



**CURRENT DEVELOPMENTS**

# **Canadian Securities Matters**

**Q3 2024**

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# Canadian securities: New guidance

## CSA Notice Regarding Coordinated Blanket Order 93-930 Re:Temporary Exemptions for Derivatives Firms from Certain Obligations When Transacting with Certain Investment Funds and for Senior Derivatives Managers from Certain Reporting Obligations

On July 25, 2024, The Canadian Securities Administrators (CSA) published temporary exemptions from specific requirements of National Instrument 93-101 Derivatives: Business Conduct regarding derivatives firms dealing with or advising certain investment funds advised or managed by registered or authorized foreign advisers or investment funds managers, and reporting requirements for senior derivatives managers to facilitate transition to the new regime.

The CSA has coordinated the relief through local blanket orders being issued in specific territories.

The purpose of the Blanket Order is to provide the following exemptions:

- A Derivatives firm is exempt from certain Rule requirements, except for core obligations in subsection 8(3), when transacting with an investment fund managed or advised by a foreign equivalent to a Canadian registered or authorized investment fund manager or adviser.
- A Senior Derivatives Manager is exempt from submitting the SDM compliance report to the board of the derivatives dealer by the current year-end deadline, as required in section 32(3) of the Rule. However, the period from the Effective Date to the end of 2024 must be addressed in the 2025 SDM compliance report.

The Blanket Order is effective on September 28, 2024. It will cease to be effective in Ontario on March 28, 2026.

## OSC Notice of Publication - Amendments to OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting; Changes to OSC Companion Policy 91-507CP; Changes to OSC

## Companion Policy 91-506CP; Related Consequential Amendments and Changes

On July 25, 2024, the Ontario Securities Commission (OSC) published amendments to OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting (“Trade reporting rule”, collectively with, Manitoba Securities Commission Rule 91-507, Regulation 91-507 (Quebec) and Multilateral Instrument 96-101 (in the remaining provinces and territories) respecting Trade Repositories and Derivatives Data Reporting, “TR Rules”); changes to OSC Companion policy 91-507CP; changes to OSC Companion policy 91-506CP to OSC Rule 91-506 Derivatives - Product determination; related consequential amendment to OSC Rule 13-503 Fees and changes to OSC Companion Policy 13-502CP, with the goal of improving the effectiveness and efficiency of derivatives trade reporting. Following is some of the notable changes made in this amendment:

- One-year implementation period
- Derivatives involving a local counterparty are required to be reported under the TR Rules. In addition, the CSA have harmonized the definition of “local counterparty” under the TR Rules.
- Harmonized the concept of “affiliated entity” under the TR rules to align with NI 93-101: Business Conduct, to align the scope of the inter-affiliate exemption across the TR Rules for derivatives where both counterparties are non-dealers.
- Replaced the existing reporting hierarchy with the alternative hierarchy to distinguish between financial derivatives dealers and non-financial derivatives dealers.
- Clarification regarding subsection 26.3(2) of the Trade Reporting Rule with respect to notice to the Commission on significant errors and omissions related to derivatives data.
- Reducing regulatory burdens by enabling reporting counterparties, at their option, to report ongoing data for example, regarding lifecycle events, valuation, and collateral and margin for each open commodity derivatives that also meet the criteria in section 33.1 [Position level data]. However, Reporting

counterparties must still report creation data separately for each derivative.

- Introduced a flexible and domestically harmonized hierarchy to determine which counterparty is required to assign the unique transaction identifier and to whom it is required to be transmitted.
- Reporting of each transaction as a unique derivative. This will enable a single set of data elements under the TR Rules, together with a single CSA Derivatives Data Technical Manual. As a result, market participants can continue to report the same data elements in the same way for all of their Canadian trade reporting
- Tailored the requirements of designated trade repositories in several respects, including to ensure consistency among North American regulatory requirements.
- Tailored the data elements that derivative trading facilities are required to report and provided them with additional time to determine whether a participant, or its customer, is a local counterparty under paragraph (c) of that definition

These amendments will come into force on July 25, 2025 subject to Minister of Finance approval.

### **OSC Staff Notice 33-756 – Registration, Inspection and Examinations Division – Summary Report for Dealers, Advisers and Investment Fund Managers**

On July 26, 2024, the Registration, Inspection and Examination Division (RIE) of the Ontario Securities Commission shared this year's Summary Report for Dealers, Advisers and Investment Fund Managers (Summary Report), which provides an overview of their work during the 2023- 2024 fiscal year. This Summary Report is designed to assist registrants by providing information about:

- Part 1 - Education and outreach - provides links and information to the registration and ongoing educational resources and outreach opportunities available to current and prospective registrants.
- Part 2 - Regulatory oversight activities and guidance - can be used by registrants as a self-assessment tool to strengthen compliance with Ontario securities law and, as appropriate, to make changes to enhance their systems of compliance, internal controls and supervision.
- Part 3 - Impact of upcoming initiatives- provides insights into some of the new and proposed rules and other regulatory initiatives that may impact a registrant's operations.

- Part 4 - Registrant conduct activities - is intended to enhance a registrant's understanding of our expectations for conduct of registrants and applicants for registration. This section also provides insight into the types of regulatory actions the CRR Branch may take to address non-compliance.

Looking ahead, the compliance review activity for 2024-2025 will prioritize: – compliance reviews of high-risk firms, following the analysis of the data collected in response to the Risk Assessment Questionnaire compliance reviews of high-impact firms (the largest firms by assets under management), reviews of specialized dealers and derivatives dealers.

# Canadian securities: Proposed guidance

## Proposed OSC Rule 11-502 Distribution of Amounts Paid to the OSC under Disgorgement Orders; Proposed Companion Policy 11-502 Distribution of Amounts Paid to the OSC under Disgorgement Orders; Proposed OSC Rule 11-503 (Commodity Futures Act) Distribution of Amounts Paid to the OSC under Disgorgement Orders; Proposed Companion Policy 11-503 (Commodity Futures Act) Distribution of Amounts Paid to the OSC under Disgorgement Orders -- Modernize the Process to Distribute Disgorged Amounts to Harmed Investors

On July 11, 2024, the OSC published for a 90-day comment period, proposed amendments to OSC Rule 11-502 Distribution of amounts paid to the OSC under disgorgement orders, as well as proposed changes to OSC Rule 11-503 (Commodity Futures Act) Distribution of amounts paid to the OSC under disgorgement orders as well as related Companion policies.

The Proposed amendments are intended to streamline, make transparent and efficient, the process to distribute money received by the Commission under disgorgement orders to harmed investors and to further support better investor redress. Importantly, this new process is an additional tool available to the Commission to return money to harmed investors. The Commission will also continue using other existing tools for this purpose, including using no contest settlements and receiverships, in appropriate cases.

On November 2, 2023, the Government introduced Bill 146, **Building a Stronger Ontario Together Act** (Budget Measures), 2023 (**Bill 146**). Bill 146 included legislative amendments to the Securities Act (Ontario) (the OSA), the Commodity Futures Act (Ontario) (**the CFA**), and the Securities Commission Act, 2021 (**the SCA**). These amendments establish a new statutory framework governing the distribution of money received by the Commission under

disgorgement orders to investors who incurred direct financial losses as a result of the contravention of Ontario securities law or Ontario commodity futures law giving rise to the disgorgement order. The new statutory distribution framework provides that regulations (which may take the form of an OSC rule or a regulation made by the Lieutenant Governor in Council) will address:

- the circumstances in which money received by the Commission under disgorgement orders is required to be distributed;
- the eligibility requirements for investors seeking a payment from the disgorged amounts received by the Commission;
- a process for distributing disgorged amounts to harmed investors in cases where a court-appointed administrator is not used; and
- the use of other monetary sanctions and settlement payments received by the Commission to pay certain administrative costs in relation to the distribution of disgorged amounts.

The Proposed Rule and the Proposed Companion Policy are being published for comment to address these matters.

In setting the circumstances in which disgorged funds received by the Commission are required to be distributed, the Proposed Rule takes a broad approach.

It is proposed that the Commission will make disgorged funds received available for distribution in all cases unless:

- (1) the disgorgement was ordered in relation to a contravention of the "insider trading and tipping" prohibition under section 76 of the OSA, or
- (2) the amount received is too small to justify the costs of distributing it.

Other than in the above circumstances, funds will be made available for distribution to potential harmed investor applicants through a notice and claims process that can be conducted by either a court-appointed administrator or directly by the Commission following the process established under the rule.

The comment period expires October 9, 2024.

## **Proposed Amendments to National Instrument 81-101 Mutual Fund Prospectus Disclosure, National Instrument 81-102 Investment Funds, National Instrument 81-106 Investment Fund Continuous Disclosure, National Instrument 81-107 Independent Review Committee for Investment Funds; and Related Proposed Consequential Amendments and Changes; Modernization of the Continuous Disclosure Regime for Investment Funds**

On September 19, 2024, CSA published for a 120-day comment period proposed amendments to modernize the continuous disclosure regime for investment funds. The objectives of the Proposed Amendments are to:

- replace the annual management report of fund performance and the interim management report of fund performance with a new annual fund report and interim fund report, by implementing a revised version of Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance;
- provide an exemption from certain conflict of interest reporting requirements in securities legislation where other similar requirements are satisfied;
- eliminate certain required class or series-level disclosures from investment fund financial statements;
- implement the fund expense ratio, which describes the sum of the management expense ratio and the trading expense ratio of an investment fund, into the Fund Facts and ETF Facts; and
- provide minor revisions relation to the version of Form 81-101F1

The comment period expires January 17, 2025.

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

On September 19, 2024, CSA published for a 90-day comment period proposed amendments to update the list of mandatory clearable derivatives to reflect the transition to a new interest rate benchmarks regime based on overnight risk-free interest rate benchmarks.

The Proposed amendments are intended to:

- remove mandatory central counterparty clearing of certain interest rate swaps and forward rate agreements referencing the Canadian dollar CDOR, United States dollar LIBOR, British pound LIBOR, and Euro Overnight Index Average of National Instrument 94-101. These derivatives are removed in each of the fixed-to-float swap, basis swap, OIS, and FRA classes, as applicable.
- Add following new classes of OTC derivatives to the list of mandatory clearable derivatives provided in Appendix A of National Instrument 94-101:
  - (1) Fixed-to-float interest rate swaps referencing Australian dollar Bank Bill Swap rates with a maturity including 28 days to 30 years;
  - (2) CDS index North American Investment Grade CDX Index with tenors of 5 and 10 years (Series 46 and all subsequent Series);
  - (3) CDS index North American High Yield CDX Index with a tenor of 5 years (Series 46 and all subsequent Series); and
  - (4) CDS index iTraxx Europe with a tenor of 5 years (Series 45 and all subsequent Series).

The comment period expires December 19, 2024

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