Available at http://docs.mbsecurities.ca/msc/irp/en/item/101711/index.doc.

[7] Available at http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/I_14_01/I14_01R0_1_A.HTM

[8] Available at http://www.albertasecurities.com, http://www.bcsc.bc.ca, http://www.nbsc-cvmnb.ca, http://nssc.novascotia.ca and http://www.fcaa.gov.sk.ca/Securities%20Division

The Proposed National Instrument mitigates many of these risks to customers by establishing robust collateral and record keeping requirements. It requires customer positions to be fully collateralized at the regulated clearing agency and obligates the regulated clearing agency and clearing intermediaries to keep records that identify customers and their positions in order to facilitate porting.[9]

(b) Costs

Generally, any increased costs resulting from compliance with the Proposed National Instrument stem from enhanced collateral protection, record keeping and reporting requirements for customer collateral and positions. Any costs associated with complying with the Proposed National Instrument will be borne by clearing intermediaries and regulated clearing agencies and would likely be passed on to customers through higher initial margins and/or higher fees for transactions. There is also a possibility that clearing service providers may be dissuaded from entering or remaining in the Canadian market due to the costs of complying with the Proposed National Instrument reducing Canadian customers' options for clearing service providers.

(i) Establishing Systems

Clearing intermediaries and regulated clearing agencies will incur up-front costs to develop record-keeping and account structure systems required to comply with the Proposed National Instrument. However, once systems are established, the incremental cost of on-going compliance should be less significant.

(ii) Loss of Potential Revenue for Clearing Intermediaries and Clearing Agencies

The Instrument places restrictions on the use and investment of customer collateral held by clearing intermediaries and clearing agencies. Customer collateral may only be invested in liquid and low-risk instruments. The Instrument also requires a regulated clearing agency to collect initial margin from clearing intermediaries for each customer on a gross basis. Gross margin promotes more effective porting of positions which benefits customers. However, this requirement means that less customer collateral will be held at and available for use by clearing intermediaries.[10] These requirements limit the potential revenue that clearing intermediaries and clearing agencies may earn through the use and investment of their customer's collateral.

(iii) Market Access Issues

Currently, OTC derivative clearing infrastructure and service providers are largely concentrated outside of Canada with the main clearing agencies and clearing intermediaries located in the United States and the European Union. Given the small size of the Canadian market there is a risk that the costs of analysing and complying with the Proposed National Instrument may result in some market participants choosing not to offer customer clearing in Canada which may limit Canadian customers' access to OTC derivative clearing services. However, as described above, the Committee is proposing substituted compliance for equivalently regulated foreign institutions and this could significantly reduce compliance costs associated with the Proposed National Instrument.

(c) Conclusion

Protection of customer positions and collateral is the fundamental principle of the Instrument. It is the Committee's view that the impact of the Proposed National Instrument, including anticipated compliance costs for market participants, is proportional to the benefits sought. The Instrument aims to provide a level of protection equal to that offered to customers in other jurisdictions. To achieve a balance of interests, the Proposed National Instrument is designed to deliver a high level of protection to customers transacting in OTC derivatives and create a safer environment in the Canadian market for customers to clear OTC derivatives, all while allowing clearing service providers a flexible and competitive market to operate in.

VIII. Contents of Annexes

The following annexes form part of this CSA Notice:

- Annex A – Summary of Comments and List of Commenters;
- Annex B – Proposed National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Positions and Collateral*; and
- Annex C – Proposed Companion Policy 94-102CP *Derivatives: Customer Clearing and Protection of Customer Positions and Collateral*.

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9 The level of protection afforded by the Proposed National Instrument is dependent on the Proposed National Instrument's interaction with other foreign and domestic laws such as bankruptcy and insolvency laws and the *Payment Clearing and Settlement Act* (Canada) as well as provincial and territorial personal property security laws including as they apply to cash collateral.

10 Clearing intermediaries would still have access to any excess collateral provided by customers.

IX. Comments

In addition to your comments on all aspects of the Instrument, the Committee also seeks specific feedback on the following question:

Should clearing intermediaries be limited to clearing derivatives for local customers with regulated clearing agencies? Please explain what the impact of this limitation would be on your current clearing activities.

Please provide your comments in writing by **April 19, 2016**.

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, the *Autorité des marchés financiers* at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.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
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
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:

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Josée Turcotte
Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
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Questions

Please refer your questions to any of:

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ANNEX A

SUMMARY OF COMMENTS ON
MODEL PROVINCIAL RULE – DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER COLLATERAL AND POSITIONS

1. Issue/Reference	2. Summary of Comments	3. Response
GENERAL COMMENTS		
Harmonization of rules	A number of commenters emphasized the importance of harmonizing the Canadian derivatives regime with international rules and standards.	The Committee agrees and is committed to implementing harmonized rules consistent with international standards. See also the substituted compliance section below.
	One commenter suggested that provincial rules should be consistent and implementation timelines should be coordinated to avoid regulatory arbitrage.	Change made. The Committee notes that it has now opted to develop a national instrument, given its intention that the substance of the Model Rule be the same across local jurisdictions and that market participants and derivative products receive the same treatment across Canada.
Amendments to personal property security and bankruptcy regimes	A number of commenters emphasized the importance of ensuring that personal property security and insolvency laws work with the Proposed National Instrument in order for Canadian participants to remain competitive on a global level.	The Committee is seeking to implement requirements which protect customer collateral, to the extent possible, under existing Canadian federal and provincial legal frameworks. The Committee notes that federal bankruptcy and provincial personal property security legislation are regimes which fall outside of the jurisdiction of the provincial securities regulatory authorities.
Customer protection model	Two commenters explained that the Model Rule is not compatible with the principal to principal model for customer clearing used in the European Union. One commenter asked which customer protection regime is proposed to be implemented in Canada.	Multiple changes made. The Instrument now facilitates the offering of various models of customer clearing including the principal to principal model.
Type of collateral accepted by a Derivatives Clearing Agency	A number of commenters suggested that the Committee should ensure that clearing agencies accept various types of Canadian collateral and/or increase the maximum amounts of such collateral they accept.	No change. The Committee recognizes the importance of Canadian clearing intermediaries and customers having the ability to utilize a broad range of collateral when posting collateral with a regulated clearing agency. Subject to the requirements and guidance provided in the National Instrument 24-102 *Clearing Agency Requirements* and its companion policy, it is the Committee's view that it should generally not prescribe the types of collateral a regulated clearing agency should accept, nor the limits it should place on that collateral. A request that a regulated clearing agency accept specific forms of collateral should be made by a clearing intermediary to the clearing agency, which would then go through its normal risk management process.

1. Issue/Reference	2. Summary of Comments	3. Response
Substituted compliance	One commenter suggested that foreign-based recognized clearing agencies be permitted to comply by way of substituted compliance so as to avoid duplicative and onerous regulation.	The Committee will consider substituted compliance where a regulated clearing agency is subject to equivalent regulation. See Part V, subparagraph (b)(ii) of the Notice for a description of the Committee's substituted compliance proposal.
	PART 1: DEFINITIONS	
s. 1 – "clearing intermediary"	Two commenters suggested that the definition of "clearing intermediary" be expanded to include a scenario where there are multiple clearing intermediaries in a chain.	Change made. The Instrument permits more than one clearing intermediary to be involved in a customer transaction.
	One commenter suggested that financial intermediaries should be permitted to post collateral and meet reporting requirements on behalf of credit unions	The Instrument does not prohibit clearing intermediaries from posting collateral on behalf of and fulfilling reporting requirements for their customers.
s. 1 – "customer collateral"	One commenter explained that the obligation to segregate variation margin is not possible for clearing agencies under certain customer protection models once the amount has been paid out to the clearing intermediary.	No change. Variation margin provided by a customer to its clearing intermediary is customer collateral and required to be segregated.
s. 1 – "excess margin"	One commenter suggested that the definition of "excess margin" be revised (i) to reflect that collateral is not excess margin until it is delivered to a clearing intermediary or clearing agency, and (ii) to clarify that any collateral delivered by a customer to a clearing agency or clearing intermediary which will be transformed should not be considered excess margin (i.e., it is the transformed collateral that is to be considered excess margin).	Change made. The definition has been revised to indicate that excess margin is customer collateral that has been delivered to a regulated clearing agency or clearing intermediary. Additionally, the CP has been revised to provide guidance clarifying that customer collateral initially delivered may be transformed and once transformed, only the transformed collateral is considered customer collateral and therefore excess margin.
	One commenter suggested that the definition be clarified to ensure that only collateral provided as margin for the customer's derivatives is included in the definition. Specifically, the commenter was concerned that confusion would arise where a customer provided a security interest in various collateral in accordance with standard customer account documentation (e.g., a security interest in all securities accounts or a security interest in all present and after-acquired property) that was not being used as margin for its derivative transactions. Another commenter suggested that the definition should be expanded to include collateral that is delivered by a customer in excess of the amount required by a clearing agency for operational efficiencies.	Change made. The definition has been revised to specify that excess margin is collateral in respect of a customer's cleared derivatives that is in excess of the amount of margin required by the regulated clearing agency to clear and settle such derivatives.
s. 1 – "permitted depository"	Two commenters suggested expanding the definition of "permitted depository" to include all entities through which collateral is currently being held by clearing agencies with global operations. Specifically, one commenter suggested expanding the definition to include securities settlement systems. The other	Change made. The definition in the Instrument covers various types of entities that are subject to a minimum amount of oversight required to ensure safekeeping of customer collateral including clearing intermediaries in the

1. Issue/Reference	2. Summary of Comments	3. Response
	commenter suggested that the definition should be broad enough to cover all potential securities intermediaries within an indirect holding system.	customer clearing chain that receive customer collateral. Other entities not covered by the definition may be granted an exemption on a case-by-case basis.
s. 1 – "permitted investment"	Two commenters suggested that minimum ratings (e.g., S&P, DBRS, Moody's) should be added as a requirement for an investment to be permitted and that the corresponding ratings be noted with the records of investment of customer collateral required under s. 23 of the Model Rule.	No change. The Committee has taken a principles based approach to permitted investments that does not rely on prescriptive requirements such as ratings.
PART 2: TREATMENT OF CUSTOMER COLLATERAL		
s. 2 – Collection of initial margin		
General Comments	Two commenters suggested that Canadian market participants should be given the choice to have initial margin requirements calculated in Canadian dollars.	No change. It is the Committee's view that it is not appropriate to include a requirement that could introduce foreign exchange risk. If collateral is only calculated, but not accepted in Canadian dollars, this would not be a useful service because the calculation would not represent the currency required to be delivered.
s. 2(1)	One commenter suggested amending the Model Rule so that initial margin can be collected by either gross or net methods. Another commenter also requested the Model Rule be amended to permit netting of collateral requirements.	No change. There is a greater likelihood that customer positions may be under-margined when collected on a net-basis. However, the Committee has amended the Model Rule to allow excess margin to be used to secure or extend credit to a customer.
s. 2(2)	One commenter suggested that it is not necessary to include a requirement for a clearing intermediary to collect initial margin given that s. 6 of the Model Rule obligates a clearing intermediary to keep sufficient property with a clearing agency.	Change made. The section has been removed from the Instrument.
	One commenter suggested that it be clarified whether a clearing intermediary may use its own property to fund initial margin requirements set by a clearing agency.	No change. There is no prohibition in the Instrument against a clearing intermediary using its own property; however, any property provided must be treated as customer collateral.
s. 3 – Segregation of customer collateral		
s. 3(2)	Two commenters suggested that the Model Rule should allow the option for customers to request that customer collateral be held using the Full Physical Segregation Model.	No change. The Committee is of the view that the Full Physical Segregation Model may be more costly than its alternatives and may not materially improve the degree of protection for customers of a clearing intermediary and therefore, there is no requirement that a clearing agency offer the Full Physical Segregation model. However, a customer may privately contract with a clearing intermediary or regulated clearing agency for Full Physical Segregation.

1. Issue/Reference	2. Summary of Comments	3. Response
s. 3(3)	Two commenters requested that the Model Rule not prohibit portfolio margining, and also requested that a mechanism for allowing portfolio margining be included.	No change. The Committee will continue to monitor developments in the market, and may make changes to the Proposed National Instrument, as necessary.
s. 4 – Holding of customer collateral		
General Comments	One commenter pointed out that Part 2 of the Model Rule permits commingling of customer collateral from multiple customers by clearing agencies and clearing intermediaries and that this seemed to contradict the requirement for individually segregated accounts to be held at a permitted depository. Additionally, two commenters suggested that the Model Rule should permit commingling of customer collateral.	Change made. Additional guidance has been added to the CP clarifying that customer collateral of multiple customers may be commingled in an omnibus customer account. The Instrument requires that the clearing intermediaries and clearing agencies identify the positions and collateral held for each individual customer within an omnibus customer account. Where a clearing intermediary or clearing agency deposits customer collateral with a permitted depository, the clearing intermediary or clearing agency is responsible for ensuring the permitted depository maintains appropriate books and records to ensure customer collateral can be attributed to each customer.
s. 4(3)	One commenter expressed concern regarding the requirement that all customer collateral be held in a segregated account that clearly identifies the name of each customer or otherwise indicates that the property in the account is customer collateral. The commenter's concern was that this may jeopardize the absolute transfer characterization of cash in such circumstances.	Change made. The Instrument does not require that the name of each customer whose customer collateral is held at a permitted depository be identified on the account, provided that the account is identified as holding customer collateral.
s. 6 – Clearing member maintenance of customer account balance		
s. 6	Three commenters suggested clarifying that clearing agency margin calls are to take place once each day, and that clearing intermediaries will not be required to cure any customer collateral shortfall on a continuous basis.	No change. The clearing intermediary will be required to meet the margin requirements of the clearing agency within the time limits set out by the clearing agency.
s. 8 – Use of customer collateral		
s. 8	One commenter expressed the view that market participants should have the right to contract in respect of excess collateral as they deem appropriate without restriction, and thus that the Model Rule should expressly allow the re-hypothecation of excess margin to the extent it is held by a clearing agency or clearing intermediary.	Change made. The Instrument has been revised to articulate that customer collateral may be bought or sold pursuant to an agreement for resale or repurchase under prescribed conditions.
	One commenter suggested that the Model Rule should expressly allow a clearing intermediary or a clearing agency to offer collateral transformation services to the customer.	Change made. The CP explains that collateral transformation is acceptable and transformed collateral would be considered customer collateral.
	One commenter noted that the CFTC's rules expressly provide for the right to withdraw customer collateral from a customer account to margin, guarantee, secure, transfer, adjust or settle the customer's cleared	Change made. The language in the Instrument expressly grants this right.

1. Issue/Reference	2. Summary of Comments	3. Response
	transactions and requested that the Model Rule make this point distinctly.	
	One commenter noted that margin held at the clearing intermediary level should be permitted to secure other obligations of the customer to the clearing intermediary.	Change made. Excess margin held by a clearing intermediary may be used to secure or extend credit to the customer.
s. 9 – Investment of customer collateral		
s. 9(1)	One commenter suggested that customers should be permitted to restrict how customer collateral is invested.	No change. The Instrument restricts investment of customer collateral to conservative investments (determined using a principles-based approach) and it is the Committee's view that further restrictions should be a private contractual matter between customers and clearing intermediaries or clearing agencies.
	One commenter suggested that a requirement to report all losses and gains made on investments of customer collateral be added to the Model Rule.	No change. Section 26 of the Instrument requires that the customer receive a daily report setting out the current value of customer collateral. This report includes any daily changes in the value of invested customer collateral.
s. 9(2)	One commenter expressed concern that a clearing intermediary may be liable for the losses that result from collateral that is transformed for the customer.	Change made. The CP clarifies that investment losses relate only to investments made by a regulated clearing agency or clearing intermediary using customer collateral, not to the collateral that is transformed for a customer.
	One commenter suggested that the Model Rule allow any investment losses incurred by a clearing agency to be mutualised and allocated to clearing intermediaries.	Change made. The CP explains that investment losses incurred by a regulated clearing agency may be mutualised and allocated to clearing intermediaries, but not to customers.
s. 10 – Acting as a clearing intermediary		
s. 10	One commenter suggested that a clearing agency should not be required to approve the clearing intermediary's customers. Instead, a clearing agency should be allowed to request information about customers and to refuse access to clearing services to a customer of a clearing intermediary.	Change made. A regulated clearing agency is no longer required to approve indirect intermediaries and customers.
s. 13 – Same		
s. 13	Two commenters requested clarification on what is meant by "prudentially regulated" and "appropriate regulatory authority".	Change made. The CP clarifies that, in Canada, prudential regulation of federally regulated financial institutions is undertaken by the Office of the Superintendent of Financial Institutions. Other regulators that perform prudential oversight include the Investment Industry Regulatory Organization of Canada and certain provincial prudential market regulators,

1. Issue/Reference	2. Summary of Comments	3. Response
		such as the Autorité des marchés financiers in Québec or other local securities regulatory authorities. An appropriate foreign regulatory authority would be one that applies comparable regulatory standards to those applied to Canadian entities.
PART 3: RECORD-KEEPING		
s.16 – Retention of records		
s.16	One commenter requested that this requirement not apply to clearing agencies that are exempt from recognition under s. 147 of the *Securities Act* (Ontario).	No change. Retention of records is a requirement for all regulated clearing agencies and clearing intermediaries falling within the scope of the Instrument. However, substituted compliance may be available. See the substituted compliance section above.
s. 17 – Books and records		
s. 17(4)	One commenter suggested removing the word “market” from “market value” to provide for a wider range of alternatives when calculating customer collateral held.	Change made. The word “market” has been removed to ensure that other accepted types of valuation methodologies can be utilized, where appropriate.
s. 20 – Separate records – derivatives clearing agency		
s. 20	One commenter suggested that the Model Rule should require clearing agencies to keep records of the positions and property of each customer only where the customer is a direct customer of a clearing intermediary, and therefore, identifiable to the clearing agency. The commenter also suggested that the Model Rule should allow clearing agencies to keep records of the positions and property of each clearing intermediary’s customers at an aggregate level per clearing intermediary.	No change. Without records for customers clearing through clearing intermediaries, portability would be impeded.
PART 4: REPORTING AND DISCLOSURE		
General Comments	Two commenters expressed concern over confidentiality and public access to the customer collateral reports.	Reports will be treated as confidential by securities regulatory authorities, subject to applicable provisions of the freedom of information and protection of privacy legislation adopted by each province and territory. However, the Committee may share the reports with self-regulatory organizations or other relevant regulatory authorities.
s. 25 – Disclosure to clearing members and customers		
s. 25(4)	Two commenters expressed concern over the requirement to receive written acknowledgements from customers and one of the commenters suggested to either make the disclosure publicly available or incorporate the disclosure into the legal agreements between the parties.	Change made. The requirement to receive written acknowledgements from customers has been removed.

1. Issue/Reference	2. Summary of Comments	3. Response
s. 28 – Customer collateral report		
s. 28(3) and s. 28(4)	One commenter requested that this requirement not apply to clearing agencies that are exempt from recognition under s. 147 of the *Securities Act* (Ontario). Another commenter suggested that the requirements under these subsections should not apply to foreign-based recognized clearing agencies and instead they should be permitted to comply by way of substituted compliance.	No change. See the substituted compliance section above. The Committee would consider foreign reporting requirements in our substituted compliance analysis. However, the information contained in the reports is necessary in order for the securities regulatory authorities to fulfill their mandates.
s. 28(5)	One commenter requested clarification on whether the reporting requirement applies in respect of (a) each individual derivatives transaction or an aggregate net exposure for all derivatives transactions for a customer, and (b) each individual type of customer collateral or collateral on an aggregate basis, regardless of collateral type. The commenter also suggested that the Model Rule should be revised to include asset type and quantity (in addition to the market value) of customer collateral that is posted by a clearing intermediary to a clearing agency on behalf of a customer.	Change made. The reporting requirement is intended to be applied in respect of aggregate net exposures for all derivatives transactions of each customer. The Instrument requires clearing intermediaries to report the current value, asset type and quantity of the collateral received.
s. 29 – Disclosure of customer collateral investment		
s. 29(1)	One commenter expressed concern over inadvertently requiring a clearing agency to publicly disclose proprietary information such as its investment guidelines and policies.	Change made. Regulated clearing agencies are only required to disclose their investment guidelines and policies directly to the customer and, if applicable, a direct intermediary.
s. 29(2)	One commenter expressed concern over the onerous requirement to receive written acknowledgements from customers and suggested that disclosure be incorporated into the legal agreements between the parties.	Change made. See response to comments on s. 25(4).
s. 29(3)	Two commenters noted that the timing for submitting the required report is not specified.	Change made. Monthly reporting to securities regulatory authorities on customer collateral is required to be delivered within 10 business days of the end of each calendar month.
PART 5: TRANSFER OF POSITIONS		
General Comments	One commenter noted that a clearing agency may not be in a position to ascertain whether or not a customer is in default and suggested that the provisions of this section be revised to reflect the solvency status of the customer's account (i.e., whether or not the collateral value is sufficient to cover the initial margin obligations).	Change made. The Instrument now provides that a regulated clearing agency and a direct intermediary may facilitate porting of a customer's positions and collateral only where the customer's account is not currently in default.
s. 30 – Transfer of customer collateral and positions		
s. 30(1)	One commenter suggested changing the language of the subsection from "transfer of the customer's positions and customer collateral" to "transfer of the customer's positions and customer collateral or its liquidation proceeds".	Change made. The Instrument now permits transfer of the liquidation proceeds of customer collateral.

1. Issue/Reference	2. Summary of Comments	3. Response
	One commenter requested clarification on when a clearing intermediary that is to receive transferred customer positions and collateral, or its liquidation proceeds, provides its consent to the transfer (i.e., if consent would be provided pursuant to arrangements made between parties at the outset of the relationship or concurrently with an event of default).	Change made. Additional guidance has been provided in the CP setting out that it is the Committee's view that such consent for transfer should be obtained at the outset of the clearing relationship.
s. 30(3)	One commenter suggested adding a requirement that conditions (a) to (e) be met within a reasonable time that is to be predetermined by a clearing agency.	No change; however, the Committee has provided additional guidance in the CP with respect to the timing for customers and direct intermediaries to provide consent to a transfer.

List of Commenters:

1. Atlantic Central
2. Caisse de dépôt et placement du Québec
3. Canadian Investor Protection Fund
4. Canadian Life and Health Insurance Association Inc.
5. Canadian Market Infrastructure Committee
6. Capital Power Corporation
7. Central 1 Credit Union
8. Concentra Financial Services
9. Enbridge Inc.
10. ICE Clear Credit LLC
11. IGM Financial Inc.
12. International Swaps and Derivatives Association, Inc.
13. Investment Industry Association of Canada
14. LCH.Clearnet Group Limited
15. NB Investment Management Corp.
16. Pension Investment Association of Canada
17. RBC Global Asset Management Inc.
18. SaskEnergy Incorporated
19. Suncor Energy
20. The Canadian Commercial Energy Working Group
21. TMX Group Limited
22. TransCanada Corp.

ANNEX B

NATIONAL INSTRUMENT 94-102
DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER COLLATERAL AND POSITIONS

PART 1
DEFINITIONS, INTERPRETATION AND APPLICATION

Definitions and Interpretation

1. (1) In this Instrument,

"Canadian financial institution" means a Canadian financial institution as defined in National Instrument 45-106 *Prospectus Exemptions*;

"cleared derivative" means a transaction in a derivative that is, directly or indirectly, submitted to and cleared by a clearing agency;

"clearing intermediary" means a direct intermediary or an indirect intermediary;

"customer" means a counterparty to a cleared derivative other than a clearing intermediary or a regulated clearing agency;

"customer collateral" means all cash, securities and other property if either of the following applies:

(a) they are received or held by a clearing intermediary or regulated clearing agency from, for or on behalf of a customer, and are intended to or does margin, guarantee, secure, settle or adjust a cleared derivative of the customer;

(b) they are deposited on behalf of a customer by a clearing intermediary to satisfy the margin requirements of the customer's cleared derivatives at a regulated clearing agency;

"direct intermediary" means a person or company that

(a) with respect to a cleared derivative, is a participant of the regulated clearing agency at which the cleared derivative is cleared,

(b) provides clearing services for a customer in respect of a cleared derivative entered into by, for or on behalf of the customer, and

(c) requires, receives or holds collateral from, for or on behalf of the customer in providing clearing services;

"excess margin" means customer collateral in respect of a customer's cleared derivatives that

(a) is delivered to a regulated clearing agency or clearing intermediary from, for or on behalf of the customer, and

(b) has a value in excess of the amount required by the regulated clearing agency to clear and settle the cleared derivatives of the customer;

"indirect intermediary" means a person or company that

(a) provides indirect clearing services for a customer in respect of a cleared derivative entered into by, for or on behalf of the customer, and

(b) requires, receives or holds collateral from, for or on behalf of the customer in providing clearing services;

"initial margin" means, in relation to a regulated clearing agency's margin system that manages credit exposures to its participants, collateral that is required by the regulated clearing agency to cover potential changes in the value of a customer's cleared derivatives positions over an appropriate close-out period in the event of default;

"local customer" means a customer that, in respect of a local jurisdiction, is either of the following:

(a) an individual who is resident in the local jurisdiction;

(b) a person or company to which one or more of the following applies:

(i) it is organized or incorporated under the laws of the local jurisdiction;

(ii) its head office is in the local jurisdiction;

(iii) its principal place of business is in the local jurisdiction;

"participant" means a person or company that has entered into an agreement with a regulated clearing agency to access the services of the regulated clearing agency and is bound by the regulated clearing agency's rules and procedures;

"permitted depository" means a person or company that is any of the following:

(a) a Canadian financial institution or Schedule III bank;

(b) a regulated clearing agency;

(c) a foreign entity that

(i) is incorporated or organized under the laws of a permitted jurisdiction,

(ii) is regulated as a banking institution or trust company by the government, or an agency of the government, of a permitted jurisdiction, and

(iii) has shareholders' equity, as reported in its most recent audited financial statements, of not less than the equivalent of $100,000,000;

(d) either of the following, but only with respect to customer collateral that it receives from a customer or a clearing intermediary for which it provides clearing services:

(i) a registered investment dealer as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

(ii) a prudentially regulated foreign entity, other than a foreign entity listed in paragraph (c) that is registered, licensed or otherwise permitted to perform the services of a clearing intermediary in accordance with the laws and regulations of a permitted jurisdiction;

"permitted investment" means cash or a highly liquid financial instrument with minimal market and credit risk that is capable of being liquidated rapidly with minimal adverse price effect;

"permitted jurisdiction" means a foreign jurisdiction that is any of the following:

(a) a country where the primary regulator of a Schedule III bank is located, or a political subdivision thereof;

(b) if a customer has provided express written consent to a cleared derivative in a foreign currency, the country of origin of the foreign currency used to denominate the rights and obligations under the cleared derivative entered into by, for or on behalf of the customer, or a political subdivision thereof;

(c) a jurisdiction approved by the regulator or the securities regulatory authority from time to time, subject to such conditions or restrictions as may be imposed in the approval;

"qualifying central counterparty" means an entity to which each of the following applies:

(a) it is licensed to operate as a central counterparty in a jurisdiction of Canada or a foreign jurisdiction by a government or regulatory authority;

(b) it is subject to regulation that is generally consistent with the *Principles for market infrastructures* published by the Bank for International Settlements' Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions in April 2012, as amended from time to time;

"regulated clearing agency" means

(a) in British Columbia, Manitoba, Ontario and Saskatchewan, a person or company recognized or exempted from recognition as a clearing agency in the local jurisdiction,

(b) in Québec, a person recognized or exempted from recognition as clearing house or as a central securities depository under the *Securities Act* (Québec), and

(c) in Alberta, Newfoundland and Labrador, New Brunswick, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon, a person or company recognized or exempted from recognition as a clearing agency or clearing house pursuant to the securities legislation of any jurisdiction of Canada;

"Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

"segregate" means to separately hold or account for customer collateral and customer positions;

"transaction" means any of the following:

(a) entering into a derivative or making a material amendment to, terminating, assigning, selling or otherwise acquiring or disposing of a derivative;

(b) the novation of a derivative, other than a novation with a clearing agency.

(2) In this Instrument, a person or company is an affiliated entity of another person or company if one of them controls the other or each of them is controlled by the same person or company.

(3) In this Instrument, a person or company (the first party) is considered to control another person or company (the second party) if any of the following apply:

(a) the first party beneficially owns or directly or indirectly exercises control or direction over securities of the second party carrying votes which, if exercised, would entitle the first party to elect a majority of the directors of the second party, unless the first party holds the voting securities only to secure an obligation;

(b) the second party is a partnership, other than a limited partnership, and the first party holds more than 50% of the interests of the partnership;

(c) the second party is a limited partnership and the general partner of the limited partnership is the first party.

Application

2. (1) This Instrument applies to all of the following:

(a) a regulated clearing agency located in a local jurisdiction that clears a cleared derivative entered into by, for or on behalf of a customer;

(b) a regulated clearing agency located in a foreign jurisdiction that clears a cleared derivative entered into by, for or on behalf of a local customer, but only in respect of that derivative;

(c) a clearing intermediary that provides clearing services for a cleared derivative entered into by, for or on behalf of a local customer, but only in respect of that derivative.

(2) This Instrument applies to each of the following:

(a) in Manitoba, a derivative as prescribed in Manitoba Securities Commission Rule 91-506 Derivatives: Product Determination;

(b) in Ontario, a derivative as prescribed in Ontario Securities Commission Rule 91-506 Derivatives: Product Determination;

(c) in Québec, a derivative as specified in Regulation 91-506 respecting derivatives determination.

(3) In Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, in this Instrument, each reference to a "derivative" is a reference to a specified derivative as defined in Multilateral Instrument 91-101 Derivatives: Product Determination.

PART 2
TREATMENT OF CUSTOMER COLLATERAL BY A CLEARING INTERMEDIARY

Segregation of customer collateral – clearing intermediary

3. **(1)** A clearing intermediary must segregate customer collateral from the property of other persons or companies including the property of the clearing intermediary.

(2) A clearing intermediary must segregate the customer collateral of the customer of an indirect intermediary from any property of the indirect intermediary.

Holding of customer collateral – clearing intermediary

4. A clearing intermediary must hold all customer collateral in one or more accounts at a permitted depository and clearly identify such accounts as holding customer collateral.

Excess margin – clearing intermediary

5. A clearing intermediary must have rules, policies or procedures in place with respect to identifying and recording, at least once each business day, the value of excess margin that it holds that is attributable to each customer for which the clearing intermediary provides clearing services.

Use of customer collateral – clearing intermediary

6. **(1)** A clearing intermediary must not use or permit the use of customer collateral except in accordance with this section and sections 7 and 8.

(2) A clearing intermediary may use or permit the use of customer collateral of a customer to do either of the following:

(a) margin, guarantee, secure, settle or adjust cleared derivatives of the customer;

(b) with respect to excess margin, secure or extend the credit of the customer.

(3) Other than with respect to excess margin used in accordance with paragraph (2)(b), a clearing intermediary must not impose or permit the imposition of a lien or claim on a customer's positions or customer collateral except to secure a claim resulting from a cleared derivative in favour of any of the following:

(a) the customer;

(b) the regulated clearing agency or clearing intermediary responsible for clearing the cleared derivatives of the customer to which the positions or customer collateral relate.

Investment of customer collateral – clearing intermediary

7. **(1)** A clearing intermediary must not invest customer collateral except in accordance with subsection (2).

(2) Subject to subsection (3), a clearing intermediary may

(a) invest property received as customer collateral in a permitted investment, and

(b) use customer collateral to buy or sell a permitted investment pursuant to an agreement for resale or repurchase if all of the following apply:

(i) the agreement is in writing;

(ii) the term of the agreement is no more than one business day;

(iii) written confirmation specifying the terms of the agreement is delivered to the customer immediately upon entering into the transaction;

(iv) the agreement is not entered into with an affiliated entity of the clearing intermediary.

(3) A loss resulting from an investment of customer collateral by the clearing intermediary must be borne by the clearing intermediary making the investment and not by the customer.

Use of customer collateral – indirect intermediary default

8. (1) Except as provided in subsection (2), a clearing intermediary must not apply customer collateral of a customer of an indirect intermediary for which the clearing intermediary provides clearing services to satisfy the obligations of that indirect intermediary.

(2) A clearing intermediary may apply the customer collateral of a customer in full or partial satisfaction of an indirect intermediary's obligations that arise or are accelerated as a consequence of the indirect intermediary's default only to the extent that those obligations are attributable to the cleared derivatives of the customer.

Acting as a clearing intermediary

9. (1) A person or company must not provide clearing services for a customer as a clearing intermediary unless the person or company is one of the following:

(a) prudentially regulated by an appropriate regulatory authority in Canada;

(b) prudentially regulated by an appropriate regulatory authority in a permitted jurisdiction and registered, licensed or otherwise permitted to perform the services of a clearing intermediary in accordance with the laws and regulations of that permitted jurisdiction.

(2) A clearing intermediary must not provide clearing services for a customer unless the clearing services are provided in respect of derivatives that are cleared through

(a) except in Alberta, a regulated clearing agency, and

(b) in Alberta, a regulated clearing agency or a qualifying central counterparty.

Risk management – clearing intermediary

10. A clearing intermediary that provides or proposes to provide clearing services for an indirect intermediary must have rules, policies or procedures reasonably designed to

(a) identify, monitor and manage material risks arising from the provision of clearing services, and

(b) manage a default of the indirect intermediary.

Risk management – indirect intermediary

11. (1) An indirect intermediary must have rules, policies or procedures reasonably designed to identify, monitor and manage the material risks arising from the provision of indirect clearing services for a customer.

(2) An indirect intermediary that receives clearing services by a clearing intermediary must provide the clearing intermediary with all information reasonably required to identify, monitor and manage any material risks arising from the provision of indirect clearing services for customers.

PART 3
RECORD KEEPING BY A CLEARING INTERMEDIARY

Retention of records – clearing intermediary

12. A clearing intermediary must keep the records required under this Part and Part 4, and all supporting documentation, in a readily accessible location for at least 7 years after the date upon which the cleared derivative expires or terminates.

Books and records – clearing intermediary

13. (1) A clearing intermediary that receives customer collateral must calculate and record all of the following, at least once each business day, in its books and records for each customer:

(a) the amount of customer collateral it requires from, for or on behalf of each customer;

(b) the total amount of customer collateral it requires from, for or on behalf of all customers.

(2) For each indirect intermediary that a clearing intermediary provides clearing services for, the clearing intermediary must calculate and record all of the following, at least once each business day:

(a) the amount of customer collateral it requires from, for or on behalf of each customer of each indirect intermediary;

(b) the total amount of customer collateral it requires from, for or on behalf of all customers of each indirect intermediary.

(3) A clearing intermediary must record all of the following in its books and records for each customer:

(a) each permitted depository at which it holds customer collateral of the customer;

(b) a description of the customer collateral held at each permitted depository;

(c) the current value of any customer collateral received from, for or on behalf of the customer, including, without limitation, all of the following at least once each business day:

(i) any accruals on the customer collateral creditable to the customer;

(ii) any gains or losses in respect of the customer collateral;

(iii) any charges lawfully accruing to the customer;

(iv) any distributions or transfers of the customer collateral.

Books and records – direct intermediary

14. A direct intermediary must record all of the following, at least once each business day, in its books and records for each customer:

(a) the total amount of customer collateral required for the cleared derivatives of the customer by each regulated clearing agency;

(b) the total amount of the customer's excess margin held by the direct intermediary.

Books and records – indirect intermediary

15. An indirect intermediary must record all of the following, at least once each business day, in its books and records for each customer:

(a) the total amount of collateral required for the cleared derivatives of the customer by each clearing intermediary through which the indirect intermediary clears;

(b) the aggregate sum of the amounts in paragraph (a);

(c) the total amount of the customer's excess margin held by the indirect intermediary.

Separate records – direct intermediary

16. A direct intermediary must keep separate books and records that, at any time, enable it to distinguish all of the following in its own accounts and in the accounts held with the regulated clearing agency:

(a) the positions and property of the direct intermediary;

(b) the positions and value of customer collateral held for or on behalf of each of the direct intermediary's customers.

Separate records – indirect intermediary

17. An indirect intermediary must keep separate books and records that, at any time, enable it to distinguish all of the following in its own accounts and in the accounts held with each clearing intermediary through which it provides clearing services:

(a) the positions and property of the indirect intermediary;

(b) the positions and value of customer collateral held for or on behalf of each of the indirect intermediary's customers.

Separate records – multiple clearing intermediaries

18. A clearing intermediary that provides clearing services in respect of a cleared derivative for an indirect intermediary must keep separate books and records that, at any time, enable it and each of its indirect intermediaries to distinguish all of the following in the accounts held with the clearing intermediary:

(a) the positions and property of the indirect intermediary;

(b) the positions and value of customer collateral held for, or on behalf of the indirect intermediary's customers.

Records of investment of customer collateral – clearing intermediary

19. A clearing intermediary that invests customer collateral must keep records of all of the following with respect to each investment of customer collateral:

(a) the date of the investment;

(b) the name of each person or company through which the investment was made;

(c) a daily market valuation of the investment, any unrealized gain or loss on that investment and related supporting documentation;

(d) a description of each asset or instrument in which the investment was made;

(e) the identity of each permitted depository where each asset, as applicable, or instrument is deposited;

(f) the date on which the investment was liquidated or otherwise disposed of and the realized gain or loss;

(g) the name of each person or company liquidating or disposing of the investment.

Records of currency conversion – clearing intermediary

20. A clearing intermediary must keep a record of each conversion of customer collateral from one currency to another.

PART 4
REPORTING AND DISCLOSURE BY A CLEARING INTERMEDIARY

Clearing intermediary delivery of disclosure by regulated clearing agency

21. Before receiving the first cleared derivative from, for or on behalf of a customer, a clearing intermediary must provide the customer, or an indirect intermediary for which it provides clearing services, with all of the following:

(a) the written disclosure provided under section 41 by each regulated clearing agency through which the direct intermediary clears a transaction for the customer or indirect intermediary;

(b) the investment guidelines and policy and any changes to such investment guidelines and policy provided under section 45 by each regulated clearing agency that invests customer collateral attributable to the customer.

Disclosure to customer by clearing intermediary

22. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, a clearing intermediary must provide written disclosure to the customer describing the treatment of customer collateral not held at a regulated clearing agency, including the impact of relevant bankruptcy and insolvency laws, in the event of a default by the clearing intermediary.

(2) After accepting the first cleared derivative from, for or on behalf of a customer of, each time there is a change to the treatment of customer collateral not held at a regulated clearing agency, the clearing intermediary must provide written disclosure to the customer, within a reasonable period of time, describing the change.

Disclosure to customer by indirect intermediary

23. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, an indirect intermediary must provide written disclosure including a description of all of the following to the customer:

(a) the risks associated with receiving clearing services through an indirect intermediary;

(b) the rules, policies or procedures for transferring positions and customer collateral, in the event of the indirect intermediary's default, to another clearing intermediary.

(2) After accepting the first cleared derivative from, for or on behalf of a customer of, each time there is a change to the rules, policies or procedures referred to in paragraph (1)(b), the indirect intermediary must provide written disclosure to the customer, within a reasonable period of time, describing the change made to the rules, policies or procedures.

Customer information – clearing intermediary

24. (1) A direct intermediary must provide all of the following to a regulated clearing agency:

(a) before submitting to the regulated clearing agency the first cleared derivative for or on behalf of a customer of the direct intermediary, or of an indirect intermediary for which the direct intermediary provides clearing services, information sufficient to identify the customer and the customer's positions and customer collateral;

(b) at least once each business day after providing the information referred to in paragraph (a), information that identifies the customer's positions and customer collateral.

(2) An indirect intermediary must provide all of the following to a clearing intermediary through which it provides clearing services:

(a) before submitting to the clearing intermediary the first cleared derivative for or on behalf of a customer, information sufficient to identify the customer and the customer's positions and customer collateral;

(b) at least once each business day after providing the information referred to in paragraph (a), information that identifies the customer's positions and customer collateral.

Customer collateral report – regulatory

25. (1) A direct intermediary that receives customer collateral must electronically submit to the regulator or securities regulatory authority, within 10 business days of the end of each calendar month, a completed Form 94-102F1 *Customer Collateral Report: Direct Intermediary*.

(2) An indirect intermediary that receives customer collateral must electronically submit to the regulator or securities regulatory authority, within 10 business days of the end of each calendar month, a completed Form 94-102F2 *Customer Collateral Report: Indirect Intermediary*.

Customer collateral report – customer

26. (1) A clearing intermediary must make available to each customer from, for or on behalf of whom it receives customer collateral, a report, calculated and available on a daily basis, setting out all of the following:

(a) the current value of the cleared derivative positions of the customer;

(b) the current value, asset type and quantity of customer collateral received from, for or on behalf of the customer that is held by the clearing intermediary and the location of each permitted depository at which the customer collateral is held;

(c) the current value of the customer collateral received from, for or on behalf of the customer that is posted with any of the following:

(i) a regulated clearing agency;

(ii) another clearing intermediary.

(2) A clearing intermediary must make available to each indirect intermediary from which it receives customer collateral for or on behalf of a customer, a report, calculated and available on a daily basis, setting out all of the following:

(a) the current value of the cleared derivative positions of the customer;

(b) the current value, asset type and quantity of customer collateral received from the indirect intermediary on behalf of the customer that is held by the clearing intermediary and the location of each permitted depository at which the customer collateral is held;

(c) the current value of the customer collateral received from the indirect intermediary on behalf of the customer that is posted with any of the following:

(i) a regulated clearing agency;

(ii) another clearing intermediary.

Disclosure of investment of customer collateral

27. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, a clearing intermediary that invests customer collateral must disclose in writing its investment guidelines and policy directly to the customer, or, if applicable, to the indirect intermediary that is providing clearing services to the customer.

(2) A clearing intermediary that invests customer collateral must promptly disclose in writing any change to its investment guidelines and policy directly to the customer, or, if applicable, to the indirect intermediary that is providing clearing services to the customer.

PART 5
TREATMENT OF CUSTOMER COLLATERAL BY A REGULATED CLEARING AGENCY

Collection of initial margin

28. A regulated clearing agency must collect initial margin for each customer on a gross basis.

Segregation of customer collateral – regulated clearing agency

29. A regulated clearing agency must segregate customer collateral from the property of other persons or companies including the property of the regulated clearing agency.

Holding of customer collateral – regulated clearing agency

30. (1) A regulated clearing agency must hold all customer collateral in one or more accounts at a permitted depository and clearly identify such accounts as holding customer collateral.

(2) A regulated clearing agency must hold all customer collateral of each customer separately from all other property of such customer that is not customer collateral.

Excess margin – regulated clearing agency

31. A regulated clearing agency must have rules, policies or procedures in place with respect to identifying and recording, at least each business day, the value of excess margin that it holds for or on behalf of each customer.

Use of customer collateral – regulated clearing agency

32. (1) A regulated clearing agency must not use or permit the use of customer collateral except in accordance with this section and sections 33 and 34.

(2) A regulated clearing agency may use or permit the use of customer collateral of a customer to do either of the following:

(a) margin, guarantee, secure, settle or adjust cleared derivatives of the customer;

(b) with respect to excess margin, secure or extend the credit of the customer.

(3) Other than with respect to excess margin used in accordance with paragraph (2)(b), a regulated clearing agency must not impose or permit the imposition of a lien or claim on a customer's positions or customer collateral except to secure a claim resulting from a cleared derivative in favour of any of the following:

(a) the customer;

(b) the regulated clearing agency or a clearing intermediary responsible for clearing the cleared derivatives of the customer to which the positions or customer collateral relate.

Investment of customer collateral – regulated clearing agency

33. (1) A regulated clearing agency must not invest customer collateral except in accordance with subsection (2).

(2) Subject to subsection (3), a regulated clearing agency may

(a) invest property received as customer collateral in a permitted investment, and

(b) use customer collateral to buy or sell a permitted investment pursuant to an agreement for resale or repurchase to which all of the following apply:

(i) the agreement is in writing;

(ii) the term of the agreement is no more than one business day;

(iii) written confirmation specifying the terms of the agreement is delivered to the customer immediately upon entering into the transaction;

(iv) the agreement is not entered into with an affiliated entity of the regulated clearing agency.

(3) Any loss resulting from an investment of customer collateral by the regulated clearing agency must be borne by the regulated clearing agency making the investment and not by any customer.

Use of customer collateral – clearing intermediary default

34. (1) Except as otherwise provided in subsection (2), a regulated clearing agency must not apply customer collateral to satisfy the obligations of a clearing intermediary to which the regulated clearing agency provides clearing services.

(2) A regulated clearing agency may apply the customer collateral of a customer in full or partial satisfaction of a clearing intermediary's obligations that arise or are accelerated as a consequence of the clearing intermediary's default only to the extent that those obligations are attributable to the cleared derivatives of the customer.

Risk management – NI 24-102 applies

35. Part 3 of National Instrument 24-102 *Clearing Agency Requirements* apply to a regulated clearing agency and, for that purpose, a reference in that instrument to a "recognized clearing agency" is to be read as a reference to a "regulated clearing agency".

PART 6
RECORD KEEPING BY A REGULATED CLEARING AGENCY

Retention of records – regulated clearing agency

36. A regulated clearing agency must keep the records required under this Part and Part 7, and all supporting documentation, in a readily accessible location for at least 7 years after the date upon which the cleared derivative expires or terminates.

Books and records – regulated clearing agency

37. (1) A regulated clearing agency that receives customer collateral must calculate and record all of the following, at least once each business day, in its books and records for each customer:

(a) the amount of customer collateral it requires from, for or on behalf of each customer;

(b) the total amount of customer collateral it requires from, for or on behalf of all customers.

(2) A regulated clearing agency must record all of the following in its books and records for each customer:

(a) each permitted depository at which it holds customer collateral of the customer;

(b) a description of the customer collateral held at each permitted depository;

(c) the current value of any customer collateral received from, for or on behalf of the customer, including, without limitation, all of the following at least once each business day:

(i) any accruals on the customer collateral creditable to the customer;

(ii) any gains or losses in respect of the customer collateral;

(iii) any charges lawfully accruing to the customer;

(iv) any distributions or transfers of the customer collateral.

Separate records – regulated clearing agency

38. A regulated clearing agency must keep separate books and records that, at any time, enable it and each of its direct intermediaries to distinguish all of the following in the accounts held at the regulated clearing agency:

(a) the positions and property held for the account of the direct intermediary;

(b) the positions and value of customer collateral held for or on behalf of the direct intermediary's customers;

(c) the positions and value of customer collateral held for or on behalf of customers of each indirect intermediary for which the direct intermediary provides clearing services.

Records of investment of customer collateral – regulated clearing agency

39. A regulated clearing agency that invests customer collateral must keep records of all of the following with respect to each investment of customer collateral:

(a) the date of the investment;

(b) the name of each person or company through which the investment was made;

(c) a daily market valuation of the investment, any unrealized gain or loss of the investment and related supporting documentation;

(d) a description of each asset or instrument in which the investment was made;

(e) the identity of each permitted depository where each asset, as applicable, or instrument is deposited;

(f) the date on which the investment was liquidated or otherwise disposed of and the realized gain or loss;

(g) the name of each person or company liquidating or disposing of the investment.

Records of currency conversion – regulated clearing agency

40. A regulated clearing agency must keep a record of each conversion of customer collateral from one currency to another.

PART 7
REPORTING AND DISCLOSURE BY A REGULATED CLEARING AGENCY

Disclosure to direct intermediaries by regulated clearing agency

41. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, a regulated clearing agency must provide written disclosure describing all of the following to the direct intermediary through which the derivative is cleared:

(a) the rules, policies or procedures of the regulated clearing agency that govern the segregation and use of customer collateral and the transfer or liquidation of a cleared derivative of a customer in the event of a direct intermediary's default;

(b) the impact of laws, including bankruptcy and insolvency laws, on the customer, its positions and customer collateral in the event of a direct intermediary's default;

(c) the circumstances under which an interest or ownership rights in the customer collateral may be enforced by the regulated clearing agency, direct intermediary or the customer.

(2) After accepting the first cleared derivative from, for or on behalf of a customer, each time that the regulated clearing agency makes any change to the rules, policies or procedures referred to in paragraph (1)(a), the regulated clearing agency must provide written disclosure to the direct intermediary through which the derivative is cleared, within a reasonable period of time, describing the changes made to the rules, policies or procedures.

Customer information – regulated clearing agency

42. A regulated clearing agency must have rules, policies or procedures reasonably designed to confirm that the information it receives from a direct intermediary in accordance with subsection 24(1) is complete and received in a timely manner.

Customer collateral report – regulatory

43. A regulated clearing agency that receives customer collateral must electronically submit to the regulator or securities regulatory authority, within 10 business days of the end of each calendar month, a completed Form 94-102F3 *Customer Collateral Report: Regulated Clearing Agency*.

Customer collateral report – direct intermediary

44. A regulated clearing agency that receives customer collateral must make available to each of its direct intermediaries a report, calculated and available on a daily basis, setting out all of the following:

(a) the current value of the cleared derivative positions of each customer of the direct intermediary;

(b) the current value, asset type and quantity of customer collateral received from the direct intermediary for or on behalf of each customer of the direct intermediary that is held by the regulated clearing agency;

(c) the total current value of customer collateral received from the direct intermediary that is held at a permitted depository;

(d) the location of each permitted depository at which the customer collateral is held.

Disclosure of investment of customer collateral

45. **(1)** Before receiving the first cleared derivative from, for or on behalf of a customer, a regulated clearing agency that invests customer collateral must disclose in writing its investment guidelines and policy to the direct intermediary through which the derivative is cleared.

(2) A regulated clearing agency that invests customer collateral must promptly disclose in writing any change to its investment guidelines and policy to the direct intermediary through which the derivative is cleared.

PART 8
TRANSFER OF POSITIONS

Transfer of customer collateral and positions

46. **(1)** Subject to subsection (3), a regulated clearing agency and a defaulting direct intermediary must facilitate a transfer of customer positions and customer collateral or their liquidation proceeds from the defaulting direct intermediary to one or more non-defaulting direct intermediaries.

(2) Subject to subsection (3), a regulated clearing agency and a non-defaulting direct intermediary must facilitate a transfer of the customer's positions and customer collateral from the non-defaulting direct intermediary to one or more non-defaulting direct intermediaries.

(3) Each of a regulated clearing agency and a direct intermediary may facilitate a transfer described in subsection (1) or (2) in respect of a customer only if all of the following apply:

(a) the customer has requested or consented to the transfer;

(b) the customer's account is not currently in default;

(c) the transferred positions will have appropriate margin at the receiving direct intermediary;

(d) any remaining positions will have appropriate margin at the transferring direct intermediary;

(e) the receiving direct intermediary has consented to the transfer.

Transfer from a clearing intermediary

47. A clearing intermediary that provides clearing services for an indirect intermediary must have rules, policies or procedures in respect of the portability and transfer of customer positions and customer collateral in the event of a default by the clearing intermediary that include a credible mechanism for transferring the positions and customer collateral of the indirect intermediary's customers, upon a default by the indirect intermediary or at the request of the indirect intermediary's customer, to one or more non-defaulting clearing intermediaries.

PART 9
SUBSTITUTED COMPLIANCE

48. **(1)** A clearing intermediary located in a foreign jurisdiction is deemed to satisfy the Parts and sections of this Instrument listed in Appendix A in respect of a cleared derivative entered into by, for or on behalf of a local customer if

(a) the cleared derivative is cleared at a regulated clearing agency, and

(b) the clearing intermediary is all of the following:

(i) registered, licensed or otherwise permitted to perform the services of a clearing intermediary in the jurisdiction where its primary regulator is located;

(ii) in compliance with the requirements of the laws of a foreign jurisdiction as set out in Appendix A.

(2) A regulated clearing agency located in a foreign jurisdiction is deemed to satisfy the Parts and sections of this Instrument listed in Appendix A in respect of a cleared derivative entered into by, for or on behalf of a local customer if the regulated clearing agency is in compliance with all of the following:

(a) the terms and conditions of any recognition or exemption decision made by a securities regulatory authority in respect of the regulated clearing agency;

(b) the requirements of the laws of a foreign jurisdiction as set out in Appendix A.

PART 10
EXEMPTIONS

49. (1) The regulator or the securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 11
EFFECTIVE DATE

Effective date

50. This Instrument comes into force on [•].

APPENDIX A

PART A
EQUIVALENT REQUIREMENTS FOR PARTS AND SECTIONS RELATING TO CLEARING INTERMEDIARIES

Further to section 48(1) of this Instrument, a clearing intermediary that satisfies the requirements of section 48(1) is deemed to satisfy the Parts and sections of this Instrument listed in the table below where the clearing intermediary is in compliance with the provisions of the laws of the foreign jurisdiction as set out opposite the Part or section of this Instrument.

Parts and sections of this Instrument applicable to a clearing intermediary	Compliance with foreign customer protection regime required to permit substituted compliance

PART B
EQUIVALENT REQUIREMENTS FOR PARTS AND SECTIONS RELATING TO REGULATED CLEARING AGENCIES

Further to section 48(2) of this Instrument, a regulated clearing agency that satisfies the requirements of section 48(2) is deemed to satisfy the Parts and sections of this Instrument listed in the table below where the regulated clearing agency is in compliance with the provisions of the laws of the foreign jurisdiction as set out opposite the Part or section of this Instrument.

Parts and sections of this Instrument applicable to a regulated clearing agency	Compliance with foreign customer protection regime required to permit substituted compliance

PROPOSED NATIONAL INSTRUMENT 94-102
DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER COLLATERAL AND POSITIONS

FORM 94-102F1 *CUSTOMER COLLATERAL REPORT: DIRECT INTERMEDIARY*

This Form 94-102F1 is to be completed by each direct intermediary in order to comply with its reporting obligations to the local securities regulator under subsection 25(1) of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the "Instrument").

Reporting Date	DD/MM/YY
Reporting Period[1]	DD/MM/YY – DD/MM/YY

Reporting direct intermediary
Name and LEI[2]

Table A is to be completed by each direct intermediary that receives customer collateral from a customer or from an indirect intermediary in accordance with the Instrument. In Section 1, complete a separate line for each customer that has posted customer collateral to the reporting direct intermediary. In Section 2, complete a separate line for each customer of an indirect intermediary for whom the indirect intermediary has posted customer collateral to the reporting direct intermediary. Where a LEI is not available please provide an Interim LEI or, if not available, the complete legal name of the customer.

Table A

		Customer collateral			
A.	LEI of customer	Total value of non-cash customer collateral posted to the direct intermediary as of the last business day of the Reporting Period	Total value of customer collateral posted to the direct intermediary as of the last business day of the Reporting Period	Maximum value of customer collateral posted to the direct intermediary during the Reporting Period	Average value of customer collateral posted to the direct intermediary over the Reporting Period
Section 1.	[Any customer that has posted customer collateral to the reporting direct intermediary]				
Section 2.	[Any customer for whom an indirect intermediary has posted customer collateral to the reporting direct intermediary]				
	Aggregate total				

Table B is to be completed by each direct intermediary that receives customer collateral from a customer or from a clearing intermediary in accordance with the Instrument. Complete a separate line for each location at which customer collateral is held by or for the reporting direct intermediary. Where a LEI is not available, please provide an Interim LEI or, if not available, the complete legal and operating name(s) of the permitted depository.

1 The Reporting Period is the calendar month preceding the Reporting Date

2 Where a LEI is not available, please provide an Interim LEI or, if not available, please provide the complete legal name of the reporting direct intermediary together with the complete address of its head office.

Table B

B.	LEI of permitted depository or reporting direct intermediary	Customer collateral			
		Total value of non-cash customer collateral held by or for the direct intermediary as of the last business day of the Reporting Period	Total value of customer collateral held by or for the direct intermediary as of the last business day of the Reporting Period	Maximum value of customer collateral held by or for the direct intermediary during the Reporting Period	Average value of customer collateral held by or for the direct intermediary over the Reporting Period
1.	[Reporting direct intermediary, if holding customer collateral itself]				
2.	[Any permitted depository holding customer collateral for the reporting direct intermediary]				
	Aggregate total				

Table C is to be completed by each direct intermediary that has deposited customer collateral with a regulated clearing agency in accordance with the Instrument. Complete a separate line for each regulated clearing agency with which the reporting direct intermediary has deposited customer collateral. Where a LEI is not available, please provide an Interim LEI or, if not available, the complete legal and operating name(s) of the regulated clearing agency.

Table C

C.	LEI of regulated clearing agency	Customer collateral			
		Total value of non-cash customer collateral deposited with a regulated clearing agency as of the last business day of the Reporting Period	Total value of customer collateral deposited with a regulated clearing agency as of the last business day of the Reporting Period	Maximum value of customer collateral deposited with a regulated clearing agency during the Reporting Period	Average value of customer collateral deposited with a regulated clearing agency over the Reporting Period
1.	[Any regulated clearing agency with which the reporting direct intermediary has deposited customer collateral]				
	Aggregate total:				

PROPOSED NATIONAL INSTRUMENT 94-102
DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER COLLATERAL AND POSITIONS

FORM 94-102F2 *CUSTOMER COLLATERAL REPORT: INDIRECT INTERMEDIARY*

This Form 94-102F2 is to be completed by each person or company that acts as an indirect intermediary in order to comply with its reporting obligations to the local securities regulator under subsection 25(2) of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the "Instrument").

Reporting Date	DD/MM/YY
Reporting Period[1]	DD/MM/YY – DD/MM/YY

Reporting indirect intermediary
Name and LEI[2]

Table A is to be completed by each indirect intermediary that receives customer collateral from a customer in accordance with the Instrument. Complete a separate line for each customer that has posted customer collateral to the reporting indirect intermediary. Where a LEI is not available, please provide an Interim LEI or, if not available, the complete legal name of the customer.

Table A

A.	LEI of customer	Customer collateral			
		Total value of non-cash customer collateral posted to the indirect intermediary as of the last business day of the Reporting Period	Total value of customer collateral posted to the indirect intermediary as of the last business day of the Reporting Period	Maximum value of customer collateral posted to the indirect intermediary during the Reporting Period	Average value of customer collateral posted to the indirect intermediary over the Reporting Period
1.	[Any customer that has posted customer collateral to the reporting indirect intermediary]				
	Aggregate total				

Table B is to be completed by each indirect intermediary that receives customer collateral from a customer in accordance with the Instrument. Complete a separate line for each location at which customer collateral is held by or for the reporting indirect intermediary. Where a LEI is not available, please provide an Interim LEI or, if not available, the complete legal and operating name(s) of the permitted depository.

[1] The Reporting Period is the calendar month preceding the Reporting Date

[2] Where a LEI is not available, please provide an Interim LEI or, if not available, please provide the complete legal name of the reporting indirect intermediary together with the complete address of its head office.

Table B

B.	LEI of permitted depository or reporting indirect intermediary	Customer collateral			
		Total value of non-cash customer collateral held by or for the indirect intermediary as of the last business day of the Reporting Period	Total value of customer collateral held by or for the indirect intermediary as of the last business day of the Reporting Period	Maximum value of customer collateral held by or for the indirect intermediary during the Reporting Period	Average value of customer collateral held by or for the indirect intermediary over the Reporting Period
1.	[Reporting indirect intermediary, if holding customer collateral itself]				
2.	[Any permitted depository holding customer collateral for the reporting indirect intermediary]				
	Aggregate total:				

Table C is to be completed by each indirect intermediary that has posted customer collateral to a direct intermediary in accordance with the Instrument. Complete a separate line for each direct intermediary with which the reporting indirect intermediary has deposited customer collateral. Where a LEI is not available, please provide an Interim LEI or, if not available, the complete legal and operating name(s) of the direct intermediary.

Table C

C.	LEI of direct intermediary	Customer collateral			
		Total value of non-cash customer collateral posted to a direct intermediary as of the last business day of the Reporting Period	Total value of customer collateral posted to a direct intermediary as of the last business day of the Reporting Period	Maximum value of customer collateral posted to a direct intermediary during the Reporting Period	Average value of customer collateral posted to a direct intermediary over the Reporting Period
1.	[Any direct intermediary with which the reporting indirect intermediary has posted customer collateral]				
	Aggregate total:				

PROPOSED NATIONAL INSTRUMENT 94-102
DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER COLLATERAL AND POSITIONS

FORM 94-102F3 *CUSTOMER COLLATERAL REPORT: REGULATED CLEARING AGENCY*

This Form 94-102F3 is to be completed by each regulated clearing agency in order to comply with its reporting obligations to the local securities regulator under section 43 of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the "Instrument").

Reporting Date	DD/MM/YY
Reporting Period[1]	DD/MM/YY – DD/MM/YY

Reporting regulated clearing agency
Name and LEI[2]

Table A is to be completed by each regulated clearing agency that receives customer collateral from a direct intermediary in accordance with the Instrument. Complete a separate line for each direct intermediary that has posted customer collateral with the reporting regulated clearing agency. Where a LEI is not available please provide an Interim LEI or, if not available, the complete legal name of the direct intermediary.

Table A

A.	LEI of direct intermediary	Customer collateral			
		Total value of non-cash customer collateral posted to the regulated clearing agency as of the last business day of the Reporting Period	Total value of customer collateral posted to the regulated clearing agency as of the last business day of the Reporting Period	Maximum value of customer collateral posted to the regulated clearing agency during the Reporting Period	Average value of customer collateral posted to the regulated clearing agency over the Reporting Period
1.	[Any direct intermediary that has posted customer collateral with the reporting regulated clearing agency]				
	Aggregate total:				

Table B is to be completed by each regulated clearing agency that holds customer collateral in accordance with the Instrument. Complete a separate line for each location at which customer collateral is held by or for the reporting regulated clearing agency. Where a LEI is not available please provide an Interim LEI or, if not available, the complete legal and operating name(s) of the permitted depository.

[1] The Reporting Period is the calendar month preceding the Reporting Date

[2] Where a LEI is not available, please provide an Interim LEI or, if not available, please provide the complete legal name of the reporting regulated clearing agency together with the complete address of its head office.

Table B

B.	LEI of permitted depository or reporting regulated clearing agency	Customer collateral			
		Total value of non-cash customer collateral held by or for the regulated clearing agency as of the last business day of the Reporting Period	Total value of customer collateral held by or for the regulated clearing agency as of the last business day of the Reporting Period	Maximum value of customer collateral held by or for the regulated clearing agency during the Reporting Period	Average value of customer collateral held by or for the regulated clearing agency over the Reporting Period
1.	[Reporting regulated clearing agency, if holding customer collateral itself]				
2.	[Any permitted depository holding customer collateral for the reporting regulated clearing agency]				
	Aggregate total				

ANNEX C

COMPANION POLICY 94-102CP
DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER COLLATERAL AND POSITIONS

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PART 1
GENERAL COMMENTS

Introduction

This Companion Policy ("CP") sets out the views of the Canadian Securities Administrators (the "CSA" or "we") on various matters relating to National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the "Instrument") and related securities legislation.

Other than this Part, the numbering of Parts, sections, subsections, paragraphs and subparagraphs in this CP generally corresponds to the numbering in the Instrument. Any general guidance for a Part appears immediately after the Part's name. Any specific guidance on a section, subsection, paragraph or subparagraph in the Instrument follows any general guidance. If there is no guidance for a Part, section, subsection paragraph or subparagraph, the numbering in this CP will skip to the next provision that does have guidance.

Unless otherwise stated, any reference to a Part, section, subsection, paragraph, subparagraph or definition in this CP is a reference to the corresponding Part, section, subsection, paragraph, subparagraph or definition in the Instrument.

Definitions and interpretation

Unless defined in the Instrument, terms used in the Instrument and in this CP have the meaning given to them in securities legislation including, National Instrument 14-101 *Definitions*.

Interpretation of terms used in the Instrument and in this CP

A number of key terms are used in the Instrument and this CP, including the terms that follow.

- "Clearing services" refers to acts in furtherance of the clearing of a customer transaction. This includes, among other things: submitting customer transactions and associated collateral to a regulated clearing agency for clearing; monitoring and maintaining collateral requirements from the regulated clearing agency on behalf of a customer, including those for initial and variation margin; monitoring and maintaining excess collateral; recording and monitoring cleared positions, collateral received and valuations of both; and monitoring credit and liquidity limits.

  Clearing services also include services provided from one clearing intermediary to another in furtherance of a customer transaction. For example, a direct intermediary would be providing clearing services to an indirect intermediary where it accepts a customer transaction that was originally submitted by a customer to the indirect intermediary and submits it to a regulated clearing agency.

- The term "lien" refers to a creditor's claim against property to secure repayment of a debt.

- The term "position" refers to the aggregate amount of a derivative cleared by a regulated clearing agency for a customer at a point in time.

- "PFMI Report" means the April 2012 final report entitled *Principles for financial market infrastructures* published by the Bank for International Settlements' Committee on Payments and Market Infrastructure (formerly the Committee on Payment and Settlement Systems) and the Technical Committee of the International Organization of Securities Commissions, as amended from time to time.

Interpretation of terms defined in the Instrument

1. A "cleared derivative" is submitted to and cleared by a clearing agency, either voluntarily or in accordance with the clearing requirement set out in Proposed National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*. The terms "directly" and "indirectly" refer to the chain of clearing intermediaries involved in a transaction. Where a customer interacts directly with a direct intermediary, the transaction would be considered to be directly submitted to and cleared by a clearing agency. Where an indirect intermediary submits a transaction to a direct intermediary for clearing on behalf of a customer, the transaction is considered to be indirectly submitted to the clearing agency.

A direct intermediary is not a customer where it transacts with a clearing agency of which it is a participant. However, a person or company that acts as a direct intermediary can be a customer when clearing its own proprietary transactions through another direct intermediary of a clearing agency where it is not itself a participant. An indirect intermediary is considered a clearing intermediary rather than a customer in a transaction where it is providing clearing services to a customer. However, a person or company acting as an indirect intermediary can be a customer to the extent that it is clearing its own proprietary transaction

through another clearing intermediary. For certainty, there is always one and only one customer per clearing chain. The customer is the person or company entering into the transaction on its own behalf and accessing clearing services through one or more clearing intermediaries.

In a clearing chain that involves an indirect intermediary providing clearing services to a person or company, that person or company would be considered a customer of each clearing intermediary in the chain as well as of the regulated clearing agency. For example, where a customer submits a transaction to an indirect intermediary, it would be a customer of both the indirect intermediary and the direct intermediary that submits the transaction to the regulated clearing agency, as well as of the regulated clearing agency. If there were multiple indirect intermediaries involved in a transaction, the person or company would be considered a customer of each of these intermediaries.

We expect that, subject to any available exemption, a clearing intermediary offering clearing services to a customer must register as a derivatives dealer when such requirement is in place. CSA Consultation Paper 91-407 *Derivatives: Registration* ("Consultation Paper 91-407") outlines the recommended business trigger for determining whether a person is in the business of trading derivatives.[1] These factors include intermediating transactions and providing clearing services to third-parties. Please refer to Consultation Paper 91-407 for further details.

With respect to "customer collateral", we wish to point out that although a customer may deliver certain collateral to a clearing intermediary, this specific collateral may not be the collateral delivered to the regulated clearing agency to satisfy the customer's margin requirements at the regulated clearing agency. A clearing intermediary may "upgrade" or "transform" the collateral delivered by the customer pursuant to their agreement. For example, a customer may deliver cash as collateral and, pursuant to their agreement, the clearing intermediary may deliver securities of an equivalent value to the regulated clearing agency. Any collateral, transformed, upgraded or otherwise, delivered to the regulated clearing agency on behalf of a customer would be considered customer collateral. Generally, the original collateral delivered by the customer is no longer considered customer collateral once it has been transformed or upgraded and therefore is no longer subject to the requirements of the Instrument. The transformed or upgraded collateral exchanged for the customer's original collateral becomes the customer collateral that is subject to the Instrument and must be treated as customer collateral regardless of the number or type of transformations or upgrades it undergoes.

Paragraph (b) of the definition of "customer collateral" refers to a situation where a clearing intermediary submits its own property to satisfy the obligations of one or more customers to the regulated clearing agency. An example of this would be a direct intermediary providing its own property to meet an inter-day margin call by the regulated clearing agency. Where a clearing intermediary submits its own property on behalf of a customer, this property must be treated as customer collateral.

A "direct intermediary" is a participant of the regulated clearing agency where a customer transaction is submitted for clearing. A direct intermediary is responsible for submitting a customer's transaction to the regulated clearing agency and has obligations to the regulated clearing agency with respect to the transaction.

An "indirect intermediary" is a person or company that is not a participant of the regulated clearing agency where a transaction is submitted but that facilitates clearing on behalf of a customer. In order to clear its customer's transaction, the indirect intermediary would enter into an agreement with a direct intermediary (or another indirect intermediary that would in turn submit the transaction to a direct intermediary) that would submit the transaction to the regulated clearing agency to be cleared. This clearing relationship is often referred to as "indirect customer clearing". It is possible that a person or company that is a direct intermediary at one regulated clearing agency could also act as an indirect intermediary in order to access another regulated clearing agency, of which it is not a participant. The classification as a direct intermediary or indirect intermediary is not exclusive. A clearing intermediary can be a direct intermediary for some transactions and an indirect intermediary for others. A person or company providing services in respect of a cleared derivative would be considered a clearing intermediary for the purposes of the Instrument if it requires, receives or holds collateral from, for or on behalf of a customer. Accordingly, an intermediary that does not receive, hold or transfer collateral from, for on behalf of a customer would not be subject to the requirements under the Instrument even if it facilitates some limited aspects of the relationship between a clearing intermediary and a customer with respect to cleared derivatives (e.g., organizing orders for derivatives).

The term "initial margin" refers to collateral required by a regulated clearing agency to cover potential future losses resulting from expected changes in the value of a cleared derivative over a pre-determined close-out period with a certain level of confidence.

The term "participant" refers to a clearing intermediary that is a member of a regulated clearing agency.

A "permitted depository" is a person or company acceptable for holding customer collateral posted with a clearing intermediary or regulated clearing agency. A clearing intermediary that itself meets the requirements of the definition may hold customer collateral directly and is not required to use a third-party permitted depository.

[1] See subsection 6.1(b) of Consultation Paper 91-407.

In recognition of the international nature of the derivatives market, paragraph (c) of the definition permits foreign banks or trust companies to act as permitted depositories and hold customer collateral, provided they are regulated as a bank or trust company in a permitted jurisdiction. Subparagraph (d)(ii) of the definition also permits a prudentially regulated foreign entity other than a bank or trust company to act as a permitted depository for customer collateral, provided that it is registered, licensed or otherwise permitted to perform the services of a clearing intermediary in a permitted jurisdiction.

The term "permitted investment" sets out a principles-based approach to determining the types of instruments in which a clearing intermediary or regulated clearing agency may invest customer collateral, in accordance with the provisions of the Instrument. The term is intended to cover an investment in an instrument that is secured by, or is a claim on, high-quality obligors, and which allows for quick liquidation with little, if any, adverse price effect, for the purpose of mitigating market, credit and liquidity risk.

We are of the view that a clearing intermediary or regulated clearing agency that invests customer collateral in accordance with the Instrument should ensure such investment is:

- consistent with its overall risk-management strategy,
- fully disclosed to its customers,
- limited to instruments that are secured by, or are claims on, high-quality obligors, and
- can be liquidated quickly with little, if any, adverse price effect.

We are also of the view that a clearing intermediary or regulated clearing agency should not invest customer collateral in its own securities or those of its affiliated entities. Examples of instruments that would be considered permitted investments by the local securities regulatory authority include each of the following:

- debt securities issued by or guaranteed by the Government of Canada or the government of a province or territory of Canada;
- debt securities that are issued or guaranteed by a municipal corporation in Canada;
- certificates of deposit, that are not securities, issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada) ("Bank Act");
- commercial paper fully guaranteed as to principal and interest by the Government of Canada;
- interests in money market mutual funds.

We are also of the view that foreign investments in high-quality obligors exhibiting the same conservative characteristics as the instruments listed above would also be acceptable.

Paragraph (a) of the definition of "permitted jurisdiction" captures jurisdictions where the primary regulators of foreign banks authorized under the Bank Act to carry on business in Canada, subject to supervision by the Office of the Superintendent of Financial Institutions ("OSFI"), are located. The following countries and their political subdivisions are included: Belgium, France, Germany, Ireland, Japan, Netherlands, Singapore, Switzerland, United Kingdom (including Scotland) and the United States of America.

For Paragraph (b) of the definition of "permitted jurisdiction," in the case of the euro, where the currency does not have a single "country of origin", the provision will be read to include all countries in the euro area[2] and countries using the euro under a monetary agreement with the European Union.[3]

The definition of "qualifying central counterparty" is based on the qualifying central counterparty standard set out in the July 2012 final report entitled *Capital requirements for bank exposures to central counterparties*[4] published by the Basel Committee

[2] European Union, Economic and Financial Affairs, What is the euro area?, May 18, 2015, online: European Union (http://ec.europa.eu/economy_finance/euro/adoption/euro_area/index_en.htm).

[3] European Union, Economic and Financial Affairs, The euro outside the euro area, April 9, 2014, online: European Union (http://ec.europa.eu/economy_finance/euro/world/outside_euro_area/index_en.htm).

[4] Basel Committee on Banking Supervision (BCBS), Capital requirements for bank exposures to central counterparties, July 2012, online: Bank for International Settlements (http://www.bis.org).

on Banking Supervision ("BCBS"). The BCBS has further stated[5] that if a regulator of a central counterparty has provided a public statement that the central counterparty has the status of a qualifying central counterparty, then the central counterparty may be considered to be a qualifying central counterparty. We are similarly of the view that a local counterparty may rely on a public statement by a regulator of a central counterparty that the central counterparty is a qualifying central counterparty. The qualifying central counterparty standard is also discussed in CSA Multilateral Staff Notice 24-311 *Qualifying Central Counterparties*.

While the term "segregate" means to separately hold or account for customer collateral, consistent with the PFMI Report, accounting segregation is acceptable.

Application

2. The Instrument applies to a clearing intermediary or foreign regulated clearing agency that provides clearing services to a local customer, but only in respect of a local customer's cleared derivatives. For example, a clearing intermediary providing clearing services to a local customer would be subject to the requirements of the Instrument only as they relate to the local customer and the cleared derivatives of the local customer. The Instrument is not applicable to the clearing intermediary when providing clearing services to foreign customers. The Instrument has broader application with respect to a regulated clearing agency located in a local jurisdiction; such a regulated clearing agency is subject to the requirements of the Instrument in respect of the cleared derivatives of all of its customers (whether they are local customers or not).

PART 2
TREATMENT OF CUSTOMER COLLATERAL BY A CLEARING INTERMEDIARY

Part 2 contains requirements for the treatment of customer collateral by a clearing intermediary.

Segregation of customer collateral – clearing intermediary

3. (1) Subsection 3(1) requires a clearing intermediary to segregate customer collateral from its own property, including from collateral advanced for a proprietary position. For example, a direct intermediary's proprietary positions (i.e., a house account) would be required to be held or accounted for separately from customer positions. Similarly, an indirect intermediary would be required to establish a separate account for its customers with its direct intermediary, so that the indirect intermediary's proprietary positions are held or accounted for separately from those of its customers. Records maintained by a clearing intermediary must make it clear that customer accounts are for the benefit of customers only.

Recognizing that methods for segregating customer collateral at the clearing intermediary level may differ depending on collateral and entity type, we are of the view that parties should have the benefit of flexibility in their collateral arrangements. However, the principle remains that notwithstanding the legal arrangement under which customer collateral is posted with a clearing intermediary, the clearing intermediary must treat customer collateral posted with it as belonging to customers. For example, in a title transfer collateral arrangement, where the title to the property posted as collateral is transferred to the person or company collecting the collateral, despite any such transfer of legal title from the customer to a clearing intermediary, such clearing intermediary must treat any property transferred as collateral by or on behalf of a customer and relating to that customer's cleared derivatives as customer collateral and as the property of that customer.

Holding of customer collateral – clearing intermediary

4. We are of the view that a clearing intermediary that holds customer collateral at a permitted depository in accordance with the Instrument should take reasonable commercial efforts to confirm that the permitted depository:

- qualifies as a permitted depository under the Instrument;
- has appropriate rules, policies and procedures, including robust accounting practices, to help ensure the integrity of the customer collateral and minimize and manage the risks associated with the safekeeping and transfer of the collateral;
- maintains securities in an immobilised or dematerialised form for their transfer by book entry;
- protects customer collateral against custody risk through appropriate rules and procedures consistent with its legal framework;
- employs a robust system that ensures segregation between the permitted depository's own property and the property of its participants and segregation among the property of participants, and where supported by the legal framework, supports operationally the segregation of property belonging to a participant's customers on the participant's books and facilitates the transfer of customer collateral;

[5] BCBS, Basel III counterparty credit risk and exposures to central counterparties – Frequently asked questions, updated December 2012, online: Bank for International Settlements (http://www.bis.org).

- identifies, measures, monitors, and manages its risks from other activities that it may perform;

- facilitates prompt access to customer collateral, when required.

If a clearing intermediary meets the requirements set out in the definition of a permitted depository, it may hold collateral itself and is not required to hold such customer collateral at a third party depository. For example, a Canadian financial institution that acts as a clearing intermediary would be permitted to hold customer cash or securities provided it did so in accordance with the requirements of the Instrument.

The customer collateral of multiple customers may be commingled in an omnibus customer account. However, the record-keeping obligations in the Instrument require the clearing intermediary to identify the positions and collateral held for each individual customer within an omnibus customer account. Where a clearing intermediary deposits customer collateral with a permitted depository, the clearing intermediary is responsible for ensuring the permitted depository maintains appropriate books and records to ensure customer collateral can be attributed to each customer.

Excess margin – clearing intermediary

5. We would interpret the requirement that a clearing intermediary identify and record the excess margin that it holds as only applying to that excess margin. For example, a direct intermediary would not be required to keep records of the excess margin required from a customer by an indirect intermediary to which it provides clearing services.

Use of customer collateral – clearing intermediary

6. (2) The use of customer collateral attributable to one customer to satisfy the obligations of another customer is not permitted. Although customer collateral may be held in one omnibus account, such collateral is not available to satisfy customer obligations generally. Therefore, a clearing model that allows recourse to a non-defaulting customer's collateral, including any model that permits fellow customer risk, violates this provision and would not be permitted to be offered to customers. For certainty, fellow customer risk is found in a clearing model that allows the customer collateral of a non-defaulting customer to be used to settle the obligations of a defaulting customer. The pooling of customer collateral held by a clearing intermediary pursuant to applicable bankruptcy and insolvency laws would not be considered a use of customer collateral by the clearing intermediary and is permitted where required by applicable laws.

(3) Subsection 6(3) recognizes that certain clearing arrangements involve the granting of security interests in customer collateral. Should an improper lien be imposed on customer collateral, the clearing intermediary must take all commercially reasonable steps to promptly address the improper lien. However, a lien over excess collateral is not restricted where the lien is imposed to secure or extend credit to the customer.

Investment of customer collateral – clearing intermediary

7. (3) Although losses in the value of invested customer collateral are not be to allocated to a customer, we are of the view that parties should be free to contract for the allocation of gains resulting from a clearing intermediary's investment activities in accordance with the Instrument. Subsection 7(3) provides that any loss resulting from a permitted investment of customer collateral must be borne by the investing clearing intermediary and not by a customer. This requirement relates only to investments made by a clearing intermediary using customer collateral, not to collateral provided by a customer. If, for example, a customer provided government bonds as collateral, and those bonds lost market value, the clearing intermediary would not be required to bear those losses. Similarly, where a customer provided collateral to a clearing intermediary and it was transformed into government bonds to be used as customer collateral posted to a regulated clearing agency, the clearing intermediary would not be required to bear any loss in market value of the transformed customer collateral.

Use of customer collateral – indirect intermediary default

8. An example of when a clearing intermediary may apply customer collateral to settle the obligations of a defaulting indirect intermediary is when a customer's default causes the default of the indirect intermediary. In such case, a direct intermediary could use the defaulting customer's collateral to satisfy the indirect intermediary's obligations attributable to the customer's default.

Acting as a clearing intermediary

9. (1) Paragraph 9(1)(a) applies to clearing intermediaries located in Canada. Prudential regulation by an appropriate regulatory authority in Canada should ensure that a clearing intermediary is adequately capitalized and has sufficient liquidity such that it is financially sound and does not present a significant solvency risk to customers. In Canada, prudential regulation of federally regulated financial institutions is undertaken by OSFI. Other regulators that perform prudential oversight include the Investment Industry Regulatory Organization of Canada ("IIROC") and certain provincial prudential market regulators, such as the Autorité

des marchés financiers in Québec, or other local securities regulatory authorities when the proposed registration regime for over-the-counter derivatives ("OTC derivatives") is implemented.

Paragraph 9(1)(b) applies to clearing intermediaries located in a foreign jurisdiction. In order to provide clearing services to a local customer, such clearing intermediaries must be registered, licensed or otherwise permitted to perform the services of a clearing intermediary in a permitted jurisdiction and must do so in accordance with the laws and regulations of that permitted jurisdiction. This would include, for example, a Commodity Futures Trading Commission ("CFTC") registered futures commission merchant authorized to provide clearing services for OTC derivatives by the CFTC.

The CSA Derivatives Committee is developing a registration regime that will apply to clearing intermediaries. Once in force, subject to any available exemptions, registration will be required for clearing intermediaries to offer clearing services to local customers.

(2) For greater certainty, pursuant to the application provisions of subsection 2, the requirement for a clearing intermediary to clear all transactions through a regulated clearing agency only applies to transactions with local customers.

Risk management – clearing intermediary

10. Rules, policies and procedures designed to identify, monitor and manage material risks arising from offering clearing services to an indirect intermediary and management of a default by an indirect intermediary should include all of the following:

- following industry standard best practices for understanding an indirect intermediary's: (i) identity and corporate structure, (ii) financial resources (e.g., by establishing credit and liquidity limits), (iii) product knowledge (e.g., by establishing a list of the indirect intermediary's products allowed to be cleared) and (iv) technical infrastructure (e.g., establishing adequate operational capacity and communication links between the indirect intermediary and the clearing intermediary);

- measuring and monitoring the positions of each indirect intermediary including: (i) the daily valuation of the indirect intermediary's positions and cash flow obligations and (ii) market risk resulting from those positions;

- a default management plan which describes the steps followed in the event of an indirect intermediary's default.

Risk management – indirect intermediary

11. Rules, policies and procedures designed to identify, monitor and manage material risks arising from offering indirect clearing services to customers should include all of the following:

- following industry standard best practices for understanding a customer's: (i) identity and corporate structure, (ii) financial resources (e.g., by establishing credit and liquidity limits), (iii) product knowledge (e.g., by establishing a list of the indirect intermediary's products allowed to be cleared) and (iv) technical infrastructure (e.g., establishing adequate operational capacity and communication links between the indirect intermediary and the customer);

- measuring and monitoring the positions of each customer including (i) the daily valuation of the customer's positions and cash flow obligations and (ii) market risk resulting from those positions.

PART 3
RECORD-KEEPING BY A CLEARING INTERMEDIARY

Part 3 outlines the minimum record-keeping requirements that apply to clearing intermediaries. The effectiveness of the customer protections required under the Instrument is predicated on accurate and thorough record-keeping by clearing intermediaries.

Retention of records – clearing intermediary

12. The records required to be prepared pursuant to this Part and Part 4 must be retained for at least 7 years and in accordance with record-retention practice in Canada and the timing requirements under the limitations acts in each local jurisdiction. Records prepared in relation to a cleared derivative include any customer profiles or other information collected from a customer prior to the date upon which a transaction for the customer is entered into and must be kept for at least 7 years after the date upon which a customer's last cleared derivative expires or terminates.

Books and records – clearing intermediary

13. (3) The description of customer collateral in respect of paragraph 13(3)(b) should include an industry standard security identifier such as a CUSIP or ISIN code or, if an identifier is not available, a plain language description of the collateral.

We are of the view that accurate record-keeping requires, at minimum, daily valuations of customer collateral using industry standard best practice methodologies. With respect to records required to be kept under paragraph 13(3)(c):

- subparagraph (i) refers to any revenue generated by the customer collateral, including, for example, dividend pay-outs relating to securities and coupon payments relating to debt instruments;
- subparagraph (ii) refers to any changes in the value of property forming part of the customer collateral, including, for example, an increase or decrease in the value of a security;
- subparagraph (iii) refers to charges that have accrued, or may accrue, against the customer and have been agreed to between the clearing intermediary and the customer; such charges may include, for example, transaction or currency exchange charges, or charges relating to the settlement or termination of a cleared derivative.

Separate records – multiple clearing intermediaries

18. Where a clearing intermediary allows a person or company to act as an indirect intermediary, the clearing intermediary assumes record-keeping obligations relating to the indirect intermediary and its customers. The effect of paragraphs 18(a) and (b) together is to enable the indirect intermediary to easily identify its own positions and property, and the positions and collateral held for, or on behalf, of each customer.

Records of investment of customer collateral – clearing intermediary

19. We are of the view that the requirement in subsection 19(d) would be fulfilled by providing a unique identifier from an industry-accepted identifying standard, such as an ISIN or CUSIP number or, if an identifier is not available, a plain language description of each instrument or asset.

Records of currency conversion – clearing intermediary

20. We are of the view that currency conversion trade records should include, at minimum, all of the following:

- the identity of the customer as represented by its legal entity identifier ("LEI") or the name or other identifier of the customer where the customer is ineligible for a LEI;
- the date of the currency exchange;
- the amount and original currency of the funds to be exchanged;
- the exchange rate at which the currency exchange is made;
- the amount and new currency resulting from the exchange;
- the name of the institution which made the exchange and/or provided the exchange rate.

PART 4
REPORTING AND DISCLOSURE BY A CLEARING INTERMEDIARY

Part 4 outlines certain disclosure and reporting required to be made by a clearing intermediary to customers, regulated clearing agencies and the local securities regulatory authority. Disclosure required to be provided to customers under this Part is not required on a transaction by transaction basis.

The written disclosure required under sections 21, 22, 23 and 27 is necessary only once upon the opening of each customer account, not prior to each cleared derivative transaction. The disclosure and notice of changes to the disclosure can be provided in electronic form by delivering copies of required materials or providing links to online information. Disclosures can be incorporated into legal agreements between parties. Where there are multiple clearing intermediaries, direct intermediaries and indirect intermediaries may provide disclosure either to a clearing intermediary closer in the transaction chain to the customer or directly to the customer. Written disclosure can be provided in electronic form by delivering copies of required materials or by providing links to online information to the customer or clearing intermediary.

Where clearing intermediaries are already engaged in transactions relating to cleared derivatives with regulated clearing agencies, other clearing intermediaries or customers before the Instrument comes into force, the written disclosure required to be delivered under this Part must be delivered before receiving or submitting the first cleared derivative after the Instrument comes into force.

We acknowledge the confidential nature of the information reported to the local securities regulatory authority, and each local securities regulatory authority will treat it as such, subject to applicable legislation adopted by each province and territory, including any applicable freedom of information and protection of privacy legislation. However, information may be shared with self-regulatory organizations or other relevant regulatory authorities.

Clearing intermediary delivery of disclosure by regulated clearing agency

21. Section 21 requires a clearing intermediary to provide disclosure, including investment guidelines and policies for investing customer collateral, received from a regulated clearing agency pursuant to sections 41 and 45 to its customer. Where there is a chain of clearing intermediaries, the direct intermediary may provide this disclosure to the indirect intermediary, which is then required to provide this disclosure to the customer. Both subsections 41(2) and 45(2) require a regulated clearing agency to disclose any changes to the information previously disclosed. A clearing intermediary is required to promptly send to its customers all of the information related to changes in the disclosure provided by a regulated clearing agency under sections 41 and 45.

Disclosure to customer by clearing intermediary

22. Customer collateral held at the clearing intermediary level may receive different treatment from customer collateral held at the regulated clearing agency in the event of a clearing intermediary's bankruptcy or insolvency. The disclosure required by this provision should provide customers with clear information on the treatment of their collateral in a default situation. For example, there may be situations where customer collateral held in a customer account maintained by a clearing intermediary would be combined with the property of other customers with uncleared derivatives.

The information given in the written disclosure should assist customers in evaluating: (i) the level of protection provided, (ii) the manner in which segregation and the transfer of assets is achieved (including the method for determining the value at which customer positions will be transferred) and (iii) any risks or uncertainties associated with such arrangements. Disclosure helps customers assess the related risks and conduct due diligence when entering into transactions that are cleared at the regulated clearing agency through one or more clearing intermediaries.

Examples of the information that the disclosure should provide include all of the following:

- which bankruptcy and insolvency laws apply and how they may impact the clearing intermediary's ability in relation to its regulated clearing agency, clearing intermediaries and customers, to expeditiously terminate such relationships, transfer customer collateral, and enforce rights in relation to customer collateral;
- the process for recovering or transferring customer collateral should the clearing intermediary default;
- analysis of applicable laws governing clearing intermediaries;
- how the applicable legal framework protects customer collateral and any risks associated with that framework;
- where a customer is required to take proactive steps to protect its collateral, information on what steps a customer can take to do so, e.g., filing financing statements under laws regulating the creation and registration of security interests in personal property such as the Personal Property Security Act (Ontario) or such similar legislation in the local jurisdiction;
- the interaction of domestic and foreign laws applicable to customer collateral held by the clearing intermediary.

Disclosure to customer by indirect intermediary

23. The indirect intermediary should disclose to a customer any information relating to additional risks to customer positions and customer collateral that arise as a result of the indirect clearing relationship.

Customer information – clearing intermediary

24. In order to facilitate a timely transfer of collateral and positions in a default scenario, a regulated clearing agency should have sufficient information to identify each customer of a clearing intermediary, and each customer's positions and customer

collateral. This identifying information must be submitted by the direct intermediary to each relevant regulated clearing agency, and must include the LEI, where the customer is eligible to be assigned a LEI in accordance with standards set by the Global Legal Entity Identifier System, or the name or other identifier of the customer.

Customer collateral report – regulatory

25. We are of the view that regular reporting on customer collateral deposits and holdings will assist the provincial securities regulatory authorities in monitoring customer collateral arrangements and developing and implementing rules to protect customer assets that are responsive to market practices. To that end, subsections 25(1) and 25(2) set out reporting requirements for direct intermediaries and indirect intermediaries, respectively, regarding customer collateral. A completed Form 94-102F1 or Form 94-102F2, as applicable, will provide the local securities regulatory authority with a snapshot of the value of collateral held by or deposited by each reporting clearing intermediary.

Customer collateral report – customer

26. The customer collateral report required under this section could be made available to the customer or indirect intermediary through either direct electronic access available to the customer or indirect intermediary at any time or a daily report sent to the customer or indirect intermediary.

Disclosure of investment of customer collateral

27. We are of the view that the requirement to provide disclosure under subsection 27(1) and subsection 27(2) may be satisfied by directing a customer or, if applicable, the indirect intermediary to the disclosure on the clearing intermediary's website.

PART 5
TREATMENT OF COLLATERAL BY A REGULATED CLEARING AGENCY

Part 5 contains requirements for the treatment of customer collateral by regulated clearing agencies.

Collection of initial margin

28. The requirement that a regulated clearing agency collect initial margin on a gross basis for each customer means that a regulated clearing agency may not, and may not permit its direct intermediaries to offset initial margin positions of different customers against one another. However, the initial margin collected from a customer may be determined by netting across the various cleared derivative positions of that customer. Further, a regulated clearing agency is not prohibited from collecting variation margin for cleared derivatives on a net basis from its direct intermediaries.

Margin requirements are determined by the regulated clearing agency in accordance with its rules, policies and procedures. For further discussion, please see National Instrument 24-102 *Clearing Agency Requirements* ("NI 24-102") for requirements applicable to clearing agency margin calculation.

Segregation of customer collateral – regulated clearing agency

29. Records maintained by the regulated clearing agency must make it clear that customer accounts are for the benefit of customers only.

We are of the view that parties should have the benefit of flexibility in their collateral arrangements. However, the principle remains that notwithstanding the legal arrangement under which customer collateral is posted with a regulated clearing agency, the regulated clearing agency must treat customer collateral posted with it as belonging to customers. For example, in a title transfer collateral arrangement, where the title to the property posted as collateral is transferred to the person or company collecting the collateral, despite any such transfer of legal title from the customer (or clearing intermediary on behalf of the customer) to a regulated clearing agency, such regulated clearing agency must treat any property transferred as collateral by or on behalf of a customer and relating to that customer's cleared derivatives, as customer collateral and as the property of that customer.

Holding of customer collateral – regulated clearing agency

30. (1) A regulated clearing agency is a permitted depository under the Instrument and therefore may hold collateral itself if it offers depository services and is not required to hold customer collateral at a third-party permitted depository. The customer collateral of multiple customers may be commingled in an omnibus customer account. However, the record-keeping obligations in the Instrument require the regulated clearing agency to identify the positions and collateral held for each individual customer within an omnibus customer account.

We are of the view that a regulated clearing agency that holds customer collateral at a third-party permitted depository in accordance with the Instrument should take reasonable commercial efforts to confirm that the permitted depository:

- qualifies as a permitted depository under the Instrument;
- has appropriate rules, policies and procedures, including robust accounting practices, to help ensure the integrity of the customer collateral and minimize and manage the risks associated with the safekeeping and transfer of the collateral;
- maintains securities in an immobilised or dematerialised form for their transfer by book entry;
- protects customer collateral against custody risk through appropriate rules and procedures consistent with its legal framework;
- employs a robust system that ensures segregation between the permitted depository's own property and the property of its participants and segregation among the property of participants, and where supported by the legal framework, supports operationally the segregation of property belonging to a participant's customers on the participant's books and facilitates the transfer of customer collateral;
- identifies, measures, monitors, and manages its risks from other activities that it may perform; and
- facilitates prompt access to customer collateral, when required.

(2) Subsection 30(2) also requires a regulated clearing agency to hold customer collateral relating to cleared derivatives separately from any other type of customer property, including any other property posted by a customer as collateral relating to another position, investment or financial instrument. For example, the customer collateral of a customer may not be commingled with collateral relating to a futures transaction, or any other property or collateral, of the same customer or of any other customer.

Excess margin – regulated clearing agency

31. We would interpret the requirement that a regulated clearing agency identify and record the excess margin that it holds as only applying to that excess margin. For example, a regulated clearing agency would not be required to keep records relating to excess margin held by a clearing intermediary.

Use of customer collateral – regulated clearing agency

32. (2) Subject to an exception for excess collateral, regulated clearing agencies are only permitted to apply the customer collateral of a customer to the cleared OTC derivatives of that customer. Accordingly, the Instrument prohibits the cross-margining of a customer's OTC derivatives and futures positions. The reasoning for this is that the regulatory framework applicable to futures in certain jurisdictions, including Canada, may make customers more susceptible to shortfalls in the event of a clearing intermediary's insolvency and therefore cross-margining could undermine a customer's ability to port its cleared OTC derivatives positions. However, in some jurisdictions, customer protection requirements applicable to futures are equivalent to those applicable to cleared OTC derivatives; under such regimes cross margining may not represent a material risk to porting a customer's OTC derivatives positions. Therefore, when considering an application for discretionary relief from the prohibition on cross-margining or when making an equivalence determination of a foreign jurisdiction's regulatory requirements for the purpose of substituted compliance, the regulator or securities regulatory authority will take these factors into account.

The use of customer collateral attributable to one customer to satisfy the obligations of another customer is not permitted. Although the customer collateral may be held in one omnibus account, such collateral is not available to satisfy customer obligations generally. Therefore, clearing models which allow recourse to a non-defaulting customer's collateral, including any model that permits fellow customer risk, violates this provision and would not be permitted to be offered to customers. For certainty, fellow customer risk is found in a clearing model that allows the customer collateral of a non-defaulting customer to be used to settle the obligations of a defaulting customer. The pooling of customer collateral held by a regulated clearing agency pursuant to applicable bankruptcy and insolvency laws would not be considered a use of customer collateral by the regulated clearing agency and is permitted where required by applicable laws.

(3) Subsection 32(3) allows a regulated clearing agency to place a lien on customer collateral where the lien arises in connection with the cleared derivative. This exception recognizes that certain clearing arrangements involve the granting of security interests in customer collateral. A regulated clearing agency is prohibited from imposing or permitting improper liens on customer collateral and should an improper lien be placed on customer collateral, the regulated clearing agency must take all commercially reasonable steps to promptly address the improper lien. However, liens over excess collateral are not restricted where the lien is imposed to secure or extend credit to the customer.

Investment of customer collateral – regulated clearing agency

33. (3) Although losses in the value of invested customer collateral are not to be allocated to a customer, we are of the view that parties should be free to contract for the allocation of gains resulting from a regulated clearing agency's investment activities in accordance with the Instrument. Subsection 33(3) provides that any loss resulting from a permitted investment of customer collateral must be borne by the investing regulated clearing agency and not by the customer. Where a regulated clearing agency's rules provide for investment loss mutualisation and allocation to clearing intermediaries, this would not violate the requirement.

This requirement relates only to investments made by a regulated clearing agency using customer collateral, not to collateral provided by a customer. If, for example, a customer provided government bonds as collateral, and those bonds lost market value, the regulated clearing agency would not be required to bear those loses. Similarly, where a customer provided collateral to a regulated clearing agency and it was transformed into government bonds to be used as customer collateral, the regulated clearing agency would not be required to bear any loss in market value of the transformed customer collateral.

Use of customer collateral – clearing intermediary default

34. An example of when a regulated clearing agency may apply customer collateral to settle the obligations of a defaulting clearing intermediary is when a customer's default is the root cause of the default of the clearing intermediary, whether directly or through the default of an indirect intermediary. In such case, a regulated clearing agency could use the defaulting customer's collateral, including its customer collateral under the Instrument, to satisfy the clearing intermediary's obligations attributable to the customer's default.

Risk management –NI 24-102 applies

35. Once in force, NI 24-102 will apply to all regulated clearing agencies providing clearing services to local customers as opposed to only those clearing agencies that are recognized. Therefore, NI 24-102 will apply to clearing agencies that are exempt from recognition if they clear customer transactions.

PART 6
RECORD-KEEPING BY A REGULATED CLEARING AGENCY

Part 6 outlines the minimum record-keeping requirements that apply to regulated clearing agencies. The effectiveness of the customer protections required under the Instrument is predicated on accurate and thorough record-keeping by regulated clearing agencies.

Retention of records – regulated clearing agency

36. The records required to be prepared pursuant to this Part and Part 7 must be retained for at least 7 years and in accordance with record retention practice in Canada and the timing requirements under the limitations acts in each local jurisdiction. Records prepared in relation to a cleared derivative include any customer profiles or other information collected from a customer prior to the date upon which a transaction for the customer is entered into and must be kept for at least 7 years after the date upon which a customer's last cleared derivative expires or terminates.

Books and records – regulated clearing agency

37. (2) Paragraph 37(2)(b) requires a description of the customer collateral held at each permitted depository. The description should include an industry standard security identifier such as a CUSIP or ISIN code or, if an identifier is not available, a plain language description of the collateral.

We are of the view that accurate record-keeping requires, at minimum, daily valuations of customer collateral using industry standard best practice methodologies. With respect to records required to be kept under paragraph 37(2)(c):

- subparagraph (i) refers to any revenue generated by the customer collateral, including, for example, dividend pay-outs relating to securities and coupon payments relating to debt instruments;

- subparagraph (ii) refers to any changes in the value of property forming part of the customer collateral, including, for example, an increase or decrease in the value of a security;

- subparagraph (iii) refers to charges that have accrued, or may accrue, against the customer and have been agreed to between the regulated clearing agency and the customer; such charges may include, for example, transaction or currency exchange charges or charges relating to the settlement or termination of a cleared derivative.

Separate records – regulated clearing agency

38. A regulated clearing agency has record-keeping obligations relating to all customers for which it clears cleared derivatives.

Paragraph (c) ensures that direct and indirect customers receive equal treatment. Direct intermediaries are required to make this information available to indirect intermediaries to which they provide clearing services pursuant to section 18.

Records of investment of customer collateral – regulated clearing agency

39. We are of the view that the requirement in paragraph 39(d) would be fulfilled by providing a unique identifier from an industry-accepted identifying standard, such as an ISIN or CUSIP number or, if an identifier is not available, a plain language description of each instrument or asset.

Records of currency conversion – regulated clearing agency

40. We are of the view that currency conversion trade records should include, at minimum, all of the following:

- the identity of the customer as represented by its LEI or the name of the customer where the customer is ineligible for a LEI;
- the date of the currency exchange;
- the amount and original currency of the funds to be exchanged;
- the exchange rate at which the currency exchange is made;
- the amount and new currency resulting from the exchange;
- the name of the institution which made the exchange and/or provided the exchange rate.

PART 7
REPORTING AND DISCLOSURE BY A REGULATED CLEARING AGENCY

Part 7 outlines certain disclosure and reporting to be made by a regulated clearing agency to customers, clearing intermediaries and the local securities regulatory authority. Disclosure required to be provided to customers under this Part is not required on a transaction by transaction basis.

The written disclosure required under sections 41 and 45 is necessary only once upon the opening of each customer account, not prior to each cleared derivative transaction. If there are changes to the information contained in the disclosure a customer received, the customer must be promptly informed in writing of such changes. Where there are multiple clearing intermediaries, a direct intermediary may provide disclosure either to a clearing intermediary closer in the transaction chain to the customer or directly to the customer. Written disclosure and notice of changes to such disclosure can be provided in electronic form by delivering copies of required materials or by providing links to online information to the customer or direct intermediary.

Where a regulated clearing agency is already providing clearing services before the Instrument comes into force, the written disclosure required to be delivered in this Part must be delivered before accepting the first cleared derivative after the Instrument comes into force.

We acknowledge the confidential nature of the information that must be reported to the local securities regulatory authority, and each securities regulatory authority will treat it as such, subject to applicable provisions of the legislation adopted by each province and territory including any applicable freedom of information and protection of privacy legislation. However, information may be shared with self-regulatory organizations or other relevant regulatory authorities.

Disclosure to direct intermediaries by regulated clearing agency

41. (1) The information given in the written disclosure should assist customers in: (i) evaluating the level of protection provided, (ii) the manner in which segregation and the transfer of assets is achieved, including the method for determining the value at which customer positions will be transferred, and (iii) any risks or uncertainties associated with such arrangements. Disclosure helps customers assess the related risks and conduct due diligence when entering into transactions that are cleared through a direct intermediary of the regulated clearing agency.

Examples of the information that the disclosure should provide include:

- which bankruptcy and insolvency laws apply and how they may impact the regulated clearing agency's ability, in relation to its clearing intermediaries and customers, to expeditiously terminate such relationships, transfer customer collateral and enforce rights in relation to customer collateral;

- the process for recovering or transferring customer collateral should the clearing intermediary default;

- analysis of applicable laws governing the regulated clearing agency including whether the regulated clearing agency is described or named under the *Payment and Clearing Settlement Act* (Canada);

- how the applicable legal framework protects customer collateral and any risks associated with that framework;

- where a customer is required to take proactive steps to protect its collateral, information on what steps a customer can take to do so such as, filing financing statements under laws regulating the creation and registration of security interests in personal property, such as the *Personal Property Security Act* (Ontario) or such other similar legislation in the local jurisdiction;

- the interaction of domestic and foreign laws applicable to customer collateral held by the regulated clearing agency.

(2) The written disclosure required under subsection 41(1), is necessary only upon the opening of each customer account, or upon any change to the rules, policies or procedures of the regulated clearing agency, rather than prior to each cleared derivative transaction.

Customer information – regulated clearing agency

42. In order to facilitate a timely transfer of collateral and positions in a default scenario, a regulated clearing agency should receive complete and timely information from a direct intermediary under subsection 24(1) in order to identify each customer of a clearing intermediary, and the customer's positions and customer collateral.

Customer collateral report – regulatory

43. We are of the view that regular reporting on customer collateral deposits and holdings will assist the provincial securities regulatory authorities in monitoring customer collateral arrangements and developing and implementing rules to protect customer assets that are responsive to market practices. To that end, section 43 sets out reporting requirements for regulated clearing agencies regarding customer collateral. A completed Form 94-102F3 will provide the local securities regulatory authority with a snapshot of the value of collateral held by the regulated clearing agency.

Customer collateral report – direct intermediary

44. The customer collateral report required under this section could be made available to a direct intermediary through either direct electronic access available to the direct intermediary at any time or a daily report sent to the direct intermediary.

Disclosure of investment of customer collateral

45. We are of the view that the requirements to provide disclosure under subsection 45(1) and subsection 45(2) may be satisfied by directing a customer to the disclosure on the regulated clearing agency's website.

PART 8
TRANSFER OF POSITIONS

Part 8 provides for the transfer of customer collateral and positions from one clearing intermediary to another, either in a default scenario or upon request of the customer. Part 8 also addresses, in part, the following recommendation included in *CSA Consultation Paper 91-404 – Derivatives: Segregation and Portability in OTC Derivatives Clearing*:

"Each CCP shall have rules facilitating the termination of contractual relationships between a clearing member and its customers and the transfer of positions."

The efficient and complete transfer of customer collateral and related positions is important in both pre-default and post-default scenarios but is particularly critical when a clearing intermediary defaults or is undergoing insolvency proceedings.

Transfer of customer collateral and positions

46. (1) We are of the view that operations, policies and procedure of clearing intermediaries and regulated clearing agencies should be structured to ensure, to the greatest extent possible, that a default by a clearing intermediary does not affect the positions and collateral of the defaulting clearing intermediary's customers. Generally, default by a direct intermediary would occur when it does not, or is unable to, meet its obligations at a regulated clearing agency.

To ensure that customer collateral and positions are insulated from a direct intermediary's default, including any winding-up or restructuring proceeding of the defaulting direct intermediary, a regulated clearing agency must be structured, including by having the necessary rules and procedures in place, to effectively and promptly facilitate the transfer of customer collateral and positions to a direct intermediary that (i) is not in default, as that term is defined in the rules and procedures of the relevant regulated clearing agency, and (ii) is not reasonably expected to default on its obligations at a regulated clearing agency as they come due.

We are of the view that customer collateral and positions should be transferred as seamlessly as possible from the perspective of the customer. This means that a customer's positions should be maintained on identical economic terms as governed the position of such customer immediately before the transfer. We are of the view that, in effecting such a transfer, a regulated clearing agency be permitted to operationally close-out and re-book the positions, provided that the ultimate result is that the customer's positions are maintained on identical economic terms as governed immediately before the transfer.

The regulated clearing agency's ability to transfer customer collateral and related positions in a timely manner may depend on such factors as market conditions, sufficiency of information on the individual constituents, and the complexity or size of the customers' portfolio. The regulated clearing agency should therefore structure its arrangements for the transfer of customer collateral and positions in a way that makes it highly likely that they will be effectively transferred to one or more other direct intermediaries, taking into account all relevant circumstances. In order to achieve a high likelihood of transferability, the regulated clearing agency will need to have the ability to (i) identify positions that belong to customers, (ii) identify and assert the regulated clearing agency's rights to related customer collateral held by or through the regulated clearing agency, (iii) transfer positions and related customer collateral to one or more other direct intermediaries, (iv) identify potential direct intermediaries to accept the positions, (v) disclose relevant information to such direct intermediaries so that they can evaluate the counterparty credit and market risk associated with the customers and positions, respectively, and (vi) facilitate the regulated clearing agency's ability to carry out its default management procedures in an orderly manner. The regulated clearing agency's policies and procedures should provide for the proper handling of customer collateral and related positions of customers of a defaulting direct intermediary.

Although we stress the importance of the transfer of customer collateral and positions in a default scenario, we acknowledge that there may be circumstances where the portability of all or a portion of a customer's position is not possible. Where a regulated clearing agency is not able to transfer positions within a pre-defined transfer period specified in its operating rules, it may take all steps permitted by its rules to actively manage its risks in relation to those positions, including liquidating the customer collateral and positions of the defaulting direct intermediary's customers.

We are of the view that a direct intermediary should also have policies and procedures in place to facilitate the prompt transfer of customer collateral that it holds to one or more direct intermediaries in the event of its own default.

(2) A regulated clearing agency must be structured, including by having the necessary rules and procedures in place, to facilitate the transfer of the customer collateral and positions of a customer from one direct intermediary to another at the request of the customer. This is also known as a "business-as-usual transfer".

A customer should be able to transfer its customer collateral and positions to another direct intermediary in the normal course of business. Subsection 46(2) requires that a regulated clearing agency be structured, including by having the necessary rules and procedures in place, to facilitate the transfer of customer collateral and related positions upon the customer's request to any one or more non-defaulting direct intermediaries, subject to any notice or other contractual requirements.

(3) Where a transfer of customer collateral and positions is facilitated under subsection 46(1) or 46(2), a regulated clearing agency may promptly transfer the customer's positions and related customer collateral, as a single portfolio or in portions, as requested by the customer, to one or more direct intermediaries.

Subsection 46(3) sets out certain pre-conditions for the transfer of customer collateral and positions, in either a default or business-as-usual transfer. The regulated clearing agency must obtain the consent of the customer with respect to the transfer of the customer collateral and positions of the customer to the particular transferee direct intermediary. We are of the view that this consent may be best obtained at the outset of a clearing relationship, and by allowing a customer to identify direct intermediaries to which it consents a priori to such a transfer. If there are circumstances where this consent would not be obtained, or where the prior consent would not be followed, those circumstances should be set out in the rules, policies or procedures of the regulated clearing agency.

The regulated clearing agency must also obtain the consent of the receiving direct intermediary as to which positions and customer collateral are to be transferred. We are of the view that the consent of the direct intermediary is also best obtained at the outset of the customer's relationship with the regulated clearing agency. If there are circumstances where the consent of the direct intermediary would not be obtained a priori to a transfer, those circumstances should be set out in the rules, policies or procedures of the regulated clearing agency.

Transfer from a clearing intermediary

47. We are of the view that customers of a clearing intermediary should benefit from protections and rights under the Instrument, with respect to the transfer of positions and collateral. To that end, in the event of the clearing intermediary's default, the clearing intermediary must be structured to promptly facilitate such a transfer, as a single portfolio or in portions as requested by the customer, to one or more non-defaulting clearing intermediaries.

PART 9
SUBSTITUTED COMPLIANCE

48. (1) Subsection 48(1) contemplates substituted compliance by foreign clearing intermediaries that are regulated under the laws of a foreign jurisdiction that achieve substantially the same objectives as the Instrument. Substituted compliance will only apply to the provisions of the Instrument specified in Appendix A where the clearing intermediary is in compliance with the corresponding laws of the foreign jurisdiction set out next to such provision of the Instrument in Appendix A. The provisions specified for substituted compliance will be determined on a jurisdiction by jurisdiction basis, and will depend on a review of the laws and regulatory framework of the foreign jurisdiction.

(2) Subsection 48(2) contemplates substituted compliance by foreign regulated clearing agencies that are recognized or exempt from recognition by a Canadian securities regulatory authority and are in compliance with the laws of a foreign jurisdiction that achieve substantially the same objectives as the Instrument. Substituted compliance will only apply to the provisions of the Instrument specified in Appendix A where the regulated clearing agency is in compliance with the corresponding laws of the foreign jurisdiction set out next to such provision of the Instrument in Appendix A.

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Mackenzie Canadian Concentrated Equity Fund
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated January 14, 2016 to Final Simplified Prospectus dated June 26, 2015
NP 11-202 Receipt dated January 14, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd.
Quadrus Investment Services Ltd.
Quadrus Investment Services Inc.
Promoter(s):
Mackenzie Financial Corporation
Project #2353705

Issuer Name:
First Asset Global Momentum (CAD hedged) ETF
First Asset Global Momentum ETF
First Asset Global Value (CAD hedged) ETF
First Asset Global Value ETF
First Asset Short Term Government Bond Index Class ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 15, 2016
NP 11-202 Receipt dated January 18, 2016
Offering Price and Description:
Class J Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
First Asset Fund Corp.
First Asset Investment Management Inc.
Project #2436682

Issuer Name:
Fortified Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated January 18, 2016
NP 11-202 Receipt dated January 18, 2016
Offering Price and Description:
$5,000,000,000.00 Real Estate Secured Line of Credit Backed Notes
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Promoter(s):
Bank of Montreal
Project #2436724

Issuer Name:
Gold Participation and Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated January 8, 2016
NP 11-202 Receipt dated January 12, 2016
Offering Price and Description:
Class A and Class F Mutual Fund Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Strathbridge Asset Management Inc.
Project #2435411

Issuer Name:
GreenSpace Brands Inc. (formerly Aumento IV Capital Corporation)
Principal Regulator - Ontario
Type and Date:
Amendment dated January 12, 2016 to Preliminary Short Form Prospectus dated December 16, 2015
NP 11-202 Receipt dated January 12, 2016
Offering Price and Description:
Up to $* - * Units
Price: $0.90 per Unit
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
GMP Securities L.P.
Beacon Securities Limited
Dundee Securities Ltd.
Promoter(s):
Matthew von Teichman
Project #2429700

Issuer Name:
Helius Medical Technologies, Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated January 13, 2016
NP 11-202 Receipt dated January 13, 2016
Offering Price and Description:
Maximum Offering: $20,000,000.00 - * Units
Minimum Offering: $8,000,000.00 - * Units
Price: $* per Unit
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Promoter(s):
-
Project #2435835

Issuer Name:
Nobelium Tech Corp.
Principal Regulator - Nova Scotia
Type and Date:
Preliminary CPC Prospectus dated January 15, 2016
NP 11-202 Receipt dated
Offering Price and Description:
$350,000.00 - 3,500,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Richardson GMP Limited
Promoter(s):
John Varghese
Project #2436510

Issuer Name:
AlphaDelta Canadian Prosperity Class
AlphaDelta Tactical Growth Class
AlphaDelta Growth of Dividend Income Class
Qwest Energy Canadian Resource Class
Principal Regulator - British Columbia
Type and Date:
Final Simplified Prospectus dated January 14, 2016
NP 11-202 Receipt dated January 15, 2016
Offering Price and Description:
Series A, F and I units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Qwest Investment Fund Management Ltd.
Project #2427323

Issuer Name:
Barometer Disciplined Leadership Balanced Fund
Barometer Disciplined Leadership Equity Fund
Barometer Disciplined Leadership Tactical Income Growth Fund (formerly Barometer Disciplined Leadership High Income)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated January 12, 2016
NP 11-202 Receipt dated January 18, 2016
Offering Price and Description:
Class A, F and I Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
BAROMETER CAPITAL MANAGEMENT INC.
Project #2427000

Issuer Name:
Dynamic Premium Bond Private Pool
Dynamic Premium Bond Private Pool Class
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated January 14, 2016
NP 11-202 Receipt dated January 18, 2016
Offering Price and Description:
Series F and I Units and Series F and FT Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
1832 Asset Management L.P.
Promoter(s):
1832 Asset Management L.P.
Project #2419512

Issuer Name:
Leith Wheeler Balanced Fund
Leith Wheeler U.S. Equity Fund
Principal Regulator - British Columbia
Type and Date:
Amendment #2 dated January 8, 2016 to Final Simplified Prospectus dated May 27, 2015
NP 11-202 Receipt dated January 15, 2016
Offering Price and Description:
Series B and Series F Units @ Net Asset Value
Underwriter(s) or Distributor(s):
LEITH WHEELER INVESTMENT FUNDS LTD.
Leith Wheeler Investment Funds Ltd.
Promoter(s):
LEITH WHEELER INVESTMENT COUNSEL LTD.
Project #2337949

Issuer Name:
Mackenzie Canadian Concentrated Equity Fund
Mackenzie Canadian Growth Balanced Fund
Mackenzie Canadian Growth Fund
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated January 14, 2016 to Final Simplified Prospectus dated September 29, 2015
NP 11-202 Receipt dated January 18, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd.
LBC Financial Services Inc
LBC Financial Services Inc.
Promoter(s):
Mackenzie Financial Corporation
Project #2380257

Issuer Name:
RBC Global Growth & Income Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated January 14, 2016
NP 11-202 Receipt dated January 15, 2016
Offering Price and Description:
Series A, Advisor Series, Advisor T5 Series, Series T5, Series F, Series FT5 and Series O units
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
Royal Mutual Funds Inc.
RBC Global Asset Management Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #2419123

Issuer Name:
Scotia Partners Balanced Growth Portfolio (formerly Scotia Partners Balanced Income & Growth Portfolio)
Scotia Partners Balanced Income Portfolio (formerly Scotia Partners Income & Modest Growth Portfolio)
Scotia Partners Growth Portfolio (formerly Scotia Partners Moderate Growth Portfolio)
Scotia Partners Income Portfolio (formerly Scotia Partners Diversified Income Portfolio)
Scotia Partners Maximum Growth Portfolio (formerly Scotia Partners Aggressive Growth Portfolio)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated January 6, 2016 to Final Simplified Prospectus dated November 12, 2015
NP 11-202 Receipt dated January 14, 2016
Offering Price and Description:
Series T units
Underwriter(s) or Distributor(s):
Scotia Securities Inc.
Scotia Securites Inc.
Scotia SecurititeInc.
Promoter(s):
1832 Asset Management L.P.
Project #2398768, 2398786

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	Segall Bryant & Hamill	Portfolio Manager	January 8, 2016
Suspension (Non-Renewal of Registration Pending Surrender)	Highwater Capital Management Corp.	Commodity Trading Manager	January 1, 2016
Consent to Suspension (Pending Surrender)	Highwater Capital Management Corp.	Exempt Market Dealer, Portfolio Manager, Investment Fund Manager	January 13, 2016
Consent to Suspension (Pending Surrender)	Gyrus Investment Management Inc.	Portfolio Manager	January 13, 2016
Voluntary Surrender	Lee, Turner & Associates Inc.	Portfolio Manager	January 13, 2016
Voluntary Surrender	Sawgrass Asset Management, L.L.C.	International Adviser (Investment Counsel & Portfolio Manager)	December 9, 2015
Name Change	From: Ifici Inc. To: Brix Exchange Inc.	Exempt Market Dealer	November 26, 2015
Voluntary Surrender	RM & Associates Limited	Exempt Market Dealer	January 8, 2016

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.3 Clearing Agencies

13.3.1 CDS – Technical Amendments to CDS Procedures: Expansion of Company Types in CDSX® – Notice of Effective Date

NOTICE OF EFFECTIVE DATE

TECHNICAL AMENDMENTS TO CDS PROCEDURES: EXPANSION OF COMPANY TYPES IN CDSX®

The Ontario Securities Commission is publishing *Notice of Effective Date – Technical Amendments to CDS Procedures: Expansion of Company Types in CDSX®*. The CDS procedure amendments were reviewed and approved by CDS's strategic development review committee (SDRC) on December 10, 2015. CDS has determined that these amendments will become effective on February 1, 2016.

A copy of the CDS notice is on our website: http://www.osc.gov.on.ca.

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