

## Annex: Jurisdictions’ authority and process for exercising deference in relation to OTC derivatives regulation

### Abbreviations Used

AMF: Autorité des marchés financiers  
 ASC: Alberta Securities Commission  
 BCSC: British Columbia Securities Commission  
 CSA: Canadian Securities Administrators  
 FCNB: Financial and Consumer Services Commission (New Brunswick)  
 MSC: Manitoba Securities Commission  
 NSSC: Nova Scotia Securities Commission  
 OSC: Ontario Securities Commission

The Authorities: AMF, ASC, BCSC, and OSC

### Introduction

The Bank of Canada (the Bank) is Canada’s central bank and is responsible for the regulatory oversight of financial market infrastructures (FMIs) with a focus on controlling systemic risk. Specifically, the Bank oversees payment systems, central counterparties and securities settlement systems that have been designated as systemically important. The objectives of the Bank in its oversight role are to ensure that systemically important FMIs operate in such a manner that risk is properly controlled and to promote efficiency and stability in the Canadian financial system.

The 10 provinces and 3 territories in Canada are responsible for market regulations. Securities regulators from each province and territory have formed the Canadian Securities Administrators (CSA). The CSA is primarily responsible for developing a harmonized approach to market regulation across the country.

The Office of the Superintendent of Financial Institutions (OSFI) regulates and supervises financial institutions and private pension plans subject to federal oversight. OSFI regulates and supervises all banks in Canada, and all federally incorporated or registered trust and loan companies, insurance companies, cooperative credit associations, fraternal benefit societies and private pension plans.

The Authorities, the Bank, and OSFI, along with Department of Finance, coordinate on OTCD reform through a cross-Canada Working Group (WG) chaired by the Bank. This WG is tasked with providing advice and coordinating efforts to meet Canada’s G-20 commitments related to OTCD in a manner consistent with the continuing stability and efficiency of the Canadian financial system.

**Part A:** With respect to the **authorisation and supervision of:** OTC derivatives market participants; TRs; CCPs; and exchanges or electronic trading platforms:

<p>A.1 What legal capacity, if any, do authorities in your jurisdiction have to defer to another jurisdiction's regulatory framework and/or authorities? Which authorities can exercise this capacity? Please also indicate if/when ‘partial’ or ‘conditional’ deference decisions can be made.</p>	<p><b>Bank of Canada</b>          The Canadian <i>Payment Clearing and Settlement Act</i> (PCSA) gives the Bank the responsibility for oversight of clearing and settlement systems which may be operated in such a manner as to pose systemic risk. Currently, two foreign-domiciled systems, CLS Bank and LCH.Clearnet Limited’s SwapClear Service, have been designated for Bank oversight. The Bank oversees these foreign-domiciled systems by entering into cooperative oversight arrangements with other foreign overseers with the consent of the lead overseer.</p> <p>Within these cooperative oversight agreements, it is important</p>
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to underline the Bank is not able to delegate its oversight responsibilities for a designated foreign-domiciled clearing and settlement system to another overseer. However, the Bank does have latitude in determining how it will satisfy its oversight authorities most effectively. Specifically, if the Bank participates in cooperative oversight, it has latitude in determining to what extent it will rely on the work of the lead overseer.

The possibility of cooperative oversight, and the scope to rely on the lead overseer in another jurisdiction, is facilitated by the fact that central banks and securities regulators have agreed upon the use of the CPSS-IOSCO's Principles for Financial Market Infrastructures (the PFMI Principles) as their international risk management standards, risk management standards to be applied to central counterparties and securities settlement systems.

**CSA**

The Authorities', the MSC's, the FCNB's and the NSSC's capacity to rely on a foreign authority's regulatory framework and oversight lies in their rule-making powers to oversee and regulate foreign OTC derivatives market participants, TRs, CCPs, and exchanges or other electronic platforms through recognition/designation or exemption from recognition/designation. The Authorities, the MSC, the FCNB and the NSSC have the power to grant full, partial or conditional exemptions in deference to a foreign jurisdiction's regulatory framework and/or authority.

Moreover, the Authorities, the MSC, the FCNB and the NSSC may enter into an agreement with a foreign government or an international organization in order to facilitate the application of their respective laws or a foreign act on a similar subject.

**OSFI**

OSFI plays no role in the authorisation and supervision of TRs, CCPs, and exchanges or electronic trading platforms.

Supervision of market participants:

The Canadian derivatives market is dominated by the 5 largest banks which are prudentially supervised on a consolidated basis by OSFI. Their derivatives activities represent a core business overseen by OSFI as part of its prudential mandate.

Home-Host supervisory relationships under Basel

OSFI's prudential supervision of foreign banks operating in Canada is in line with long-established principles of the Basel Committee on Banking Supervision. These principles are based on the premise that the home supervisor is responsible for overseeing the activities of the home bank incorporated in their jurisdiction and the consolidated position of the bank as a whole, while host authorities are responsible for overseeing the activities of legal entities established in their jurisdictions. OSFI actively participates in and regularly hosts "Supervisory

	<p>colleges” of interested supervisory authorities for the internationally active Canadian banks. In January 2014 BCBS published revised good practice principles for supervisory colleges for consultation (see: <a href="http://www.bis.org/publ/bcbs276.pdf">http://www.bis.org/publ/bcbs276.pdf</a>).</p> <p><u>Authorization of market participants</u>  OSFI has no role in the authorization of market participants <i>solely</i> for the purpose of OTC derivatives activities. However, OSFI is responsible for the assessment of applications to incorporate banks or establish foreign bank branches in Canada, and makes recommendations to the Minister of Finance. After OSFI grants authorization to commence and carry on business in Canada, it oversees the OTC derivatives activities of the bank as part of its prudential mandate.</p>
<p>A.2 Please provide a brief description of the standards that need to be met in coming to a decision as to whether to exercise any such deference, and the criteria/inputs used in assessing whether these standards have been met (e.g. whether “similar outcomes” is the standard used; whether an analysis of enforcement regimes or authority is included as part of the assessment; whether reference is made to implementation of international standards; etc.).</p>	<p><b>Bank of Canada</b>  N/A</p> <p><b>CSA</b>  In the context described in A.1, the Authorities make a determination, on a case by case basis using an outcomes-based standard, about whether the regulatory regime of the foreign jurisdiction is equivalent even though it may not be identical.</p> <p>The criteria used by the Authorities in determining the appropriateness of reliance on a foreign authority’s regulatory framework and oversight may include:</p> <ul style="list-style-type: none"> <li>i. An analysis of enforcement regimes, notably the level of investor protection.</li> <li>ii. The implementation of relevant international standards.</li> <li>iii. The existence of Memorandums of Understanding (MOUs) or appropriate agreements with the entity’s home regulator to provide the Authorities (as applicable) with access to the information needed to carry out our respective regulatory mandates.</li> </ul> <p><b>OSFI</b>  As described above, in the prudential supervision of banks, the Basel principles are based on the premise that the home supervisor is responsible for overseeing the activities of the home bank incorporated in their jurisdiction and the consolidated position of the bank as a whole, while host authorities are responsible for overseeing the activities of legal entities established in their jurisdictions.</p> <p>Supervisory colleges do not undermine the legal and prudential responsibilities of respective supervisors. They are not intended to be decision-making bodies, or a substitute for effective national supervision.</p>
<p>A.3 Please provide a brief description of the process by which a decision to defer to another jurisdiction is taken,</p>	<p><b>Bank of Canada</b>  N/A</p>

<p>including any action that needs to be initiated to begin the process (e.g. an application from a jurisdiction or an entity), the general time frame for coming to a decision, any processes in place for reviewing a decision, and whether any other agreements or conditions need to be met in order for an affirmative decision to be taken (e.g. confidentiality agreements, supervisory cooperation, or reciprocal arrangements).</p>	<p><b>CSA</b>  In the context described in A.1, <i>TRs, CCPs, and exchanges or other electronic platforms</i> seeking to be recognized/designated or exempted from recognition/designation will submit an application to the Authorities, respectively and as applicable, including materials to support their application. Where the entity is resident outside the local jurisdiction, these materials would be expected to include specific information to demonstrate the sufficiency of applicable regulatory requirements applicable in the applicant’s home jurisdiction.</p> <p>Staff will review the materials and interact with the foreign entity in view of recommending, once the analysis is conclusive, the recognition/designation or an exemption from recognition/designation (including relevant terms and conditions). As part of this review, staff will establish if the foreign regulatory regime offers the same level of investor protection and recommend to defer, or not, to the foreign jurisdiction’s regulatory framework.</p> <p>There is no established timeframe for coming to a recognition/designation decision.</p> <p>The information sharing is usually governed by a formal MOU.</p> <p>With regards to <i>OTC derivatives market participants</i>, regulations and processes relating to substituted compliance determinations in respect of OTC derivatives market participants have not yet been developed but would be, in principle, similar to those described above.</p> <p><b>OSFI</b>  A signed MOU with the applicable foreign regulator(s) is generally a prerequisite for a Supervisory college arrangement.</p>
<p>A.4 Please provide copies of, or weblinks to, any documentation or forms that have been developed for sharing with jurisdictions or entities as part of the comparability or equivalence assessment.</p>	<p><b>Bank of Canada</b>  N/A</p> <p><b>CSA</b>  OSC staff Notice 21-702 Regulatory Approach for Foreign-Based Stock Exchanges:  <a href="http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20031031_21-702_foreignbased.jsp">http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20031031_21-702_foreignbased.jsp</a></p> <p>AMF Policy Statement respecting the Authorization of Foreign-Based Exchanges:  <a href="http://www.lautorite.qc.ca/files/pdf/reglementation/valeurs-mobilieres/instr-gen-bourses-etranangeres/2005-03-30/2005mars30-ig-boursesetranangeres-en.pdf">http://www.lautorite.qc.ca/files/pdf/reglementation/valeurs-mobilieres/instr-gen-bourses-etranangeres/2005-03-30/2005mars30-ig-boursesetranangeres-en.pdf</a></p> <p>OSC staff Notice 24-702 Regulatory Approach to Recognition And Exemption From Recognition of Clearing Agencies:  <a href="http://www.osc.gov.on.ca/documents/en/Securities-Category2/sn_20100319_24-702_clearing-agencies.pdf">http://www.osc.gov.on.ca/documents/en/Securities-Category2/sn_20100319_24-702_clearing-agencies.pdf</a></p>

	<p><b>OSFI</b> N/A</p>
<p>A.5 Please provide a list of jurisdictions that you have already determined to be comparable or equivalent, if any (and for what regulatory purposes), and please note any jurisdictions for which a determination is pending.</p>	<p><b>Bank of Canada</b> N/A</p> <p><b>CSA</b> The OSC has determined that the U.K. is comparable or equivalent in respect of the supervision of certain clearing agencies and that the U.S. is comparable or equivalent in respect of the supervision of certain clearing agencies and exchanges or electronic trading platforms.</p> <p><b>OSFI</b> N/A</p>

**Part B:** With respect to **requirements on market participants** related to: reporting to TRs; clearing transactions through CCPs; capital, margin and/or other risk mitigation requirements; and executing transactions on exchanges or electronic platforms:

<p>B.1 What legal capacity, if any, do authorities in your jurisdiction have to defer to another jurisdiction's regulatory framework and/or authorities? Which authorities can exercise this capacity? Please also indicate if/when 'partial' or 'conditional' deference decisions can be made.</p>	<p><b>Bank of Canada</b> The Bank does not oversee or set requirements for market participants.</p> <p><b>CSA</b> The Authorities' capacity to defer their regulatory responsibility with respect to the requirements on market participants related to reporting to TRs, clearing transactions through CCPs, capital, margin and/or other risk mitigation requirements and executing transactions on exchange or electronic platforms to another jurisdiction lies in their rule-making powers to subject market participants to or exempt market participants from certain regulatory requirements. The Authorities have the power to grant market participants full, partial or conditional exemptions in deference to a foreign jurisdiction's regulatory framework and/or authority.</p> <p>Moreover, pursuant to the derivative trade reporting rule requirements effective in Manitoba, Ontario and Québec, reporting counterparties may benefit from substituted compliance provided that certain conditions are met, under express provisions of the Authorities' respective rules.</p> <p><b>OSFI</b> OSFI sets requirements for the market participants it supervises through guidelines, such as its Capital Adequacy Requirements (CAR) guidelines:</p> <p><u>Capital incentives for Central Clearing</u> On January 1, 2013, OSFI implemented capital incentives for federally regulated banks to centrally clear derivatives contracts and appropriately capitalize bi-lateral transactions with the adoption of Basel III minimum capital requirements in CAR. Banks receive favourable capital treatment for exposures to qualifying CCPs (<b>both domestic and foreign</b>). See section 4.1.9 of CAR: <a href="http://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/CAR_chpt4.aspx">http://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/CAR_chpt4.aspx</a></p> <p>A <b>qualifying central counterparty (QCCP)</b> is an entity that is licensed to operate as a CCP (including a license granted by way of confirming an exemption), and is permitted by the appropriate regulator/overseer to operate as such with respect to the products offered. This is subject to the</p>
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	<p>provision that the CCP is based and prudentially supervised in a jurisdiction where the relevant regulator/overseer has established, and publicly indicated that it applies to the CCP on an on-going basis, domestic rules and regulations that are consistent with the PFMI Principles. As such, OSFI relies on the oversight of the CCP by the relevant regulator(s) and its application of the PFMI Principles for qualification as a QCCP for capital purposes.</p> <p><u>Reporting to TRs</u> OSFI expects that a federally-regulated financial institution (FRFI) report derivatives transactions to a TR as required by the laws of the jurisdiction in which it is doing business. OSFI has directed FRFIs to meet the requirements of the provincial securities authority in the province where the FRFI's head office or principal place of business is located, or applicable foreign legislation if no Canadian reporting requirements are in force.</p>
<p>B.2 Please provide a brief description of the standards that need to be met in coming to a decision as to whether to exercise any such deference, and the criteria/inputs used in assessing whether these standards have been met (e.g. whether “similar outcomes” is the standard used; whether an analysis of enforcement regimes or authority is included as part of the assessment; whether reference is made to implementation of international standards; etc.).</p>	<p><b>Bank of Canada</b> N/A</p> <p><b>CSA</b> In the context described in B.1, the Authorities use an “outcomes-based” standard when conducting a substituted compliance analysis, that is, a high-level overview of the foreign authority’s comparable regime but not a detailed assessment of its enforcement mechanisms.</p> <p>Substituted compliance analysis inputs may include and are not limited to:</p> <ul style="list-style-type: none"> <li>• Provision-by-provision comparison of relevant rules/regulations and international standards.</li> <li>• An overview of regulatory outcomes.</li> <li>• The Authorities communicate with the relevant foreign authority throughout the process.</li> </ul> <p><b>OSFI</b> In order for banks to receive favourable capital treatment, a QCCP must be based and prudentially supervised in a jurisdiction where the relevant regulator/overseer has established, and publicly indicated that it applies to the CCP on an on-going basis, domestic rules and regulations that are consistent with the CPSS-IOSCO PFMI.</p> <p>OSFI still reserves the right to require banks to hold additional capital against their exposures to such CCPs via Pillar 2. This might be appropriate</p>

	<p>where, for example, an external assessment such as a Financial Sector Assessment Program (FSAP) has found material shortcomings in the CCP or the regulation of CCPs, and the CCP and/or the CCP regulator have not since publicly addressed the issues identified.</p> <p>Where the CCP is in a jurisdiction that does not have a CCP regulator applying the Principles to the CCP, then OSFI may make the determination of whether the CCP meets this definition.</p>
<p>B.3 Please provide a brief description of the process by which a decision to defer to another jurisdiction is taken, including any action that needs to be initiated to begin the process (e.g. an application from a jurisdiction or an entity), the general time frame for coming to a decision, any processes in place for reviewing a decision, and whether any other agreements or conditions need to be met in order for an affirmative decision to be taken (e.g. confidentiality agreements, supervisory cooperation, or reciprocal arrangements).</p>	<p><b>Bank of Canada</b> N/A</p> <p><b>CSA</b> The process, in the context described in B.1, may be initiated either through the Authorities’ own views of relevant foreign jurisdictions for domestic market participants, communications from particular foreign market participants or market infrastructure, or communications from authorities from particular foreign jurisdictions.</p> <p>In addition, the Authorities will seek the input of other members of the CSA Derivatives Committee on its substituted compliance recommendation.</p> <p>There is no established timeframe for coming to a substituted compliance decision.</p> <p>It is, in general, not a necessary requirement for other agreements to be entered into with or conditions to be met by the authority in the relevant foreign jurisdiction in order for substituted compliance to be granted.</p> <p><b>OSFI</b> OSFI expects that all central clearing by FRFIs be done using a QCCP, including global QCCPs, recognized by Canadian authorities.</p> <p>Once a CCP begins offering clearing services in Canada, FRFIs using its services would need to make an assessment as to whether it qualifies as a QCCP. It should be noted that OSFI has not done a focused review of the rules and regulations applicable to the CCPs authorized to operate in Canada. In the absence of a negative indicator, we have relied on the banks’ assessments of the CCP and have assumed that CCPs overseen by Canadian authorities have met the conditions to qualify as a QCCP.</p>
<p>B.4 Please provide copies of, or weblinks to, any documentation or forms that have been developed</p>	<p><b>Bank of Canada / CSA / OSFI</b> N/A</p>

<p>for sharing with jurisdictions or entities as part of the comparability or equivalence assessment.</p>	
<p>B.5 Please provide a list of jurisdictions that you have already determined to be comparable or equivalent, if any (and for what regulatory purposes), and please note any jurisdictions for which a determination is pending.</p>	<p><b>Bank of Canada</b> N/A</p> <p><b>CSA</b> The OSC has determined that, subject to certain conditions, compliance with the U.S. CFTC Swap Data Reporting Rules is comparable or equivalent for certain market participants subject to OSC Rule 91-507.</p> <p><b>OSFI</b> For the purposes of capital treatment, all of the CCPs used by FRFIs are treated as QCCPs as they are prudentially supervised in jurisdictions where the relevant regulator/overseer has established domestic rules and regulations that are consistent with the CPSS-IOSCO PFMIs. These include SwapClear (LCH), Ice Clear Credit, CME Group and CDCC.</p>