THE MANITOBA SECURITIES COMMISSION
MSC Rule No. 2017-2
(Section 149.1, *The Securities Act*)

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**" has the meaning ascribed to it in National Instrument 45-106 *Prospectus Exemptions*;

"**cleared derivative**" means 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 any of the following apply:

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

(b) the cash, securities or other property is posted on behalf of a customer by a clearing intermediary to satisfy the margin requirements arising from the customer's cleared derivatives;

"**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) directly 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) indirectly provides 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 over an appropriate close-out period in the event of a default;

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

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

(b) a person or company, other than an individual, to which any of the following apply:

(i) the person or company is organized under the laws of the local jurisdiction;

(ii) the head office of the person or company is in the local jurisdiction;

(iii) the principal place of business of the person or company 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) the central bank of Canada or of a permitted jurisdiction;

(d) in Québec, a person recognized or exempt from recognition as a central securities depository under the *Securities Act* (Québec);

(e) a person or company

(i) whose head office or principal place of business is in a permitted jurisdiction,

(ii) that is a banking institution or trust company of a permitted jurisdiction, and

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

(f) with respect to customer collateral that it receives from a customer or a clearing intermediary for which it provides clearing services, a registered investment dealer as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

(g) with respect to customer collateral that it receives from a customer or a clearing intermediary for which it provides clearing services, a prudentially regulated entity

(i) whose head office or principal place of business is located outside of Canada, and

(ii) that is subject to and in compliance with the laws of a permitted jurisdiction relating to clearing services and the requiring, receiving and holding of customer collateral;

"**permitted investment**" means cash or a security or other 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 head office or principal place of business of a Schedule III bank is located, and a political subdivision of that country;

(b) if a customer has provided express written consent to the clearing intermediary or the regulated clearing agency clearing 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, and a political subdivision of that country;

"**position**" means the economic interest of a counterparty in an outstanding cleared derivative at a point in time;

"**prudentially regulated entity**" means a person or company that is subject to and in compliance with the laws of a foreign jurisdiction that is a permitted jurisdiction under paragraph (a) of the definition of "permitted jurisdiction", relating to minimum capital requirements, financial soundness and risk management;

"**qualifying central counterparty**" means a person or company to which all of the following apply:

(a) it is recognized, exempt from recognition or otherwise registered or authorized 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 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 and Ontario, a person or company recognized or exempt from recognition as a clearing agency in the local jurisdiction, and

(b) in Alberta, Newfoundland and Labrador, New Brunswick, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon, a person or company recognized or exempt 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 separately account for a customer's positions or customer collateral.

1.(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.

1.(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;

(d) the second party is a trust and the trustee of the trust is the first party.

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

Application

2.(1) This Instrument does not apply to any of the following:

(a) a regulated clearing agency whose head office or principal place of business is in a foreign jurisdiction except with respect to a cleared derivative entered into by, for or on behalf of a local customer;

(b) a clearing intermediary that provides clearing services except with respect to a cleared derivative entered into by, for or on behalf of a local customer.

2.(2) This Instrument applies to

(a) in Manitoba,

(i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and

(ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security,

(b) in Ontario,

(i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and

(ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security, and

(c) in Québec, a derivative specified in section 1.2 of Regulation 91-506 respecting derivatives determination, other than a contract or instrument specified in section 2 of that regulation.

In each other local jurisdiction, this Instrument applies to a derivative as defined in subsection 1(4) of this Instrument. This text box does not form part of this Instrument and has no official status.

2.(3) Despite subsection (2), this Instrument does not apply to an option on a security.

2.(4) In British Columbia, Newfoundland and Labrador, the Northwest Territories, Nunavut, Prince Edward Island and Yukon, subsection (3) does not apply to a security that is a derivative as defined in subsection 1(4).

PART 2 – TREATMENT OF CUSTOMER COLLATERAL BY A CLEARING INTERMEDIARY

Segregation of customer collateral – clearing intermediary
3.(1) A clearing intermediary must segregate a customer's positions and customer collateral from the positions and property of other persons or companies including the positions and property of the clearing intermediary.

3.(2) A clearing intermediary must segregate the positions and customer collateral of a customer of an indirect intermediary from the positions and property of the indirect intermediary.

Holding of customer collateral – clearing intermediary
4. A clearing intermediary must hold all customer collateral

(a) in one or more accounts at a permitted depository that are clearly identified as holding customer collateral, and

(b) in separate accounts from the property of all persons who are not customers.

Excess margin – clearing intermediary
5. A clearing intermediary must at least once each business day identify and record the value of excess margin 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.
6.(2) A clearing intermediary must not use or permit the use of customer collateral of a customer except to do any of the following:

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

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

6.(3) Other than with respect to excess margin used in accordance with paragraph (2)(b), a clearing intermediary must not create or permit to exist any lien or other encumbrance on a cleared derivative of a customer or customer collateral in respect of the cleared derivative unless the lien or other encumbrance secures an obligation resulting from the 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 derivative.

Investment of customer collateral – clearing intermediary

7.(1) A clearing intermediary must not invest customer collateral or enter into an agreement for resale or repurchase of customer collateral except in accordance with subsections (2) and (3).

7.(2) A clearing intermediary may

(a) invest customer collateral in a permitted investment, and

(b) enter into an agreement for resale or repurchase of customer collateral if all of the following apply:

(i) the agreement is for the resale or repurchase of a permitted investment;

(ii) the agreement is in writing;

(iii) the term of the agreement is no more than one business day, or reversal of the transaction is possible on demand;

(iv) written confirmation specifying the terms of the agreement is delivered by the counterparty to the agreement to the clearing intermediary immediately on entering into the agreement;

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

7.(3) A loss resulting from an investment or use of a customer's customer collateral in accordance with subsection (1) or subsection (2) 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) A clearing intermediary must not use customer collateral of a customer of an indirect intermediary for which the clearing intermediary provides clearing services to satisfy an obligation of the indirect intermediary.

8.(2) Despite subsection (1), a clearing intermediary may use the customer collateral of a customer to fully or partially satisfy an obligation of an indirect intermediary that arises or is accelerated as a consequence of the indirect intermediary's default only if the obligation is attributable to a cleared derivative of the customer.

Acting as a clearing intermediary

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

(a) a person or company that is subject to and is in compliance with the laws of a jurisdiction of Canada relating to minimum capital requirements, financial soundness and risk management;

(b) a person or company that is registered as a dealer under securities legislation in a local jurisdiction;

(c) a person or company that is

(i) a prudentially regulated entity, and

(ii) subject to and in compliance with the laws of a permitted jurisdiction relating to clearing services and the requiring, receiving and holding of customer collateral.

9.(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 by a regulated clearing agency.

Risk management – clearing intermediary
10. A clearing intermediary that provides or proposes to provide clearing services for an indirect intermediary must adopt and implement rules, policies or procedures reasonably designed to

(a) identify, monitor and reasonably mitigate 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 establish and implement rules, policies or procedures reasonably designed to identify, monitor and reasonably mitigate the material risks to the clearing intermediary or its customers arising from the provision of indirect clearing services for a customer.

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

PART 3 – RECORDKEEPING BY A CLEARING INTERMEDIARY

Retention of records – clearing intermediary
12.(1) A clearing intermediary must keep a record required under this Part and Part 4, and all supporting documentation,

(a) in a readily accessible and safe location and in a durable form,

(b) in the case of a record or supporting documentation that relates to a cleared derivative, for a period of 7 years following the date on which the cleared derivative expires or is terminated, and

(c) in any other case, for a period of 7 years following the date on which a customer's last cleared derivative that is cleared for or on behalf of the customer through the clearing intermediary expires or is terminated.

12.(2) Despite subsection (1), in Manitoba, with respect to a customer or clearing intermediary located in Manitoba, the time period applicable to records and supporting documentation kept pursuant to subsection (1) is 8 years.

Daily 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 records:

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

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

13.(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 in its records:

(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.

13.(3) For each customer, a clearing intermediary must record all of the following in its records:

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

(b) calculated at least once each business day, the current value of any customer collateral received from, for or on behalf of the customer, including all of the following:

(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 accruing to the customer;

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

Daily records – direct intermediary

14. For each customer, a direct intermediary must record all of the following at least once each business day in its records:

(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.

Daily records – indirect intermediary

15. For each customer, an indirect intermediary must record all of the following at least once each business day in its records:

(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 sum of the amounts for the customer referred to in paragraph (a);

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

Identifying records – direct intermediary

16. A direct intermediary must keep records that, at any time, enable it to identify all of the following in its own accounts and in the accounts held with each regulated clearing agency through which it provides clearing services:

(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.

Identifying records – indirect intermediary

17. An indirect intermediary must keep records that, at any time, enable it to identify 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.

Identifying records – multiple clearing intermediaries

18. A clearing intermediary that provides clearing services in respect of a cleared derivative for an indirect intermediary must keep records that, at any time, enable it and each of its indirect intermediaries to identify 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, including any unrealized gain or loss on 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 or instrument in which the investment was made 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.(1) 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 subsection 41(1) by each regulated clearing agency the direct intermediary uses to clear a cleared derivative for the customer or indirect intermediary;

(b) the investment guidelines and policy provided under subsection 45(1) by each regulated clearing agency that invests customer collateral attributable to the customer.

21.(2) After accepting the first cleared derivative from, for or on behalf of a customer, each time that the clearing intermediary receives written disclosure in accordance with subsection 41(2) or subsection 45(2) from a regulated clearing agency that invests customer collateral attributable to the customer, the clearing intermediary must provide the written disclosure to the customer, or indirect clearing intermediary for which it provides clearing services, within a reasonable period of time.

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.

22.(2) After accepting the first cleared derivative from, for or on behalf of a customer of, each time there is a change to the written disclosure referred to in subsection (1), 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 to the customer including a description of all of the following:

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

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

23.(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.

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 the current value of the customer's customer collateral.

24.(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 the current value of the customer's customer collateral.

Customer collateral report – regulatory

25.(1) A direct intermediary that receives customer collateral must electronically deliver 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.*

25.(2) An indirect intermediary that receives customer collateral must electronically deliver 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 each position of the customer;

(b) the current value of customer collateral received from, for or on behalf of the customer that is held by the clearing intermediary or at a permitted depository;

(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.

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

(a) the current value of each position of each customer of the indirect intermediary;

(b) the current value of customer collateral received from the indirect intermediary for or on behalf of each customer of the indirect intermediary that is held by the clearing intermediary or at a permitted depository;

(c) the current value of the customer collateral received from the indirect intermediary for or on behalf of each customer of the indirect intermediary 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.

27.(2) A clearing intermediary that invests customer collateral must within a reasonable period of time disclose in writing any change to the investment guidelines and policy referred to in subsection (1) 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 a customer's positions and customer collateral from the positions and property of other persons or companies including the positions and property of the regulated clearing agency.

Holding of customer collateral – regulated clearing agency
30. A regulated clearing agency must hold all customer collateral

(a) in one or more accounts at a permitted depository that are clearly identified as holding customer collateral, and

(b) in separate accounts from all other property that is not customer collateral.

Excess margin – regulated clearing agency
31. A regulated clearing agency must at least once each business day identify and record the value of excess margin it holds for or on behalf of the customers of each clearing intermediary.

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.

32.(2) A regulated clearing agency must not use or permit the use of customer collateral of a customer except to do any of the following:

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

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

32.(3) Other than with respect to excess margin used in accordance with paragraph (2)(b), a regulated clearing agency must not create or permit to exist any lien or other encumbrance on a cleared derivative of a customer or customer collateral in respect of the cleared derivative unless the lien or other encumbrance secures an obligation resulting from the 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 derivative.

Investment of customer collateral – regulated clearing agency

33.(1) A regulated clearing agency must not invest customer collateral or enter into an agreement for resale or repurchase of customer collateral except in accordance with subsections (2) and (3).

33.(2) A regulated clearing agency may

(a) invest customer collateral in a permitted investment, and

(b) enter into an agreement for resale or repurchase of customer collateral if all of the following apply:

(i) the agreement is for resale or repurchase of a permitted investment;

(ii) the agreement is in writing;

(iii) the term of the agreement is no more than one business day, or reversal of the transaction is possible on demand;

(iv) written confirmation specifying the terms of the agreement is delivered by the counterparty to the agreement to the regulated clearing agency immediately on entering into the agreement;

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

33.(3) A loss resulting from an investment or use of a customer's customer collateral in accordance with subsection (1) or subsection (2) by the regulated clearing agency must be borne by the regulated clearing agency making the investment or by a clearing intermediary that is a participant of the regulated clearing agency and not by any customer.

Use of customer collateral – clearing intermediary default

34.(1) A regulated clearing agency must not use customer collateral to satisfy an obligation of a clearing intermediary to which the regulated clearing agency provides clearing services.

34.(2) Despite subsection (1), a regulated clearing agency may use the customer collateral of a customer to fully or partially satisfy an obligation of a clearing intermediary that arises or is accelerated as a consequence of the clearing intermediary's default only if the obligation is attributable to a cleared derivative of the customer.

Risk management – NI 24-102 applies

35. Part 3 of National Instrument 24-102 *Clearing Agency Requirements* applies 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 – RECORDKEEPING BY A REGULATED CLEARING AGENCY

Retention of records – regulated clearing agency

36. A regulated clearing agency must keep a record required under this Part and Part 7, and all supporting documentation, in a readily accessible and safe location and in a durable form, until the date on which the cleared derivative that the record or supporting documentation relates to expires or is terminated.

Daily 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 records:

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

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

37.(2) A regulated clearing agency must record all of the following in its records:

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

(b) calculated at least once each business day, the current value of the customer collateral received from, for or on behalf of the customers of each direct intermediary including all of the following:

(i) any accruals on the customer collateral creditable to the direct intermediary's customers;

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

(iii) any charges accruing to the direct intermediary's customers;

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

Identifying records – regulated clearing agency

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

(a) the positions and property held for 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, including any unrealized gain or loss on 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 or instrument in which the investment is made 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 to the direct intermediary through which the derivative is cleared including a description of all of the following:

(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 customer collateral may be enforced by the regulated clearing agency, the direct intermediary or the customer.

41.(2) After accepting the first cleared derivative from, for or on behalf of a customer, each time there is a 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 change.

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 deliver 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 must make available to each direct intermediary from which it receives customer collateral a report, calculated and available on a daily basis, setting out all of the following:

(a) the current value of each position of each customer of the direct intermediary;

(b) the current value 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.

45.(2) A regulated clearing agency that invests customer collateral must within a reasonable period of time disclose in writing any change to the investment guidelines and policy referred to in subsection (1) to the direct intermediary through which the derivative is cleared.

PART 8 – TRANSFER OF POSITIONS

Transfer of customer collateral and positions

46.(1) On default of a direct intermediary, a regulated clearing agency and the defaulting direct intermediary must do all of the following:

(a) facilitate a transfer of the defaulting direct intermediary's customers' positions and customer collateral, or their liquidation proceeds, from the defaulting direct intermediary to one or more non-defaulting direct intermediaries;

(b) make reasonable efforts to ensure the transfer is facilitated in accordance with the customer's instructions.

46.(2) At the request of a customer, 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 if all of the following apply:

(a) the customer has 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 a customer's positions and customer collateral that include a reasonable mechanism for transferring the positions and customer collateral of the indirect intermediary's customers, in the event of 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

Substituted compliance

48.(1) A clearing intermediary whose head office or principal place of business is in a foreign jurisdiction is exempt from this Instrument in respect of a cleared derivative entered into by, for or on behalf of a local customer if all of the following apply:

(a) the cleared derivative is cleared for or on behalf of a local customer

(i) in a local jurisdiction other than British Columbia, Manitoba and Ontario by a qualifying central counterparty or a regulated clearing agency, and

(ii) in British Columbia, Manitoba and Ontario, by a regulated clearing agency;

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

(i) registered, licensed or otherwise authorized to perform the services of a clearing intermediary in a foreign jurisdiction listed in Appendix A;

(ii) in compliance with the laws of the foreign jurisdiction applicable to the clearing intermediary set out in Appendix A opposite the name of the foreign jurisdiction relating to clearing services and the requiring, receiving and holding of customer collateral.

48.(2) Despite subsection (1), a clearing intermediary relying on the exemption from the Instrument set out in subsection (1) that provides clearing services in respect of a cleared derivative entered into by, for or on behalf of a local customer must comply with the provisions of this Instrument set out in Appendix A opposite the name of the foreign jurisdiction referred to in paragraph (1)(b).

48.(3) A regulated clearing agency whose head office or principal place of business is in a foreign jurisdiction is exempt from this Instrument in respect of a cleared derivative entered into by, for or on behalf of a local customer if the regulated clearing agency complies with all of the following:

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

(b) the laws of a foreign jurisdiction applicable to the regulated clearing agency set out in Appendix A opposite the name of the foreign jurisdiction relating to clearing services and the requiring, receiving and holding of customer collateral.

48.(4) Despite subsection (3), a regulated clearing agency relying on the exemption from the Instrument set out in subsection (3) that provides clearing services in respect of a cleared derivative entered into by, for or on behalf of a local customer must comply with the provisions of this Instrument set out in Appendix A opposite the name of the foreign jurisdiction referred to in paragraph (3)(b).

PART 10 – EXEMPTIONS

Exemption – general

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

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

49.(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 July 3, 2017.

51. This Instrument may be cited as MSC Rule 2017-2.

APPENDIX A
TO
NATIONAL INSTRUMENT 94-102 *DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER POSITIONS AND COLLATERAL*

Substituted Compliance
(Section 48)

PART A
LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS APPLICABLE TO CLEARING INTERMEDIARIES FOR SUBSTITUTED COMPLIANCE

Foreign Jurisdiction	**Laws, Regulations or Instruments**	**Provisions of this Instrument applicable to a clearing intermediary despite compliance with the foreign jurisdiction's laws, regulations or instruments**
European Union	Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended by Regulation (EU) 600/2014 of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012. Commission Delegated Regulation (EU) 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP. Directive (EU) 39/2004 of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.	Subsection 6(2) Subsection 6(3) Section 12 Section 25 Section 26
United States of America	Commodity Futures Trading Commission, *General Regulations Under the Commodity Exchange Act*, 17 CFR pt 1. Commodity Futures Trading Commission, *Registration*, 17 CFR pt 3. Commodity Futures Trading Commission, *Cleared Swaps*, 17 CFR pt 22. Commodity Futures Trading Commission, *Bankruptcy Rules*, 17 CFR pt 190.	Section 12 Section 25 Section 26

PART B
LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS APPLICABLE TO REGULATED CLEARING AGENCIES FOR SUBSTITUTED COMPLIANCE

Foreign Jurisdiction	**Laws, Regulations or Instruments**	**Provisions of this Instrument applicable to a regulated clearing agency despite compliance with the foreign jurisdiction's laws, regulations or instruments**
European Union	Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended by Regulation (EU) 600/2014 of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012. Commission Delegated Regulation (EU) 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP. Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties, as amended by Commission Delegated Regulation (EU) 822/2016 of 21 April 2016 amending Delegated Regulation (EU) No 153/2013 as regards the time horizons for the liquidation period to be considered for the different classes of financial instruments. Directive (EU) 39/2004 of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.	Section 28 Subsection 32(2) Subsection 32(3) Section 36 Section 43 Section 44

United States of America	Commodity Futures Trading Commission, *General Regulations Under the Commodity Exchange Act*, 17 CFR pt 1. Commodity Futures Trading Commission, *Cleared Swaps*, 17 CFR pt 22. Commodity Futures Trading Commission, *Derivatives Clearing Organizations*, 17 CFR pt 39. Commodity Futures Trading Commission, *Provisions Common to Registered Entities*, 17 CFR pt 40. Commodity Futures Trading Commission, *Swap Data Recordkeeping and Reporting Requirements*, 17 CFR pt 45. Commodity Futures Trading Commission, *Bankruptcy Rules*, 17 CFR pt 190.	Section 36 Section 43 Section 44