



## NOTICE TO MEMBERS

No. 2017 – 158

November 15, 2017

### REQUEST FOR COMMENTS

#### MINOR CHANGES TO THE ELIGIBILITY CRITERIA FOR MEMBERSHIP IN THE CORPORATION

##### Summary

On November 3<sup>rd</sup>, 2017, the Board of Directors of Canadian Derivatives Clearing Corporation (“CDCC”) approved amendments to section A-1A01 of CDCC’s Rules. The purpose of the proposed amendments is to enlarge CDCC’s membership criteria to allow certain firms that are not banks, financial institutions or members of an exchange to become Clearing Members, allowing them to directly clear with CDCC over-the-counter instruments transactions, fixed income transactions, or their own exchange transactions.

Please find enclosed an analysis document as well as the proposed amendments.

##### Process for Changes to the Rules

CDCC is recognized as a clearing house under section 12 of the *Derivatives Act* (Québec) by the Autorité des marchés financiers (“AMF”) and is a recognized clearing agency under section 21.2 of the *Securities Act* (Ontario) by the Ontario Securities Commission (“OSC”).

The Board of Directors of CDCC has the power to approve the adoption or amendment of the Rules and the Operations Manual of CDCC. Amendments are submitted to the AMF in accordance with the self-certification process and to the OSC in accordance with the process provided in its Recognition Order.

Comments on the proposed amendments must be submitted before December 31<sup>st</sup>, 2017. Please submit your comments to:

*Mr. Alexandre Normandeau*  
*Legal Counsel, Montreal Exchange & CDCC*  
*Canadian Derivatives Clearing Corporation*  
*Tour de la Bourse*  
*P.O. Box 61, 800 Victoria Square*  
*Montréal, Québec H4Z 1A9*  
*E-mail: [legal@tmx.com](mailto:legal@tmx.com)*



A copy of these comments shall also be forwarded to the AMF and to the OSC to:

*Mrs. Anne-Marie Beaudoin*  
*Corporate Secretary*  
*Autorité des marchés financiers*  
*Tour de la Bourse, P.O. Box 246*  
*800 Victoria Square, 22<sup>nd</sup> Floor*  
*Montréal, Québec H4Z 1G3*  
*E-mail: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)*

*Manager, Market Regulation*  
*Market Regulation Branch*  
*Ontario Securities Commission*  
*Suite 2200,*  
*20 Queen Street West*  
*Toronto, Ontario, M5H 3S8*  
*Fax: 416-595-8940*  
*email: [marketregulation@osc.gov.on.ca](mailto:marketregulation@osc.gov.on.ca)*

For any questions or clarification, Clearing Members may contact CDCC's Corporate Operations.

Glenn Goucher  
President and Chief Clearing Officer



**AMENDMENTS TO SECTION A-1A01 OF RULE A-1A OF THE CANADIAN DERIVATIVES CLEARING CORPORATION**

**MODIFICATION OF THE ELIGIBILITY CRITERIA FOR MEMBERSHIP IN THE CORPORATION**

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## I. SUMMARY

The Canadian Derivatives Clearing Corporation (“CDCC” or the “Corporation”) is hereby proposing a Rule change to allow dealer members in good standing with the Investment Industry Regulatory Organization of Canada (“IIROC”) that are not (i) a member or approved participant of an exchange recognized in a Canadian province, or (ii) a bank or a financial institution (as described under current section A-1A01 of CDCC’s Rules) to apply for membership and become Clearing Members (as such term is defined in CDCC’s Rules<sup>1</sup>) of the CDCC.

Such Clearing Members would be subject to the same membership framework and obligations as other Clearing Members, including standards of membership and margin requirements, allowing for a broader range of clearing members while maintaining the same risk exposure framework. These would encompass principally, if not only, those IIROC dealer members that are not members or approved participants of an exchange who would want to clear directly with CDCC OTCI Transactions and/or Fixed Income Transactions.

## II. ANALYSIS

### a. Background

CDCC’s current membership eligibility criteria allows the following entities to apply for membership at CDCC (current section A-1A01 of Rule A-1A):

- i) a member or approved participant in good standing with an exchange recognized in a Canadian province; or
- ii) a bank or an authorized foreign bank to which the Bank Act (Canada), as amended from time to time, applies; or
- iii) a Financial Institution that is either:
  - a) a financial services cooperative regulated pursuant to an Act respecting financial services cooperatives (Québec), or
  - b) a credit union central or a central cooperative credit society, which is incorporated and regulated under the laws of Canada or under the legislature of a province, one of whose principal purposes is to provide liquidity support to local credit unions or financial services cooperatives

*(our emphasis)*

Certain IIROC dealer members, while having the financial capacity and interest to become and act as Clearing Members of CDCC for clearing OTCI Transactions and/or Fixed Income Transactions, which do not require them to be members or approved participants of an exchange, are not able to become members of CDCC under the current membership framework as they might not qualify under any other CDCC eligibility criteria. CDCC believes that widening the scope of the membership eligibility criteria while keeping all membership obligations the

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<sup>1</sup> Unless otherwise specified herein, capitalized terms used in this analysis shall have the meanings assigned to such terms in CDCC’s Rules.

same is a reasonable solution to allow these entities to directly access CDCC's services with respect to OTCI Transactions and Fixed Income Transactions.

CDCC has determined that enlarging the scope of the membership to IIROC dealer members is consistent with its current membership structure<sup>2</sup> and has no impact for all practical purposes from a risk exposure perspective given the Corporation will be applying the current membership obligations and requirements to such new potential Clearing Members. Moreover, CDCC's rules already contain the notion of "SRO Clearing Member" and provisions specific to Clearing Members who are IIROC dealer members.

#### **b. Description and Analysis of Impacts**

CDCC would like to include members in good standing with the Investment Industry Regulatory Organization of Canada within its membership eligibility criteria. As a result of the proposed change, firms that are dealer members of IIROC while not members of a recognized exchange would be able to apply for membership at CDCC and therefore become Clearing Members of CDCC, with the same obligations as other Clearing Members.

CDCC has decided to apply the exact same standards of membership (under section A-1A02, "Standards of membership") and related obligations and requirements to these new potential members as the ones currently in place for its Clearing Members, avoiding the need to create of an entire new category of Clearing Members. As such, these new potential members would be tied to the same Standards of membership (minimum capital requirements, adequate operations facilities and staff, initial deposit with the Clearing Fund) ongoing monitoring, margins framework, eligible collateral, clearing fund contributions, recovery powers, records keeping etc. as other Clearing Members.

Under the rules of CDCC, such new members would fall under the definition of a *SRO Clearing Member*, as they would be within the audit jurisdiction of IIROC. Provisions applicable to SRO Clearing Members would continue to apply.

This solution has the benefit of broadening CDCC's membership eligibility criteria within the current regulatory framework of the Corporation without compromising its risk exposure framework. The end result of this initiative will be to allow more entities to join CDCC and directly clear OTCI Transactions and Fixed Income Transactions or their own exchange transactions, without forcing these entities to become a member or approved participant of an Exchange.

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<sup>2</sup> Current Canadian approved participants of the Bourse de Montréal, the only Exchange for which CDCC clears Exchange Transactions, are required to be registered with a securities or derivative instruments regulator, or a recognized self-regulatory organization, which includes IIROC, in order to become an approved participant. See Rule 3003 and 3301 of the Bourse de Montréal at [https://www.m-x.ca/f\\_regles\\_en/03\\_en.pdf](https://www.m-x.ca/f_regles_en/03_en.pdf).

**c. Proposed Amendments**

Please see the appendix for the proposed rule change which is confined to section A-1A01 of Rule A-1A.

**d. Benchmarking**

CDCC has reviewed the membership eligibility criteria of other clearing houses (Eurex Clearing, ICE Clear Europe and the Options Clearing Corporation (OCC)). At its core, the membership eligibility criteria of these clearing houses is tied to the reach of their services.

The information summarized below has been extracted from the website and regulatory filings of each respective clearing house.

Clearing house	Membership Eligibility Criteria summary
Eurex Clearing <sup>3</sup>	<p>Only entities which have been granted a Clearing License by Eurex Clearing AG are allowed as Clearing Members of this entity. The membership then depends on the type of transactions that will be handled by the Clearing Member (e.g. a member that wishes to fulfil transactions in products of the Eurex Exchanges will need to show evidence of direct or indirect access to a derivatives exchange or a clearing house determined by Eurex Clearing AG. On the other side, a member that wishes to participate solely in the clearing of OTC derivative transactions would need an OTC Clearing License, which does not require evidence of access to a derivatives exchange).</p> <p>As such, although Eurex Clearing’s membership eligibility criteria does not limit applications to banks /financial institutions or members of an exchange, it will only allow certain types of transactions to be cleared by certain clearing members, as governed by the Clearing Licenses granted by Eurex Clearing AG.</p>
ICE Clear Europe <sup>4</sup>	<p>Given its multi-exchange reach, ICE Clear Europe’s membership eligibility criteria is segregated amongst the various exchanges for which it provides central counterparty clearing services (e.g. a firm wishing to become a Clearing member for the purpose of clearing products listed on ICE Endex must be a member of ICE Endex).</p> <p>As such, ICE Clear Europe limits its membership to members of specific exchanges.</p>
Options Clearing Corporation (OCC) <sup>5</sup>	<p>As per the By-Laws of the OCC, OCC’s eligibility criteria is broad and does not limit membership to members of an exchange, registered banks or specific financial institutions.</p> <p>Basically, US broker-dealers registered under the SEC are eligible to become Clearing Members of the OCC (among other entities like non-U.S. securities firms).</p>

<sup>3</sup> Eurex Clearing AG. *Rules and Regulations* [Online] available at: <https://www.eurexclearing.com/clearing-en/resources/rules-and-regulations> [Consulted September 12, 2017]

<sup>4</sup> ICE Clear Europe. *ICE Clear Europe Clearing Rules*. [Online] available at: [https://www.theice.com/publicdocs/clear\\_europe/rulebooks/rules/Clearing\\_Rules.pdf](https://www.theice.com/publicdocs/clear_europe/rulebooks/rules/Clearing_Rules.pdf) [Consulted September 12, 2017]

<sup>5</sup> Options Clearing Corporation (OCC). *OCC By-Laws* [Online] available at: [https://www.theocc.com/components/docs/legal/rules\\_and\\_bylaws/occ\\_bylaws.pdf](https://www.theocc.com/components/docs/legal/rules_and_bylaws/occ_bylaws.pdf) [Consulted September 12, 2017]

Broadening the membership eligibility criteria of CDCC would be consistent and compatible with the membership eligibility practices of the main clearing houses such as OCC and Eurex Clearing.

### **III. IMPACTS ON TECHNOLOGICAL SYSTEMS**

The proposed changes should have no impact on the technological systems of CDCC, or its current Clearing Members.

### **IV. OBJECTIVES OF THE PROPOSED MODIFICATIONS**

The objective of the proposed amendments is to broaden up CDCC's membership criteria to allow certain firms that are not banks, financial institutions or members of an exchange (under current section A-1A101) to become Clearing Members to allow them to directly clear with CDCC OTCI Transaction, Fixed Income Transactions, or their own exchange transactions.

### **V. PUBLIC INTEREST**

In CDCC's opinion, the proposed amendments are not contrary to the public interest as they allow for a broader range of Clearing Members and allow direct access to its clearing services while maintaining the current membership obligations and requirements to preserve CDCC's membership integrity and risk exposure.

### **VI. MARKET IMPACTS**

In light of the fact that the new potential members will have the same obligations as current Clearing Members, CDCC does not believe that the proposed amendments will have significant impacts on the market.

### **VII. PROCESS**

The proposed amendments are submitted for approval to CDCC Board. After the approval has been obtained, the proposed amendments, including this analysis, will be transmitted to the Autorité des marchés financiers in accordance with the self-certification process, and to the Ontario Securities Commission in accordance with the "Rule Change Requiring Approval in Ontario" process. The proposed amendments and analysis will also be submitted for approval to the Bank of Canada in accordance with the Regulatory Oversight Agreement.

### **VIII. EFFECTIVE DATE**

Subject to public comments and regulatory guidance, CDCC expects the proposed rule amendments to become effective during Q1 2018, at the latest.

**IX. ATTACHED DOCUMENTS**

Appendix: proposed amendments to CDCC's Rules.



## APPENDIX

### AMENDMENTS TO SECTION A-1A01 OF RULE A-1A OF THE RULES OF CDCC

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#### RULE A-1A MEMBERSHIP IN THE CORPORATION

##### SECTION A-1A01 – ELIGIBILITY FOR MEMBERSHIP

- a) In order to apply for membership, an applicant must be:
- i) a member or approved participant in good standing with an exchange recognized in a Canadian province or a dealer member in good standing with the Investment Industry Regulatory Organization of Canada; or
  - ii) a bank or an authorized foreign bank to which the Bank Act (Canada), as amended from time to time, applies; or
  - iii) a Financial Institution that is either:
    - a) a financial services cooperative regulated pursuant to an Act respecting financial services cooperatives (Québec), or
    - b) a credit union central or a central cooperative credit society, which is incorporated and regulated under the laws of Canada or under the legislature of a province,  
one of whose principal purposes is to provide liquidity support to local credit unions or financial services cooperatives.
- b) A Clearing Member that intends to submit Stock Options or Share Futures to the Corporation for clearing must be a full member participant in good standing with CDS.
- c) A Clearing Member that intends to submit bond Options and/or bond Futures to the Corporation for clearing, must be a full member participant in good standing with CDS.
- d) A Clearing Member that intends to submit physically settled OTCI transactions to the Corporation for clearing, must ensure that it and/or its Client is in good standing and remains as such at all times with the appropriate Market Centres and/or Delivery Agents. Furthermore, and where appropriate, the Clearing Member and/or its Client need to ensure access to a transportation system for the physical transport of the Underlying Interest to the appropriate Market Centres and/or Delivery Agents.

- e) A Clearing Member that intends to submit Futures Contracts on Carbon Dioxide Equivalent (CO<sub>2</sub>e) Units with physical settlement to the Corporation for clearing must ensure that at all times it and/or its client is and remains in good standing with the Registry as this term is defined in Section A-102 of the Rules.
- f) A Clearing Member that intends to submit Fixed Income Transactions to the Corporation for clearing must be a full member participant in good standing with CDS.

The Corporation may in its sole discretion waive the requirements set forth in clauses (b), (c), (d) or (f) if the Clearing Member enters into an agency agreement with a full member participant in good standing with CDS, that meets certain requirements established by the Corporation, which agency agreement shall be in form and substance satisfactory to the Corporation, pursuant to which such entity agrees to act as the Clearing Member's agent for the purpose of fulfilling such Clearing Member's obligations to the Corporation under these Rules and the Application for Membership.

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## **RULE A-1A MEMBERSHIP IN THE CORPORATION**

### **SECTION A-1A01 – ELIGIBILITY FOR MEMBERSHIP**

- g) In order to apply for membership, an applicant must be:
  - iv) a member or approved participant in good standing with an exchange recognized in a Canadian province or a dealer member in good standing with the Investment Industry Regulatory Organization of Canada; or
  - v) a bank or an authorized foreign bank to which the Bank Act (Canada), as amended from time to time, applies; or
  - vi) a Financial Institution that is either:
    - c) a financial services cooperative regulated pursuant to an Act respecting financial services cooperatives (Québec), or
    - d) a credit union central or a central cooperative credit society, which is incorporated and regulated under the laws of Canada or under the legislature of a province,  
one of whose principal purposes is to provide liquidity support to local credit unions or financial services cooperatives.
- h) A Clearing Member that intends to submit Stock Options or Share Futures to the Corporation for clearing must be a full member participant in good standing with CDS.
- i) A Clearing Member that intends to submit bond Options and/or bond Futures to the Corporation for clearing, must be a full member participant in good standing with CDS.
- j) A Clearing Member that intends to submit physically settled OTCI transactions to the Corporation for clearing, must ensure that it and/or its Client is in good standing and remains as such at all times with the appropriate Market Centres and/or Delivery Agents. Furthermore, and where appropriate, the Clearing Member and/or its Client need to ensure access to a transportation system for the physical transport of the Underlying Interest to the appropriate Market Centres and/or Delivery Agents.
- k) A Clearing Member that intends to submit Futures Contracts on Carbon Dioxide Equivalent (CO<sub>2</sub>e) Units with physical settlement to the Corporation for clearing must ensure that at all times it and/or its client is and remains in good standing with the Registry as this term is defined in Section A-102 of the Rules.
- l) A Clearing Member that intends to submit Fixed Income Transactions to the Corporation for clearing must be a full member participant in good standing with CDS.

The Corporation may in its sole discretion waive the requirements set forth in clauses (b), (c), (d) or (f) if the Clearing Member enters into an agency agreement with a full member participant in

good standing with CDS, that meets certain requirements established by the Corporation, which agency agreement shall be in form and substance satisfactory to the Corporation, pursuant to which such entity agrees to act as the Clearing Member's agent for the purpose of fulfilling such Clearing Member's obligations to the Corporation under these Rules and the Application for Membership.