

Chapter 5

Rules and Policies

5.1.1 CSA Notice of Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Custody-Related Amendments



CSA Notice of Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* Custody-Related Amendments

March 14, 2019

Introduction

We, the Canadian Securities Administrators (the **CSA**), are adopting amendments (the **Custody Amendments**) to certain custody-related provisions of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

The Custody Amendments have been, or are expected to be, adopted by each member of the CSA. In some jurisdictions, ministerial approvals are required for the implementation of the Custody Amendments. If all necessary ministerial approvals are obtained, the Custody Amendments will come into force on **June 12, 2019**. Further detail can be found in Annex A of this Notice.

Substance and Purpose

The substance and purpose of the Custody Amendments is to continue to align the permissible custodial practices in section 14.6.1 of NI 31-103 with the similar permitted custodial practices for investment funds in subsection 6.8(2) of National Instrument 81-102 *Investment Funds* (**NI 81-102**). This subsection deals with portfolio assets held as margin for derivatives transactions outside Canada.

Amendments to subsection 6.8(2) of NI 81-102 came into force on January 3, 2019 as part of the implementation of the final phase of the CSA's Modernization of Investment Fund Product Regulation Project. This final phase related to the establishment of a regulatory framework for alternative mutual funds (the **NI 81-102 Amendments**).

Implementing the Custody Amendments will result in all clients and investment funds of registered firms having the same ability to deposit assets with certain dealers in respect of cleared over-the-counter derivatives.

Background

We published proposed amendments for comment on October 25, 2018 (the **October 2018 Proposal**). The 60-day comment period ended on December 24, 2018. We received no comment letters on the October 2018 Proposal. We made a change to correctly reference the definition of "regulated clearing agency", but no other changes have been made to the proposed amendments. As this change is not material, we are not publishing the Custody Amendments for another comment period.

Summary of amendments to NI 31-103

The amendments are to section 14.6.1 [*custodial provisions relating to certain margin or security interests*] of NI 31-103.

We added the definitions of the following terms to subsection 14.6.1(1) of NI 31-103:

- "cleared specified derivative"
- "regulated clearing agency"

Rules and Policies

We amended subsection 14.6.1(2) to permit clients or investment funds of a registered firm to deposit cash or securities with certain members of regulated clearing agencies as margin for certain transactions outside of Canada.

We amended paragraphs 14.6.1(2)(a) and (b) to subject members of “regulated clearing agencies” to the membership and net worth requirements set out in these paragraphs. Paragraph 14.6.1(2)(c) was amended to ensure that registered firms’ clients or investment funds only use members of “regulated clearing agencies” for margin transactions if, as per the existing requirements of this paragraph, it is more beneficial to the client or investment fund than using a Canadian custodian.

We also amended subsection 14.6.1(2) to include an additional type of permitted margin transaction, namely, transactions involving “cleared specified derivatives”.

List of annexes

This Notice contains the following annexes:

- Annex A – Adoption of the Instrument
- Annex B – Amendments to NI 31-103

Questions

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ANNEX A

ADOPTION OF THE INSTRUMENT

The Custody Amendments will be implemented as:

- a rule in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon
- a regulation in Québec
- a commission regulation in Saskatchewan

In Ontario, the Custody Amendments, as well as other required materials, were delivered to the Minister of Finance on March 7, 2019. The Minister may approve or reject the Custody Amendments or return them for further consideration. If the Minister approves the Custody Amendments or does not take any further action, the Custody Amendments will come into force on June 12, 2019.

In Québec, the Custody Amendments are adopted as a regulation made under section 331.1 of the *Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The regulation will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation. It is also published in the Bulletin of the Autorité des marchés financiers.

In British Columbia, the implementation of the Custody Amendments is subject to ministerial approval. If all necessary approvals are obtained, British Columbia expects the Custody Amendments to come into force on June 12, 2019.

In Saskatchewan, the implementation of the Custody Amendments is subject to ministerial approval. If all necessary approvals are obtained, the Custody Amendments will come into force on June 12, 2019 or, if after June 12, 2019, on the day on which they are filed with the Registrar of Regulations.

ANNEX B

**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. **Subsections 14.6.1(1) and (2) are 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 subsection 1(1) of National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*.
 - (2) Subsection 14.5.2(2) does not apply to a registered firm in respect of cash or securities of a client or investment fund deposited with a member of a regulated clearing agency or a dealer as margin for transactions outside of Canada involving clearing corporation options, options on futures, standardized futures or cleared specified derivatives if
 - (a) the member or dealer is a member of a regulated clearing agency, futures exchange or stock exchange, and, as a result in any case, is subject to a regulatory audit,
 - (b) the member or dealer has a net worth, determined from its most recent audited financial statements, in excess of \$50 million, and
 - (c) a reasonable person would conclude that using the member or dealer is more beneficial to the client or investment fund than using a Canadian custodian..
3.
 - (1) This Instrument comes into force on June 12, 2019.
 - (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after June 12, 2019, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.