

Financial Services Regulatory Authority of Ontario (“FSRA”)

Notice of Rule and Request for Comment (the “Notice”)

Rule 2025 – 002 – Eligible Financial Contracts (the “Proposed Rule”)

October 20, 2025

Introduction

FSRA acts as both a supervisory and resolution authority for Ontario’s credit unions and caisses populaires (“**CU**”) sector. With respect to recovery and resolution, the *Credit Unions and Caisses Populaires Act, 2020* (“**CUCPA 2020**”) sets out certain powers with respect to financial assistance, administration, supervision, dissolution and winding up.

FSRA is taking steps to further strengthen the CU sector by enhancing the CUCPA 2020’s overall resolution regime. Specifically, FSRA is introducing the Proposed Rule, which sets out the types of financial agreements that constitute an eligible financial contract (“**EFC**”) for the purposes of the new enhanced resolution order regime under the CUCPA 2020.

By defining EFC, the Proposed Rule clarifies an integral aspect of the resolution order regime. Ultimately, a resolution order regime, with a clearly defined EFC scope, is necessary to maintain financial stability, minimize disruption and protect the Deposit Insurance Reserve Fund (the “**DIRF**”) from loss.

As required by s. 22(1) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the “**FSRA Act**”), FSRA is publishing the Proposed Rule for comment on its website. Stakeholders can make written comments on the Proposed Rule within 60 days after the Proposed Rule’s publication. FSRA will publish stakeholder comments on its website.

Please refer to Appendix A of the Notice for the full text of the Proposed Rule.

Background

In October 2024, the Government of Ontario (the “**Government**”) tabled the *Building Ontario For You Act (Budget Measures), 2024*, S.O. 2024, c. 20 – Bill 216. As part of this bill, the Government introduced an enhanced resolution order regime in the CUCPA 2020. If proclaimed into force this regime would:

- help maintain and promote the stability of the CU sector by enhancing the CEO’s resolution toolkit while mitigating any potential chilling effect on the ability of CUs to engage with derivative counterparties to hedge their exposures, and
- promote credible recovery and resolution frameworks for Ontario CUs, which are key eligibility criteria for gaining access to the Bank of Canada’s Emergency Lending Assistance program.

In addition, if proclaimed into force, these amendments would provide FSRA's Chief Executive Officer (the "**CEO**") with the discretion to make resolution orders if certain conditions are met.

One type of resolution order is an order with respect to contractual and membership matters. Broadly speaking, when this type of order is made, a CU's counterparties are not permitted to terminate or amend their agreements with CUs for a number of reasons. These reasons are set out under the CUCPA 2020, and they include a CU's deteriorated financial position or the making of a resolution order itself.

In comparison to other agreements, the CUCPA 2020 treats EFCs differently in the context of a resolution order.¹ This treatment of EFCs strikes a balance between establishing robust resolution order powers to prevent the mass termination of EFCs during a resolution and adequately protecting the rights of EFC counterparties to manage their risks.

As a starting point, the rights of CU counterparties under EFCs are not impacted by resolution order stays. For example, if the CEO makes a contractual resolution order, then these counterparties can still exercise rights under their EFCs for a CU's failure to satisfy its obligations. However, these counterparties would be stayed from terminating or amending an EFC, claiming accelerated payment or forfeiture under an EFC or dealing with financial collateral for any of the following reasons:

- the making of an order under s. 233 of the CUCPA 2020,
- the CU's deteriorated financial position,
- a non-monetary default, before the resolution order was made, under the agreement by the CU or its affiliates that is remedied within 60 days after the day on which the order is made,
- the making of a resolution order or any change of control or ownership of the CU, or any of its affiliates, that is related to the making of the resolution order, and
- the transfer to or acquisition by a third party of all or part of the assets or liabilities of the CU or any of its affiliates.

Under paragraph 57.1 of ss. 285(1) of the CUCPA 2020, FSRA is granted the authority to define EFC in a Rule. In light of this, the Proposed Rule articulates a critical aspect of the resolution order regime by defining the types of agreements which constitute an EFC.

The Proposed Rule also furthers the following statutory objects under the FSRA Act:

- regulate and generally supervise the regulated sectors,
- contribute to public confidence in the regulated sectors,

¹ Please refer to ss. 234.1(10), 234.1(11), 234.1(12), 234.1(13), 234.1(14), 234.1(16) and 234.1(18) of the CUCPA 2020.

- promote and otherwise contribute to the stability of the CU sector in Ontario with due regard to the need to allow CUs to compete effectively while taking reasonable risks, and
- to pursue the objects set out in s. 3(4)(a)-(b) of the FSRA Act for the benefit of persons having deposits with CUs and in such a manner as will minimize the exposure of the Deposit Insurance Reserve Fund to loss.

Substance and Purpose of the Proposed Rule

i. Purpose

The purpose of the Proposed Rule is to define EFC for the purposes of s. 234.1 of the CUCPA 2020. This will provide the CU sector with certainty regarding the types of financial agreements which constitute an EFC in a resolution order context.

ii. Substance

The substance of the Proposed Rule is to define the types of agreements which constitute an EFC.

Summary of the Proposed Rule

i. Section 1 – Interpretation

This section of the Proposed Rule:

- defines “derivative instrument,”² and
- clarifies that if a term or phrase used in the Proposed Rule is defined in the CUCPA 2020, then the CUCPA 2020’s definition applies to the Proposed Rule.

ii. Section 2 – EFCs

This section of the Proposed Rule defines EFC for the purposes of s. 234.1 of the CUCPA 2020.

iii. Section 3 – Coming into Force

This section sets out the Proposed Rule’s coming into force date.

Authority for the Proposed Rule

If proclaimed into force, paragraph 57.1 of ss. 285(1) of the CUCPA 2020 would allow FSRA to make a rule defining EFC for the purposes of s. 234.1 of the CUCPA 2020. Pursuant to this rulemaking authority, FSRA has the authority to make the Proposed Rule.

² Please note that in accordance with s. 75(2) of O. Reg. 105/22, a CU must not invest in a derivative instrument unless it is purchased for the purposes of managing interest rate or foreign exchange risk.

Unpublished Materials

FSRA has not relied on any significant unpublished study, report, decision or other written material with respect to the Proposed Rule.

Alternatives Considered

As noted in the Introduction, FSRA is proposing a Rule that would define EFC for the purposes of the CUCPA 2020's resolution order regime.

FSRA has considered the following alternatives to this approach.

i. Guidance

FSRA considered setting out the types of agreements which constitute an EFC in Guidance that interprets applicable provisions in the CUCPA 2020 or otherwise establishes FSRA's internal practices and procedures with respect to EFCs.

However, FSRA intends to set out the types of agreements which constitute an EFC in a Rule that sets out a clear and certain statutory definition under the CUCPA 2020 which has legal effectiveness and enforceability. In addition, the CUCPA 2020 provides FSRA with explicit rulemaking authority to define EFC.

For these reasons, FSRA is proposing a Rule instead of issuing Guidance.

ii. Status Quo (no action)

FSRA evaluated whether no regulatory action is appropriate.

However, in light of the crucial role that EFCs play in a resolution context, FSRA did not consider it to be an appropriate response to not introduce a Rule. FSRA's view is that the CU sector would benefit from explicit clarity regarding the types of agreements which constitute an EFC.

Anticipated Costs and Benefits

The introduction of the Proposed Rule will define EFCs for the purposes of the CEO's resolution order making powers. Defining EFCs will signal a strong and predictable regulatory environment. In turn, this will enhance stakeholder confidence, particularly among institutional counterparties and service providers.

FSRA has considered both the qualitative and quantitative costs and benefits of the Proposed Rule.

i. Qualitative Costs and Benefits

In terms of qualitative costs, FSRA does not anticipate that the Proposed Rule will result in additional material costs for CUs. Instead, because of the Proposed Rule, the CU sector

will avoid material costs caused by the uncertainty of the term EFC being undefined in the CUCPA 2020.

The Proposed Rule will have the following qualitative benefits:

- harmonize with the federal *Eligible Financial Contract Regulations (CDIC Act, SOR/2007-255)* under the *Canada Deposit Insurance Corporation Act*, which reduces inconsistencies for counterparties operating across jurisdictions,
- maintain and promote the stability of the CU sector by supporting the proper functioning of the CEO's enhanced resolution powers,
- support FSRA's preferred "open CU resolution" approach where, during a resolution, a CU remains open for business under FSRA's control thus minimizing disruption to members and the sector,
- provide certainty and fairness to counterparties so they understand which types of standardized contracts qualify as EFCs in a resolution context, otherwise they may not transact business with CUs, and
- give comfort to counterparties that, if a resolution happens, they can terminate an EFC if they are not paid by the CU prior to the resolution commencing.

ii. Quantitative Costs and Benefits

In terms of quantitative costs and benefits, although the Proposed Rule only applies to CUs that enter resolution, FSRA estimates that the frequency of such events, while low, still justifies the need for clear, defined and actionable resolution powers. The rationale is that these rare resolution events can have sector-wide implications and impacts, underscoring the importance of the Proposed Rule. The Proposed Rule's development is also important given that Ontario's 16 largest CUs, which hold approximately 90% of the sector's total assets, have exposure to derivatives and certain types of derivatives instruments are included within the Proposed Rule's definition of EFC.

FSRA anticipates that the sector will face very minimal quantitative costs as a result of the Proposed Rule (i.e., administrative costs related to CUs reviewing executed EFCs etc.). Instead, because of the Proposed Rule, the CU sector will avoid material costs caused by any potential uncertainty which could result from the term EFC being undefined in the CUCPA 2020.

The Proposed Rule will have the following quantitative benefits:

- provide a clear definition of EFC, which will reduce ambiguity during a resolution. This is likely to prevent disputes over contract enforceability, saving both CUs and counterparties from potential legal, administrative and other costs, and
- ensure operational continuity and sufficient interest rate and foreign exchange risk mitigation via hedging for CUs.

Recommendations to the Minister of Finance

FSRA will not be making any recommendations to the Minister of Finance with respect to the amendment or revocation of a regulation or a provision in a regulation that relates to the implementation of the Proposed Rule.

Rule 2025 – 002 – Eligible Financial Contracts

1 Interpretation

1(1) In this Rule,

(i) “Act” means the *Credit Unions and Caisses Populaires Act, 2020*, S.O. 2020, c. 36, Sched. 7, as amended,

(ii) “derivative instrument” means a financial agreement whose obligations are derived from, referenced to, or based on, one or more underlying reference items such as interest rates, indices, currencies, commodities, securities or other ownership interests, credit or guarantee obligations, debt securities, climatic variables, bandwidth, freight rates, emission rights, real property indices and inflation or other macroeconomic data and includes

(a) a contract for differences or a swap, including a total return swap, price return swap, default swap or basis swap,

(b) a futures agreement,

(c) a cap, collar, floor or spread,

(d) an option, and

(e) a spot or forward.

1(2) In addition to s. 1(1), if a term or phrase used in this Rule is defined in the Act, that definition shall apply for the purpose of this Rule.

2 Eligible Financial Contracts

2(1) For the purposes of s. 234.1 of the Act, “eligible financial contract” means,

(i) a derivative instrument, whether settled by payment or delivery, that

(a) trades on a futures or options exchange or board, or other regulated market,
or

(b) is the subject of recurrent dealings in the derivatives market or in the over-the-counter securities or commodities markets,

(ii) an agreement to

(a) borrow or lend securities or commodities, including an agreement to transfer securities or commodities under which the borrower may repay the loan with other securities or commodities, cash or cash equivalents,

- (b) clear or settle securities, futures, options or derivatives transactions, or
- (c) act as a depository for securities,
- (iii) a repurchase, reverse purchase or buy-sellback agreement with respect to securities or commodities,
- (iv) a margin loan in so far as it is in respect of a securities account or futures account maintained by a
 - (a) clearing agent, or
 - (b) person, including a broker, bank or a trust company, that in the ordinary course of business maintains securities accounts or futures accounts for others,
- (v) any combination of agreements referred to in any of clauses (i) to (iv),
- (vi) a master agreement in so far as it is in respect of an agreement referred to in any of clauses (i) to (v),
- (vii) a master agreement in so far as it is in respect of a master agreement referred to in clause (vi),
- (viii) a guarantee of, or an indemnity or reimbursement obligation with respect to, the liabilities under an agreement referred to in any of clauses (i) to (vii), and
- (ix) an agreement relating to financial collateral, including any form of security or security interest in collateral and a title transfer credit support agreement, with respect to an agreement referred to in any of clauses (i) to (viii).

3 Coming into Force

- 3(1) This Rule comes into force on the later of the date that sections 11 and 13 of Schedule 5 of *Building Ontario For You Act (Budget Measures), 2024* comes into force and 15 days after the Rule is approved by the Minister.