

Chapter 6

Request for Comments

6.1.1 CSA Notice and Request for Comment – Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Custody-Related Amendments



CSA Notice and Request for Comment

Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Custody-Related Amendments

October 25, 2018

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 60-day comment period proposed amendments (the **Proposed Custody Amendments**) to certain custody-related provisions of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) as a consequence of recent custody-related amendments to National Instrument 81-102 *Investment Funds* (**NI 81-102**) which were made as part of the “Modernization of Investment Fund Product Regulation – Alternative Funds” project (the **NI 81-102 Amendments**). The NI 81-102 Amendments were published in final form on October 4, 2018¹.

The text of the Proposed Custody Amendments is contained in Annex A of this notice and will also be available on the websites of certain CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
nssc.novascotia.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

Substance and Purpose

We are proposing amendments to section 14.6.1 of NI 31-103 to reflect the recent amendments to subsection 6.8(2) of NI 81-102.

The NI 81-102 Amendments codify existing relief granted to investment funds subject to NI 81-102 regarding the use of cleared derivatives. Specifically, section 6.8 of NI 81-102 was amended to allow these investment funds to deal with futures commission merchants and clearing corporations in accordance with the rules of those organizations for cleared over-the-counter derivatives.

Section 14.6.1 of NI 31-103 sets out acceptable custodial practices for certain margin and security interests which codified existing custodial best practices of registered firms. The permissible activities in this section are similar to the custodial practices for investment funds permitted under NI 81-102 in respect of portfolio assets being held as margin for certain derivatives transactions outside of Canada. For this reason, we are proposing amendments to section 14.6.1 of NI 31-103 to align with the amendments to subsection 6.8(2) of NI 81-102 described above.

¹ Provided all necessary ministerial approvals are obtained, the NI 81-102 Amendments will come into force on January 3, 2019 in all CSA jurisdictions.

The intent of the Proposed Custody Amendments is to give all clients and investment funds of registered firms the same ability to deposit assets with certain dealers in respect of cleared over-the-counter derivatives. In the absence of making the Proposed Custody Amendments, this option would only be available to investment funds that are subject to NI 81-102.

Background

On July 27, 2017 custody-related amendments to NI 31-103 were published in final form, and these amendments came into force on June 4, 2018. In the CSA notice² that accompanied those amendments, we indicated that additional changes might be made to these custody-related provisions as a consequence of the work being done by the CSA as part of the NI 81-102 Amendments. The Proposed Custody Amendments are being proposed as a result of the NI 81-102 Amendments.

Summary of the Proposed Custody Amendments

Subsection 14.6.1(1) of NI 31-103 is being amended to add the following two definitions: “cleared specified derivative” and “regulated clearing agency”.

Subsection 14.6.1(2) is being expanded to permit clients or investment funds of a registered firm to deposit cash or securities with members of regulated clearing agencies in respect of certain prescribed margin transactions outside of Canada. Subsection 14.6.1(2) is also being expanded to include an additional type of permitted margin transaction, namely, transactions involving cleared specified derivatives.

Local Matters

Annex B includes, where applicable, additional information that is relevant in a local jurisdiction only.

Request for comments

We welcome your comments on the Proposed Custody Amendments.

Please submit your comments in writing on or before **December 24, 2018**. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Thank you in advance for your comments.

Where to send your comments

Please address your comments to all CSA members, as follows:

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

² Notice of Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, National Instrument 33-109 *Registration Information*, and Companion Policy 33-109CP *Registration Information*.

Request for Comments

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other CSA members.

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, ON M5H 3S8
Fax: 416-593-2318
E-mail: comments@osc.gov.on.ca

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22^e étage
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Fax : 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.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.

Contents of Annexes

Annex A – Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Annex B – Local Matters

Questions

Please refer your questions to any of the following CSA staff:

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ANNEX A

PROPOSED AMENDMENTS TO

NATIONAL INSTRUMENT 31-103

REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS

1. ***National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.***
2. ***Subsection 14.6.1(1) is replaced with the following:***
 - (1) In this section

“cleared specified derivative”, “clearing corporation option”, “futures exchange”, “option on futures”, “specified derivative” and “standardized future” have the same meaning as in section 1.1 of National Instrument 81-102 *Investment Funds*;

“regulated clearing agency” has the same meaning as in section 1.1 of National Instrument 94-101 *Mandatory Central Counterparty Clearing Derivatives*..
3. ***Subsection 14.6.1(2) is amended***
 - (a) ***by adding*** “member of a regulated clearing agency or a” ***after*** “cash or securities of a client or investment fund deposited with a”, ***by replacing*** “or” ***with*** “,” ***after*** “options on futures” ***and by adding*** “or cleared specified derivatives” ***after*** “standardized futures”,
 - (b) ***in paragraph (a) by replacing*** “in the case of standardized futures and options on futures, the” ***with*** “the member or”, ***by adding*** “regulated clearing agency,” ***before*** “futures exchange”, ***by deleting*** “, in the case of clearing corporation options, is a member of a”, ***and by replacing*** “either case” ***with*** “any case”,
 - (c) ***in paragraph (b) by adding*** “member or” ***before*** “dealer”, ***and***
 - (d) ***in paragraph (c) by adding*** “member or” ***before*** “dealer”.

Effective Date

4. This Instrument comes into force on ●.

ANNEX B

ONTARIO LOCAL MATTERS

1. Introduction

The purpose of this Annex is to cover, to the extent not already covered in the main body of this notice, matters required by subsection 143.2(2) of the *Securities Act* (Ontario) (the **Act**).

2. Authority for the Proposed Custody Amendments

Rule-making authority for the Proposed Custody Amendments is in paragraph 2 and subparagraph 31iii of subsection 143(1) of the Act.

3. Alternatives considered

Given that the Proposed Custody Amendments represent minor changes to a provision of an existing rule, no alternative to rule-making was considered.

4. Unpublished Materials

In proposing the Proposed Custody Amendments, we have not relied on any significant unpublished study, report or other written materials.

5. Anticipated costs and benefits

The Proposed Custody Amendments decrease regulatory burden and reflect the relevant custody-related NI 81-102 Amendments. The intent of the Proposed Custody Amendments is to give all clients and investment funds of registered firms the same ability to deposit assets with certain dealers in respect of cleared over-the-counter derivatives. If the Proposed Custody Amendments are not made, this option would only be available to investment funds that are subject to NI 81-102.