CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Multilateral Notice and Request for Comments
Proposed Amendments to Multilateral Instrument 96-101
Trade Repositories and Derivatives Data Reporting
and
Proposed Changes to Companion Policy 96-101CP
Trade Repositories and Derivatives Data Reporting

February 16, 2016

Introduction

The securities regulatory authorities (each an **Authority** and collectively the **Authorities** or **we**) in Alberta, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon (together with the British Columbia Securities Commission, the **Participating Jurisdictions**) are publishing the following for a 60-day comment period expiring April 17, 2016:

- proposed amendments (the **Proposed TR Rule Amendments**) to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the **TR Rule**), and

- proposed changes (the **Proposed TR CP Changes**) to Companion Policy 96-101CP *Trade Repositories and Derivatives Data Reporting* (the **TR CP**).

Together, the Proposed TR Rule Amendments and the Proposed TR CP Changes are referred to as the **Proposed Amendments**. We are issuing this notice to solicit comments on the Proposed Amendments.

While the British Columbia Securities Commission is not an Authority publishing the Proposed Amendments under this notice, it anticipates that, subject to receiving the necessary approvals, it will, in the coming weeks, publish for comment proposed amendments to the TR Rule that are identical to the Proposed Amendments described in this notice. The Participating Jurisdictions anticipate that the Proposed Amendments will be fully harmonized.

Background

The Participating Jurisdictions published the TR Rule on January 22, 2016, with an effective date of May 1, 2016 subject to Ministerial approval and legislative amendments in certain participating jurisdictions.

The Proposed Amendments have been developed in cooperation with staff from the securities regulatory authorities in Manitoba, Ontario and Québec. The Proposed Amendments are intended to be substantively harmonized with proposed amendments (collectively, the **Proposed**

Local TR Rule Amendments) to corresponding instruments in Manitoba, Ontario and Québec[1] (collectively, the **Local TR Rules**). The Proposed Local TR Rule Amendments were published for comment on November 5, 2015.

In developing the Proposed TR Rule Amendments and the Proposed Local TR Rule Amendments, Canadian Securities Administrators (**CSA**) Derivatives Committee has considered comment letters received in relation to previous publications of the TR Rule.

Harmonization

We intend to work together with staff of the securities regulatory authorities in Manitoba, Ontario and Québec in the context of the CSA Derivatives Committee to review all comments received on the Proposed Amendments and the Proposed Local TR Rule Amendments. Our objective is to seek harmonized amendments in all CSA jurisdictions, in particular with respect to reporting of derivatives between affiliated entities and public dissemination of transaction-level data.

Substance and Purpose

The key objectives of the Proposed TR Rule Amendments are to:

- make explicit the requirement that a local counterparty have a legal entity identifier (**LEI**), and revise the provisions relating to LEIs to reflect international developments;

- provide relief from the reporting obligations under the TR Rule for derivatives between two end-users (i.e., not derivatives dealers or affiliates of derivatives dealers, or clearing agencies or affiliates of clearing agencies) that are affiliated entities if either

    - each is a local counterparty in at least one jurisdiction in Canada, or

    - reporting is done in compliance with equivalent trade reporting laws of specified foreign jurisdictions or under the securities legislation of another jurisdiction of Canada;

- provide a transition period before the reporting obligations under the TR Rule become effective for an end-user that previously qualified for an exclusion from reporting derivatives under the TR Rule and becomes the reporting counterparty for the first time;

- set out the requirements for public dissemination of transaction-level data, balancing the objective of providing price information on the Canadian over-the-counter (**OTC**) derivatives market and the need to preserve the anonymity of counterparties to limit the negative impact of transparency on market participants; and

[1] Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* and Québec Regulation 91-507 respecting trade repositories and derivatives data reporting, CQLR, c. I-14.01, r. 1.1

- specify certain laws, regulations or instruments of foreign jurisdictions in Appendix B, for the purpose of providing that, for certain derivatives, reporting in compliance with these specified laws, regulations or instruments is deemed to also be in compliance with the reporting obligations under the TR Rule.

The Proposed TR CP Changes correspond to the Proposed TR Rule Amendments.

Implementation

At present, the TR Rule provides that the reporting obligations for derivatives between affiliated entities and the requirements with respect to public dissemination of transaction-level data do not take effect until January 1, 2017. Staff anticipate making a determination on whether to recommend adoption of the Proposed Amendments by the respective securities regulatory authorities before the provisions relating to the reporting of derivatives between affiliated entities and public dissemination of transaction-level data take effect.

Summary of the Proposed TR Rule Amendments

(a) Subsection 26(3): Duty to report – substituted compliance for inter-affiliate derivatives

We are proposing to amend subsection 26(3) to extend the availability of substituted compliance. Local counterparties will be deemed to comply with the TR Rule where a derivative is between affiliated entities that are end-users if the derivative is reported to a trade repository that is recognized in that local jurisdiction and the reporting is done pursuant to trade reporting laws of another jurisdiction of Canada or a foreign jurisdiction specified in Appendix B (**proposed substituted compliance for inter-affiliate derivatives**). This is intended to alleviate the reporting burden for certain derivatives that are reported under prescribed foreign trade reporting legislation. To benefit from substituted compliance, the conditions set out in paragraphs 26(3)(a) through (c) of the TR Rule must be satisfied.

Question:

1. The corresponding provision in the Proposed Local TR Rule Amendments would make the proposed substituted compliance for inter-affiliate derivatives available to an affiliate of a derivatives dealer or of a clearing agency. Is it appropriate to permit an affiliate of a derivatives dealer or of a clearing agency to avail itself of the proposed substituted compliance for inter-affiliate derivatives?

(b) Subsection 26(4): Duty to report – locations to report data

We are proposing to amend the requirement under subsection 26(6) of the TR Rule to provide that all derivatives data in respect of a derivative must be reported to the same recognized trade repository, but not necessarily to the recognized trade repository to which the initial report relating to the derivative was made. This amendment is intended to facilitate the porting of derivatives data from one recognized trade repository to another while ensuring that all data relating to a derivative is available in a single facility.

(c) Section 28: Legal entity identifiers

The identification of counterparties by LEI is an initiative endorsed by G20 nations and provides a globally recognized and standardised identification system of legal entities engaged in financial transactions. LEIs support authorities and market participants in identifying and managing financial risks and simplify reporting and accessing reported data across jurisdictions.
Under proposed paragraph 28(2)(a), each local counterparty, other than an individual, to a derivative that is required to be reported under the TR Rule would, if eligible, be required to have an LEI issued in accordance with the standards set by the Global LEI System. Absent this proposed requirement, the reporting counterparty would be responsible for ensuring that both counterparties to a derivative were identified using an LEI. Reporting counterparties have indicated that they have encountered challenges in complying with the Local TR Rules as some of their counterparties did not have LEIs. This amendment ensures that all local counterparties to reportable derivatives are under a direct obligation to have an LEI.

Proposed subsection 28(3) would require the reporting counterparty to identify a counterparty that is ineligible to receive an LEI by an alternate identifier. Proposed subsection 28(4) would require a recognized trade repository to identify the counterparty with the alternate identifier supplied by the reporting counterparty.

Questions:

2. Proposed subsection 28(2) excludes an individual from the requirement to obtain an LEI. Is it appropriate to exclude individuals from the requirement to obtain an LEI? Please identify and discuss any specific privacy law related concerns.

3. Proposed subsection 28(3) would require the reporting counterparty to identify a counterparty that is ineligible to receive an LEI by an alternate identifier. Proposed subsection 28(4) would require a recognized trade repository to identify a counterparty that is ineligible to receive an LEI with this alternate identifier assigned by the reporting counterparty.

    a. Is it appropriate to place the responsibility on the reporting counterparty to assign the alternate identifier? Would a recognized trade repository be better situated to assign the alternate identifier?

    b. Would current practices and technological capabilities permit a recognized trade repository to identify a counterparty by an alternate identifier supplied by the reporting counterparty?

    c. Would current practices and technological capabilities permit a recognized trade repository to assign an alternate identifier to a counterparty, and to notify the reporting counterparty of the alternate identifier assigned?

4. Requiring a trade repository to identify a counterparty using an alternate identifier supplied by the reporting counterparty may result in a particular counterparty being

identified by different alternate identifiers supplied by multiple reporting counterparties – within a single trade repository's database and across the databases of multiple trade repositories. Do recognized trade repositories have the technological capability to reconcile, within their own databases, different alternate identifiers that have been reported for a particular counterparty?

(d) Section 34: Pre-existing derivatives

The purpose of the proposed amendments to paragraph 34(1)(b) and 34(2)(b) is to correct an error. The proposed amendments reflect our intention that transactions entered into before the reporting obligation commences for new transactions, for which there are contractual obligations outstanding as of a prescribed date, be reported to a recognized trade repository on or before that prescribed date.

(e) Section 41.1: Derivative between affiliated entities

We are proposing an exclusion from the reporting requirements in the TR Rule for a derivative between local counterparties that are end-users and that are also affiliated entities (the **proposed exclusion for inter-affiliate derivatives**). We have received feedback that many end-users, trade exclusively with derivatives dealers, other than inter-affiliate derivatives; under the TR Rule, the drivatives dealer would be the reporting counterparty. End-users would then be required to incur the cost of developing reporting systems and subscribing to trade repository services exclusively for the purpose of reporting inter-affiliate derivatives. We have weighed these costs against the benefits of requiring these derivatives to be reported. We think that the primary source of risk to a corporate group may arise from its market-facing derivatives, i.e., derivatives with counterparties that are not affiliated with the corporate group. While inter-affiliate derivative reporting may provide some valuable information regarding the redistribution of risk between affiliated entities, we think this value may be outweighed by the costs of end-users reporting inter-affiliate derivatives where one of the counterparties or another affiliated entity is responsible for the liabilities of the two affiliated counterparties.

The proposed exclusion for inter-affiliate derivatives applies to a derivative involving two affiliated entities where each is a local counterparty in any jurisdiction of Canada. This allows corporate groups with affiliates in Canada to benefit from the exclusion while ensuring that one or more securities regulatory authorities in Canada has access to reports relating to all of the corporate group's market-facing derivatives, including a market-facing derivative related to the inter-affiliate derivative. This exclusion is also available to affiliates located in foreign jurisdictions that qualify as local counterparties pursuant to paragraph (c) of the definition of "local counterparty".

The proposed exclusion for inter-affiliate derivatives is not available for inter-affiliate derivatives involving an affiliate that is not a local counterparty pursuant to the trade reporting rules of a jurisdiction of Canada. As discussed above, we think that it is important for securities regulatory authorities in Canada to have a comprehensive view of a corporate group's exposure to over-the-counter derivatives, and therefore to have access to reports relating to all relevant market-facing derivatives. For example, a corporate group might consolidate its risk

management program by transacting with a third party (e.g., a derivatives dealer) through a single market-facing entity for the corporate group. The market-facing entity might then enter into an identical back-to-back derivative with an affiliated entity to hedge the risk of the affiliated entity. Where both the market-facing entity and the affiliated entity are local counterparties in a jurisdiction of Canada, at least one securities regulatory authority in Canada would have access to reports relating to the market-facing derivative. However, this would not be the case if the market-facing entity was not a local counterparty in a jurisdiction of Canada.

We are interested in hearing market participants' views on whether the combination of the proposed substituted compliance for inter-affiliate derivatives and the proposed exclusion for inter-affiliate derivatives will be effective in reducing the reporting burden for end-users corporate groups with respect to inter-affiliate derivatives.

Question:

5. Inter-affiliate derivatives that involve an affiliated entity that is not a local counterparty in a Canadian jurisdiction do not qualify for the proposed exclusion in section 41.1. Would a requirement to report creation data on a quarterly basis, instead of the current creation data reporting requirement, be of significant assistance in reducing the burden with respect to reporting these derivatives?

(f) Section 44.1: Reporting by a local counterparty that ceases to benefit from an exclusion

We are proposing a transition period (the **proposed transition period**) for an end-user counterparty that has previously qualified for an exclusion from reporting derivatives under the TR Rule and has not previously acted as the reporting counterparty under the TR Rule or a similar rule in another jurisdiction of Canada. We are aware that some local counterparties may not be required to act as the reporting counterparty for a derivative because they are currently under the $250 000 000 aggregate month-end gross notional outstanding threshold in the commodity derivative exemption in section 40 of the TR Rule. Additionally, other local counterparties may not be required to act as the reporting counterparty as a result of the proposed exclusion for inter-affiliate derivatives.

For such a local counterparty, the reporting obligations under the TR Rule would become effective 180 days after the date on which the local counterparty no longer qualifies for the relevant exclusion. Immediately following the expiry of the 180-day transition period, the local counterparty would be required to report all of its outstanding derivatives that have not already been reported pursuant to the TR Rule – for example, by its counterparty – as of the date the transition period expires.

We think that 180 days would be a sufficient period of time to prepare for fulfilling the reporting obligations under the TR Rule.

(g) Section 45: Effective date – Requirement for public dissemination of transaction-level data

The Authorities are proposing to revise the effective date of subsection 39(3) of the Instrument, which sets out the requirement that a recognized trade repository make transaction-level reports available to the public. Under the Proposed TR Rule Amendments, a recognized trade repository would be required to begin making transaction-level reports publicly available on July 29, 2016. The July 29, 2016 date is the intended start date for transaction-level public dissemination under the Local TR Rules; harmonizing the effective date for public dissemination of transaction-level data will facilitate a single, Canada-wide report of transaction-level data, and will help to mitigate the risk that a particular local counterparty's derivatives activity could be identified within the public reports. We note that the reporting requirements for end-users take effect on November 1, 2016. Derivatives that are subject to the transaction-level public dissemination requirements as set out in subsection 39(3) and proposed Appendix C and that are reported by an end-user would be included in the public dissemination report once they are reported, in accordance with the timing set out in Appendix C.

(h) Appendix B: Trade Reporting Laws of Foreign Jurisdictions

Subsection 26(3) provides that, in certain circumstances, a derivative that is reported pursuant to trade reporting laws of a jurisdiction of Canada or a foreign jurisdiction specified in Appendix B to the TR Rule is deemed to comply with the reporting requirements under the TR Rule (**substituted compliance**).

We have proposed to include in Appendix B the European Union (**EU**) trade reporting rules and the U.S. Commodity Futures Trading Commission (**CFTC**) swap data reporting rules. This amendment would permit certain OTC derivatives market participants that are subject to the reporting obligation under the TR Rule to benefit from substituted compliance when they report pursuant to the EU trade reporting rules or the CFTC swap data reporting rules.

The Authorities will review and assess the EU trade reporting rules and the CFTC swap data reporting rules during the comment period and will take into account any comments received.

The inclusion of the EU trade reporting rules and the CFTC swap data reporting rules in Appendix B will harmonize the operation of substituted compliance under the TR Rule with the corresponding provision in the Local TR Rules, and alleviate the burden of certain obligations in the TR Rule on certain market participants. The inclusion does not impose any new obligations on market participants.

(i) Appendix C: Requirements for the Public Dissemination of Transaction-level Data

Subsection 39(3) of the TR Rule requires a recognized trade repository to publicly disseminate transaction-level data for certain derivatives reported to it. The TR Rule currently provides that this requirement becomes effective January 1, 2017. Under the Proposed Amendments, this requirement would become effective approximately 5 months earlier, on July 29, 2016.

At present, subsection 39(3) does not establish any criteria with respect to this requirement. We are proposing to amend subsection 39(3) to refer to proposed Appendix C, and to establish specific requirements relating to the types of OTC derivatives that will be subject to public dissemination of transaction-level data, and the data required to be publicly disseminated, in proposed Appendix C.

Public dissemination of derivatives data provides important information to the OTC derivatives market by facilitating price discovery. This will allow market participants to value existing derivatives more accurately and to assess whether they are achieving quality execution when entering into new derivatives.

Despite the importance of transparency, we appreciate the importance of maintaining the anonymity of OTC derivative counterparties in the context of public dissemination of transaction-level data. The publication of transaction-level data, even anonymised data, could potentially allow market participants to determine the identity and amount of exposure under derivatives of one or both of the counterparties to a specific derivative through, for example, the size and/or underlying interest of the derivative. The indirect identification of counterparties to a derivative could make future transactions in derivatives, including derivative hedging the risks of a particular published derivative, more difficult and expensive as market participants adjust pricing in anticipation of the counterparties' immediate hedging needs. This is a particularly relevant risk for counterparties engaged in derivatives related to asset classes that are relatively illiquid in the Canadian market.

To effectively protect the anonymity of counterparties while providing appropriate transparency, we propose to limit, through proposed Appendix C, the application of the transaction-level public dissemination requirement to OTC derivatives relating to only certain asset classes and underlying benchmarks that exhibit sufficient market activity to make it difficult to identify a specific counterparty. Proposed Appendix C also provides for additional anonymising measures, such as the rounding and capping of notional amounts, to further protect counterparty identity without eliminating the value of the published information to the market.

The details for transaction-level public dissemination in proposed Appendix C were developed in conjunction with other members of the CSA Derivatives Committee including, in particular, staff of the securities regulatory authorities in Manitoba, Ontario and Québec. Those jurisdictions have had several months experience of derivatives data being reported under their respective Local TR Rules. Capping levels for each asset class and category were determined by assessing the unique market characteristics for each type of OTC derivative, including the relative size and frequency of derivatives transactions in Canada.

We anticipate coordinating harmonized amendments to Appendix C with the other members of the CSA over a series of phases following additional study of trade repository data and public consultation, to determine additional data and types of OTC derivatives that are appropriate for public dissemination and appropriate timing for publicly disseminating the data. We are particularly interested in the type of post-trade information that could be publicly disseminated for OTC derivatives involving less liquid underlying assets or that appear infrequently in the Canadian OTC derivatives market, without facilitating undue identification of the counterparties.

Question:

6. Do the Proposed TR Rule Amendments relating to public dissemination of transaction-level data appropriately balance (i) the protection of counterparty anonymity, and (ii) the benefits to the market of useful and timely transaction-level public transparency?

(j) Proposed TR CP Changes corresponding to the Proposed TR Rule Amendments

We propose to revise the guidance in the TR CP to correspond to the Proposed TR Rule Amendments.

Request for Comments

We welcome your comments on the Proposed Amendments. We invite any general comments you may have, in addition to any comments on the specific questions set out above.

Please submit your comments in writing on or before April 17, 2016. If you are not sending your comments by email, please send a CD containing the submissions.

We do not intend to keep submissions confidential. All comments received will be posted on the websites of the Alberta Securities Commission at www.albertasecurities.com. You should not include personal information directly in your comments. It is important that you state on whose behalf you are providing comments.

Thank you in advance for your comments. Please address your submission to the following:

Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating jurisdictions.

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Contents of Annexes

The following annexes form part of this CSA Notice:

Annex A	Proposed amendments to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*,
Annex B	Proposed changes to Companion Policy 96-101CP *Trade Repositories and Derivatives Data Reporting*,
Annex C	Blackline of Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* showing the Proposed TR Rule Amendments, and
Annex D	Blackline of Companion Policy 96-101CP *Trade Repositories and Derivatives Data Reporting* showing the Proposed TR CP Changes.

Questions

Please refer your questions to any of the following:

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ANNEX A

Proposed Amendments to
Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*

1. Multilateral Instrument 96-101 Trade Repositories and Derivatives Data Reporting is amended by this Instrument.

2. Paragraph 26(3)(a) is amended by adding the following subparagraph (iii):

(iii) the counterparties to the derivative are affiliated entities at the time of the transaction and none of the counterparties is one or more of the following:

(A) a clearing agency;

(B) a derivatives dealer;

(C) an affiliated entity of a person or company referred to in clause (A) or (B);**.**

3. Paragraph 26(3)(b) is amended by adding the following subparagraph (iv):

(iv) the laws of a foreign jurisdiction listed in Appendix B;**.**

4. The Instrument is amended by replacing subsection 26(4) with the following:

(4) A reporting counterparty must report all derivatives data relating to a derivative to the same recognized trade repository**..**

5. The Instrument is amended by replacing section 28 with the following:

Legal entity identifiers

28. (1) A recognized trade repository must identify each counterparty to a derivative that is required to be reported under this Instrument in all recordkeeping and all reporting required under this Instrument by means of a single legal entity identifier that is a unique identification code assigned to a counterparty in accordance with the standards set by the Global LEI System.

(2) Each local counterparty to a derivative required to be reported under this Instrument that is eligible to receive a legal entity identifier as determined by the Global LEI System, other than an individual, must:

(a) prior to executing a transaction, obtain a legal entity identifier assigned

in accordance with the requirements imposed by the Global LEI System;

(b) for as long as it is a counterparty to a derivative required to be reported under this Instrument, renew and maintain the legal entity identifier referred to in paragraph (a).

(3) If a local counterparty to a derivative required to be reported under this Instrument is an individual, or is not eligible to receive a legal entity identifier as determined by the Global LEI System, the reporting counterparty must identify the counterparty by a single alternate identifier.

(4) Despite subsection (1), if subsection (3) applies to a counterparty to a derivative, the recognized trade repository to which a report has been made in relation to the derivative must identify such a counterparty with the alternate identifier supplied by the reporting counterparty**..**

6. The Instrument is amended by replacing paragraph 34(1)(b) with the following:

(b) the transaction was entered into before July 29, 2016;**.**

7. The Instrument is amended by replacing paragraph 34(2)(b) with the following:

(b) the transaction was entered into before November 1, 2016;**.**

8. The Instrument is amended by replacing subsection 39(3) with the following:

(3) A recognized trade repository must make transaction-level reports available to the public at no cost, in accordance with the requirements in Appendix C**..**

9. The Instrument is amended by adding the following section:

Derivative between affiliated entities

41.1. (1) Despite Part 3, a counterparty is not required to report derivatives data relating to a derivative if:

(a) the counterparties to the derivative are affiliated entities at the time the data is required to be reported;

(b) none of the counterparties to the derivative is one or more of the following:

(i) a clearing agency;

(ii) a derivatives dealer;

(iii) an affiliated entity of a person or company referred to in

subparagraph (i) or (ii);

(c) each counterparty to the derivative is a local counterparty under the securities legislation of a jurisdiction of Canada**..**

10. The Instrument is amended by deleting subsection 44(4).

11. The Instrument is amended by adding the following section:

Reporting by a local counterparty that ceases to qualify for an exclusion

44.1 (1) Despite sections 40, 41, 41.1, and 42, and subject to subsection 44(2), a local counterparty is required to report creation data in relation to a derivative if:

(a) the derivative was not previously reported as a result of the operation of section 40, 41, 41.1 or 42;

(b) the local counterparty no longer satisfies the condition or conditions in section 40, 41, 41.1 or 42, as applicable;

(c) the derivative was entered into after May 1, 2016 and before the date on which the local counterparty no longer satisfies the condition or conditions in section 40, 41, 41.1 or 42, as applicable;

(d) there were outstanding contractual obligations with respect to the derivative on the earlier of the date that the derivative is reported or the date that is 180 days following the date on which the local counterparty no longer satisfies the condition or conditions in section 40, 41, 41.1 or 42, as applicable.

(2) Despite subsection (1) and subject to subsection 44(3), if the reporting counterparty to a derivative to which subsection (1) applies has not previously acted as a reporting counterparty under this Instrument or a similar instrument in another jurisdiction of Canada, the reporting counterparty is not required to report derivatives data in relation to the derivative, or any other derivative required to be reported under this Instrument, until the date that is 180 days following the date the local counterparty no longer satisfies the condition or conditions referred to in paragraph (1)(b).

(3) Despite section 31, a reporting counterparty to a derivative to which subsection (1) applies is only required to report, in relation to the transaction resulting in the derivative, the creation data indicated in the column in Appendix A entitled "Required for Pre-existing Derivatives".

(4) Despite section 32, a reporting counterparty is not required to report life-cycle event data relating to a derivative to which subsection (1) applies until the

reporting counterparty has reported creation data in accordance with subsections (1) and (2).

(5) Despite section 33, a reporting counterparty is not a required to report valuation data relating to a derivative to which subsection (1) applies until the reporting counterparty has reported creation data in accordance with subsections (1) and (2)**..**

12. The Instrument is amended by replacing subsection 45(4) with the following:

(4) Despite subsection (1) and, in Saskatchewan, subject to subsection (2), subsection 39(3) comes into force on July 29, 2016**..**

13. The Instrument is amended by inserting the following as Appendix B:

APPENDIX B
to
MULTILATERAL INSTRUMENT 96-101
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

Trade Reporting Laws of Foreign Jurisdictions

Jurisdiction	Law, Regulation and/or Instrument
European Union	Regulation (EU) 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended from time to time. Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories, as amended from time to time. Commission Delegated Regulation (EU) No 151/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data, as amended from time to time. Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, as amended from time

	to time.
United States of America	*CFTC Real-Time Public Reporting of Swap Transaction Data*, 17 C.F.R. pt. 43 (2013), as amended from time to time. *CFTC Swap Data Recordkeeping and Reporting Requirements*, 17 C.F.R. pt. 45 (2013), as amended from time to time. *CFTC Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 17 C.F.R. pt. 46 (2013), as amended from time to time.

14. The Instrument is amended by inserting the following as Appendix C:

APPENDIX C
to
MULTILATERAL INSTRUMENT 96-101
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

Requirements for the Public Dissemination of Transaction-level Data

Instructions

1. Subject to items 2 through 6, a recognized trade repository is required to disseminate to the public at no cost the information contained in Table 1 for a derivative in any of the Asset Classes and Underlying Asset Identifiers listed in Table 2 for:

(a) a derivative reported to the recognized trade repository under this Instrument;

(b) a life-cycle event that changes the pricing of an existing derivative reported to the recognized trade repository under this Instrument;

(c) a cancellation or correction of previously disseminated data relating to a transaction resulting in a derivative listed in paragraph (a) or a life-cycle event listed in paragraph (b).

Table 1

Data field	Description
Cleared	Indicate whether the derivative has been cleared by a clearing agency.
Electronic trading venue identifier	Indicate whether the transaction was executed on an electronic trading venue.
Collateralization	Indicate whether the derivative is collateralized.
Unique product	Unique product identification code based on the taxonomy of the product.

Data field	Description
identifier	
Contract or instrument type	The name of the contract of instrument type (e.g., swap, swaption, forward, option, basis swap, index swap, basket swap).
Underlying asset identifier 1	The unique identifier of the asset referenced in the derivative.
Underlying asset identifier 2	The unique identifier of the second asset referenced in the derivative, if more than one. If more than two assets identified in the derivative, report the unique identifiers for those additional underlying assets.
Asset class	Major asset class of the product (e.g., interest rate, credit, commodity, foreign exchange, equity).
Effective date or start date	The date the derivative becomes effective or starts.
Maturity, termination or end date	The date the derivative expires.
Payment frequency or dates	The dates or frequency the derivative requires payments to be made (e.g., quarterly, monthly).
Reset frequency or dates	The dates or frequency at which the price resets (e.g., quarterly, semi-annually, annually).
Day count convention	Factor used to calculate the payments (e.g., 30/360, actual/360).
Price 1	The price, rate, yield, spread, coupon or similar characteristic of the derivative. This should not include any premiums such as commissions, collateral premiums or accrued interest.
Price 2	The price, rate, yield, spread, coupon or similar characteristic of the derivative. This should not include any premiums such as commissions, collateral premiums or accrued interest.
Price notation type 1	The manner in which the price is expressed (e.g., percentage, basis points).

Data field	Description
Price notation type 2	The manner in which the price is expressed (e.g., percentage, basis points).
Notional amount leg 1	Total notional amount(s) of leg 1 of the derivative.
Notional amount leg 2	Total notional amount(s) of leg 2 of the derivative.
Currency leg 1	Currency of leg 1.
Currency leg 2	Currency of leg 2.
Settlement currency	The currency used to determine the cash settlement amount.
Embedded option	Indicate whether the option is an embedded option.
Option exercise date	The date(s) on which the option may be exercised.
Option premium	Fixed premium paid by the buyer to the seller.
Strike price (cap/floor rate)	The strike price of the option.
Option style	Indicate whether the option can be exercised on a fixed date or anytime during the life of the derivative. (e.g., American, European, Bermudan, Asian).
Option type	Put/call.
Action	Describes the type of event to the derivative (e.g., new transaction, modification or cancellation of existing derivative).
Execution timestamp	The time and date of execution of a derivative, including a novation, expressed using Coordinated Universal Time (UTC).

Table 2

Asset Class	Underlying Asset Identifier
Interest Rate	CAD-BA-CDOR
Interest Rate	USD-LIBOR-BBA

Interest Rate	EUR-EURIBOR-Reuters
Interest Rate	GBP-LIBOR-BBA
Credit	All Indexes
Equity	All Indexes

Exclusions

2. Despite item 1, each of the following is excluded from the requirement to be publicly disseminated:

(a) a derivative that requires the exchange of more than one currency;

(b) a derivative resulting from a multilateral portfolio compression exercise;

(c) a derivative resulting from novation by a clearing agency.

Rounding of notional amount

3. A recognized trade repository must round the notional amount of a derivative for which it disseminates transaction level data in accordance with the Instrument and item 1 of this Appendix in accordance with the rounding conventions contained in Table 3.

Table 3

Reported Notional Amount Leg 1 or 2	**Rounded Notional Amount**
<$1,000	Round to nearest $5
=>$1,000, <$10,000	Round to nearest $100
=>$10,000, <$100,000	Round to nearest $1,000
<$1 million	Round to nearest $10,000
=>$1 million, <$10 million	Round to nearest $100,000
=>$10 million, <$50 million	Round to nearest $1 million
=>$50 million, <$100 million	Round to nearest $10 million
=>$100 million, <$500 million	Round to nearest $50 million
=>$500 million, <$1 billion	Round to nearest $100 million
=>$1 billion, <$100 billion	Round to nearest $500 million
>$100 billion	Round to nearest $50 billion

Capping of notional amount

4. Where the Rounded Notional Amount of a derivative, as set out in Table 3, would

exceed the Capped Rounded Notional Amount, in Canadian dollars (CAD), according to the Asset Class and Maturity Date less Execution Time Stamp Date of that derivative as set out in Table 4, a recognized trade repository must disseminate the Capped Rounded Notional Amount for the derivative in place of the Rounded Notional Amount.

5. When disseminating data in accordance with subsection 39(3) of this Instrument and this Appendix, a recognized trade repository must indicate if the Rounded Notional Amount for a derivative is a Capped Rounded Notional Amount.

6. For each derivative where the Capped Rounded Notional Amount is disseminated, a recognized trade repository must adjust, if part of the data to be disseminated, the option premium, in a consistent and proportionate manner.

Table 4

Asset Class	**Maturity Date less Execution Time Stamp Date**	**Capped Rounded Notional Amount in CAD**
Interest Rate	Less than or equal to two years (746 days)	$250 million
Interest Rate	Greater than two years (746 days) and less than or equal to ten years (3,668 days)	$100 million
Interest Rate	Greater than ten years (3,668 days)	$50 million
Credit	All dates	$50 million
Equity	All dates	$50 million

Timing

7. Subject to items 2 through 6, a recognized trade repository must disseminate the information contained in Table 1 no later than

(a) the end of the day following the day on which it receives the data from the reporting counterparty to the derivative, if one of the counterparties to the derivative is a derivatives dealer or a reporting clearing agency, or

(b) the end of the second day following the day on which it receives the data from the reporting counterparty to the derivative in all other circumstances..

15. This Instrument comes into force on [●].

ANNEX B

Proposed Changes to
Companion Policy 96-101 *Trade Repositories and Derivatives Data Reporting*

1. Companion Policy 96-101 Trade Repositories and Derivatives Data Reporting is changed by this Instrument.

2. The Policy is changed by replacing the guidance relating to subsection 26(3) with the following:

(3) Subsection 26(3) provides for limited substituted compliance in three circumstances.

The first circumstance is where a counterparty to a derivative is organized under the laws of the local jurisdiction but does not conduct business in the jurisdiction other than activities incidental to being organized in the jurisdiction.

We are of the view that factors that would indicate that a person or company is conducting business in the jurisdiction would include the following:

- having a physical location in a jurisdiction;
- having employees or agents that reside in the jurisdiction;
- generating revenue in the jurisdiction;
- having customers or clients in the jurisdiction.

We are also of the view that activities that are incidental to being organized under the law of a jurisdiction would include instructing legal counsel to file materials with the government agency responsible for registering corporations and maintaining a local agent for service of legal documents.

The second circumstance is where the derivative involves a local counterparty that is a local counterparty solely on the basis that it is an affiliated entity of a person or company, other than an individual, that is organized in the local jurisdiction or has its head office and principal place of business in the local jurisdiction, and that person or company is liable for all or substantially all of the liabilities of the affiliated entity.

The third circumstance is where the derivative is between two affiliated entities, each of which is neither a derivatives dealer or a clearing agency, nor an affiliated entity of a derivatives dealer or a clearing agency.

In each instance, the counterparties can benefit from substituted compliance where the derivative has been reported to a recognized trade repository pursuant to the laws of a

province of Canada other than the local jurisdiction or of a foreign jurisdiction listed in Appendix B, provided that the additional conditions set out in paragraph 26(3)(c) are satisfied..

3. The Policy is changed by replacing the guidance relating to subsection 26(4) with the following:

(4) Subsection 26(4) requires that all derivatives data reported for a derivative be reported to the same recognized trade repository or, with respect to a derivative reported under subsection 26(2), to the local securities regulatory authority.

For a bi-lateral derivative that is cleared by a clearing agency (novation), the recognized trade repository to which all derivatives data must be reported is the recognized trade repository to which the original bi-lateral derivative was reported.

The purpose of this requirement is to ensure the securities regulatory authority has access to all reported derivatives data for a particular derivative and its related transactions from the same entity. It is not intended to restrict counterparties' ability to report to multiple trade repositories..

4. The Policy is changed by replacing the guidance relating to subsection 26(6) with the following:

(6) We interpret the requirement in subsection 26(6), to report errors or omissions in derivatives data "as soon as practicable" after it is discovered, to mean upon discovery and in any case no later than the end of the business day following the day on which the error or omission is discovered..

5. The Policy is changed by replacing the guidance relating to subsection 26(7) with the following:

(7) Under subsection 26(7), where a local counterparty that is not a reporting counterparty discovers an error or omission in respect of derivatives data that has been reported to a recognized trade repository, such local counterparty has an obligation to report the error or omission to the reporting counterparty for the derivative. Once an error or omission is reported by the local counterparty to the reporting counterparty, the reporting counterparty then has an obligation under subsection 26(6) to report the error or omission to the recognized trade repository or to the securities regulatory authority in accordance with subsection 26(2). We interpret the requirement in subsection 26(7) to notify the reporting counterparty of errors or omissions in derivatives data to mean upon discovery and in any case no later than the end of the business day following the day on which the error or omission is discovered..

6. The Policy is changed by replacing the guidance relating to section 28 with the following:

28. The Global LEI System is a G20 endorsed initiative[6] for uniquely identifying parties to financial transactions, designed and implemented under the direction of the LEI ROC, a governance body endorsed by the G20. The Global LEI System serves as a public-good utility responsible for overseeing the issuance of legal entity identifiers globally, including to counterparties who enter into derivatives or that are involved in a derivatives transaction.

(1) We are of the view that reporting counterparties will take steps to ensure that the non-reporting counterparty provides its LEI to facilitate reporting under the Instrument. If the reporting counterparty cannot, for any reason, obtain the LEI from the non-reporting counterparty, publicly accessible resources may be available for obtaining that information.

(2) Paragraph 28(2)(a) requires each local counterparty to a derivative that is required to be reported under the Instrument, other than an individual, to acquire an LEI, regardless of whether the local counterparty is the reporting counterparty.

(3) Some counterparties to a reportable derivative may not be eligible to receive an LEI. In such cases, the reporting counterparty must use an alternate identifier to identify each counterparty that is ineligible for an LEI when reporting derivatives data to a recognized trade repository..

7. The Policy is changed by replacing the guidance relating to subsection 39(3) with the following:

(3) Subsection 39(3) requires a recognized trade repository to publicly disseminate transaction-level reports in accordance with the requirements set out in Appendix C..

8. The Policy is changed by adding the following new guidance immediately following the guidance relating to section 40:

Derivative between affiliated entities

41.1. Section 41.1 provides an exclusion from the reporting requirement for derivatives between two affiliated entities that are each a local counterparty in a jurisdiction of Canada. The exclusion is not available to a person or company that is a derivatives dealer or a clearing agency, or is an affiliated entity of a derivatives dealer or a clearing agency..

[6] For more information, see FSB Report *A Global Legal Entity Identifier for Financial Markets*, June 8, 2012, online: Financial Stability Board http://www.financialstabilityboard.org/publications/.

9. The Policy is changed by adding the following new guidance immediately following the guidance relating to section 42:

Reporting by a local counterparty that ceases to qualify for an exclusion

44.1. (1) Subsection 44.1(1) provides that a derivative that was excluded under any of section 40, 41, 41.1 or 42 from the reporting requirements under the Instrument, but which no longer meets the applicable condition or conditions, must be reported once the applicable condition or conditions are no longer met.

Subsection 44.1(2) is intended to provide a person or company that has previously benefitted from an exclusion from trade reporting under Part 6, and has not previously acted as a reporting counterparty under the Instrument or a similar instrument in another jurisdiction of Canada, with a reasonable transition period to allow them to develop the resources and implement policies and procedures necessary to meet the requirements applicable to a reporting counterparty**..**

10. The Policy is changed by replacing the guidance relating to section 45 with the following:

Effective date

45. (4) The requirement under subsection 39(3) for a recognized trade repository to make transaction-level data reports available to the public does not apply until July 29, 2016**..**

11. The Policy is changed by adding the following new guidance immediately following the guidance relating to section 45:

APPENDIX C

Instructions

1. The instructions provided at item 1 of this Appendix describe the types of derivatives for which the data fields described in Table 1 must be publicly disseminated by a recognized trade repository.

Public dissemination is not required for life-cycle events that do not contain new price information compared to the original transaction.

Table 1

Table 1 lists the data fields that must be publicly disseminated. Table 1 is a subset of the information that the trade repository is required to submit to the regulator and does not include all the fields required to be reported to a recognized trade repository pursuant to Appendix A. For example, valuation data fields are not required to be publicly disseminated.

Table 2

Only derivatives in any of the Asset Class and Underlying Asset Identifiers fields listed in Table 2 are subject to the public dissemination requirement under subsection 39(3) of the Instrument.

For further clarification, the identifiers listed under the Underlying Asset Identifier in Table 2 refer to the following:

"CAD-BA-CDOR" means all tenors of the Canadian Dollar Offered Rate (CDOR). CDOR is a financial benchmark for bankers' acceptances with a term to maturity of one year or less currently calculated and administered by Thomson Reuters.

"USD-LIBOR-BBA" means all tenors of the U.S. Dollar IntercontinentalExchange London Interbank Offered Rate (ICE LIBOR). ICE LIBOR is a benchmark currently administered by ICE Benchmark Administration and provides an indication of the average rate at which a contributor bank can obtain unsecured funding in the London interbank market for a given period, in a given currency.

"EUR-EURIBOR-Reuters" means all tenors of the Euro Interbank Offered Rate (Euribor). Euribor is a reference rate published by the European Banking Authority based on the average interest rates at which selected European prime banks borrow funds from one another.

"GBP-LIBOR-BBA" means all tenors of the GBP Pound Sterling IntercontinentalExchange London Interbank Offered Rate (ICE LIBOR). ICE LIBOR is a benchmark currently administered by ICE Benchmark Administration providing an indication of the average rate at which a contributor bank can obtain unsecured funding in the London interbank market for a given period, in a given currency.

"All Indexes" means any statistical measure of a group of assets that is administered by an organization that is not affiliated with the counterparties and whose value and calculation methodologies are publicly available. Examples of indexes that would satisfy this meaning are underlying assets that would be included in ISDA's Unique Product Identifier Taxonomy[9] under (i) the categories of Index and Index Tranche for credit products and (ii) the Single Index category for equity products.

Exclusions

2. Item 2 of this Appendix specifies the types of derivatives that are excluded from the public dissemination requirement in subsection 39(3) of the Instrument. An example of a derivative excluded under item 2(a) is a cross-currency swap. The type of derivative excluded under item 2(b) results from portfolio compression activity which occurs whenever a derivative is amended or entered into in order to reduce the gross notional amount of an outstanding derivative or group of derivatives without impacting the net

[9] ISDA's Unique Product Identifier Taxonomy can be found at www.isda.org.

exposure. Item 2(c) excludes a derivative resulting from a novation on the part of a clearing agency when facilitating the clearing of a bi-lateral derivative.

Rounding of notional amount

3. The rounding thresholds are to be applied to the notional amount of a derivative in the currency of the derivative. For example, a derivative denominated in United States dollars (USD) would be rounded and disseminated in USD and not the Canadian dollar (CAD) equivalent.

Capping of notional amount

4. Item 4 of this Appendix requires a recognized trade repository to compare the Rounded Notional Amount of a derivative denominated in a non-CAD currency to the Capped Rounded Notional Amount in CAD that corresponds to the Asset Class and tenor of that derivative. Therefore, the recognized trade repository must convert the non-CAD currency into CAD in order to determine whether it would be above the capping threshold. The recognized trade repository must utilise a transparent and consistent methodology for converting to and from CAD for the purposes of comparing and publishing the capped notional amount.

For example, in order to compare the Rounded Notional Amount of a derivative denominated in UK Pounds (GBP) to the thresholds in Table 4, the recognized trade repository must convert this amount to a CAD-equivalent amount. If the CAD-equivalent notional amount of the GBP denominated derivative is above the capping threshold, the recognized trade repository must disseminate the Capped Rounded Notional Amount converted back into the currency of the derivative using a consistent and transparent process.

6. Item 6 of this Appendix requires a recognized trade repository to adjust the Option Premium field in a consistent and proportionate manner if the Rounded Notional Amount of a derivative is greater than the Capped Rounded Notional Amount. The Option Premium field adjustment should be proportionate to the size of the Capped Rounded Notional Amount compared to the Rounded Notional Amount.

Timing

7. Item 7 of this Appendix sets out when a recognized trade repository must publicly disseminate the required information from Table 1. The purpose of the public reporting delays is to ensure that counterparties have adequate time to enter into any offsetting derivative that may be necessary to hedge their positions. These time delays apply to all derivatives, regardless of size**..**

12. These changes become effective on [●].

ANNEX C

This Annex sets out a blackline showing the proposed amendments to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*, as set out in Annex A.

MULTILATERAL INSTRUMENT 96-101
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

PART 1
DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1. (1) In this Instrument

"accounting principles" means accounting principles as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"auditing standards" means auditing standards as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"asset class" means the category of the underlying interest of a derivative and includes, for greater certainty, interest rate, foreign exchange, credit, equity and commodity;

"board of directors" means, in the case of a recognized trade repository that does not have a board of directors, a group of individuals that acts in a capacity similar to a board of directors;

"creation data" means data resulting from a transaction which is within the classes of data described in the fields listed in Appendix A, other than valuation data;

"derivatives data" means all data that is required to be reported under Part 3;

"derivatives dealer" means a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives as principal or agent;

"Global LEI System" means the system for unique identification of parties to financial transactions developed by the Legal Entity Identifier Regulatory Oversight Committee;

"interim period" means interim period as defined in section 1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*;

"Legal Entity Identifier System Regulatory Oversight Committee" means the international working group established by the finance ministers and the central bank governors of the Group of Twenty nations and the Financial Stability Board, under the

Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier System dated November 5, 2012;

"life-cycle event" means an event that results in a change to derivatives data reported to a recognized trade repository in respect of a derivative;

"life-cycle event data" means data reflecting changes to derivatives data resulting from a life-cycle event;

"local counterparty" means a counterparty to a derivative if, at the time of the transaction, one or more of the following apply:

(a) the counterparty is a person or company, other than an individual, to which one or more of the following apply:

(i) it is organized under the laws of the local jurisdiction;

(ii) its head office is in the local jurisdiction;

(iii) its principal place of business is in the local jurisdiction;

(b) the counterparty is a derivatives dealer in the local jurisdiction;

(c) the counterparty is an affiliated entity of a person or company to which paragraph (a) applies and the person or company is liable for all or substantially all of the liabilities of the counterparty;

"participant" means a person or company that has entered into an agreement with a recognized trade repository to access the services of the recognized trade repository;

"publicly accountable enterprise" means a publicly accountable enterprise as defined in Part 3 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"reporting clearing agency" means either of the following:

(a) a person or company recognized or exempted from recognition as a clearing agency under securities legislation;

(b) a clearing agency that has provided a written undertaking to the regulator or securities regulatory authority to act as the reporting counterparty with respect to derivatives cleared by it that are subject to this Instrument;

"reporting counterparty" has the same meaning as in subsection 25(1);

"transaction" means any of the following:

(a) entering into, assigning, selling or otherwise acquiring or disposing of a derivative;
(b) the novation of a derivative;

"U.S. AICPA GAAS" means auditing standards of the American Institute of Certified Public Accountants, as amended from time to time;

"U.S. GAAP" means generally accepted accounting principles in the United States of America that the SEC has identified as having substantial authoritative support, as supplemented by Regulation S-X under the 1934 Act, as amended from time to time;

"U.S. PCAOB GAAS" means auditing standards of the Public Company Accounting Oversight Board (United States of America), as amended from time to time;

"user" means, in respect of a recognized trade repository, a counterparty to a derivative that has been reported to the recognized trade repository under this Instrument including, for greater certainty, a delegate of a counterparty acting in its delegated capacity;

"valuation data" means data within the classes of data described in the fields listed in Appendix A under Item E – "Valuation Data".

(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 if each of them is controlled by the same person or company.

(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 a trustee of the trust is the first party.

(4) In this Instrument, "derivative" means a "specified derivative" as defined in Multilateral Instrument 91-101 *Derivatives: Product Determination*.

(5) In this Instrument, "trade repository" means

(a) in British Columbia, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Yukon, a quotation and trade reporting system for derivatives, and

(b) in Nova Scotia, a derivatives trade repository.

PART 2
TRADE REPOSITORY RECOGNITION AND ONGOING REQUIREMENTS

Filing of initial information on application for recognition as a trade repository

2. (1) A person or company applying for recognition as a trade repository must file Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* as part of its application.

(2) A person or company applying for recognition as a trade repository whose head office or principal place of business is located in a foreign jurisdiction must file Form 96-101F2 *Trade Repository Submission to Jurisdiction and Appointment of Agent for Service of Process*.

(3) No later than the 7th day after becoming aware of an inaccuracy in or making a change to the information provided in Form 96-101F1, a person or company that has filed Form 96-101F1 must file an amendment to Form 96-101F1 in the manner set out in Form 96-101F1.

Change in information by a recognized trade repository

3. (1) A recognized trade repository must not implement a significant change to a matter set out in Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* unless it has filed an amendment to the information provided in Form 96-101F1 in the manner set out in Form 96-101F1 no later than 45 days before implementing the change.

(2) Despite subsection (1), a recognized trade repository must not implement a change to a matter set out in Exhibit I (Fees) of Form 96-101F1 unless it has filed an amendment to the information provided in Exhibit I no later than 15 days before implementing the change.

(3) For a change to a matter set out in Form 96-101F1 other than a change referred to in subsection (1) or (2), a recognized trade repository must file an amendment to the information provided in Form 96-101F1 by the earlier of

(a) the close of business of the recognized trade repository on the 10th day after the end of the month in which the change was made, or

(b) the time the recognized trade repository discloses the change.

Filing of initial audited financial statements

4. (1) A person or company applying for recognition as a trade repository must file audited financial statements for its most recently completed financial year as part of its application for recognition as a trade repository.

(2) The financial statements referred to in subsection (1) must

(a) be prepared in accordance with one of the following:

(i) Canadian GAAP applicable to publicly accountable enterprises;

(ii) IFRS;

(iii) U.S. GAAP, if the person or company is incorporated or organized under the laws of the United States of America or a jurisdiction of the United States of America,

(b) identify in the notes to the financial statements the accounting principles used to prepare the financial statements,

(c) disclose the presentation currency, and

(d) be audited in accordance with one of the following:

(i) Canadian GAAS;

(ii) International Standards on Auditing;

(iii) U.S. AICPA GAAS or U.S. PCAOB GAAS, if the person or company is incorporated or organized under the laws of the United States of America or a jurisdiction of the United States of America.

(3) The financial statements referred to in subsection (1) must be accompanied by an auditor's report that

(a) is prepared in accordance with the same auditing standards used to conduct the audit and,

(i) if prepared in accordance with Canadian GAAS or International Standards on Auditing, expresses an unmodified opinion, or

(ii) if prepared in accordance with U.S. AICPA GAAS or U.S. PCAOB GAAS, expresses an unqualified opinion,

(b) identifies all financial periods presented for which the auditor has issued the auditor's report,

(c) identifies the auditing standards used to conduct the audit,

(d) identifies the accounting principles used to prepare the financial statements, and

(e) is prepared and signed by a person or company that is authorized to sign an auditor's report under the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.

Filing of annual audited and interim financial statements by a recognized trade repository

5. (1) A recognized trade repository must file annual audited financial statements that comply with subsections 4(2) and (3) no later than the 90th day after the end of its financial year.

(2) A recognized trade repository must file interim financial statements no later than the 45th day after the end of each interim period.

(3) The interim financial statements referred to in subsection (2) must

(a) be prepared in accordance with one of the following:

(i) Canadian GAAP applicable to publicly accountable enterprises;

(ii) IFRS;

(iii) U.S. GAAP, if the person or company is incorporated or organized under the laws of the United States of America or a jurisdiction of the United States of America, and

(b) identify in the notes to the financial statements the accounting principles used to prepare the financial statements.

Ceasing to carry on business

6. (1) A recognized trade repository that intends to cease carrying on business as a trade repository in the local jurisdiction must file a report on Form 96-101F3 *Cessation of Operations Report for Recognized Trade Repository* no later than the 180th day before the date on which it intends to cease carrying on that business.

(2) A recognized trade repository that involuntarily ceases to carry on business as a trade repository in the local jurisdiction must file a report on Form 96-101F3 as soon as practicable after it ceases to carry on that business.

Legal framework

7. (1) A recognized trade repository must establish, implement and maintain clear and transparent written rules, policies and procedures that are not contrary to the public interest and that are reasonably designed to ensure that

(a) each material aspect of its activities complies with applicable laws,

(b) its rules, policies, procedures and contractual arrangements applicable to its users are consistent with applicable laws,

(c) the rights and obligations of its users and owners with respect to the use of derivatives data reported to the trade repository are clear and transparent, and

(d) where a reasonable person would conclude that it is appropriate to do so, an agreement that it enters into clearly states service levels, rights of access, protection of confidential information, who possesses intellectual property rights and levels of operational reliability of the recognized trade repository's systems, as applicable.

(2) Without limiting the generality of subsection (1), a recognized trade repository must implement rules, policies and procedures that clearly establish the status of records of contracts for derivatives reported to the trade repository and whether those records of contracts are the legal contracts of record.

Governance

8. (1) A recognized trade repository must establish, implement and maintain clear and transparent written governance arrangements that set out a clear organizational structure with direct lines of responsibility and are reasonably designed to do each of the following:

(a) provide for internal controls;

(b) provide for the safety of the recognized trade repository;

(c) ensure oversight of the recognized trade repository;

(d) support the stability of the financial system and other relevant public interest considerations;

(e) balance the interests of relevant stakeholders.

(2) A recognized trade repository must establish, implement and maintain written rules, policies and procedures reasonably designed to identify and manage or resolve conflicts of interest.

(3) A recognized trade repository must disclose on its website, in a manner that is easily accessible to the public,

(a) the governance arrangements required under subsection (1), and

(b) the rules, policies and procedures required under subsection (2).

Board of directors

9. (1) A recognized trade repository must have a board of directors.

(2) The board of directors of a recognized trade repository must include

(a) individuals who have sufficient skill and experience to effectively oversee the management of its operations in accordance with all relevant laws, and

(b) reasonable representation by individuals who are independent of the recognized trade repository.

(3) The board of directors of a recognized trade repository must, in consultation with the chief compliance officer of the recognized trade repository, manage or resolve conflicts of interest identified by the chief compliance officer.

Management

10. (1) A recognized trade repository must establish, implement and maintain written policies and procedures that

(a) specify the roles and responsibilities of management, and

(b) ensure that management has sufficient skill and experience to effectively discharge its roles and responsibilities.

(2) A recognized trade repository must notify the regulator or securities regulatory authority no later than the 5th business day after appointing or replacing its chief compliance officer, chief executive officer or chief risk officer.

Chief compliance officer

11. (1) The board of directors of a recognized trade repository must appoint a chief compliance officer with sufficient skill and experience to effectively serve in that capacity.

(2) The chief compliance officer of a recognized trade repository must report directly to the board of directors of the recognized trade repository or, if so directed by the board of directors, to the chief executive officer of the recognized trade repository.

(3) The chief compliance officer of a recognized trade repository must

(a) establish, implement and maintain written rules, policies and procedures designed to identify and resolve conflicts of interest,

(b) establish, implement and maintain written rules, policies and procedures designed to ensure that the recognized trade repository complies with securities legislation,

(c) monitor compliance with the rules, policies and procedures required under paragraphs (a) and (b) on an ongoing basis,

(d) report to the board of directors of the recognized trade repository as soon as practicable upon becoming aware of a circumstance indicating that the recognized trade repository, or an individual acting on its behalf, has not complied with securities legislation in any jurisdiction, including a foreign jurisdiction, in which it operates and any of the following apply:

(i) the non-compliance creates a risk of harm to a user;

(ii) the non-compliance creates a risk of harm to the capital markets;

(iii) the non-compliance is part of a pattern of non-compliance;

(iv) the non-compliance could impact the ability of the recognized trade repository to carry on business as a trade repository in compliance with securities legislation,

(e) report to the board of directors of the recognized trade repository as soon as practicable upon becoming aware of a conflict of interest that creates a risk of harm to a user or to the capital markets, and

(f) prepare and certify an annual report assessing compliance by the recognized trade repository, and individuals acting on its behalf, with securities legislation and submit the report to the board of directors.

(4) Concurrently with submitting a report under paragraph (3)(d), (e) or (f), the chief compliance officer must file a copy of the report with the regulator or securities regulatory authority.

Fees

12. A recognized trade repository must disclose on its website, in a manner that is easily accessible to the public, all fees and other material charges imposed by it on its participants for each service it offers with respect to the collection and maintenance of derivatives data.

Access to recognized trade repository services

13. (1) A recognized trade repository must establish, implement and maintain written objective risk-based criteria for participation that permit fair and open access to the services it provides.

(2) A recognized trade repository must disclose the criteria referred to in subsection (1) on its website in a manner that is easily accessible to the public.

(3) A recognized trade repository must not do any of the following:

(a) unreasonably prevent, condition or limit access by a person or company to the services offered by it;

(b) unreasonably discriminate between or among its participants;

(c) impose an unreasonable barrier to competition;

(d) require a person or company to use or purchase another service to utilize the trade reporting service offered by the trade repository.

Acceptance of reporting

14. A recognized trade repository must accept derivatives data from a participant for all derivatives of an asset class set out in the recognition order for the trade repository.

Communication policies, procedures and standards

15. A recognized trade repository must use or accommodate relevant internationally accepted communication procedures and standards that facilitate the efficient exchange of data between its systems and those of

(a) its participants,

(b) other trade repositories,

(c) clearing agencies, exchanges and other platforms that facilitate derivatives transactions, and

(d) its service providers.

Due process

16. (1) Before making a decision that directly and adversely affects a participant or an applicant that applies to become a participant, a recognized trade repository must give the participant or applicant an opportunity to be heard.

(2) A recognized trade repository must keep records of, give reasons for, and provide for reviews of its decisions, including, for each applicant, the reasons for granting, denying or limiting access.

Rules, policies and procedures

17. (1) A recognized trade repository must have rules, policies and procedures that

(a) allow a reasonable participant to understand each of the following:

(i) the participant's rights, obligations and material risks resulting from being a participant of the recognized trade repository;

(ii) the fees and other charges that the participant may incur in using the services of the recognized trade repository,

(b) allow a reasonable user to understand the conditions of accessing derivatives data relating to a derivative to which it is a counterparty, and

(c) are reasonably designed to govern all aspects of the services it offers with respect to the collection and maintenance of derivatives data and other information relating to a derivative.

(2) The rules, policies and procedures of a recognized trade repository must not be inconsistent with securities legislation.

(3) A recognized trade repository must monitor compliance with its rules, policies and procedures on an ongoing basis.

(4) A recognized trade repository must establish, implement and maintain written rules, policies and procedures that provide appropriate sanctions for violations of its rules, policies and procedures applicable to its participants.

(5) A recognized trade repository must disclose on its website, in a manner that is easily accessible to the public,

(a) the rules, policies and procedures required under this section, and

(b) its procedures for adopting new rules, policies and procedures or amending existing rules, policies and procedures.

Records of data reported

18. (1) A recognized trade repository must have recordkeeping procedures reasonably designed to ensure that it records derivatives data accurately, completely and on a timely basis.

(2) A recognized trade repository must keep, in a safe location and in a durable form, records of derivatives data relating to a derivative required to be reported under this Instrument for 7 years after the date on which the derivative expires or terminates.

(3) A recognized trade repository must create and maintain at least one copy of each record of derivatives data required to be kept under subsection (2), for the same period as referenced in subsection (2), in a safe location and in a durable form, separate from the location of the original record.

Comprehensive risk-management framework

19. A recognized trade repository must establish, implement, and maintain a written risk-management framework reasonably designed to comprehensively manage risks including general business, legal and operational risks.

General business risk

20. (1) A recognized trade repository must establish, implement and maintain appropriate systems, controls and procedures reasonably designed to identify, monitor, and manage its general business risk.

(2) Without limiting the generality of subsection (1), a recognized trade repository must hold sufficient insurance coverage and liquid net assets funded by equity to cover potential general business losses in order that it can continue operations and services as a going concern and in order to achieve a recovery or an orderly wind-down if those losses materialize.

(3) For the purposes of subsection (2), a recognized trade repository must hold, at a minimum, liquid net assets funded by equity equal to 6 months of current operating expenses.

(4) A recognized trade repository must have policies and procedures reasonably designed to identify scenarios that could potentially prevent it from being able to provide its critical operations and services as a going concern and to assess the effectiveness of a full range of options for an orderly wind-down.

(5) A recognized trade repository must establish, implement and maintain written rules, policies and procedures reasonably designed to facilitate its orderly wind-down based on the results of the assessment required by subsection (4).

(6) A recognized trade repository must establish, implement and maintain written rules, policies and procedures reasonably designed to ensure that it or a successor entity, insolvency administrator or other legal representative will be able to continue to comply with the requirements of subsection 6(2) and section 37 in the event of the bankruptcy or insolvency of the recognized trade repository or the wind-down of the recognized trade repository's operations.

System and other operational risk requirements

21. (1) A recognized trade repository must establish, implement and maintain appropriate systems, controls and procedures reasonably designed to identify and minimize the impact of the plausible sources of operational risk, both internal and external, including risks to data integrity, data security, business continuity and capacity and performance management.

(2) The systems, controls and procedures required under subsection (1) must be approved by the board of directors of the recognized trade repository.

(3) Without limiting the generality of subsection (1), a recognized trade repository must

(a) develop and maintain

(i) an adequate system of internal controls over its systems, and

(ii) adequate information technology general controls, including, without limitation, controls relating to information systems operations, information security and integrity, change management, problem management, network support and system software support,

(b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually,

(i) make reasonable current and future capacity estimates, and

(ii) conduct capacity stress tests to determine the ability of those systems to process derivatives data in an accurate, timely and efficient manner, and

(c) promptly notify the regulator or securities regulatory authority of a material systems failure, malfunction, delay or other disruptive incident, or a breach of data security, integrity or confidentiality, and provide a post-incident report that includes a root-cause analysis as soon as practicable.

(4) Without limiting the generality of subsection (1), a recognized trade repository must establish, implement and maintain business continuity plans, including disaster recovery plans, reasonably designed to

(a) achieve prompt recovery of its operations following a disruption,

(b) allow for the timely recovery of information, including derivatives data, in the event of a disruption, and

(c) provide for the exercise of authority in the event of an emergency.

(5) A recognized trade repository must test its business continuity plans, including disaster recovery plans, at least annually.

(6) For each of its systems for collecting and maintaining reports of derivatives data, a recognized trade repository must annually engage a qualified party to conduct an independent review and prepare a report in accordance with established audit standards to ensure that the recognized trade repository is in compliance with paragraphs (3)(a) and (b) and subsections (4) and (5).

(7) A recognized trade repository must provide the report referred to in subsection (6) to

(a) its board of directors or audit committee promptly upon the completion of the report, and

(b) the regulator or securities regulatory authority not later than the 30th day after providing the report to its board of directors or audit committee.

(8) A recognized trade repository must disclose on its website, in a manner that is easily accessible to the public, all technology requirements regarding interfacing with or accessing the services provided by the recognized trade repository

(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and

(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

(9) A recognized trade repository must make available testing facilities for interfacing with or accessing the services provided by the recognized trade repository,

(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and

(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

(10) A recognized trade repository must not begin operations in the local jurisdiction unless it has complied with paragraphs (8)(a) and (9)(a).

(11) Paragraphs (8)(b) and (9)(b) do not apply to a recognized trade repository if

(a) the change to the recognized trade repository's technology requirements must be made immediately to address a failure, malfunction or material delay of its systems or equipment,

(b) the recognized trade repository immediately notifies the regulator or securities regulatory authority of its intention to make the change to its technology requirements, and

(c) the recognized trade repository discloses on its website, in a manner that is easily accessible to the public, the changed technology requirements as soon as practicable.

Data security and confidentiality

22. (1) A recognized trade repository must establish, implement and maintain written rules, policies and procedures reasonably designed to ensure the safety, privacy and confidentiality of derivatives data reported to it under this Instrument.

(2) A recognized trade repository must not release derivatives data for commercial or business purposes unless one or more of the following apply:

(a) the derivatives data has otherwise been disclosed under section 39;

(b) the counterparties to the derivative have provided the recognized trade repository with their express written consent to use or release the derivatives data.

Confirmation of data and information

23. (1) A recognized trade repository must establish, implement and maintain written rules, policies and procedures reasonably designed to allow for confirmation by each counterparty to a derivative that has been reported under this Instrument that the derivatives data reported in relation to the derivative is accurate.

(2) Despite subsection (1), a recognized trade repository is not required to establish, implement and maintain written rules, policies or procedures referred to in that

subsection in respect of a counterparty that is not a participant of the recognized trade repository.

Outsourcing

24. If a recognized trade repository outsources a material service or system to a service provider, including to an associate or affiliated entity of the recognized trade repository, the recognized trade repository must do each of the following:

(a) establish, implement and maintain written rules, policies and procedures for the selection of a service provider to which a material service or system may be outsourced and for the evaluation and approval of such an outsourcing arrangement;

(b) identify any conflicts of interest between the recognized trade repository and a service provider to which a material service or system is outsourced, and establish, implement, maintain and enforce written rules, policies and procedures to mitigate and manage or resolve those conflicts of interest;

(c) enter into a written contract with the service provider that is appropriate for the materiality and nature of the outsourced activity and that provides for adequate termination procedures;

(d) maintain access to the books and records of the service provider relating to the outsourced activity;

(e) ensure that the regulator or securities regulatory authority has the same access to all data, information and systems maintained by the service provider on behalf of the recognized trade repository that it would have absent the outsourcing arrangement;

(f) ensure that all persons or companies conducting an audit or independent review of the recognized trade repository under this Instrument have appropriate access to all data, information and systems maintained by the service provider on behalf of the recognized trade repository that those persons or companies would have absent the outsourcing arrangement;

(g) take appropriate measures to determine that a service provider to which a material service or system is outsourced establishes, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan in accordance with the requirements set out in section 21;

(h) take appropriate measures to ensure that the service provider protects the safety, privacy and confidentiality of derivatives data and of users' confidential information in accordance with the requirements set out in section 22;

(i) establish, implement, maintain and enforce written rules, policies and procedures to regularly review the performance of the service provider under the outsourcing agreement.

PART 3
DATA REPORTING

Reporting counterparty

25. (1) In this Instrument, "reporting counterparty", with respect to a derivative involving a local counterparty, means

(a) if the derivative is cleared through a reporting clearing agency, the reporting clearing agency,

(b) if paragraph (a) does not apply and the derivative is between a derivatives dealer and a counterparty that is not a derivatives dealer, the derivatives dealer,

(c) if paragraphs (a) and (b) do not apply and the counterparties to the derivative have, at the time of the transaction, agreed in writing that one of them will be the reporting counterparty, the counterparty determined to be the reporting counterparty under the terms of that agreement, and

(d) in any other case, each counterparty to the derivative.

(2) A local counterparty to a derivative to which paragraph (1)(c) applies must keep a record of the written agreement referred to in that paragraph for 7 years after the date on which the derivative expires or terminates.

(3) The records required to be maintained under subsection (2) must be kept in

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

(b) a manner that permits the records to be provided to the regulator within a reasonable time following request.

(4) Despite section 40, a local counterparty that agrees under paragraph (1)(c) to be the reporting counterparty for a derivative to which section 40 applies must report derivatives data relating to the derivative in accordance with this Instrument.

Duty to report

26. (1) A reporting counterparty to a derivative involving a local counterparty must report, or cause to be reported, the data required to be reported under this Part to a recognized trade repository.

(2) Despite subsection (1), if no recognized trade repository accepts the data required to be reported under this Part, the reporting counterparty must electronically report the data required to be reported under this Part to the regulator or securities regulatory authority.

(3) A reporting counterparty satisfies the reporting obligation in respect of a derivative required to be reported under subsection (1) if each of the following applies:

(a) one of the following applies to the derivative:

(i) the derivative is required to be reported solely because a counterparty to the derivative is a local counterparty under subparagraph (a)(i) of the definition of "local counterparty" and that local counterparty does not conduct business in the local jurisdiction other than incidental to being organized under the laws of the local jurisdiction;

(ii) the derivative is required to be reported solely because a counterparty to the derivative is a local counterparty under paragraph (c) of the definition of "local counterparty";

(iii) the counterparties to the derivative are affiliated entities at the time of the transaction and none of the counterparties is one or more of the following:

(A) a clearing agency;

(B) a derivatives dealer;

(C) an affiliated entity of a person or company referred to in clause (A) or (B);

(b) the derivative is reported to a recognized trade repository under one or more of the following:

(i) Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, as amended from time to time;

(ii) Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, as amended from time to time;

(iii) Quebec Regulation 91-507 respecting trade repositories and derivatives data reporting, as amended from time to time;

(iv) the laws of a foreign jurisdiction listed in Appendix B;

(c) the reporting counterparty instructs the recognized trade repository referred to in paragraph (b) to provide the regulator or securities regulatory authority with access to the derivatives data that it is required to report under this Instrument and otherwise uses its best efforts to provide the regulator or securities regulatory authority with access to such derivatives data.

(4) A reporting counterparty must report all derivatives data relating to a derivative to the same recognized trade repository ~~to which an initial report was made~~.

(5) A reporting counterparty must not submit derivatives data that is false or misleading to a recognized trade repository.

(6) A reporting counterparty must report an error or omission in the derivatives data it has reported as soon as practicable after discovery of the error or omission and, in any event, no later than the end of the business day following the day of discovery of the error or omission.

(7) A local counterparty, other than the reporting counterparty, must notify the reporting counterparty of an error or omission with respect to derivatives data relating to a derivative to which it is a counterparty as soon as practicable after discovery of the error or omission and, in any event, no later than the end of the business day following the day of discovery of the error or omission.

(8) If a local counterparty to a derivative that is required to be reported under this Instrument and is cleared through a reporting clearing agency has specified a recognized trade repository to which derivatives data in relation to the derivative is to be reported, the reporting clearing agency must report the derivatives data to that recognized trade repository.

Identifiers, general

27. (1) In a report of creation data required under this Part, a reporting counterparty must include each of the following:

(a) the legal entity identifier of each counterparty to the derivative as set out in section 28;

(b) the unique product identifier for the derivative as set out in section 30.

(2) In a report of life-cycle data or valuation data required under this Part, a reporting counterparty must include the unique transaction identifier for the transaction relating to the derivative as set out in section 29.

Legal entity identifiers

28. (1) A recognized trade repository must identify each counterparty to a derivative that is required to be reported under this Instrument in all recordkeeping and all reporting required under this Instrument by means of a single legal entity identifier that is a unique identification code assigned to a counterparty in accordance with the standards set by the Global LEI System.

~~**(2)** Subject to subsection (3), the legal entity identifier referred to in subsection (1) must be a unique identification code assigned to a counterparty in accordance with the standards set by the Global LEI System.~~

~~**(3)** If the Global LEI System is unavailable to a counterparty to a derivative at the time when a report under this Instrument is required to be made, each of the following applies:~~

~~(a) each counterparty to the derivative must obtain a substitute legal entity identifier which complies with the standards established March 8, 2013 by the Legal Entity Identifier Regulatory Oversight Committee for pre-legal entity identifiers;~~

~~(b) a local counterparty must use the substitute legal entity identifier until a legal entity identifier is assigned to the counterparty in accordance with the standards set by the Global LEI System as required under subsection (2);~~

~~(c) after the holder of a substitute legal entity identifier is assigned a legal entity identifier in accordance with the standards set by the Global LEI System as required under subsection (2), the local counterparty must ensure that it is identified only by the assigned legal entity identifier in all derivatives data reported under this Instrument in respect of a derivative to which it is a counterparty.~~

(2) Each local counterparty to a derivative required to be reported under this Instrument that is eligible to receive a legal entity identifier as determined by the Global LEI System, other than an individual, must:

(a) prior to executing a transaction, obtain a legal entity identifier assigned in accordance with the requirements imposed by the Global LEI System;

(b) for as long as it is a counterparty to a derivative required to be reported under this Instrument, renew and maintain the legal entity identifier referred to in paragraph (a).

(43) If a local counterparty to a derivative required to be reported under this Instrument is an individual, or is not eligible to receive a legal entity identifier ~~assigned~~ as determined by the Global LEI System, the reporting counterparty must identify the counterparty by a single alternate~~ive~~ identifier.

(4) Despite subsection (1), if subsection (3) applies to a counterparty to a derivative, the recognized trade repository to which a report has been made in relation to the derivative must identify such a counterparty with the alternate identifier supplied by the reporting counterparty.

Unique transaction identifiers

29. (1) A recognized trade repository must identify each transaction relating to a derivative that is required to be reported under this Instrument in all recordkeeping and all reporting required under this Instrument by means of a unique transaction identifier.

(2) A recognized trade repository must assign a unique transaction identifier to a transaction, using its own methodology or incorporating a unique transaction identifier previously assigned to the transaction.

(3) A recognized trade repository must not assign more than one unique transaction identifier to a transaction.

Unique product identifiers

30. (1) In this section, "unique product identifier" means a code that uniquely identifies a sub-type of derivative and is assigned in accordance with international or industry standards.

(2) For each derivative that is required to be reported under this Instrument, the reporting counterparty must assign a unique product identifier that identifies the sub-type of the derivative.

(3) A reporting counterparty must not assign more than one unique product identifier to a derivative.

(4) If international or industry standards for a unique product identifier are not reasonably available for a particular sub-type of derivative at the time a report is made under this Instrument, a reporting counterparty must assign a unique product identifier to the derivative using its own methodology or incorporating a unique product identifier previously assigned to the derivative.

Creation data

31. (1) A reporting counterparty must report creation data relating to a derivative that is required to be reported under this Instrument to a recognized trade repository immediately following the transaction.

(2) Despite subsection (1), if it is not practicable to immediately report the creation data, a reporting counterparty must report creation data as soon as practicable and in no event later than the end of the business day following the day on which the data would otherwise be required to be reported.

Life-cycle event data

32. (1) A reporting counterparty must report all life-cycle event data relating to a derivative that is required to be reported under this Instrument to a recognized trade repository by the end of the business day on which the life-cycle event occurs.

(2) Despite subsection (1), if it is not practicable to report life-cycle event data by the end of the business day on which the life-cycle event occurs, the reporting counterparty must report life-cycle event data no later than the end of the business day following the day on which the life-cycle event occurs.

Valuation data

33. (1) A reporting counterparty must report valuation data relating to a derivative that is required to be reported under this Instrument to a recognized trade repository in accordance with industry accepted valuation standards

(a) daily, based on relevant closing market data from the previous business day, if the reporting counterparty is a reporting clearing agency or a derivatives dealer, or

(b) quarterly, as of the last day of each calendar quarter, if the reporting counterparty is not a reporting clearing agency or a derivatives dealer.

(2) Despite subsection (1), valuation data required to be reported under paragraph (1)(b) must be reported to the recognized trade repository no later than the 30th day after the end of the calendar quarter.

Pre-existing derivatives

34. (1) Despite section 31 and subject to subsection 44(2), on or before December 1, 2016, a reporting counterparty must report creation data relating to a derivative if all of the following apply:

(a) the reporting counterparty is a reporting clearing agency or a derivatives dealer;

(b) the transaction was entered into before ~~May 1~~July 29, 2016;

(c) there were outstanding contractual obligations with respect to the derivative on the earlier of the date that the derivative is reported or December 1, 2016.

(2) Despite section 31 and subject to subsection 44(3), on or before February 1, 2017, a reporting counterparty must report creation data relating to a derivative if all of the following apply:

(a) the reporting counterparty is not a reporting clearing agency or a derivatives dealer;

(b) the transaction was entered into before ~~May 1~~ November 1, 2016;

(c) there were outstanding contractual obligations with respect to the derivative on the earlier of the date that the derivative is reported or February 1, 2017.

(3) Despite section 31, a reporting counterparty to a derivative to which subsection (1) or (2) applies is required to report, in relation to the derivative, only the creation data indicated in the column in Appendix A entitled "Required for Pre-existing Derivatives".

(4) Despite section 32, a reporting counterparty is not required to report life-cycle event data relating to a derivative to which subsection (1) or (2) applies until the reporting counterparty has reported creation data in accordance with subsection (1) or (2).

(5) Despite section 33, a reporting counterparty is not required to report valuation data relating to a derivative to which subsection (1) or (2) applies until the reporting counterparty has reported creation data in accordance with subsection (1) or (2).

Timing requirements for reporting data to another recognized trade repository

35. Despite subsection 26(4) and sections 31 to 34, if a recognized trade repository ceases operations or stops accepting derivatives data for an asset class of derivatives, a reporting counterparty may fulfill its reporting obligations under this Instrument by reporting the derivatives data to another recognized trade repository or, if there is not an available recognized trade repository, the regulator or securities regulatory authority.

Records of data reported

36. (1) A reporting counterparty must keep records relating to a derivative that is required to be reported under this Instrument, including transaction records, for 7 years after the date on which the derivative expires or terminates.

(2) A reporting counterparty must keep the records referred to in subsection (1) in a safe location and in a durable form.

PART 4
DATA DISSEMINATION AND ACCESS TO DATA

Data available to regulators

37. (1) A recognized trade repository must

(a) provide to the regulator or securities regulatory authority direct, continuous and timely electronic access to derivatives data in the possession of the recognized trade repository that has been reported under this Instrument or that may impact the capital markets,

(b) provide the data referenced in paragraph (a) on an aggregated basis, and

(c) notify the regulator or securities regulatory authority of the manner in which the derivatives data provided under paragraph (b) has been aggregated.

(2) A recognized trade repository must establish, implement and maintain rules, policies or operations designed to ensure that it meets or exceeds the access standards and recommendations published by the International Organization of Securities Commissions in the August, 2013 report entitled "Authorities' access to trade repository data", as amended from time to time.

(3) A reporting counterparty must use its best efforts to provide the regulator or securities regulatory authority with prompt access to all derivatives data that it is required to report under this Instrument, including instructing a trade repository to provide the regulator or securities regulatory authority with access to that data.

Data available to counterparties

38. (1) A recognized trade repository must provide all counterparties to a derivative with timely access to all derivatives data relating to that derivative which is submitted to the recognized trade repository.

(2) A recognized trade repository must have appropriate verification and authorization procedures in place to deal with access pursuant to subsection (1) by a non-reporting counterparty or a delegate of a non-reporting counterparty.

(3) Each counterparty to a derivative must permit the release of all derivatives data required to be reported or disclosed under this Instrument.

(4) Subsection (3) applies despite any agreement to the contrary between the counterparties to a derivative.

Data available to public

39. (1) Unless otherwise governed by the requirements or conditions of a decision of the securities regulatory authority, a recognized trade repository must, on a reasonably frequent basis, create and make available on its website, in a manner that is easily accessible to the public, at no cost, aggregate data on open positions, volume, number and, if applicable, price, relating to the derivatives reported to it under this Instrument.

(2) The data made available under subsection (1) must include, at a minimum, breakdowns, if applicable, by currency of denomination, geographic location of reference entity or asset, asset class, contract type, maturity and whether the derivative is cleared.

(3) A recognized trade repository must make transaction-level reports available to the public at no cost, in accordance with the requirements in Appendix C.

(4) In making transaction level reports available for the purpose of subsection (3), a recognized trade repository must not disclose the identity of either counterparty to the derivative.

(5) A recognized trade repository must make the data referred to in this section available to the public on its website or through a similar medium, in a usable form and in a manner that is easily accessible to the public at no cost.

(6) Despite subsections (1) to (5), a recognized trade repository must not make public derivatives data relating to a derivative between affiliated entities, unless otherwise required by law.

PART 5
EXCLUSIONS

Commodity derivative

40. Despite Part 3, a local counterparty is not required to report derivatives data relating to a derivative the asset class of which is a commodity, other than currency, if

(a) none of the counterparties to the derivative are any of the following:

(i) a clearing agency;

(ii) a derivatives dealer;

(iii) an affiliated entity of a person or company referred to in subparagraph (i) or (ii), and

(b) the aggregate month-end gross notional amount under all outstanding derivatives the asset class of which is a commodity, other than currency, of the local counterparty and of each affiliated entity of the local counterparty that is a local counterparty in a jurisdiction of Canada, excluding derivatives with an affiliated entity, did not, in any calendar month in the preceding 12 calendar months, exceed $250 000 000.

Derivative between a government and its consolidated entity

41. Despite Part 3, a counterparty is not required to report derivatives data relating to a derivative between

(a) the government of a local jurisdiction, and

(b) a crown corporation or agency the accounts of which are consolidated for accounting purposes with those of the government referred to in paragraph (a).

Derivative between affiliated entities

41.1. (1) Despite Part 3, a counterparty is not required to report derivatives data relating to a derivative if:

(a) the counterparties to the derivative are affiliated entities at the time the data is required to be reported;

(b) none of the counterparties to the derivative is one or more of the following:

(i) a clearing agency;

(ii) a derivatives dealer;

(iii) an affiliated entity of a person or company referred to in subparagraph (i) or (ii);

(c) each counterparty to the derivative is a local counterparty under the securities legislation of a jurisdiction of Canada.

Derivative between a non-resident derivatives dealer and a non-local counterparty

42. Despite Part 3, a counterparty is not required to report derivatives data relating to a derivative if the derivative is required to be reported solely because one or both counterparties is a local counterparty under paragraph (b) of the definition of “local counterparty”.

PART 6
EXEMPTIONS

Exemption – general

43. (1) Except in Alberta, the regulator or securities regulatory authority may, under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction, grant an exemption to this Instrument.

(2) In Alberta, the regulator or securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to such terms, conditions, restrictions or requirements as may be imposed in the exemption.

PART 7
TRANSITION PERIOD AND EFFECTIVE DATE

Transition period

44. (1) Despite Part 3, a reporting counterparty that is not a reporting clearing agency or a derivatives dealer is not required to make a report under that Part until November 1, 2016.

(2) Despite Part 3, a reporting counterparty is not required to report derivatives data relating to a derivative if all of the following apply:

(a) the derivative is entered into before May 1, 2016;

(b) the derivative expires or terminates on or before July 28, 2016;

(c) the reporting counterparty is a reporting clearing agency or a derivatives dealer.

(3) Despite Part 3, a reporting counterparty is not required to report derivatives data relating to a derivative if all of the following apply:

(a) the derivative is entered into before May 1, 2016;

(b) the derivative expires or terminates on or before October 31, 2016;

(c) the reporting counterparty is not a reporting clearing agency or a derivatives dealer.

~~**(4)** Despite Part 3, a reporting counterparty is not required to report derivatives data relating to a derivative if all of the following apply:~~

~~(a) the derivative is entered into before January 1, 2017;~~

~~(b) the counterparties are affiliated entities at the time of the transaction;~~

~~(c) none of the counterparties to the derivative is one or more of the following:~~

~~(i) a recognized or exempt clearing agency;~~

~~(ii) a derivatives dealer;~~

~~(iii) an affiliated entity of a person or company referred to in subparagraph (i) or (ii).~~

Reporting by a local counterparty that ceases to qualify for an exclusion

44.1 (1) Despite sections 40, 41, 41.1, and 42, and subject to subsection 44(2), a local counterparty is required to report creation data in relation to a derivative if:

(a) the derivative was not previously reported as a result of the operation of section 40, 41, 41.1 or 42;

(b) the local counterparty no longer satisfies the condition or conditions in section 40, 41, 41.1 or 42, as applicable;

(c) the derivative was entered into after May 1, 2016 and before the date on which the local counterparty no longer satisfies the condition or conditions in section 40, 41, 41.1 or 42, as applicable;

(d) there were outstanding contractual obligations with respect to the derivative on the earlier of the date that the derivative is reported or the date that is 180 days following the date on which the local counterparty no longer satisfies the condition or conditions in section 40, 41, 41.1 or 42, as applicable.

(2) Despite subsection (1) and subject to subsection 44(3), if the reporting counterparty to a derivative to which subsection (1) applies has not previously acted as a reporting counterparty under this Instrument or a similar instrument in another jurisdiction of Canada, the reporting counterparty is not required to report derivatives data in relation to the derivative, or any other derivative required to be reported under this Instrument, until the date that is 180 days following the date the local counterparty no longer satisfies the condition or conditions referred to in paragraph (1)(b).

(3) Despite section 31, a reporting counterparty to a derivative to which subsection (1) applies is only required to report, in relation to the transaction resulting in the derivative, the creation data indicated in the column in Appendix A entitled “Required for Pre-existing Derivatives”.

(4) Despite section 32, a reporting counterparty is not required to report life-cycle event data relating to a derivative to which subsection (1) applies until the reporting counterparty has reported creation data in accordance with subsections (1) and (2).

(5) Despite section 33, a reporting counterparty is not a required to report valuation data relating to a derivative to which subsection (1) applies until the reporting counterparty has reported creation data in accordance with subsections (1) and (2).

Effective date

45. (1) This Instrument comes into force on May 1, 2016.

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after May 1, 2016, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

(3) Despite subsection (1) and, in Saskatchewan, subject to subsection (2), Parts 3 and 5 come into force on July 29, 2016.

(4) Despite subsection (1) and, in Saskatchewan, subject to subsection (2), subsection 39(3) comes into force on ~~January 1, 2017~~July 29, 2016.

APPENDIX A
to
MULTILATERAL INSTRUMENT 96-101
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

Minimum Data Fields Required to be Reported to a Recognized Trade Repository

Instructions:

The reporting counterparty is required to provide a response for each of the fields unless the field is not applicable to the derivative.

Data field	Description	Required for Pre-existing Derivatives
Transaction identifier	The unique transaction identifier as provided by the recognized trade repository or the identifier as identified by the two counterparties, electronic trading venue of execution or clearing agency.	Y
Master agreement type	The type of master agreement, if used for the reported derivative.	N
Master agreement version	Date of the master agreement version (e.g., 2002, 2006).	N
Cleared	Indicate whether the derivative has been cleared by a clearing agency.	Y
Intent to clear	Indicate whether the derivative will be cleared by a clearing agency.	N
Clearing agency	LEI of the clearing agency where the derivative is or will be cleared.	Y (If available)
Clearing member	LEI of the clearing member, if the clearing member is not a counterparty.	N
Clearing exemption	Indicate whether one or more of the counterparties to the derivative are exempted from a mandatory clearing requirement.	N
Broker/Clearing intermediary	LEI of the broker acting as an intermediary for the reporting counterparty without becoming a counterparty.	N
Electronic trading venue identifier	LEI of the electronic trading venue where the transaction was executed.	Y

Inter-affiliate	Indicate whether the derivative is between two affiliated entities.	Y (If available)
Collateralization	Indicate whether the derivative is collateralized. Field Values: • Fully (initial and variation margin required to be posted by both parties); • Partially (variation only required to be posted by both parties); • One-way (one party will be required to post some form of collateral); • Uncollateralized.	N
Identifier of reporting counterparty	LEI of the reporting counterparty or, in case of an individual, its client code.	Y
Identifier of non-reporting counterparty	LEI of the non-reporting counterparty or, in case of an individual, its client code.	Y
Counterparty side	Indicate whether the reporting counterparty was the buyer or seller. In the case of swaps, other than credit default, the buyer will represent the payer of leg 1 and the seller will be the payer of leg 2.	Y
Identifier of agent reporting the derivative	LEI of the agent reporting the derivative if reporting of the derivative has been delegated by the reporting counterparty.	N
Jurisdiction of reporting counterparty	If the reporting counterparty is a local counterparty under the derivatives data reporting rules of one or more provinces of Canada, indicate all of the jurisdictions in which it is a local counterparty.	Y (If available)
Jurisdiction of non-reporting counterparty	If the non-reporting counterparty is a local counterparty under the derivatives data reporting rules of one or more provinces of Canada, indicate all of the jurisdictions in which it is a local counterparty.	Y (If available)
A. Common Data	These fields are required to be reported for all derivatives even if the information may be entered in an Additional Asset Information field below. A field is not required to be reported if the unique product identifier adequately describes the data required in that field.	
Unique product identifier	Unique product identification code based on the taxonomy of the product.	N

Contract or instrument type	The name of the contract or instrument type (e.g., swap, swaption, forward, option, basis swap, index swap, basket swap).	Y
Underlying asset identifier 1	The unique identifier of the asset referenced in the derivative.	Y
Underlying asset identifier 2	The unique identifier of the second asset referenced in the derivative, if more than one. If more than two assets identified in the derivative, report the unique identifiers for those additional underlying assets.	Y
Asset class	Major asset class of the product (e.g., interest rate, credit, commodity, foreign exchange, equity).	Y (If available)
Effective date or start date	The date the derivative becomes effective or starts.	Y
Maturity, termination or end date	The date the derivative expires.	Y
Payment frequency or dates	The dates or frequency the derivative requires payments to be made (e.g., quarterly, monthly).	Y
Reset frequency or dates	The dates or frequency at which the price resets (e.g., quarterly, semi-annually, annually).	Y
Day count convention	Factor used to calculate the payments (e.g., 30/360, actual/360).	Y
Delivery type	Indicate whether derivative is settled physically or in cash.	Y
Price 1	The price, rate, yield, spread, coupon or similar characteristic of the derivative. This must not include any premiums such as commissions, collateral premiums or accrued interest.	Y
Price 2	The price, rate, yield, spread, coupon or similar characteristic of the derivative. This must not include any premiums such as commissions, collateral premiums or accrued interest.	Y
Price notation type 1	The manner in which the price is expressed (e.g., percentage, basis points).	Y
Price notation type 2	The manner in which the price is expressed (e.g., percentage, basis points).	Y

Price multiplier	The number of units of the underlying reference entity represented by 1 unit of the derivative.	Y (If available)
Notional amount leg 1	Total notional amount(s) of leg 1 of the derivative.	Y
Notional amount leg 2	Total notional amount(s) of leg 2 of the derivative.	Y
Currency leg 1	Currency of leg 1.	Y
Currency leg 2	Currency of leg 2.	Y
Settlement currency	The currency used to determine the cash settlement amount.	Y
Up-front payment	Amount of any up-front payment.	N
Currency or currencies of up-front payment	The currency or currencies in which any up-front payment is made by one counterparty to another.	N
Embedded option	Indicate whether the option is an embedded option.	Y (If available)
B. Additional Asset Information	These fields are required to be reported for the respective types of derivatives set out below, even if the information is entered in a Common Data field above.	
i) Interest rate derivatives		
Fixed rate leg 1	The rate used to determine the payment amount for leg 1 of the derivative.	Y
Fixed rate leg 2	The rate used to determine the payment amount for leg 2 of the derivative.	Y
Floating rate leg 1	The floating rate used to determine the payment amount for leg 1 of the derivative.	Y
Floating rate leg 2	The floating rate used to determine the payment amount for leg 2 of the derivative.	Y
Fixed rate day count convention	Factor used to calculate the fixed payer payments (e.g., 30/360, actual/360).	Y
Fixed leg payment frequency or dates	Frequency or dates of payments for the fixed rate leg of the derivative (e.g., quarterly, semi-annually, annually).	Y

Floating leg payment frequency or dates	Frequency or dates of payments for the floating rate leg of the derivative (e.g., quarterly, semi-annually, annually).	Y
Floating rate reset frequency or dates	The dates or frequency at which the floating leg of the derivative resets (e.g., quarterly, semi-annually, annually).	Y
ii) Currency derivatives		
Exchange rate	Contractual rate(s) of exchange of the currencies.	Y
iii) Commodity derivatives		
Sub-asset class	Specific information to identify the type of commodity derivative (e.g., Agriculture, Power, Oil, Natural Gas, Freights, Metals, Index, Environmental, Exotic).	Y
Quantity	Total quantity in the unit of measure of an underlying commodity.	Y
Unit of measure	Unit of measure for the quantity of each side of the derivative (e.g., barrels, bushels).	Y
Grade	Grade of product being delivered (e.g., grade of oil).	Y
Delivery point	The delivery location.	N
Load type	For power, load profile for the delivery.	Y
Transmission days	For power, the delivery days of the week.	Y
Transmission duration	For power, the hours of day transmission starts and ends.	Y
C. Options	These fields are required to be reported for options derivatives, even if the information is entered in a Common Data field above.	
Option exercise date	The date(s) on which the option may be exercised.	Y
Option premium	Fixed premium paid by the buyer to the seller.	Y
Strike price (cap/floor rate)	The strike price of the option.	Y
Option style	Indicate whether the option can be exercised on a fixed date or anytime during the life of the derivative (e.g., American, European, Bermudan, Asian).	Y
Option type	Put/call.	Y

D. Event Data		
Action	Describes the type of event to the derivative (e.g., new transaction, modification or cancellation of existing derivative).	N
Execution timestamp	The time and date of execution of a transaction, including a novation, expressed using Coordinated Universal Time (UTC).	Y (If available)
Post-transaction events	Indicate whether the report results from a post-transaction service (e.g., compression, reconciliation) or from a life-cycle event (e.g., amendment).	N
Reporting timestamp	The time and date the derivative was submitted to the trade repository, expressed using UTC.	N
E. Valuation data	These fields are required to be reported on a continuing basis for all reported derivatives, including reported pre-existing derivatives.	
Value of derivative calculated by the reporting counterparty	Mark-to-market valuation or mark-to-model valuation of the derivative.	N
Valuation currency	Indicate the currency used when reporting the value of the derivative.	N
Valuation date	Date of the latest mark-to-market or mark-to-model valuation.	N
F. Other details		
Other details	Where the terms of the derivative cannot be effectively reported in the above prescribed fields, provide any additional information that may be necessary.	Y (If applicable)

APPENDIX B
to
MULTILATERAL INSTRUMENT 96-101
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

Trade Reporting Laws of Foreign Jurisdictions

Jurisdiction	Law, Regulation and/or Instrument
European Union	Regulation (EU) 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended from time to time. Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories, as amended from time to time. Commission Delegated Regulation (EU) No 151/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data, as amended from time to time. Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, as amended from time to time.
United States of America	*CFTC Real-Time Public Reporting of Swap Transaction Data*, 17 C.F.R. pt. 43 (2013), as amended from time to time. *CFTC Swap Data Recordkeeping and Reporting Requirements*, 17 C.F.R. pt. 45 (2013), as amended from time to time. *CFTC Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 17 C.F.R. pt. 46 (2013), as amended from time to time.

APPENDIX C
to
MULTILATERAL INSTRUMENT 96-101
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

Requirements for the Public Dissemination of Transaction-level Data

Instructions

1. Subject to items 2 through 6, a recognized trade repository is required to disseminate to the public at no cost the information contained in Table 1 for a derivative in any of the Asset Classes and Underlying Asset Identifiers listed in Table 2 for:

(a) a derivative reported to the recognized trade repository under this Instrument;

(b) a life-cycle event that changes the pricing of an existing derivative reported to the recognized trade repository under this Instrument;

(c) a cancellation or correction of previously disseminated data relating to a transaction resulting in a derivative listed in paragraph (a) or a life-cycle event listed in paragraph (b).

Table 1

Data field	**Description**
Cleared	Indicate whether the derivative has been cleared by a clearing agency.
Electronic trading venue identifier	Indicate whether the transaction was executed on an electronic trading venue.
Collateralization	Indicate whether the derivative is collateralized.
Unique product identifier	Unique product identification code based on the taxonomy of the product.
Contract or instrument type	The name of the contract of instrument type (e.g., swap, swaption, forward, option, basis swap, index swap, basket swap).
Underlying asset identifier 1	The unique identifier of the asset referenced in the derivative.
Underlying asset identifier 2	The unique identifier of the second asset referenced in the derivative, if more than one. If more than two assets identified in the derivative, report the unique identifiers for those additional underlying assets.

Data field	Description
Asset class	Major asset class of the product (e.g., interest rate, credit, commodity, foreign exchange, equity).
Effective date or start date	The date the derivative becomes effective or starts.
Maturity, termination or end date	The date the derivative expires.
Payment frequency or dates	The dates or frequency the derivative requires payments to be made (e.g., quarterly, monthly).
Reset frequency or dates	The dates or frequency at which the price resets (e.g., quarterly, semi-annually, annually).
Day count convention	Factor used to calculate the payments (e.g., 30/360, actual/360).
Price 1	The price, rate, yield, spread, coupon or similar characteristic of the derivative. This should not include any premiums such as commissions, collateral premiums or accrued interest.
Price 2	The price, rate, yield, spread, coupon or similar characteristic of the derivative. This should not include any premiums such as commissions, collateral premiums or accrued interest.
Price notation type 1	The manner in which the price is expressed (e.g., percentage, basis points).
Price notation type 2	The manner in which the price is expressed (e.g., percentage, basis points).
Notional amount leg 1	Total notional amount(s) of leg 1 of the derivative.
Notional amount leg 2	Total notional amount(s) of leg 2 of the derivative.
Currency leg 1	Currency of leg 1.
Currency leg 2	Currency of leg 2.

Data field	Description
Settlement currency	The currency used to determine the cash settlement amount.
Embedded option	Indicate whether the option is an embedded option.
Option exercise date	The date(s) on which the option may be exercised.
Option premium	Fixed premium paid by the buyer to the seller.
Strike price (cap/floor rate)	The strike price of the option.
Option style	Indicate whether the option can be exercised on a fixed date or anytime during the life of the derivative. (e.g., American, European, Bermudan, Asian).
Option type	Put/call.
Action	Describes the type of event to the derivative (e.g., new transaction, modification or cancellation of existing derivative).
Execution timestamp	The time and date of execution of a derivative, including a novation, expressed using Coordinated Universal Time (UTC).

Table 2

Asset Class	Underlying Asset Identifier
Interest Rate	CAD-BA-CDOR
Interest Rate	USD-LIBOR-BBA
Interest Rate	EUR-EURIBOR-Reuters
Interest Rate	GBP-LIBOR-BBA
Credit	All Indexes
Equity	All Indexes

Exclusions

2. Despite item 1, each of the following is excluded from the requirement to be publicly disseminated:

(a) a derivative that requires the exchange of more than one currency;

(b) a derivative resulting from a multilateral portfolio compression exercise;

(c) a derivative resulting from novation by a clearing agency.

Rounding of notional amount

3. A recognized trade repository must round the notional amount of a derivative for which it disseminates transaction level data in accordance with the Instrument and item 1 of this Appendix in accordance with the rounding conventions contained in Table 3.

Table 3

Reported Notional Amount Leg 1 or 2	**Rounded Notional Amount**
<$1,000	Round to nearest $5
=>$1,000, <$10,000	Round to nearest $100
=>$10,000, <$100,000	Round to nearest $1,000
<$1 million	Round to nearest $10,000
=>$1 million, <$10 million	Round to nearest $100,000
=>$10 million, <$50 million	Round to nearest $1 million
=>$50 million, <$100 million	Round to nearest $10 million
=>$100 million, <$500 million	Round to nearest $50 million
=>$500 million, <$1 billion	Round to nearest $100 million
=>$1 billion, <$100 billion	Round to nearest $500 million
>$100 billion	Round to nearest $50 billion

Capping of notional amount

4. Where the Rounded Notional Amount of a derivative, as set out in Table 3, would exceed the Capped Rounded Notional Amount, in Canadian dollars (CAD), according to the Asset Class and Maturity Date less Execution Time Stamp Date of that derivative as set out in Table 4, a recognized trade repository must disseminate the Capped Rounded Notional Amount for the derivative in place of the Rounded Notional Amount.

5. When disseminating data in accordance with subsection 39(3) of this Instrument and this Appendix, a recognized trade repository must indicate if the Rounded Notional Amount for a derivative is a Capped Rounded Notional Amount.

6. For each derivative where the Capped Rounded Notional Amount is disseminated, a recognized trade repository must adjust, if part of the data to be disseminated, the option premium, in a consistent and proportionate manner.

Table 4

Asset Class	**Maturity Date less Execution Time Stamp Date**	**Capped Rounded Notional Amount in CAD**
Interest Rate	Less than or equal to two years (746 days)	$250 million
Interest Rate	Greater than two years (746 days) and less than or equal to ten years (3,668 days)	$100 million
Interest Rate	Greater than ten years (3,668 days)	$50 million
Credit	All dates	$50 million
Equity	All dates	$50 million

Timing

7. Subject to items 2 through 6, a recognized trade repository must disseminate the information contained in Table 1 no later than

(a) the end of the day following the day on which it receives the data from the reporting counterparty to the derivative, if one of the counterparties to the derivative is a derivatives dealer or a reporting clearing agency, or

(b) the end of the second day following the day on which it receives the data from the reporting counterparty to the derivative in all other circumstances.

FORM 96-101F1
APPLICATION FOR RECOGNITION –
TRADE REPOSITORY INFORMATION STATEMENT

Filer:

Type of Filing: ☐ **INITIAL** ☐ **AMENDMENT**

Name(s)

1. Full name of trade repository:

2. Name(s) under which business is conducted, if different from item 1:

3. If this filing makes a name change on behalf of the trade repository in respect of the name set out in item 1 or item 2, enter the previous name and the new name.

   Previous name:
   New name:

Contact information

4. Head office

   Address:
   Telephone:
   Fax:

5. Mailing address (if different):

6. Other office(s)

   Address:
   Telephone:
   Fax:

7. Website address:

8. Contact employee

   Name and title:
   Telephone:
   Fax:
   E-mail:

9. Counsel

Firm name:
Lawyer name:
Telephone:
Fax:
E-mail:

10. Canadian counsel (if applicable)

Firm name:
Lawyer name:
Telephone:
Fax:
E-mail:

EXHIBITS

File all Exhibits with the Filing. For each Exhibit, include the name of the trade repository, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any required Exhibit is inapplicable, a statement to that effect must be furnished in place of such Exhibit.

Except as provided below, if the filer files an amendment to the information provided in its Filing and the information relates to an Exhibit filed with the Filing or a subsequent amendment, the filer must, in order to comply with section 3 of the Instrument, provide a description of the change, the expected date of the implementation of the change, and file a complete and updated Exhibit. The filer must provide a clean and blacklined version showing changes from the previous filing.

If the filer has otherwise filed the information required by the previous paragraph under section 17 of the Instrument, it is not required to file the information again as an amendment to an Exhibit. However, if supplementary material relating to a filed rule is contained in an Exhibit, an amendment to the Exhibit must also be filed.

Exhibit A – Corporate Governance

1. Legal status:

☐ Corporation

☐ Partnership

☐ Other (specify):

2. Indicate the following:

   (1) Date (DD/MM/YYYY) of formation.

   (2) Place of formation.

   (3) Statute under which trade repository was organized.

   (4) Regulatory status in other jurisdictions.

3. Provide a copy of the constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents, and all subsequent amendments.

4. Provide the policies and procedures to address potential conflicts of interest arising from the operation of the trade repository or the services it provides, including those related to the commercial interest of the trade repository, the interests of its owners and its operators, the responsibilities and sound functioning of the trade repository, and those between the operations of the trade repository and its regulatory responsibilities.

5. An applicant that is located outside of the local jurisdiction that is applying for recognition as a trade repository under the local securities legislation must additionally provide the following:

   (1) An opinion of legal counsel that, as a matter of law, the applicant has the power and authority to provide the securities regulatory authority with prompt access to the applicant's books and records and submit to onsite inspection and examination by the securities regulatory authority.

   (2) A completed Form 96-101F2 *Trade Repository Submission to Jurisdiction and Appointment of Agent for Service of Process*.

Exhibit B – Ownership

1. Provide a list of the registered or beneficial holders of securities of, partnership interests in, or other ownership interests in, the trade repository, indicating the following for each:

   (1) Name.

   (2) Principal business or occupation and title.

   (3) Ownership interest.

   (4) Nature of the ownership interest, including a description of the type of security, partnership interest or other ownership interest.

2. In the case of a trade repository that is publicly traded, if the trade repository is a corporation, please only provide a list of each shareholder that directly owns 5% or more of a class of a security with voting rights.

Exhibit C – Organization

1. Provide a list of partners, officers, governors, and members of the board of directors and any standing committees of the board, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, indicating the following for each:

    (1) Name.

    (2) Principal business or occupation and title.

    (3) Dates of commencement and expiry of present term of office or position.

    (4) Type of business in which each is primarily engaged and current employer.

    (5) Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.

    (6) Whether the person is considered to be an independent director.

2. Provide a list of the committees of the board, including their mandates.

3. Provide the name of the trade repository's Chief Compliance Officer.

Exhibit D – Affiliated Entities

1. For each affiliated entity of the trade repository, provide the name and head office address and describe the principal business of the affiliated entity.

2. For each affiliated entity of the trade repository

    (a) to which the trade repository has outsourced any of its key services or systems described in Exhibit E – Operations of the Trade Repository, including business recordkeeping, recordkeeping of trade data, trade data reporting, trade data comparison or data feed, or

    (b) with which the trade repository has any other material business relationship, including loans or cross-guarantees,

    provide the following information:

    (1) Name and address of the affiliated entity.

(2) The name and title of the directors and officers, or persons performing similar functions, of the affiliated entity.

(3) A description of the nature and extent of the contractual and other agreements with the trade repository, and the roles and responsibilities of the affiliated entity under the arrangement.

(4) A copy of each material contract relating to any outsourced functions or other material relationship.

(5) Copies of constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents.

(6) For the latest financial year of any affiliated entity that has any outstanding loans or cross-guarantee arrangements with the trade repository, copies of financial statements, which may be unaudited, prepared in accordance with one or more of the following:

(a) Canadian GAAP applicable to publicly accountable enterprises;

(b) IFRS;

(c) U.S. GAAP, if the affiliated entity is incorporated or organized under the laws of the United States of America or a jurisdiction of the United States of America.

Exhibit E – Operations of the Trade Repository

1. Describe in detail the manner of operation of the trade repository and its associated functions, including, but not limited to, the following:

(1) The structure of the trade repository.

(2) Means of access by the trade repository's participants and, if applicable, their clients to the trade repository's facilities and services.

(3) The hours of operation.

(4) The facilities and services offered by the trade repository including, but not limited to, collection and maintenance of derivatives data.

(5) A list of the types of derivatives instruments for which data recordkeeping is offered, including, but not limited to, a description of the features and characteristics of the instruments.

(6) Procedures regarding the entry, display and reporting of derivatives data.

(7) Recordkeeping procedures that ensure derivatives data is recorded accurately, completely and on a timely basis.

(8) The safeguards and procedures to protect derivatives data of the trade repository's participants, including required policies and procedures reasonably designed to protect the privacy and confidentiality of the data.

(9) Training provided to participants and a copy of any materials provided with respect to systems and rules and other requirements of the trade repository.

(10) Steps taken to ensure that the trade repository's participants have knowledge of and comply with the requirements of the trade repository.

(11) The trade repository's risk management framework for comprehensively managing risks including business, legal and operational risks.

2. Provide all policies, procedures and manuals related to the operation of the trade repository.

Exhibit F – Outsourcing

1. Where the trade repository has outsourced the operation of key services or systems described in Exhibit E – Operations of the Trade Repository to an arm's-length third party, including any function associated with the collection and maintenance of derivatives data, provide the following information:

(1) Name and address of the person or company (including any affiliated entities of the trade repository) to which the function has been outsourced.

(2) A description of the nature and extent of the contractual or other agreement with the trade repository and the roles and responsibilities of the arm's-length party under the arrangement.

(3) A copy of each material contract relating to any outsourced function.

Exhibit G – Systems and Contingency Planning

1. For each of the systems for collecting and maintaining reports of derivatives data, describe:

(1) Current and future capacity estimates.

(2) Procedures for reviewing system capacity.

(3) Procedures for reviewing system security.

(4) Procedures to conduct stress tests.

(5) The filer's business continuity and disaster recovery plans, including any relevant documentation.

(6) Procedures to test business continuity and disaster recovery plans.

(7) The list of data to be reported by all types of participants.

(8) The data format or formats that will be available to the securities regulatory authority and other persons or companies receiving trade reporting data.

Exhibit H – Access to Services

1. Provide a complete set of all forms, agreements or other materials pertaining to access to the services of the trade repository described in item 1(4) in Exhibit E – Operations of the Trade Repository.

2. Describe the types of trade repository participants.

3. Describe the trade repository's criteria for access to the services of the trade repository.

4. Describe any differences in access to the services offered by the trade repository to different groups or types of participants.

5. Describe conditions under which the trade repository's participants may be subject to suspension or termination with regard to access to the services of the trade repository.

6. Describe any procedures that will be involved in the suspension or termination of a participant.

7. Describe the trade repository's arrangements for permitting clients of participants to have access to the trade repository. Provide a copy of any agreements or documentation relating to these arrangements.

Exhibit I – Fees

1. Provide a description of the fee model and all fees charged by the trade repository, or by a party to which services have been directly or indirectly outsourced, including, but not limited to, fees relating to access and the collection and maintenance of derivatives data, how such fees are set, and any fee rebates or discounts and how the rebates and discounts are set.

CERTIFICATE OF TRADE REPOSITORY

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____, 20____

_____
(Name of trade repository)

_____
(Name of director, officer or partner – please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity – please type or print)

[*If applicable*,]

ADDITIONAL CERTIFICATE
OF TRADE REPOSITORY THAT IS LOCATED OUTSIDE OF [*insert local jurisdiction*]

The undersigned certifies that

1. it will provide the securities regulatory authority with access to its books and records and will submit to onsite inspection and examination by the securities regulatory authority;

2. as a matter of law, it has the power and authority to

    (a) provide the securities regulatory authority with access to its books and records, and

    (b) submit to onsite inspection and examination by the securities regulatory authority.

DATED at _____ this _____ day of _____, 20____

_____
(Name of trade repository)

_____
(Name of director, officer or partner – please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity – please type or print)

FORM 96-101F2
TRADE REPOSITORY SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

1. Name of trade repository (the "Trade Repository"):

_____

2. Jurisdiction of incorporation, or equivalent, of the Trade Repository:

_____

3. Address of principal place of business of the Trade Repository:

_____

4. Name of the agent for service of process for the Trade Repository (the "Agent"):

_____

5. Address of the Agent in [*insert local jurisdiction*]:

_____

6. The Trade Repository designates and appoints the Agent as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of the Trade Repository in [*insert local jurisdiction*]. The Trade Repository hereby irrevocably waives any right to challenge service upon its Agent as not binding upon the Trade Repository.

7. The Trade Repository agrees to unconditionally and irrevocably attorn to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of [*insert local jurisdiction*] and (ii) any proceeding in any province or territory arising out of, related to, concerning or in any other manner connected with the regulation and oversight of the activities of the Trade Repository in [*insert local jurisdiction*].

8. The Trade Repository must file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before the Trade Repository ceases to be recognized or exempted by the Commission, to be in effect for 6 years from the date it ceases to be recognized or exempted unless otherwise amended in accordance with item 9.

9. Until 6 years after it has ceased to be recognized or exempted by the Commission from the recognition requirement under the securities legislation of [*insert local jurisdiction*], the Trade Repository must file an amended submission to jurisdiction and appointment of

agent for service of process in this form at least 30 days before any change in the name or above address of the Agent.

10. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of [*insert local jurisdiction*].

Dated: _____ _____

Signature of the Trade Repository

_____

Print name and title of signing officer of the Trade Repository

AGENT

CONSENT TO ACT AS AGENT FOR SERVICE

I, _____ (name of Agent in full; if Corporation, full Corporate name) of _____ (business address), hereby accept the appointment as agent for service of process of _____ (insert name of Trade Repository) and hereby consent to act as agent for service pursuant to the terms of the appointment executed by _____ (insert name of Trade Repository) on _____ (insert date).

Dated: _____ _____

Signature of the Trade Repository

_____

Print name and title of signing officer of the Trade Repository

FORM 96-101F3
CESSATION OF OPERATIONS REPORT FOR RECOGNIZED TRADE REPOSITORY

1. Identification:

   (1) Full name of the recognized trade repository:

   (2) Name(s) under which business is conducted, if different from item 1(1):

2. Date the recognized trade repository proposes to cease carrying on business as a trade repository:

3. If cessation of business was involuntary, date the recognized trade repository has ceased to carry on business as a trade repository:

EXHIBITS

File all Exhibits with this Cessation of Operations Report. For each exhibit, include the name of the recognized trade repository, the date of filing of the exhibit and the date as of which the information is accurate (if different from the date of the filing). If any required Exhibit is inapplicable, a statement to that effect must be furnished in place of such Exhibit.

Exhibit A

Provide the reasons for the recognized trade repository ceasing to carry on business as a trade repository.

Exhibit B

Provide a list of all derivatives instruments for which data recordkeeping is offered during the last 30 days prior to ceasing business as a trade repository.

Exhibit C

Provide a list of all participants who are counterparties to a derivative required to be reported under this Instrument and for whom the recognized trade repository provided services during the last 30 days prior to ceasing business as a trade repository.

CERTIFICATE OF RECOGNIZED TRADE REPOSITORY

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____, 20____

_____
(Name of trade repository)

_____
(Name of director, officer or partner – please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity – please type or print)

ANNEX D

This Annex sets out a blackline showing the proposed changes to Companion Policy 96-101 *Trade Repositories and Derivatives Data Reporting*, as set out in Annex B.

COMPANION POLICY 96-101
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

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PART 1
GENERAL COMMENTS

Introduction

This companion policy (the "Policy") provides guidance on how those members ("participating jurisdictions" or "we") of the Canadian Securities Administrators participating in Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the "Instrument") interpret various matters in the Instrument.

Except for Part 1, the numbering and headings of Parts, sections and subsections in this Policy correspond to the numbering and headings in the Instrument. Any general guidance for a Part or section appears immediately after the Part or section name. Any specific guidance on a section or subsection follows any general guidance. If there is no guidance for a Part or section, the numbering in this Policy will skip to the next provision that does have guidance.

Unless defined in the Instrument or this Policy, terms used in the Instrument and in this Policy have the meaning given to them in securities legislation, including in National Instrument 14-101 *Definitions*.

Definitions and interpretation of terms in this Policy and in the Instrument

1. (1) In this Policy

"CPMI" means the Committee on Payments and Market Infrastructure;[1]

"FMI" means a financial market infrastructure, as described in the PFMI Report;

"Global LEI System" means the Global Legal Entity Identifier System;

"IOSCO" means the Technical Committee of the International Organization of Securities Commissions;

"ISDA methodology" means the methodology described in the Canadian Transaction Reporting Party Requirements issued by the International Swaps and Derivatives Association, Inc. and dated April 4, 2014;

"LEI" means a legal entity identifier;

"LEI ROC" means the LEI Regulatory Oversight Committee;

"PFMI Report" means the April 2012 final report entitled *Principles for financial market infrastructures* published by CPMI (formerly CPSS) and IOSCO, as amended from time to time;[2]

[1] Prior to September 1, 2014, CPMI was known as the Committee on Payment and Settlement Systems (CPSS).

"principle" means, unless the context otherwise indicates, a principle set out in the PFMI Report.

(2) The definition of asset class is not exclusive. Some types of derivatives may fall into additional asset classes.

(3) The definition of derivatives dealer in the instrument only applies in relation to the Instrument. A person or company that is a derivatives dealer for the purpose of the Instrument will not necessarily need to register as a dealer (or in any other registration category) and will not necessarily be subject to regulatory requirements applicable to derivatives dealers in other Instruments.

We consider the factors listed below to be relevant in determining whether a person or company is a derivatives dealer for the purpose of the Instrument:

- *intermediating transactions* – the person or company provides services relating to the intermediation of transactions between third-party counterparties to derivative contracts. This typically takes the form of the business commonly referred to as a broker;

- *acting as a market maker* – the person or company makes a market in a derivative or derivatives. The person or company routinely makes a two-way market in a derivative or category of derivatives or publishes quotes to buy and quotes to sell a derivatives position at the same time;

- *transacting with the intention of being compensated* – the person or company receives, or expects to receive, any form of compensation for carrying on derivatives transaction activity including compensation that is transaction or value based and including from spreads or built-in fees. It does not matter if the person or company actually receives compensation or what form the compensation takes. However, a person or company would not be considered to be a derivatives dealer solely by reason that it realizes a profit from changes in the market price for the derivative (or its underlying), regardless of whether the derivative was intended for the purpose of hedging or speculating;

- *directly or indirectly soliciting in relation to derivatives transactions* – the person or company contacts others to solicit derivatives transactions. Solicitation includes contacting someone by any means, including advertising that offers (i) derivatives transactions, (ii) participation in derivatives transactions or (iii) services relating to derivatives transactions. This includes advertising on the internet with the intention of encouraging transacting in derivatives by local persons or companies. A person or company might not be considered to be soliciting solely because it contacts a potential counterparty or a potential counterparty contacts them to inquire about a transaction in a derivative unless it is the person or company's intention or expectation to be compensated from the transaction. For example, a person or company that wishes to hedge a specific risk might not be considered to be soliciting for the purpose of the

[2] The PFMI Report is available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).

Instrument if they contacted multiple potential counterparties to inquire about potential derivatives transactions to hedge the risk;

- *transacting derivatives with individuals or small business* – the person or company transacts with or on behalf of persons or companies that are neither "permitted clients" as that term is defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Obligations* nor "qualified parties" as that term may be defined in applicable rules or orders in the securities legislation of the local jurisdiction, except where those persons or companies are represented by a registered dealer or adviser;

- *providing derivatives clearing services* – the person or company provides services to allow third parties, including counterparties to trades involving the person or company, to clear derivatives through a clearing agency. While these services do not directly relate to the execution of a transaction they are actions in furtherance of a trade conducted by a person or company that would typically be familiar with the derivatives market and would possess the necessary expertise to allow them to conduct trade reporting;

- *engaging in activities similar to a derivatives dealer* – the person or company sets up a business to carry out any activities related to transactions involving derivatives that would reasonably appear, to a third party, to be similar to the activities discussed above. This would not include the operator of a trading platform that is not registered or exempted from registration as a dealer, such as an exchange, or the operator of a clearing agency.

In determining whether or not they are a derivatives dealer for the purpose of the Instrument a person or company should consider their activities holistically. Generally, we would consider a person or company that engages in the activities referenced above in an organized and repetitive manner to be a derivatives dealer. Ad hoc or isolated activities may not necessarily result in a person or company being a derivatives dealer. For example if a person or company makes an effort to take a long and short position at the same time to manage business risk, it does not necessarily mean that the person or company is making a market. Similarly, organized and repetitive proprietary trading, in and of itself, absent other factors described above, may not result in a person or company being a derivatives dealer for the purpose of the Instrument.

To be a derivatives dealer in a jurisdiction a person or company must conduct the activities described above in that jurisdiction. Activities are considered to be conducted in a jurisdiction if the counterparty to the derivative is a local counterparty in the jurisdiction. A person or company does not need to have a physical location, staff or other presence in the local jurisdiction to be a derivatives dealer.

A person or company's primary business activity does not need to include the activities described above for the person or company to be a derivatives dealer for the purpose of the Instrument. Its primary business activity could be unrelated to any of the factors described above; however if it does meet any of these factors, it may be a derivatives dealer in the jurisdiction in which it engages in those activities.

A person or company is not a dealer for the purpose of the Instrument if they would be a dealer solely as a result of derivatives involving affiliated entities.

(4) A "life-cycle event" is defined in the Instrument as an event that results in a change to derivatives data previously reported to a recognized trade repository. Examples of a life-cycle event include:

- a change to the termination date for the derivative;
- a change in the cash flows, payment frequency, currency, numbering convention, spread, benchmark, reference entity or rates originally reported;
- the availability of an LEI for a counterparty previously identified by name or by some other identifier;
- a corporate action affecting a security or securities on which the derivative is based (e.g., a merger, dividend, stock split, or bankruptcy);
- a change to the notional amount of a derivative including contractually agreed upon changes (e.g., amortization schedule);
- the exercise of a right or option that is an element of the derivative;
- the satisfaction of a level, event, barrier or other condition contained in the derivative.

(5) We use the term "transaction" in the Instrument instead of the statutorily defined term "trade". The term "transaction" reflects that certain types of activities or events relating to a derivative, whether or not they constitute a "trade", must be reported as a unique derivative. The primary differences between the two definitions are that (i) the term "trade" as defined in securities legislation includes material amendments and terminations, whereas "transaction" as defined in the Instrument does not, and (ii) the term "transaction", as defined in the Instrument, includes a novation to a clearing agency, whereas "trade" as defined in securities legislation does not.

A material amendment to a derivative is not a "transaction" and is required to be reported as a life-cycle event under section 32. Similarly, a termination is not a "transaction", as the expiry or termination of a derivative is required to be reported as a life-cycle event under section 32.

In addition, the definition of "transaction" in the Instrument includes a novation to a clearing agency. The creation data resulting from a novation of a bilateral derivative to a clearing agency is required to be reported as a distinct derivative with reporting links to the original derivative.

(6) The term "valuation data" refers to data that reflects the current value of a derivative. We are of the view that valuation data can be calculated based upon the use of an industry-accepted methodology such as mark-to-market or mark-to-model, or another valuation method that is in

accordance with accounting principles and will result in a reasonable valuation of a derivative.[3] We expect that the methodology used to calculate valuation data that is reported with respect to a derivative would be consistent over the entire life of the derivative.

PART 2
TRADE REPOSITORY RECOGNITION AND ONGOING REQUIREMENTS

Part 2 sets out rules relating to the recognition of a trade repository by the local securities regulatory authority and establishes ongoing requirements for a recognized trade repository. To obtain and maintain recognition as a trade repository, a person or company must comply with these requirements and the terms and conditions in the recognition order made by the securities regulatory authority.

In order to comply with the reporting obligations contained in Part 3, a reporting counterparty to a derivative involving a local counterparty must report the derivative to a recognized trade repository. In some jurisdictions, securities legislation prohibits a person or company from carrying on business as a trade repository in the jurisdiction unless recognized as a trade repository by the securities regulatory authority.

The legal entity that applies to be a recognized trade repository will typically be the entity that operates the facility and collects and maintains records of derivatives data reported to the trade repository by other persons or companies. In some cases, the applicant may operate more than one trade repository. In such cases, the applicant may file separate forms in respect of each trade repository, or it may choose to file one form to cover all of its different trade repositories. If the latter alternative is chosen, the applicant must clearly identify the facility to which the information or any changes submitted under this Part of the Instrument apply.

Filing of initial information on application for recognition as a trade repository

2. In determining whether to recognize an applicant as a trade repository under securities legislation, we will consider a number of factors, including the following:

- whether it is in the public interest to recognize the trade repository;
- the manner in which the trade repository proposes to comply with the Instrument;
- whether the trade repository has meaningful representation as described in subsection 9(2) on its board of directors;
- whether the trade repository has sufficient financial and operational resources for the proper performance of its functions;

[3] For example, see International Financial Reporting Standard 13, *Fair Value Measurement*.

- whether the rules and procedures of the trade repository are reasonably designed to ensure that its business is conducted in an orderly manner that fosters both fair and efficient capital markets, and improves transparency in the derivatives market;

- whether the trade repository has policies and procedures to effectively identify and manage conflicts of interest arising from its operation and the services it provides;

- whether the requirements of the trade repository relating to access to its services are fair and reasonable;

- whether the trade repository's process for setting fees is fair, transparent and appropriate;

- whether the trade repository's fees are inequitably allocated among the participants, have the effect of creating barriers to access, or place an undue burden on any participant or class of participants;

- the manner and process for the securities regulatory authority and other applicable regulatory agencies to receive or access derivatives data, including the timing, type of reports, and any confidentiality restrictions;

- whether the trade repository has robust and comprehensive policies, procedures, processes and systems reasonably designed to ensure the security and confidentiality of derivatives data;

- for trade repositories that are not resident in the local jurisdiction, whether the securities regulatory authority has entered into a memorandum of understanding with the relevant regulatory authority in the trade repository's local jurisdiction;

- whether the trade repository has been, or will be, in compliance with securities legislation, including compliance with the Instrument and any terms and conditions attached to the recognition order in respect of the trade repository.

A trade repository that is applying for recognition must demonstrate that it has established, implemented and maintains and enforces appropriate written rules, policies and procedures that are in accordance with standards applicable to trade repositories. In assessing these rules, policies and procedures we will consider, among other things, the principles and key considerations and explanatory notes applicable to trade repositories in the PFMI Report. These principles are set out in the following chart, along with the corresponding sections of the Instrument.

Principle in the PFMI Report applicable to a trade repository	***Relevant section(s) of the Instrument***
Principle 1: Legal basis	Section 7 – Legal framework Section 17 – Rules, policies, and procedures (in part)

Principle in the PFMI Report applicable to a trade repository	***Relevant section(s) of the Instrument***
Principle 2: Governance	Section 8 – Governance Section 9 – Board of directors Section 10 – Management
Principle 3: Framework for the comprehensive management of risks	Section 19 – Comprehensive risk-management framework Section 20 – General business risk (in part)
Principle 15: General business risk	Section 20 – General business risk
Principle 17: Operational risk	Section 21 – System and other operational risk requirements Section 22 – Data security and confidentiality Section 24 – Outsourcing
Principle 18: Access and participation requirements	Section 13 – Access to recognized trade repository services Section 16 – Due process (in part) Section 17 – Rules, policies and procedures (in part)
Principle 19: Tiered participation arrangements	No equivalent provisions in the Instrument; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.
Principle 20: FMI links	No equivalent provisions in the Instrument; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.
Principle 21: Efficiency and effectiveness	No equivalent provisions in the Instrument; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.
Principle 22: Communication procedures and standards	Section 15 – Communication policies, procedures and standards
Principle 23: Disclosure of rules, key procedures, and market data	Section 17 – Rules, policies and procedures (in part)
Principle 24: Disclosure of market data by trade repositories	Sections in Part 4 – Data Dissemination and Access to Data

We anticipate that the regulator in each participating jurisdiction will consider the principles in conducting its oversight activities of a recognized trade repository. Similarly, we will expect that

recognized trade repositories observe the principles in complying with the Instrument and the terms of its recognition order.

We anticipate that certain information included in the forms filed by an applicant or recognized trade repository under the Instrument will be kept confidential to the extent permitted in the local jurisdiction where this content contains proprietary financial, commercial and technical information. We are of the view that the cost and potential risks to the filers of disclosure of such information may outweigh the benefit of the principle requiring that forms be made available for public inspection. However, we would expect a recognized trade repository to disclose its responses to the CPSS-IOSCO consultative report entitled *Disclosure framework for financial market infrastructures*,[4] which is a supplement to the PFMI Report. Other information included in the filed forms will be required to be made publicly available by a recognized trade repository in accordance with the Instrument or the terms and conditions of the recognition order imposed by a securities regulatory authority.

While we generally expect to keep the information contained in a filed Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* and any amendments to such information confidential, if a regulator or securities regulatory authority considers that it is in the public interest to do so, it may require the applicant or recognized trade repository to disclose a summary of the information contained in the form, or in any amendments to the information in the filed Form 96-101F1.

Notwithstanding the confidential nature of the forms, we anticipate that an applicant's application itself (excluding forms) will be published for comment for a minimum period of 30 days.

(2) A person or company applying for recognition as a trade repository whose head office or principal place of business is located in a foreign jurisdiction will typically be required to provide additional information to allow us to evaluate a trade repository's application, including

- an undertaking to provide the regulator or securities regulatory authority with access to its books and records and to submit to onsite inspection and examination by the regulator or securities regulatory authority, and

- an opinion of legal counsel addressed to the regulator or securities regulatory authority that the person or company has the power and authority to provide the regulator or securities regulatory authority with access to the person or company's books and records, and to submit to onsite inspection and examination by the regulator or securities regulatory authority.

[4] Publication available on the BIS website (www.bis.org) and the IOSCO website (www.iosco.org).

Change in information by a recognized trade repository

3. A participating jurisdiction with which an amendment to the information provided in Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* is filed will endeavour to review such amendment in accordance with subsections 3(1) and 3(2) before the proposed implementation date for the change. However, where the changes are complex, raise regulatory concerns, or when additional information is required, this review may exceed these timeframes.

(1) We would consider a change to be significant when it could impact a recognized trade repository, its users, participants, market participants, investors, or the capital markets (including derivatives markets and the markets for assets underlying a derivative). We would generally consider a significant change to include, but not be limited to, the following:

- a change in the structure of the recognized trade repository, including procedures governing how derivatives data is collected and maintained (including in any back-up sites), that has or may have a direct impact on users in a local jurisdiction;

- a change to the services provided by the recognized trade repository, or a change that affects the services provided, including the hours of operation, that has or may have a direct impact on users in a local jurisdiction;

- a change to means of access to the recognized trade repository's facility and its services, including changes to data formats or protocols, that has or may have a direct impact on users in a local jurisdiction;

- a change to the types of derivative asset classes or categories of derivatives that may be reported to the recognized trade repository;

- a change to the systems and technology used by the recognized trade repository that collect, maintain and disseminate derivatives data, including matters affecting capacity;

- a change to the governance of the recognized trade repository, including changes to the structure of its board of directors or board committees and their related mandates;

- a change in control of the recognized trade repository;

- a change in entities that provide key services or systems to, or on behalf of, the recognized trade repository;

- a change to outsourcing arrangements for key services or systems of the recognized trade repository;

- a change to fees or the fee structure of the recognized trade repository;

- a change in the recognized trade repository's policies and procedures relating to risk-management, including relating to business continuity and data security, that has or may have an impact on the recognized trade repository's provision of services to its participants;

- the commencement of a new type of business activity, either directly or indirectly through an affiliated entity;

- a change in the location of the recognized trade repository's head office or primary place of business or the location where the main data servers or contingency sites are housed.

(2) We will generally consider a change in a recognized trade repository's fees or fee structure to be a significant change. However, we acknowledge that recognized trade repositories may frequently change their fees or fee structure and may need to implement fee changes within timeframes that are shorter than the 45-day notice period contemplated in subsection 3(1). To facilitate this process, subsection 3(2) provides that a recognized trade repository may provide information that describes the change to fees or fee structure in a shorter timeframe (at least 15 days before the expected implementation date of the change to fees or fee structure) than is provided for another type of significant change. See section 12 of this Policy for guidance with respect to fee requirements applicable to recognized trade repositories.

(3) Subsection 3(3) sets out the filing requirements for changes to information provided in a filed Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* other than those described in subsections 3(1) or (2). Such changes to information are not considered significant and include the following:

- changes that would not have an impact on the recognized trade repository's structure or participants, or more broadly on market participants, investors or the capital markets;

- changes in the routine processes, policies, practices, or administration of the recognized trade repository that would not impact participants;

- changes due to standardization of terminology;

- corrections of spelling or typographical errors;

- changes to the types of participants of a recognized trade repository that are in a local jurisdiction;

- necessary changes to conform to applicable regulatory or other legal requirements of a jurisdiction of Canada;

- minor system or technology changes that would not significantly impact the system or its capacity.

The participating jurisdictions may review filings under subsection 3(3) to ascertain whether the changes have been categorized appropriately. If the securities regulatory authority disagrees with the categorization, the recognized trade repository will be notified in writing. Where the securities regulatory authority determines that changes reported under subsection 3(3) are in fact significant changes under subsection 3(1), the recognized trade repository will be required to file an amendment to Form 96-101F1 that will be subject to review by the securities regulatory authority.

Ceasing to carry on business

6. (1) In addition to filing a completed Form 96-101F3 *Cessation of Operations Report for Recognized Trade Repository*, a recognized trade repository that intends to cease carrying on business in the local jurisdiction as a recognized trade repository must make an application to voluntarily surrender its recognition to the securities regulatory authority pursuant to securities legislation. The securities regulatory authority may accept the voluntary surrender subject to terms and conditions.[5]

Legal framework

7. (1) We would generally expect a recognized trade repository to have rules, policies, and procedures in place that provide a legal basis for their activities in all relevant jurisdictions where they have activities, whether within Canada or any foreign jurisdiction.

Governance

8. (3) We expect that interested parties will be able to locate the governance information required by subsections 8(1) and 8(2) through a web search or through clearly identified links on the recognized trade repository's website.

Board of directors

9. The board of directors of a recognized trade repository is subject to various requirements, such as requirements pertaining to board composition and conflicts of interest. To the extent that a recognized trade repository is not organized as a corporation, the requirements relating to the board of directors may be fulfilled by a body that performs functions that are equivalent to the functions of a board of directors.

(2) Paragraph 9(2)(a) requires individuals who comprise the board of directors of a recognized trade repository to have an appropriate level of skill and experience to effectively oversee the management of its operations. This would include individuals with experience and skills in areas such as business recovery, contingency planning, financial market systems and data management.

[5] This will apply in those jurisdictions where securities legislation provides the securities regulatory authority with the power to impose terms and conditions on an application for voluntary surrender. The transfer of derivatives data/information can be addressed through the terms and conditions imposed by the securities regulatory authority on such application.

Under paragraph 9(2)(b), the board of directors of a recognized trade repository must include individuals who are independent of the recognized trade repository. We generally consider individuals who have no direct or indirect material relationship with the recognized trade repository as independent. We expect that independent directors of a recognized trade repository would represent the public interest by ensuring that regulatory and public transparency objectives are fulfilled, and that the interests of participants who are not derivatives dealers are considered.

Chief compliance officer

11. (1) Subsection 11(1) is not intended to prevent management from hiring the chief compliance officer, but instead requires the Board to approve the appointment.

(3) References to harm to the capital markets in subsection 11(3) may be in relation to domestic or international capital markets.

Fees

12. We would generally expect a recognized trade repository's fees and costs to be fairly and equitably allocated among participants. We anticipate that the relevant securities regulatory authority will consider fees when assessing an application for recognition by a trade repository and may review changes in fees proposed by recognized trade repositories. In analyzing fees, we anticipate considering a number of factors, including the following:

- the number and complexity of the derivatives being reported;
- the amount of the fee or cost imposed relative to the cost of providing the services;
- the amount of fees or costs charged by other comparable trade repositories, where relevant, to report similar derivatives in the market;
- with respect to market data fees and costs, the amount of market data fees charged relative to the market share of the recognized trade repository;
- whether the fees or costs represent a barrier to accessing the services of the recognized trade repository for any category of participant.

A recognized trade repository should provide clear descriptions of priced services for comparability purposes. Other than fees for individual services, a recognized trade repository should also disclose costs and other fees related to connecting to or accessing the trade repository. For example, a recognized trade repository should disclose information on the system design, as well as technology and communication procedures, that influence the costs of using the recognized trade repository. A recognized trade repository is also expected to provide timely notice to participants and the public of any changes to services and fees.

Access to recognized trade repository services

13. (3) Under subsection 13(3), a recognized trade repository is prohibited from unreasonably preventing, conditioning or limiting access to its services, unreasonably discriminating between its participants, imposing unreasonable barriers to competition or requiring the use or purchase of another service in order for a person or company to utilize its trade reporting service. A recognized trade repository should not engage in anti-competitive practices such as setting overly restrictive terms of use or engaging in anti-competitive price discrimination. A recognized trade repository should not develop closed, proprietary interfaces that result in vendor lock-in or barriers to entry with respect to competing service providers that rely on the data maintained by the recognized trade repository. As an example, a recognized trade repository that is affiliated with a clearing agency must not impose barriers that would make it difficult for a competing clearing agency to report derivatives data to the recognized trade repository.

Acceptance of reporting

14. Section 14 requires that a recognized trade repository accept derivatives data for all derivatives of the asset class or classes set out in its recognition order. For example, if the recognition order of a recognized trade repository includes interest rate derivatives, the recognized trade repository is required to accept derivatives data for all types of interest rate derivatives that are entered into by a local counterparty. It is possible that a recognized trade repository may accept derivatives data for only a subset of a class of derivatives if this is indicated in its recognition order. For example, there may be recognized trade repositories that accept derivatives data for only certain types of commodity derivatives, such as energy derivatives.

Communication policies, procedures and standards

15. Section 15 sets out the communication standard required to be used by a recognized trade repository in communications with other specified entities. The reference in paragraph 15(d) to "service providers" may include persons or companies who offer technological or transaction processing or post-transaction services.

Due process

16. Section 16 imposes a requirement that a recognized trade repository provide participants or applicants with an opportunity to be heard before making a decision that directly and adversely affects the participant or applicant. We would generally expect that a recognized trade repository would meet this requirement by conducting a hearing or by allowing the participant or applicant to make representations in any form.

Rules, policies and procedures

17. The rules, policies and procedures of a recognized trade repository should be clear and comprehensive, and include explanatory material written in plain language so that participants can fully understand the system's design and operations, their rights and obligations, and the

risks of participating in the system. Moreover, a recognized trade repository should disclose, to its participants and to the public, basic operational information and responses to the *FMI disclosure template* in Annex A of the CPSS-IOSCO report *Principles for financial market infrastructures: Disclosure framework and assessment methodology*, published December 2012.

We anticipate that participating jurisdictions may develop and implement a protocol with the recognized trade repository that will set out the procedures to be followed with respect to the review and approval of rules, policies and procedures and any amendments thereto. Such a protocol may be appended to and form part of the recognition order. Depending on the nature of the changes to the recognized trade repository's rules, policies and procedures, such changes may also impact the information contained in Form 96-101F1 *Application for Recognition – Trade Repository Information Statement*. In such cases, the recognized trade repository will be required to file an amendment to Form 96-101F1 with the securities regulatory authority. See section 3 of this Policy for a discussion of filing requirements. We anticipate that requirements relating to the review and approval of rules, policies, and procedures and any amendments thereto will be described in the order of the securities regulatory authority recognizing the trade repository.

(3) Subsection 17(3) requires that a recognized trade repository monitor compliance with its rules, policies and procedures. The methodology of monitoring such compliance should be fully documented.

(4) The processes implemented by a recognized trade repository for dealing with a participant's non-compliance with its rules, policies and procedures do not preclude enforcement action by any other person or company, including a securities regulatory authority or other regulatory body.

Records of data reported

18. A recognized trade repository may be subject to record-keeping requirements under securities legislation that are in addition to those under section 18 of the Instrument.

(2) The requirement to maintain records for 7 years after the expiration or termination of a derivative, rather than from the date of the transaction, reflects the fact that derivatives create ongoing obligations and that information is subject to change throughout the life of a derivative.

Comprehensive risk-management framework

19. Section 19 requires that a recognized trade repository have a comprehensive risk-management framework. Set out below are some of our expectations for a recognized trade repository to be able to demonstrate that it meets that requirement.

Features of the framework

We would generally expect that a recognized trade repository would have a written risk-management framework (including policies, procedures and systems) that enables it to identify,

measure, monitor, and manage effectively the range of risks that arise in, or are borne by, the recognized trade repository. A recognized trade repository's framework should include the identification and management of risks that could materially affect its ability to perform or to provide services as expected, such as interdependencies.

Establishing a framework

A recognized trade repository should have comprehensive internal processes to help its board of directors and senior management monitor and assess the adequacy and effectiveness of its risk-management policies, procedures, systems and controls. These processes should be fully documented and readily available to the recognized trade repository's personnel who are responsible for implementing them.

Maintaining a framework

We would generally expect that a recognized trade repository would regularly review the material risks it bears from, and poses to, other entities (such as other FMIs, settlement banks, liquidity providers or service providers) as a result of interdependencies, and develop appropriate risk-management tools to address these risks. These tools should include business continuity arrangements that allow for rapid recovery and resumption of critical operations and services in the event of operational disruptions and recovery or orderly wind-down plans should the trade repository become non-viable.

General business risk

20. (1) We consider general business risk to include any potential impairment of the recognized trade repository's financial position (as a business concern) as a consequence of a decline in its revenues or an increase in its expenses, such that expenses exceed revenues and result in a loss that must be charged against capital or an inadequacy of resources necessary to carry on business as a recognized trade repository.

(2) For the purpose of subsection 20(2), the amount of liquid net assets funded by equity that a recognized trade repository should hold is to be determined by its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services, if such action is taken.

(4) The scenarios identified under subsection 20(4) should take into account the various independent and related risks to which the recognized trade repository is exposed.

(5) Plans for the recovery or orderly wind-down of a recognized trade repository should contain, among other elements, a substantive summary of the key recovery or orderly wind-down strategies, the identification of the recognized trade repository's critical operations and services, and a description of the measures needed to implement the key strategies. The recognized trade repository should maintain the plan on an ongoing basis, to achieve recovery and orderly wind-down, and should hold sufficient liquid net assets funded by equity to implement this plan. A recognized trade repository should also take into consideration the operational, technological and

legal requirements for participants to establish and move to an alternative arrangement in the event of an orderly wind-down.

Systems and other operational risk requirements

21. (1) Subsection 21(1) sets out a general principle concerning the management of operational risk. In interpreting subsection 21(1), the following key considerations should be applied:

- a recognized trade repository should establish a robust operational risk-management framework with appropriate systems, policies, procedures, and controls to identify, monitor and manage operational risks;

- a recognized trade repository should review, audit and test systems, operational policies, procedures and controls, periodically and after any significant changes;

- a recognized trade repository should have clearly defined operational-reliability objectives and policies in place that are designed to achieve those objectives.

(2) The board of directors of a recognized trade repository should clearly define the roles and responsibilities for addressing operational risk.

(3) An adequate system of internal control over systems as well as adequate general information-technology controls are to be implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support and security. Recommended Canadian guides as to what constitutes adequate information technology controls include '*Information Technology Control Guidelines*' from the Canadian Institute of Chartered Accountants and '*COBIT*' from the IT Governance Institute. A recognized trade repository should ensure that its information-technology controls address the integrity of the data that it maintains, by protecting all derivatives data submitted from corruption, loss, improper disclosure, unauthorized access and other processing risks.

Paragraph 21(3)(b) requires a recognized trade repository to thoroughly assess future needs and make systems capacity and performance estimates in a method consistent with prudent business practice at least once a year. This paragraph also imposes an annual requirement for recognized trade repositories to conduct periodic capacity stress tests. Continual changes in technology, risk management requirements and competitive pressures will often result in these activities or tests being carried out more frequently.

Paragraph 21(3)(c) requires a recognized trade repository to notify the securities regulatory authority of any material systems failure. A failure, malfunction, delay or other disruptive incident would be considered "material" if the recognized trade repository would in the normal course of its operations escalate the incident to, or inform, its senior management that is responsible for technology, or if the incident would have an impact on participants. We also expect that, as part of this notification, the recognized trade repository will provide updates on the status of the failure, the resumption of service, and the results of its internal review of the failure.

(4) We are generally of the view that disaster recovery plans should allow the recognized trade repository to provide continuous and undisrupted service, as back-up systems ideally should commence processing immediately. Where a disruption is unavoidable, a recognized trade repository is expected to provide prompt recovery of operations, meaning that it resumes operations within 2 hours following the disruptive event. Under paragraph 21(4)(c), an emergency event could include any external sources of operational risk, such as the failure of critical service providers or utilities or events affecting a wide metropolitan area, such as natural disasters, terrorism, and pandemics. Business continuity planning should encompass all policies and procedures to ensure uninterrupted provision of key services regardless of the cause of potential disruption.

(5) We expect that a recognized trade repository will engage relevant industry participants, as necessary, in tests of its business continuity plans, including testing of back-up facilities for both the recognized trade repository and its participants.

(6) For the purpose of subsection 21(6), a qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment, such as external auditors or third party information system consultants. We would generally consider that this obligation could be satisfied by an independent assessment by an internal audit department that is compliant with the International Standards for the Professional Practice of Internal Auditing published by the Institute of Internal Audit. Before engaging a qualified party, the recognized trade repository should notify each relevant securities regulatory authority.

(8) In determining what a reasonable period is to allow participants to make system modifications and test their modified systems, a recognized trade repository should consult with its participants and allow all participants a reasonable opportunity to develop, implement and test systems changes. We expect that the needs of all types of participants would be considered, including those of smaller and less sophisticated participants.

(9) In determining what a reasonable period is to allow participants to test their modified systems and interfaces with the recognized trade repository, we would generally expect a recognized trade repository to consult with its participants. We consider a reasonable period to be a period that would provide all participants a reasonable opportunity to develop, implement and test systems changes. We expect that the needs of all types of participants would be considered, including those of smaller and less sophisticated participants.

Data security and confidentiality

22. **(1)** Rules, policies and procedures to ensure the safety, privacy and confidentiality of derivatives data must include limitations on access to confidential data held by the trade repository, including derivatives data, and safeguards to protect against persons and companies affiliated with a recognized trade repository from using trade repository data for their personal benefit or the benefit of others.

(2) The purpose of subsection 22(2) is to ensure that users of a recognized trade repository have some measure of control over their derivatives data.

Confirmation of data and information

23. The purpose of the confirmation requirement in subsection 23(1) is to ensure that the reported information accurately describes the derivative as agreed to by both counterparties.

In cases where the non-reporting counterparty to a derivative is not a participant of the recognized trade repository to which the derivatives data is reported, the recognized trade repository would not be in a position to allow non-participants to confirm the accuracy of the derivatives data. As such, subsection 23(2) provides that a recognized trade repository is not obligated to allow non-participants to confirm the accuracy of derivatives data reported to it under the Instrument.

A recognized trade repository may satisfy its obligation under section 23 by notice to each counterparty to the derivative that is a participant of the recognized trade repository, or its delegated third-party representative where applicable, that a report has been made naming the participant as a counterparty to a derivative, accompanied by a means of accessing a report of the derivatives data submitted. The policies and procedures of the recognized trade repository may provide that if the recognized trade repository does not receive a response from a counterparty within 48 hours, the counterparty is deemed to confirm the derivatives data as reported.

Outsourcing

24. Section 24 sets out requirements applicable to a recognized trade repository that outsources any of its material services or systems to a service provider. Generally, a recognized trade repository must establish policies and procedures to evaluate and approve these outsourcing arrangements, including assessing the suitability of potential service providers and the ability of the recognized trade repository to continue to comply with securities legislation in the event of bankruptcy, insolvency or the termination of business of the service provider. A recognized trade repository is also required to monitor the ongoing performance of a service provider to which it outsources a key service, system or facility. The requirements under section 24 apply regardless of whether an outsourcing arrangement is with a third-party service provider or an affiliated entity of the recognized trade repository. A recognized trade repository that outsources any of its material services or systems remains responsible for those services or systems and for compliance with securities legislation.

PART 3
DATA REPORTING

Part 3 deals with reporting obligations for a derivative that involves a local counterparty and includes a determination of which counterparty to the derivative will be subject to the duty to report, requirements as to the timing of reports and a description of the data that is required to be reported.

Reporting counterparty

25. Section 25 sets out a process for determining which counterparty to a derivative is the reporting counterparty and is therefore required to fulfil the reporting obligations under the Instrument.

(1) The hierarchy outlined in subsection 25(1) for determining which counterparty to a derivative will be the reporting counterparty is intended to reflect the counterparty to the derivative that is best suited to fulfill the reporting obligation. For example, for a derivative that is cleared through a clearing agency, the clearing agency is best positioned to report derivatives data and is therefore the reporting counterparty.

The definition of "derivatives dealer" in the Instrument does not require that a person or company be registered with the local securities regulatory authority in order to meet the definition. Accordingly, where the reporting counterparty to a derivative is a derivatives dealer, as defined in the Instrument, the reporting obligations with respect to the derivative apply irrespective of whether the derivatives dealer is a registrant in the local jurisdiction. See the guidance in section 1(2) with respect to the factors to be considered to determine whether a person or company is a derivatives dealer for the purpose of the Instrument. A person or company that meets the definition of "derivatives dealer" in the local jurisdiction would be a derivatives dealer for the purpose of the Instrument, even if it is exempted or excluded from the requirement to register.

Agreement between the counterparties

For a derivative that is not cleared and is between two derivatives dealers or two end-users – that is, a derivative to which paragraphs 25(1)(a) and (b) do not apply – paragraph 25(1)(c) allows the counterparties to agree, in writing, at or before the time the transaction occurs, which counterparty will act as the reporting counterparty for the derivative. The intention of paragraph 25(1)(c) is to facilitate single counterparty reporting while requiring both counterparties to have procedures or contractual arrangements in place to ensure that reporting occurs.

One example of a type of agreement the counterparties may use to determine the reporting counterparty to a derivative is the ISDA methodology, publicly available at www.isda.org, developed for derivatives in Canada in order to facilitate one-sided derivative reporting and to provide a consistent method for determining the party required to act as reporting counterparty.

There is no requirement for counterparties to a derivative to use the ISDA methodology. However, in order for the counterparties to rely on paragraph 25(1)(c), the agreement must meet the conditions in paragraph 25(1)(c). Namely, the agreement must be in written form, have been made at the time of the derivative, and identify the reporting counterparty with respect to the derivative.

(2) Each local counterparty that relies on paragraph 25(1)(c) must fulfil the record-keeping obligations set out in subsection 25(2).

(4) Subsection (4) provides that a local counterparty that agrees to be the reporting counterparty for a derivative under paragraph 25(1)(c) must fulfil all reporting obligations as the reporting counterparty in relation to that derivative even if that local counterparty would otherwise be excluded from the trade reporting obligation under section 40.

Duty to report

26. Section 26 outlines the duty to report derivatives data.

A reporting counterparty may delegate its reporting obligations to a third-party, including a third-party service provider. This includes reporting of initial creation data, life-cycle event data and valuation data. Where reporting obligations are delegated to a third-party, the reporting counterparty remains liable for any failure to comply with applicable requirements under the instruments.

(2) We would generally expect that reports for derivatives that are not accepted for reporting by any recognized trade repository would be electronically submitted to the local securities regulatory authority in accordance with the guidance provided by the local securities regulatory authority.

(3) Subsection 26(3) provides for limited substituted compliance in ~~two~~three circumstances.

The first circumstance is where a counterparty to a derivative is organized under the laws of the local jurisdiction but does not conduct business in the jurisdiction other than activities incidental to being organized in the jurisdiction.

We are of the view that factors that would indicate that a person or company is conducting business in the jurisdiction would include the following:

- having a physical location in a jurisdiction;
- having employees or agents that reside in the jurisdiction;
- generating revenue in the jurisdiction;
- having customers or clients in the jurisdiction.

We are also of the view that activities that are incidental to being organized under the law of a jurisdiction would include instructing legal counsel to file materials with the government agency responsible for registering corporations and maintaining a local agent for service of legal documents.

The second circumstance is where the derivative involves a local counterparty that is a local counterparty solely on the basis that it is an affiliated entity of a person or company, other than an individual, that is organized in the local jurisdiction or has its head office and principal place

of business in the local jurisdiction, and that person or company is liable for all or substantially all of the liabilities of the affiliated entity.

The third circumstance is where the derivative is between two affiliated entities, each of which is neither a derivatives dealer or a clearing agency, nor an affiliated entity of a derivatives dealer or a clearing agency.

In each instance, the counterparties can benefit from substituted compliance where the derivatives data has been reported to a recognized trade repository pursuant to the laws of a province of Canada other than the local jurisdiction or of a foreign jurisdiction listed in Appendix B, provided that the additional conditions set out in paragraph 26(3)(c) are satisfied. ~~We anticipate that the concept of substituted compliance will be expanded to include situations where reports are made under requirements in foreign jurisdictions that have derivative transaction reporting requirements that are similar to those in the Instrument. We anticipate that amendments to the rule that will extend substituted compliance to foreign jurisdictions will be implemented before the implementation of reporting requirements under the Instrument.~~

(4) Subsection 26(4) requires that all derivatives data reported for a given derivative be reported to the same recognized trade repository ~~to which the initial report is submitted~~ or, with respect to a derivative~~s data~~ reported under subsection 26(2), to the local securities regulatory authority.

For a bi-lateral derivative that is cleared by a clearing agency (novation), the recognized trade repository to which all derivatives data must be reported is the recognized trade repository to which the original bi-lateral derivative was reported.

The purpose of this requirement is to ensure the securities regulatory authority has access to all reported derivatives data for a particular derivative and its related transactions from the same entity. It is not intended to restrict counterparties' ability to report to multiple trade repositories.

(6) We interpret the requirement in subsection 26(6), to report errors or omissions in derivatives data "as soon as practicable" after it is discovered, to mean upon discovery and in any case no later than the end of the business day following the day on which the error or omission is discovered.

(7) Under subsection 26(7), where a local counterparty that is not a reporting counterparty discovers an error or omission in respect of derivatives data that ~~is~~has been reported to a recognized trade repository, such local counterparty has an obligation to report the error or omission to the reporting counterparty for the derivative. Once an error or omission is reported by the local counterparty to the reporting counterparty, the reporting counterparty then has an obligation under subsection 26(6) to report the error or omission to the recognized trade repository or to the securities regulatory authority in accordance with subsection 26(2). We interpret the requirement in subsection 26(7) to notify the reporting counterparty of errors or omissions in derivatives data to mean upon discovery and in any case no later than the end of the business day following the day on which the error or omission is discovered.

Legal entity identifiers

28. The Global LEI System is a G20 endorsed initiative[6] for uniquely identifying parties to financial transactions, designed and implemented under the direction of the LEI ROC, a governance body endorsed by the G20. The Global LEI System serves as a public-good utility responsible for overseeing the issuance of legal entity identifiers globally, including to counterparties who enter into derivatives or that are involved in a derivatives transaction.

(1) We are of the view that reporting counterparties will take steps to ensure that the non-reporting counterparty provides its LEI to facilitate reporting under the Instrument. If the reporting counterparty cannot, for any reason, obtain the LEI from the non-reporting counterparty, publicly accessible resources may be available for obtaining that information.

(2) Paragraph 28(2)(a) requires each local counterparty to a derivative that is required to be reported under the Instrument, other than an individual, to acquire an LEI, regardless of whether the local counterparty is the reporting counterparty.

(3) Some counterparties to a reportable derivative may not be eligible to receive an LEI. In such cases, the reporting counterparty must use an alternate identifier to identify each counterparty that is ineligible for an LEI when reporting derivatives data to a recognized trade repository.
~~**(3)** If the Global LEI System is not available at the time a reporting counterparty is required under the Instrument to report derivatives data, including the LEI for each counterparty, with respect to the derivative, a counterparty should use a substitute legal entity identifier. The substitute legal entity identifier should be set in accordance with the standards established by the LEI ROC for pre-LEIs identifiers. At the time the Global LEI System is operational, counterparties should cease using their substitute LEI and commence reporting their LEI. The substitute LEI and LEI might be identical.~~

Unique transaction identifiers

29. A unique transaction identifier is used to identify a derivative and the transaction relating to that derivative from the perspective of all counterparties to the transaction. For example, both counterparties to a single derivative would identify the derivative and its related transaction by the same single identifier. For a derivative that is novated to a clearing agency, the reporting of the novated derivatives should reference the unique transaction identifier of the original bi-lateral derivative.

The Instrument imposes an obligation on the recognized trade repository to identify each derivative and its related transaction by means of a unique transaction identifier. This does not preclude the trade repository from incorporating a unique transaction identifier provided by the reporting counterparty or using a unique transaction identifier provided by the reporting counterparty where such an identifier meets industry standards or would otherwise reasonably be expected to be both unique and to appropriately identify the derivatives and its related transaction.

[6] For more information see FSB Report A Global Legal Entity Identifier for Financial Markets, June 8, 2012, online: Financial Stability Board <http://www.financialstabilityboard.org/publications/>.

Unique product identifiers

30. Section 30 requires that a reporting counterparty identify each derivative that is subject to the reporting obligation under the Instrument by means of a unique product identifier. The unique product identifier identifies the sub-type of derivative within the asset class to which the derivative belongs. There are currently systems of product taxonomy that may be used for this purpose.[7] To the extent that a unique product identifier is not available for a particular derivative type or sub-type, a reporting counterparty would be required to create one using an alternative methodology.

Creation data

31. (1) Subsection 31(1) requires that reporting of creation data be made immediately after a transaction occurs, which means that creation data should be reported as soon as technologically practicable after the execution of a transaction. In evaluating what will be considered to be "technologically practicable", we will take into account the prevalence of implementation and use of technology by comparable counterparties located in Canada and in foreign jurisdictions. The participating jurisdictions may also conduct independent reviews to determine the state of reporting technology.

(2) Subsection 31(2) is intended to take into account the fact that not all counterparties will have the same technological capabilities. For example, counterparties that do not regularly engage in derivatives would, at least in the near term, likely not be as well situated to achieve real-time reporting. Further, for certain post-transaction operations that result in reportable derivatives, such as trade compressions involving numerous derivatives, immediate reporting may not currently be practicable. In all cases, the outside limit for reporting is the end of the business day following execution of the transaction.

Life-cycle event data

32. (1) When reporting a life-cycle event, there is no obligation to re-report derivatives data that has not changed other than the unique transaction identifier as required by subsection 27(2) – only new data and changes to previously reported data need to be reported. Life-cycle event data is not required to be reported immediately but rather at the end of the business day on which the life-cycle event occurs. The end of business day report may include multiple life-cycle events that occurred on that day.

Valuation data

33. (1) Subsection 33(1) provides for differing frequency of valuation data reporting based on the type of entity that is the reporting counterparty.

[7] See e.g., <http://www2.isda.org/identifiers-and-otc-taxonomies/> for more information.

Pre-existing derivatives

34. (3) The derivatives data required to be reported for pre-existing derivatives under section 34 is substantively the same as the requirement under CFTC Rule 17 CFR Part 46 *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*. Therefore, to the extent that a reporting counterparty has reported pre-existing derivatives data as required by the CFTC rule, this would meet the derivatives data reporting requirements under section 34. This interpretation applies only to pre-existing derivatives.

Only the data indicated in the column entitled "Required for Pre-existing Derivatives" in Appendix A is required to be reported for pre-existing derivatives.

(4) Subsection 4 imposes an obligation on a reporting counterparty to commence reporting life-cycle event data for a pre-existing derivative immediately after it has reported the creation data relating to the derivative in accordance with this section. Life-cycle event data should be reported in accordance with the requirements in section 32.

(5) Subsection (5) imposes an obligation on a reporting counterparty to commence reporting valuation data for a pre-existing derivative immediately after it has reported the creation data relating to the derivative in accordance with this section. Valuation data should be reported in accordance with the requirements in section 33.

PART 4
DATA DISSEMINATION AND ACCESS TO DATA

Data available to regulators

37. The derivatives data covered by this section is data necessary to carry out the securities regulatory authority's mandate to protect against unfair, improper or fraudulent practices, to foster fair and efficient capital markets, to promote confidence in the capital markets, and to address systemic risk. This includes derivatives data with respect to any derivative or derivatives that may impact capital markets in Canada.

Derivatives that reference an underlying asset or class of assets with a nexus to a jurisdiction in Canada can impact capital markets in Canada even if the counterparties to the derivative are not local counterparties. Therefore, the participating jurisdictions have a regulatory interest in derivatives involving such underlying interests even if such data is not submitted pursuant to the reporting obligations in the Instrument, but is held by a recognized trade repository.

(1) For the purpose of subsection 37(1) electronic access includes the ability of the securities regulatory authority to access, download, or receive a direct real-time feed of derivatives data maintained by the recognized trade repository.

(2) It is expected that all recognized trade repositories will comply with the access standards and recommendations developed by CPMI (formerly CPSS) and IOSCO and contained in the CPSS-

IOSCO final report entitled *Authorities' access to trade repository data*.[8]

(3) We interpret the requirement for a reporting counterparty to use best efforts to provide the securities regulatory authority with access to derivatives data to mean, at a minimum, instructing the recognized trade repository to release derivative data to the securities regulatory authority.

Data available to counterparties

38. Section 38 is intended to ensure that each counterparty, and any person or company acting on behalf of a counterparty, has access to all derivatives data relating to its derivative(s) in a timely manner. The participating jurisdictions expect that where a counterparty has provided consent to a recognized trade repository to grant access to data to a delegate, including a third-party service provider, the recognized trade repository will grant such access on the terms consented to.

Data available to public

39. (1) Subsection 39(1) requires a recognized trade repository to make available to the public, free of charge, certain aggregate data for all derivatives reported to it under the Instrument (including open positions, volume, number of transactions and price) unless otherwise governed by the requirements or conditions of a decision of a securities regulatory authority, including the terms of an applicable recognition order.

It is expected that a recognized trade repository will provide aggregate data by notional amounts outstanding and level of activity. Such aggregate data is expected to be available at no cost on the recognized trade repository's website.

(2) Subsection 39(2) requires that the aggregate data that is disclosed under subsection 39(1) be broken down into various categories of information. The following are examples of the categorized aggregate data required under subsection 39(2):

- currency of denomination (the currency in which the derivative is denominated);
- geographic location of the underlying reference entity (e.g., "Canada" for derivatives which reference the TSX60 index);
- asset class of reference entity (e.g., fixed income, credit or equity);
- product type (e.g., options, forwards or swaps);
- cleared or uncleared;
- maturity (broken down into maturity ranges, such as less than one year, 1-2 years, 2-3 years).

(3) Subsection 39(3) requires a recognized trade repository to publicly disseminate transaction-

[8] Publication available on the BIS website <www.bis.org> and the IOSCO website <www.iosco.org>.

level reports in accordance with the requirements set out in Appendix C.
~~**(3)** We anticipate publishing specific guidelines relating to the data that trade repositories are required to publish. These guidelines will attempt to balance the benefits of transparency and the desire to anonymize data that could reveal the identity of counterparties based on the terms of the derivative.~~

(4) Published data must be anonymized and the names or legal entity identifiers of counterparties must not be published. This provision is not intended to create a requirement for a recognized trade repository to determine whether anonymized published data could reveal the identity of a counterparty based on the terms of the derivative.

PART 5
EXCLUSIONS

Commodity derivative

40. The exclusion in section 40 applies only to a derivative the asset class of which is a commodity other than currency. A local counterparty with an aggregate month-end gross notional outstanding of less than $250 000 000 would still be required to report a derivative involving a non-commodity (other than currency) based derivative, if it is the reporting counterparty for the derivative under subsection 25(1). The exclusion in section 40 does not apply to a person or company that is a clearing agency or a derivatives dealer, or an affiliated entity of a clearing agency or a derivatives dealer, even if the person or company is below the $250 000 000 threshold.

For a derivative involving a local counterparty to which the exclusion under section 40 applies, the other counterparty will be the reporting counterparty for the derivative unless either

- the exclusion under section 40 also applies to that counterparty, or
- the local counterparty to which the exclusion under section 40 applies agrees under paragraph 25(1)(c) to be the reporting counterparty for the derivative.

In calculating the month-end notional outstanding for any month, the notional amount of all outstanding derivatives relating to a commodity other than cash or currency, with all counterparties other than affiliated entities, whether domestic or foreign, should be included. Contracts or instruments that are excluded from the definition of “specified derivative” in Multilateral Instrument 91-101 *Derivatives: Product Determination* are not required to be included in the calculation of month-end notional outstanding.

For the purpose of this calculation, we would generally expect that a notional amount denominated in a foreign currency or referencing a quantity or volume of the underlying interest would be converted to a Canadian-dollar notional amount as at a time proximate to the time of the transaction in a reasonable and consistent manner, and consistent with applicable industry standards.

Derivative between affiliated entities

41.1. Section 41.1 provides an exclusion from the reporting requirement for derivatives between two affiliated entities that are each a local counterparty in a jurisdiction of Canada. The exclusion is not available to a person or company that is a derivatives dealer or a clearing agency, or is an affiliated entity of a derivatives dealer or a clearing agency.

Derivative between a non-resident derivatives dealer and a non-local counterparty

42. Please see the discussion relating to the definition of "local counterparty" for additional guidance relating to section 42.

PART 7
TRANSITION PERIOD AND EFFECTIVE DATE

Reporting by a local counterparty that ceases to qualify for an exclusion

44.1. (1) Subsection 44.1(1) provides that a derivative that was excluded under any of section 40, 41, 41.1 or 42 from the reporting requirements under the Instrument, but which no longer meets the applicable condition or conditions, must be reported once the applicable condition or conditions are no longer met.

Subsection 44.1(2) is intended to provide a person or company that has previously benefitted from an exclusion from trade reporting under Part 6, and has not previously acted as a reporting counterparty under the Instrument or a similar instrument in another jurisdiction of Canada, with a reasonable transition period to allow them to develop the resources and implement policies and procedures necessary to meet the requirements applicable to a reporting counterparty.

Effective date

45. (4) The requirement under subsection 39(3) for a recognized trade repository to make transaction-level data reports available to the public does not apply until ~~January 1, 2017~~July 29, 2016.

APPENDIX C

Instructions

1. The instructions provided at item 1 of this Appendix describe the types of derivatives for which the data fields described in Table 1 must be publicly disseminated by a recognized trade repository.

Public dissemination is not required for life-cycle events that do not contain new price information compared to the original transaction.

Table 1

Table 1 lists the data fields that must be publicly disseminated. Table 1 is a subset of the information that the trade repository is required to submit to the regulator and does not include all the fields required to be reported to a recognized trade repository pursuant to Appendix A. For example, valuation data fields are not required to be publicly disseminated.

Table 2

Only derivatives in any of the Asset Class and Underlying Asset Identifiers fields listed in Table 2 are subject to the public dissemination requirement under subsection 39(3) of the Instrument.

For further clarification, the identifiers listed under the Underlying Asset Identifier in Table 2 refer to the following:

"CAD-BA-CDOR" means all tenors of the Canadian Dollar Offered Rate (CDOR). CDOR is a financial benchmark for bankers' acceptances with a term to maturity of one year or less currently calculated and administered by Thomson Reuters.

"USD-LIBOR-BBA" means all tenors of the U.S. Dollar IntercontinentalExchange London Interbank Offered Rate (ICE LIBOR). ICE LIBOR is a benchmark currently administered by ICE Benchmark Administration and provides an indication of the average rate at which a contributor bank can obtain unsecured funding in the London interbank market for a given period, in a given currency.

"EUR-EURIBOR-Reuters" means all tenors of the Euro Interbank Offered Rate (Euribor). Euribor is a reference rate published by the European Banking Authority based on the average interest rates at which selected European prime banks borrow funds from one another.

"GBP-LIBOR-BBA" means all tenors of the GBP Pound Sterling IntercontinentalExchange London Interbank Offered Rate (ICE LIBOR). ICE LIBOR is a benchmark currently administered by ICE Benchmark Administration providing an indication of the average rate at which a contributor bank can obtain unsecured funding in the London interbank market for a given period, in a given currency.

"All Indexes" means any statistical measure of a group of assets that is administered by an organization that is not affiliated with the counterparties and whose value and calculation methodologies are publicly available. Examples of indexes that would satisfy this meaning are underlying assets that would be included in ISDA's Unique Product Identifier Taxonomy[9] under (i) the categories of Index and Index Tranche for credit products and (ii) the Single Index category for equity products.

[9] ISDA's Unique Product Identifier Taxonomy can be found at www.isda.org.

Exclusions

2. Item 2 of this Appendix specifies the types of derivatives that are excluded from the public dissemination requirement in subsection 39(3) of the Instrument. An example of a derivative excluded under item 2(a) is a cross-currency swap. The type of derivative excluded under item 2(b) results from portfolio compression activity which occurs whenever a derivative is amended or entered into in order to reduce the gross notional amount of an outstanding derivative or group of derivatives without impacting the net exposure. Item 2(c) excludes a derivative resulting from a novation on the part of a clearing agency when facilitating the clearing of a bi-lateral derivative.

Rounding of notional amount

3. The rounding thresholds are to be applied to the notional amount of a derivative in the currency of the derivative. For example, a derivative denominated in United States dollars (USD) would be rounded and disseminated in USD and not the Canadian dollar (CAD) equivalent.

Capping of notional amount

4. Item 4 of this Appendix requires a recognized trade repository to compare the Rounded Notional Amount of a derivative denominated in a non-CAD currency to the Capped Rounded Notional Amount in CAD that corresponds to the Asset Class and tenor of that derivative. Therefore, the recognized trade repository must convert the non-CAD currency into CAD in order to determine whether it would be above the capping threshold. The recognized trade repository must utilise a transparent and consistent methodology for converting to and from CAD for the purposes of comparing and publishing the capped notional amount.

For example, in order to compare the Rounded Notional Amount of a derivative denominated in UK Pounds (GBP) to the thresholds in Table 4, the recognized trade repository must convert this amount to a CAD-equivalent amount. If the CAD-equivalent notional amount of the GBP denominated derivative is above the capping threshold, the recognized trade repository must disseminate the Capped Rounded Notional Amount converted back into the currency of the derivative using a consistent and transparent process.

6. Item 6 of this Appendix requires a recognized trade repository to adjust the Option Premium field in a consistent and proportionate manner if the Rounded Notional Amount of a derivative is greater than the Capped Rounded Notional Amount. The Option Premium field adjustment should be proportionate to the size of the Capped Rounded Notional Amount compared to the Rounded Notional Amount.

Timing

7. Item 7 of this Appendix sets out when a recognized trade repository must publicly disseminate the required information from Table 1. The purpose of the public reporting delays is to ensure that counterparties have adequate time to enter into any offsetting derivative that may be necessary to hedge their positions. These time delays apply to all derivatives, regardless of size.

April 15, 2016

BY EMAIL

Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Martin McGregor, Legal Counsel
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
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Dear Sirs/Mesdames:

Re: ***Proposed Amendments to Multilateral Instrument 96-101 Trade Repositories and Derivatives Data Reporting*** **(the "Proposed Amendments")**

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to respond to the specific questions set out below with respect to the Proposed Amendments.

1. *The corresponding provision in the Proposed Local TR Rule Amendments would make the proposed substituted compliance for inter-affiliate derivatives available to an affiliate of a derivatives dealer or of a clearing agency. Is it appropriate to permit an affiliate of a derivatives dealer or of a clearing agency to avail itself of the proposed substituted compliance for inter-affiliate derivatives?*

   We would not have concerns if the proposed substituted compliance was available to affiliates of derivatives dealers or of a clearing agency.

[1]The CAC represents more than 15,000 Canadian members of the CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at http://www.cfasociety.org/cac. Our Code of Ethics and Standards of Professional Conduct can be found at http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx.

[2] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 135,000 members in 151 countries and territories, including 128,000 CFA charterholders, and 145 member societies. For more information, visit www.cfainstitute.org.

2. *Proposed subsection 28(2) excludes an individual from the requirement to obtain an LEI. Is it appropriate to exclude individuals from the requirement to obtain an LEI? Please identify and discuss any specific privacy law related concerns.*

In our view, it is appropriate to exclude individuals from the requirement to obtain an LEI. It is unlikely that individuals would themselves be trading in OTC derivatives and thus subject to the reporting rules. In any event, it is currently not possible via the LEI/GMEI initiative to identify individuals with beneficial ownership of entities such as holding corporations and partnerships that have an LEI, and thus it would be unequitable to require individuals who do choose to trade as individuals to obtain an identifier. Individuals would still have the option to obtain a LEI if they so chose.

6. *Do the Proposed TR Rule Amendments relating to public dissemination of transaction level data appropriately balance (i) the protection of counterparty anonymity, and (ii) the benefits to the market of useful and timely transaction-level public transparency?*

In general, the Proposed Amendments strike the right balance between the protection of counterparty anonymity and the benefits of public transparency of transaction level data. We are for the most part and in principle in favour of additional transparency. However, as noted in our comments below, we are doubtful that some of the information that is proposed to be released will be helpful to end users and may not be required.

The narrow scope of the rule as well as the reporting timing will have a large impact on the use of the data. The most liquid OTC derivatives, particularly interest rate swaps, will be subject to mandatory reporting while less liquid derivatives such as F/X contracts or single name equity or credit derivatives will not. The facts that only the most liquid derivatives will be reported, together with, in many cases, the suggested rounding will limit the data available.

We query whether the suggested rounding intervals are sufficient to provide anonymity for certain derivative trades, if the derivatives are less liquid than others and in the context of the relatively small Canadian OTC derivative market when compared to the US or Europe. The rounding appears to be quite granular. While the proposed caps help ameliorate some of these concerns, there may not be sufficient difference between some of the rounding categories to provide the requisite level of anonymity.

The protection of data is not only to protect against the identification of end users, but to avoid parties being able to discern the intentions of other parties placing a hedge (for example, if a counterparty sought to hedge with multiple other parties). For example, in a multi-dealer request for quotes, other dealers could be able to determine intentions based on the net rounding information, particularly below the net $500 million level. In addition, even when it is not possible to identify the counterparties, it would be possible, for example in an interest rate swap transaction, to determine that a counterparty is not hedging but is taking a position on the direction of rates. Thus, if end users are simply looking to hedge, the current rounding brackets may not be useful; the amount of the trade could be irrelevant and thus the bands between the categories could be much larger (e.g. to the nearest $100 million). The current table of granular rounding categories

could increase the overall cost of trades on end users, which will ultimately impact all market participants and could lead to inefficiencies in the market.

We understand that public dissemination of derivatives data is intended to facilitate price discovery. However, it would be helpful to have additional statistics with respect to tangible benefits to the general public of public dissemination of the proposed transaction level data, particularly as the information in Canada will be released later than in other jurisdictions such as the United States. Other than entities that either look to profit from the trading patterns of end users and dealers, or who are paid from making trading recommendations based on such data, it is difficult to pinpoint who will benefit from the information. Prior to implementing additional costly reporting requirements, it is important to confirm that there will be appreciable benefits for the market, particularly if the regulators will themselves be receiving the information regardless of the success of the proposals, and have total transparency with respect to the trading activity.

If public dissemination of data is deemed important and proceeds, we agree with moving up the date the requirement will take effect to harmonize it with other jurisdictions, however, as noted above, it might be prudent for regulators across Canada to consider further study of specific aspects of the proposal prior to implementation.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have or to meet with you to discuss these and related issues in greater detail. We appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Michael Thom*

Michael Thom, CFA
Chair, Canadian Advocacy Council

Via Email: martin.mcgregor@asc.ca

Canadian Market
Infrastructure Committee

April 17, 2016

Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Dear Sirs/Mesdames:

Re: CSA Multilateral Notice ("Notice") and Request for Comments – Proposed Amendments (the "Amendments") to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the "TR Rule") and the related Companion Policy

INTRODUCTION

The Canadian Market Infrastructure Committee ("**CMIC**")[1] welcomes the opportunity to comment on the Amendments.[2] This letter will comment on the Amendments and the TR Rule only to the extent they are relevant to members of CMIC.

CMIC Responses to Questions Posed

CMIC has the following responses to the six (6) questions posed by the CSA in its Notice.

1. *The corresponding provision in the Proposed Local TR Rule Amendments would make the proposed substituted compliance for inter-affiliate derivatives available to an affiliate of a derivatives dealer or of a clearing agency. Is it appropriate to permit an affiliate of a derivatives dealer or of a clearing agency to avail itself of the proposed substituted compliance for inter-affiliate derivatives?*

[1] CMIC was established in 2010, in response to a request from Canadian public authorities, to represent the consolidated views of certain Canadian market participants on proposed regulatory changes in relation to over-the-counter ("**OTC**") derivatives. The members of CMIC who are responsible for this letter are: Alberta Investment Management Corporation, Bank of America Merrill Lynch, Bank of Montreal, Bank of Tokyo-Mitsubishi UFJ (Canada), Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, Canadian Imperial Bank of Commerce, Citigroup Global Markets Inc., Deutsche Bank A.G., Canada Branch, Fédération des Caisses Desjardins du Québec, Healthcare of Ontario Pension Plan, HSBC Bank Canada, JPMorgan Chase Bank, N.A., Toronto Branch, Manulife Financial Corporation, National Bank of Canada, OMERS Administration Corporation, Ontario Teachers' Pension Plan Board, Public Sector Pension Investment Board, Royal Bank of Canada, Sun Life Financial, The Bank of Nova Scotia, and The Toronto-Dominion Bank. CMIC brings a unique voice to the dialogue regarding the appropriate framework for regulating the Canadian over-the-counter ("**OTC**") derivatives market. The membership of CMIC has been intentionally designed to present the views of both the 'buy' side and the 'sell' side of the Canadian OTC derivatives market, including both domestic and foreign owned banks operating in Canada. As it has in all of its submissions, this letter reflects the consensus of views within CMIC's membership about the proper Canadian regulatory regime for the OTC derivatives market.

[2] See http://www.albertasecurities.com/Regulatory%20Instruments/5219901-v1-CSA_Notice_Proposed_Amendments_to_MI_96-101.PDF

Response: In CMIC's view, it is appropriate to permit an affiliate of a derivatives dealer or of a clearing agency to avail itself of the proposed substituted compliance for inter-affiliate derivatives. This would alleviate the burden of double reporting for counterparties who are already required to report their derivatives transactions under established and reliable reporting legislation elsewhere in the world. Parties should not be prevented from accessing this benefit simply because they are an affiliate of a derivatives dealer or clearing agency. However, CMIC believes that the substitute compliance provisions under the proposed Amendments have limited benefit for two main reasons. First, the Condition that requires trades to be reported to a recognized trade repository does not take into account the fact that trade repositories have set up different legal entities for doing business in different jurisdictions. Therefore, a trade reported, for example, under EMIR to DTCC is actually reported to the European affiliate of DTCC and not to the trade repository recognized under the TR Rule. Second, the Condition that requires the reporting counterparty to instruct a recognized trade repository to provide the transactional data to the regulatory authority still requires the reporting party to report the relevant provincial information to the recognized trade repository, thus negating the benefit of substitute compliance.

With respect to the first limitation identified above, CMIC recommends that the substitute compliance provisions under the TR Rule (in respect of all circumstances and not only in respect of inter-affiliate trades) should allow for trades to be reported not only to a recognized trade repository but also to affiliates of recognized trade repositories so long as the recognized trade repository and the affiliates are under common control. With respect to the second limitation identified above, CMIC encourages all Canadian regulators of OTC derivatives to enter into memoranda of understanding with regulators in other jurisdictions to obtain direct access to relevant derivatives data that has been reported subject to another recognized jurisdiction's requirements. This would eliminate the need for the reporting party to specifically authorize access on a trade-by-trade basis.

2. *Proposed subsection 28(2) excludes an individual from the requirement to obtain an LEI. Is it appropriate to exclude individuals from the requirement to obtain an LEI? Please identify and discuss any specific privacy law related concerns.*

Response: CMIC is supportive of the proposed amendment to section 28 of the TR Rule to exclude an individual from the requirement to obtain an LEI. Even if, in the future, the Global Legal Entity Identifier System allows an LEI to be issued for individuals, disclosure of such LEIs by reporting parties could result in a breach of privacy laws in certain jurisdictions. It is our understanding that certain jurisdictions have specific privacy laws relating to individuals, separate from privacy laws applicable to corporations. As some jurisdictions may have a more consumer focused privacy law, this may result in specific forms of consent or notification for individuals than what is currently provided in the ISDA Canadian Representation Letter. As individuals are currently masked, reporting counterparties have not developed specific systems and procedures to accommodate separate consent requirements for individuals, which in turn would result in additional costs to market participants if the TR Rule did not exclude individuals from the requirement to obtain an LEI.

As a drafting point, we note that in Appendix A under the "Identifier of reporting counterparty" and "Identifier of non-reporting counterparty" data fields, they provide that the LEI should be reported or, in the case of an individual, its "client code". CMIC suggests that the wording in Appendix A track the wording in the proposed section 28(3) by deleting "client code" and replacing it with the more generic "alternate identifier".

3(a). *Is it appropriate to place the responsibility on the reporting counterparty to assign the alternate identifier? Would a recognized trade repository be better situated to assign the alternate identifier?*

Response: In CMIC's view, it is appropriate to place the responsibility on the reporting counterparty. The reporting counterparty initiates the report that is sent to the recognized trade repository and, therefore, it makes sense that the reporting counterparty generate the alternate identifier. Such an approach should facilitate more efficient reporting. It is CMIC's understanding that this is the current market practice. In addition, the recognized trade repository does not have an existing relationship with the non-reporting counterparty. If it were up to the recognized trade repository to assign an alternate identifier, the identity of the non-reporting counterparty would need to be disclosed to the recognized trade repository before an alternate identifier could be assigned, which could breach certain jurisdiction's privacy laws. As a result, placing the responsibility on the reporting counterparty will reduce any delay in completing the reporting.

3(b). *Would current practices and technological capabilities permit a recognized trade repository to identify a counterparty by an alternate identifier supplied by the reporting counterparty?*

Response: CMIC defers to recognized trade repositories to definitively answer this question, however, we note that this is the current market practice.

3(c). *Would current practices and technological capabilities permit a recognized trade repository to assign an alternate identifier to a counterparty, and to notify the reporting counterparty of the alternate identifier assigned?*

Response: CMIC defers to recognized trade repositories to answer this question.

4. *Requiring a trade repository to identify a counterparty using an alternate identifier supplied by the reporting counterparty may result in a particular counterparty being identified by different alternate identifiers supplied by multiple reporting counterparties –within a single trade repository's database and across the databases of multiple trade repositories. Do recognized trade repositories have the technological capability to reconcile, within their own databases, different alternate identifiers that have been reported for a particular counterparty?*

Response: CMIC defers to recognized trade repositories to answer the question as to technological capabilities. However, we note that, as mentioned above under question 3(a), if it were up to the recognized trade repository to assign an alternate identifier, the identity of the non-reporting counterparty would need to be disclosed to the recognized trade repository before an alternate identifier could be assigned. Since the recognized trade repository does not have a relationship with the counterparty, this disclosure could breach the privacy laws of certain jurisdictions.

5. *Inter-affiliate derivatives that involve an affiliated entity that is not a local counterparty in a Canadian jurisdiction do not qualify for the proposed exclusion in section 41.1. Would a requirement to report creation data on a quarterly basis, instead of the current creation data reporting requirement, be of significant assistance in reducing the burden with respect to reporting these derivatives?*

Response: This issue does not directly affect CMIC members and, accordingly, CMIC will not respond to this question.

6. *Do the Proposed TR Rule Amendments relating to public dissemination of transaction-level data appropriately balance (i) the protection of counterparty anonymity, and (ii) the benefits to the market of useful and timely transaction-level public transparency?*

Response: In September 2009, G-20 leaders agreed to implement measures to improve transparency in the derivatives markets, mitigate systemic risk, and protect against market abuse. In CMIC's view, improving transparency in the Canadian derivatives markets does not mean public dissemination of transaction level data. Transparency of the derivatives markets is already accomplished under the TR Rule and under 91-507[3] by the reporting of derivatives data to regulators and the dissemination of aggregate data to the public. However, CMIC is of the view that public dissemination at the transaction level is not appropriate given that the Canadian OTC derivative market on a relative basis is smaller than some of the larger markets (e.g. US and Europe) in terms of outstanding notional, trade volume and number of active market makers. Further, it is not clear to CMIC whether such transaction level public dissemination is beneficial to the derivatives market as a whole, given that there is no clear indication yet, as to whether trade data submitted to the public would actually be in the form of a readily workable outcome, given market's anticipation that such data could be subject to further harmonization efforts - such efforts being already underway in Europe and in the US. Given these timing considerations in jurisdictions outside Canada, we also note that requiring an isolated tape in Canada could easily lead to reverse engineering risks that allow disclosure of Canadian market participants.

In contrast, there is a very real risk that public dissemination of data would not protect the identity of the parties and could lead to reverse engineering of transactions and manipulation of the markets. Accordingly, CMIC strongly recommends that the public dissemination of transaction level data be removed from the Amendments at least until such time that a thorough study of this issue is conducted. We further recommend that such study include whether the public dissemination of transaction level data under US and European rules results in any material benefit to the derivatives market, and only if it does, study whether such disclosure would also be beneficial to the Canadian market. Such study should also include considerations as to whether or not it makes sense for a market the size of Canada to precede Europe on public dissemination. In addition, we recommend that this approach be harmonized across Canada and therefore we have copied the OSC, the MSC and the AMF on this letter.

If the above recommendation is not adopted and public dissemination of transaction level data is required under the TR Rule and 91-507, CMIC is generally supportive of the approach proposed with respect to asset classes and caps. In particular, we confirm that CMIC fully supports the proposal to exclude cross-currency swaps from public dissemination. However, CMIC believes there are still circumstances where the proposed public dissemination rules will not protect the anonymity of the parties, which could make hedging the risks of a transaction more difficult and expensive as market participants may adjust the pricing in anticipation of the hedging needs of such parties. Accordingly, the recommendations under the following paragraphs (i)-(vi) are made in order to protect the anonymity of the parties in the much smaller Canadian OTC derivatives market.

We note that even if our recommendations below are adopted, because the Canadian market is so small, when very large notional interest rate transactions are being entered into, it is easy to reverse-engineer such transactions and be able to identify the likely specific party to

[3] The Ontario Securities' Commission ("**OSC**") Rule 91-507 and in the proposed amendments to the Autorité des marchés financiers ("**AMF**") Regulation 91-507 (together with OSC Rule 91-507 and the Manitoba Securities Commission Rule ("**MSC**") 91-507, "**91-507**")

those transactions, particularly where the counterparty is a provincial government seeking to hedge a particular long term risk in connection with its treasury operations. The market knows that provincial governments issuing long term bonds will often enter into derivatives transactions at the same time the bonds are issued in order to hedge interest rate risks in connection with those bonds. Therefore, the identity of the provincial government could easily be determined by matching the maturity date of the interest rate transaction with the maturity date of the bond issuance. CMIC recommends that the CSA consult with the treasury units of each provincial government to ensure that they are aware that the public dissemination requirements may not provide them with anonymity. If anonymity is desired, CMIC recommends that the specific maturity date of the transaction not be publicly disclosed and instead, the term of the transaction could be disclosed in general terms, for example, "greater than 10 years".

(i) Rates

The liquidity in interest rate OTC derivatives drops off rapidly as you move out the curve. The current proposal in Appendix C applies a $50 million cap to any trade with maturity greater than 10 years. In CMIC's view, this is insufficient for longer-dated transactions. We therefore suggest a $20 million cap for trades with a maturity greater than 20 years. If this suggestion is not adopted, in our view, a market participant's ability to hedge its transactions could be negatively impacted. For example, it would not be uncommon for a dealer to run open risk on a 30 year swap for one week. T+1 disclosure could harm that dealer as it would still be in the market hedging that transaction when the public report is released.

(ii) Credit & Equity

CMIC notes that the size of the OTC derivatives market in Canada and the limited number of market makers for specific products on indices, whether a major index or a sub-index, results in certain transactions being vulnerable to reverse engineering. Based on the information proposed to be disseminated in Appendix C, we are particularly concerned about public dissemination of information relating to the strike price and option type. Accordingly, CMIC urges the CSA to recognize that transactions on sub-indices[4] are quite illiquid in Canada and, therefore, CMIC recommends excluding sub-index transactions from public dissemination. If these transactions on sub-indices were to be publicly disseminated, the underlying asset and option type would be disclosed, which would easily impact a market participant's ability to hedge risk and potentially actually shift the market for the underlying sub-index itself. Alternatively, in order to protect the market, CMIC supports a rule that masks the name of the index and strike price from public dissemination. Further, it is CMIC's view that since there are limited market participants in Canada in relation to credit derivatives, any transaction on a credit index will be vulnerable to reverse engineering if subject to public dissemination. In addition, for the same reasons, it is CMIC's strong view that Appendix C should expressly provide that option transactions on bespoke baskets should not be publicly disseminated.

With respect to the proposed capped rounded notional amounts set out in Table 4 to Appendix C, in order to further protect the anonymity of the parties in this illiquid credit and

[4] By way of example only, the following sub-indices have been identified as illiquid in Canada: S&P/TSX Capped Energy Index, S&P/TSX Composite Banks Industry Group Index, S&P/TSX Capped Utilities Sector Index, and S&P/TSX Composite Energy Sector Index.

equity derivatives market, CMIC recommends changing the capped rounded notional amount for credit and equity from CAD 50 million to CAD 20 million. We note that this point is not an alternative to the recommendations set out in the first paragraph of this section. Even if the capped amount were to change to CAD 20 million, in CMIC's view, for the reasons stated above, sub-index transactions should not be publicly disseminated or, in the alternative, the index name and strike price should be masked from public dissemination.

We note for future consideration that the single name OTC option market in Canada is relatively illiquid and should not be considered for public reporting in the future. Public dissemination of transactions in illiquid products will create unhelpful arbitrage opportunities. One of the reasons market participants trade OTC options is to preserve anonymity and to avoid trading on an exchange where the size of their transactions could move markets and adversely impact pricing and their ability to hedge.

(iii) Foreign Exchange Transactions

CMIC strongly agrees with the decision to expressly exclude foreign exchange transactions (including cross-currency transactions) from public dissemination. This is particularly important given that foreign exchange swaps and forwards are out of scope for public reporting requirements under CFTC rules. In CMIC's view, there would be a significant deterrent for US market participants to trade with Canadian market participants if foreign exchange swaps and forwards were publicly disseminated in Canada but not in the US. In fact, it is CMIC's view that foreign exchange transactions should never be in scope for public dissemination in Canada given that foreign exchange swap markets in Canada are relatively small wholesale markets.

(iv) Commodities

In CMIC's view, it is appropriate to exclude Canadian OTC commodity markets from public dissemination of transaction data, both now and in the future. The Canadian market is much less mature than other OTC derivatives markets, with only one or two dealers making markets in certain products. Public dissemination of transaction level data could significantly impair a market intermediary's ability to hedge its risk. In addition, commodities as a category also represent a more diverse set of underlying products, which makes it exceptionally difficult to set appropriate notional caps.

(v) Timing of public dissemination

Paragraph 7 of Appendix C requires public dissemination of transaction level data "no later than" T+1. If information is publicly disseminated prior to T+1, any benefit of delayed reporting under Canadian TR Rules would be lost and the anonymity of Canadian market participants could well be lost in such circumstances. Therefore, CMIC submits that the rule should specifically require public dissemination on a T+1 basis (and not before), although we recognize that adopting such a rule may mean that the trade repository itself may not be able, logistically, to achieve public reporting dissemination on a T+1 basis where market participants themselves report transactions to the trade repository on T+1.

(vi) Rounded Notional Amounts

With respect to the proposed rounded notional amounts set out in Table 3 of Appendix C, it is CMIC's view that these should be further refined. Due to the small size of the Canadian OTC derivatives market, using the proposed rounding could render the transactions vulnerable to reverse engineering, which may harm a party's ability to hedge its risks and compromise the integrity of the market. We therefore propose the following changes to Table 3:

- if the Reported Notional Amount of Leg 1 or 2 is below $1 million, the reported amount should simply state "under $1 million";
- if the Reported Notional Amount of Leg 1 or 2 is equal to or greater than $1 million but less than $10 million, round to the nearest million (and not $100,000 as currently proposed); and
- if the Reported Notional Amount of Leg 1 or 2 is equal to or greater than $10 million but less than $50 million, round to the nearest $5 million (and not $1 million as currently proposed).

Other Comments

Definition of Affiliate

CMIC has consistently supported derivative reform that is harmonized, both globally (wherever it makes sense from a Canadian market perspective), as well as within Canada. From a Canadian perspective, we note that there are still differences between the definition of "affiliate" as used in the TR Rule and in 91-507. In Ontario, the definition of "affiliate" in section 1(2) of the Securities Act, along with the related definitions of "controlled companies" and "subsidiary companies" in sections 1(3) and 1(4) respectively, do not clarify how affiliates of partnerships or trusts can be determined or whether they can be included as "affiliates". However, the proposed amendments to Quebec's Regulation 91-507[5], clarify how affiliates of partnerships can be determined, but is silent with respect to trusts, and in the TR Rule, there is yet another difference relating to how affiliates of both partnerships and trusts are determined. This point is particularly important as the result could be that the inter-affiliate exemption from reporting trades may be available in one Canadian province but may not be available in another simply due to the differences in the definition of "affiliate". Even if the Ontario definition of "affiliate" were expanded to include trusts and partnerships such that certain foreign trusts and partnerships that did not previously have a reporting obligation would have one, CMIC would support such an amendment. In CMIC's view, harmonization of this definition across all jurisdictions within Canada is extremely important and as a result, this is another reason why a copy of this letter is being sent to the OSC, the MSC and the AMF.

Definition of Local Counterparty – Derivative Dealer

In section 1(1) of the TR Rule, subsection (b) of the local counterparty definition includes a counterparty that is a "derivatives dealer" in the local jurisdiction. In contrast, 91-507 limits the inclusion of dealers in their local counterparty definition to counterparties which are "registered" as a derivatives dealers or in an alternate category as a consequence of trading in derivatives. This difference may have an unintended consequence with respect to the reporting of the "Jurisdiction of reporting counterparty" and "Jurisdiction of non-reporting counterparty" data fields in Appendix A of both the TR Rule and 91-507.

As all jurisdictions in Canada, other than Quebec, do not have a derivatives dealer registration regime in place at the current time, many banks and other sell-side market participants have agreed to report

[5] See https://www.lautorite.qc.ca/files/pdf/bulletin/2015/vol12no44/vol12no44.pdf at pg. 286.

transactions under 91-507, and solely for those purposes only, as if they were a derivatives dealer (a "**deemed dealer**"). Therefore, these deemed dealers (if not a registered dealer) will not be a "local counterparty" under 91-507, but will be under the TR Rule. In order to ensure that regulators only receive reports involving counterparties resident in the local jurisdiction, section 42 of the TR Rule has been included. This section provides that transactions of non-resident derivatives dealers need not be reported under the TR Rule if their counterparty is not otherwise a "local counterparty" under subsection (a) or (c) of that definition (a "**Canadian Counterparty**").

However, if facing a Canadian Counterparty, those transactions will need to be reported. Under the TR Rule and 91-507, the data fields "Jurisdiction of reporting counterparty" and "Jurisdiction of non-reporting counterparty" require the reporting party to indicate all of the jurisdictions in Canada in which each of the deemed dealer and its Canadian Counterparty is a "local counterparty", which then determines which regulators are to be provided access to the trade report. Therefore, under the TR Rule, because the non-resident deemed dealer is a "local counterparty", the relevant jurisdictions will include all the jurisdictions of the deemed dealer, and not just the jurisdiction where the Canadian Counterparty is incorporated and has its head office or principal place of business (the "**Canadian Counterparty Jurisdictions**"). In contrast, under 91-507, when a non-resident deemed dealer enters into a transaction with a Canadian Counterparty, the relevant jurisdictions reported in these data fields (without taking into effect the TR Rule) will only be the Canadian Counterparty Jurisdictions. However, because the TR Rule now includes "derivatives dealers" (rather than "registered derivatives dealer"), even if the non-resident deemed dealer were reporting only pursuant to OSC 91-507, because Appendix A to 91-507 requires the reporting party to indicate all of the jurisdictions in Canada in which the deemed dealer is a local counterparty, it will now need to also include all Canadian jurisdictions as it will be a deemed dealer in all those jurisdictions under the TR Rule.

This difference in the definition of "local counterparty" between the TR Rule and 91-507 has three consequences: (i) the ISDA Canadian Representation Letter[6] does not ask for the relevant jurisdictions in which each deemed dealer is a "local counterparty" (the "**Additional Jurisdictions**") and therefore this information is not currently being tracked; (ii) in order to report in all these Additional Jurisdictions, the reporting systems of deemed dealers will need to be amended to allow for this additional reporting once the Additional Jurisdictions have been identified, and (iii) assuming that the deemed dealer is doing business in all jurisdictions of Canada, this will result in the trade data information being sent to all Canadian regulators, instead of only the regulators that are applicable to the Canadian Counterparty. In CMIC's view, this reporting to regulators of Additional Jurisdictions is inconsistent with the CSA's express intention that regulators "only receive reports of derivatives involving a counterparty that is resident in the jurisdiction".[7]

Accordingly, CMIC recommends that either the definition of "local counterparty" in the TR Rule be amended to remove the reference to "derivatives dealers" and instead refer only to "registered derivatives dealers" or, alternatively, the data fields "Jurisdiction of reporting counterparty" and "Jurisdiction of non-reporting counterparty" in Appendix A of the TR Rule be amended such that only the jurisdictions in which a party is a local counterparty under subsection (a) and (c) of that definition are specified. If the latter approach is adopted, Appendix A of 91-507 will also need to be amended to provide that if a party is a local counterparty under the TR Rule, only the jurisdictions in which it is a

[6] http://www2.isda.org/attachment/NjQ3Mg==/Cdn%20repletter2final.doc

[7] CSA Multilateral Notice of Approval Multilateral Instrument 91-101 *Derivatives: Product Determination* and Companion Policy 91-101CP *Derivatives: Product Determination* and Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* and Companion Policy 96-101CP *Trade Repositories and Derivatives Data Reporting*, at pg. 7. Available at: http://www.albertasecurities.com/Regulatory%20Instruments/5218949-v1-CSA_Notice_re_MIs_96-101_and_Annexes.pdf

local counterparty under subsection (a) and (c) of the definition of “local counterparty” under the TR Rule are to be specified.

Timing of Public Dissemination of Transaction Level Data

If it is decided to publicly disseminate transaction level data, CMIC supports changing the effective date of public dissemination of transaction level data under section 45(4) from January 1, 2017 to a date that is harmonized with the trade reporting rules in Ontario, Manitoba and Quebec. However, with regard to the proposed July 29, 2016 effective date for public dissemination of transaction data, a market participant’s ability to meet this deadline is dependent upon the trade repository’s own ability to build and test the necessary infrastructure by that date. In addition, market participants will also need several months from the availability of final specifications from their trade repository in order to develop and test the new functionality internally. Therefore, before finalizing the July 29, 2016 effective date in the Amendments, CMIC encourages the CSA to engage in a detailed discussion with the trade repositories in order to determine a realistic effective date for public dissemination of transaction data.

Effective Date

Lastly, CMIC is very concerned about the lack of harmonization in terms of the effective date of the Amendments with the existing trade reporting rules in three provinces. Currently, as you know, relief has been provided to various market participants in the three provinces with trade reporting requirements in relation to various aspects of those current trade reporting requirements which expires Dec 21, 2016 . Extensions of that relief may need to be sought in those three provinces. However, the Amendments also need to recognize explicitly that this relief process forms part of the introduction of trade reporting requirements across Canada and the effective date of new requirements across Canada needs to be harmonized with that process of obtaining such relief.

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CMIC welcomes the opportunity to discuss this response with you. The views expressed in this letter are the views of the following members of CMIC:

Alberta Investment Management Corporation
Bank of America Merrill Lynch
Bank of Montreal
Bank of Tokyo-Mitsubishi UFJ (Canada)
Caisse de dépôt et placement du Québec
Canada Pension Plan Investment Board
Canadian Imperial Bank of Commerce
Citigroup Global Markets Inc.
Deutsche Bank A.G., Canada Branch
Fédération des Caisses Desjardins du Québec
Healthcare of Ontario Pension Plan
HSBC Bank Canada
JPMorgan Chase Bank, N.A., Toronto Branch
Manulife Financial Corporation
National Bank of Canada
OMERS Administration Corporation
Ontario Teachers' Pension Plan Board
Public Sector Pension Investment Board

Royal Bank of Canada
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April 18, 2016

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Alberta Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut
Superintendent of Securities, Yukon Territory

Dear Sirs/Mesdames:

RE: Encana Corporation – Comments on CSA Proposed Amendments to Multilateral Instrument 96-101 – Trade Repositories
and
Derivatives Data Reporting and Proposed Changes to Companion Policy 96-101CP – Trade Repositories and Derivatives Data Reporting

Encana Corporation ("Encana") is pleased to respond to your request for comments with respect to the above captioned.

Specific Comments and Responses to Questions

Duty to Report

We appreciate that Subsection 26(3) has been revised and Appendix B added to include certain foreign jurisdictions be included in the reporting exception for substituted compliance.

APPENDIX C

Can you please confirm that commodity derivative transactions are excluded from transaction-level public dissemination?

Duty to Report
Can you please confirm that a non-reporting local counterparty to a derivative transaction has no obligation to verify the data related to the transaction that has been submitted to a trade repository by the reporting party? The non-reporting local counterparty's obligation appears to be limited to informing the reporting counterparty of the error or admission *"...as soon as practicable after discovery of the error or omission..."* (Section 26(7)).

Please contact me at (403) 645-7519 or by email at scott.dalton@encana.com if you have any questions.

Yours very truly,

ENCANA CORPORATION, acting by and through its authorized agent, Encana Services Company Ltd.

Per: Scott Dalton
Director, Risk Management

CC: Jeff Jarvis (jeff.jarvis@encana.com)
Director, Legal - Marketing

ICE TRADE VAULT

April 14, 2016

Via Electronic Mail: martin.mcgregor@asc.ca

Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territories
Superintendent of Securities, Nunavut

Re: Proposed Amendments to Multilateral Instrument 96-101 Trade Repositories and Derivatives Data Reporting (the "TR Rule") and Proposed Changes to Companion Policy 96-101CP Trade Repositories and Derivatives Data Reporting (the "TR-CP")

Dear Sir/Madam:

ICE Trade Vault, LLC ("ICE Trade Vault") appreciates the opportunity to provide comments and recommendations to the Alberta Securities Commission, Financial and Consumer Affairs Authority of Saskatchewan, Financial and Consumer Services Commission (New Brunswick), Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island, Nova Scotia Securities Commission, Securities Commission of Newfoundland and Labrador, Superintendent of Securities, Northwest Territories, Superintendent of Securities, Yukon Territories and the Superintendent of Securities, Nunavut (collectively, the "Authorities") in response to the Proposed Amendments to the TR Rule and the Proposed Changes to the related TR-CP (collectively referred to as the "Proposed Amendment"). As background, ICE Trade Vault is a designated Trade Repository ("TR") in the provinces of Ontario, Quebec and Manitoba and is a provisionally registered Swap Data Repository with the Commodity Futures Trading Commission ("CFTC"). As the operator of domestic and international trade repositories, ICE Trade Vault has a practical perspective of the implications of the proposed changes to the trade reporting rules. Considering these factors, ICE Trade Vault respectfully offers the following comments regarding the framework outlined in the Authorities' Proposed Amendments.

Question 1: *The corresponding provision in the Proposed Local TR Rule Amendments would make the proposed substituted compliance for inter-affiliate derivatives available to the affiliate of a derivatives dealer or of a clearing agency. Is it appropriate to permit an affiliate of a derivatives dealer or of a clearing agency to avail itself of the proposed substituted compliance for inter-affiliate derivatives?*

Response: Substituted compliance for inter-affiliate derivative transactions between a derivatives dealer and a clearing agency would alleviate the non-reporting inter-affiliate entities' reporting

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obligation. Nevertheless, inter-affiliate entities that are located in different jurisdictions (e.g., other Canadian Provisions or foreign countries) will be required to report transactions to each jurisdiction in which the affiliated entities reside. For Canadian transactions previously reported to ICE Trade Vault, these transactions will be made available to the various Authorities via a single report submission regardless of this proposed rule modification. Transactions will be displayed to the appropriate Authorities based on the jurisdictional settings established by counterparties to the transaction.

The substituted compliance requirements contained in the Proposed Amendments cannot be effectively fulfilled by reporting counterparties because other non-Canadian jurisdictions do not provision for the collection of such trade data. Pursuant to applicable regulations, U.S. and EU trade repositories are not authorized to employ a mechanism (e.g., require such reportable fields on trade data) that will provision for substituted reporting. Furthermore, the addition of reportable fields for the submission of trade data would require an amendment to the Regulatory Technical Standards ("RTS") of the European Securities and Market Authority ("ESMA"). In addition, swap data repository core principles prohibit sharing data with non-prudential regulators.[1] As such, ICE Trade Vault recommends that all transactions, including inter-affiliate transactions where one party is a derivatives dealer or a Clearing Agency, be reported to each applicable regulatory jurisdiction. This approach will ensure that the appropriate Authority can access its sanctioned trade data.

Subsection 26(4): *Duty to report -- location to report data*

Response: ICE Trade Vault supports the concept of trade data portability by allowing reporting parties to transfer data to the TR of its choice. This approach is consistent with the portability and transfer provisions currently in place for Clearing Agencies. The transfer of trade data can be effectuated by market participants cancelling its transactions in the existing TR and reporting such transactions to the new TR. This process will require the creation of a new USI that references the previous USI (e.g., populate the "Previous USI" field). By linking the old and new USIs, the Authorities can view the entire life of the transaction. In order to provide market participants with a choice of TRs, the Authorities should adopt portability provisions similar to that of a Clearing Agency. ICE Trade Vault suggests that Authorities consider collaboratively engaging TRs to promulgate guidance on portability procedures.

Question 2: *Proposed subsection 28(2) excludes an individual from the requirement to obtain an LEI. Is it appropriate to exclude individuals from the requirement to obtain an LEI? Please identify and discuss any specific privacy law related concerns.*

Response: Individuals who are not acting in a business capacity should not be required to obtain an LEI. Pursuant to the guidance issued by the LEI Regulatory Oversight Committee,[2] LEI

[1] Article 19(c) of Commission Delegated Regulation (EU) No 150/2013 ("RTS") and 17 CFR Part 49 Swap Data Repositories: Registration, Standards, Duties and Core Principles ("Part 49")

[2] LEI Regulatory Oversight Committee, Statement on Individuals Acting in a Business Capacity (30 September 2015). (http://www.leiroc.org/publications/gls/lou_20150930-1.pdf)

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registration is only required for individuals that are acting in a business capacity, conducting an independent business activity, or are affiliated with a business registry. Natural persons who act in a private or non-professional capacity, such as persons serving as employees are not be eligible to obtain LEIs. Therefore, ICE Trade Vault recommends the Proposed Amendment adhere to the standards prescribed by LEI Regulatory Oversight Committee, which have been adopted by other jurisdictions.

Question 3: *Proposed subsection 28(3) would require the reporting counterparty to identify a counterparty that is ineligible to receive an LEI by an alternate identifier. Proposed subsection 28(4) would require a recognized trade repository to identify a counterparty that is ineligible to receive an LEI with this alternate identifier assigned by the reporting counterparty.*

a. *Is it appropriate to place the responsibility on the reporting counterparty to assign the alternate identifier? Would a recognized trade repository be better situated to assign the alternate identifier?*

Response: ICE Trade Vault supports placing the responsibility on TRs and not the reporting counterparties for the creation of alternative identifiers. By requiring reporting counterparties to generate legal entity identifiers, this approach introduces operational risk to the transaction reporting workflow because each reporting counterparty will likely assigned different identifiers to a single entity. As such, traceability and market oversight by the Authorities will be impaired since the trade data of non-reporting counterparties will likely be assigned different identifiers its various counterparties. This in turn will create downstream issues and affect TRs' ability to validate trade data. Uniform and standardized identifiers are necessary for TRs to properly perform position calculations, which provisions Authorities with the necessary information to oversee systematic market risk. Therefore, ICE Trade Vault requests that the responsibility be placed solely on TRs to issue a unique alternate identifier for non-LEI eligible counterparties.

b. *Would current practices and technological capabilities permit a recognized trade repository to identify a counterparty by an alternative identifier supplied by the reporting counterparty?*

Response: Please see the response to Question 3.a. ICE Trade Vault encourages the Authorities to solely permission TRs to create identifiers for non-LEI eligible parties.

c. *Would current practices and technological capabilities permit a recognized trade repository to assign an alternate identifier to a counterparty, and to notify the reporting counterparty of the alternate identifier assigned?*

Response: Please see the response to Question 3.a and b. ICE Trade Vault currently creates internal identifiers for companies and individuals who are non-LEI eligible parties.

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Question 4: *Requiring a trade repository to identify a counterparty using an alternate identifier supplied by the reporting counterparty may result in a particular counterparty being identified by different alternate identifiers supplied by multiple reporting counterparties -- within a single trade repository's database across the databases of multiple trade repositories. Do recognized trade repositories have the technological capability to reconcile, within their own databases, different alternate identifiers that have been reported for a particular counterparty?*

Response: Please see the response to Question 3.a. TRs will not be able to accurately identify non-reporting parties and subsequently aggregate trade data if reporting parties are allowed to generate IDs for non-LEI eligible parties.

Question 5: *Inter-affiliate derivatives that involve an affiliated entity that is not a local counterparty in a Canadian jurisdiction do not qualify for a proposed exclusion in section 41.1. Would a requirement to report creation data on a quarterly basis, instead of the current creation data reporting requirement, be of significant assistance in reducing the burden with respect to reporting these derivatives?*

Response: ICE Trade Vault supports minimizing the effects of reporting obligations on market participants. Nevertheless, quarterly reporting of inter-affiliate trades along with other bespoke reporting exceptions increases the complexity of reporting and impairs TRs' ability to monitor compliance with such customized reporting requirements. The benefits of such exceptions are unlikely to outweigh any potential benefits and the Proposed Amendment should prescribe uniform and standard workflows for reporting to TRs.

Section 44.1: *Reporting by a local counterparty that ceases to benefit from an exclusion*

Response: Please see the response to Question 5. Exclusions or exceptions that provision certain local counterparties with unique reporting time periods will hinder the ability of the Authorities and TRs to compile and monitor trade data. If this exclusion were granted, market participants and TRs will need a minimum of 180 days to develop, preform quality assurance and deploy the necessary changes to support this exclusion.

Appendix B: *Trade Reporting Laws of Foreign Jurisdictions*

Response: Please see the answer to Question 1. ICE Trade Vault does not support the substituted compliance exception for the reasons previously stated.

Question 6: *Do the Proposed TR Rule Amendments relating to public dissemination of transaction-level data appropriately balance (i) the protection of counterparty anonymity, and (ii) the benefits to the market of useful and timely transaction-level public transparency?*

Response: ICE Trade Vault supports the proposed public dissemination requirements. The Proposed Amendment should establish a standard and uniform approach for TRs to publicly disseminate Creation Data. Reporting counterparties are required to submit Creation Data to a TR upon execution of a transaction. In general terms, reporting to a TR must be completed in a real-time manner but not later than the end of the following business day under certain circumstances.

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Under Appendix C (Section 7) of the Proposed Amendment, a TR shall publicly disseminate trade data after receiving such data on the basis of T+1 to T+2 time periods. ICE Trade Vault believes there are two areas of concern with this time requirement for public dissemination. First, a TR may receive transaction information as late as 11:59:59 p.m. the on T+1 day. Subsequently, the TR would have an additional day or two to publicly disseminate the data. In such an instance, the disseminated information would not become available to the public until two or three days after execution. This time delay should be amended to reference the execution date and time as opposed to the submission date. This approach using the execution date successfully works in the U.S. jurisdiction for public dissemination. Second, the Proposed Amendment does not prescriptively require TRs to delay public dissemination of transaction data in a uniform manner. Instead, TRs are given the discretion as to when to disseminate with a twenty-four to forty-eight hour time periods. TRs that choose to disseminate during the earlier time period, in order to the benefit the public, will be at a competitive disadvantage to TRs that suppress such data until the latest allowable time period. Therefore, ICE Trade Vault recommends the use of explicit and distinct time periods for the delay of public dissemination by TRs

To further enhance the Proposed Amendment, ICE Trade Vault additionally requests that "firm trades" (or otherwise referred to as "forced trades") that are facilitated by clearing agencies be included on the list of "Exclusions" under Section C of Appendix C. Clearing agency facilitates "firm trades" for transactions with limit price discovery as a means to obtain settlement prices.

Thank you for your consideration for ICE Trade Vault's comments. Please do not hesitate to contact Kara Dutta (+1.770.916.7812 or kara.dutta@theice.com) if you have any questions regarding our comments.

Sincerely,

Tara C. Manuel
Director
ICE Trade Vault, LLC

Kara Dutta
General Counsel
ICE Trade Vault, LLC

Cc: Bruce Tupper, President, ICE Trade Vault, LLC
Takako Okada, Chief Compliance Officer, ICE Trade Vault, LLC

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ISDA Safe, Efficient Markets

April 6, 2016

Delivered by e-mail to martin.mcgregor@asc.ca

Alberta Securities Commission
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Re: Request for Comments on Proposed Amendments to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* and Proposed Changes to Companion Policy 96-101-CP *Trade Repositories and Derivatives Data Reporting*

Dear Sirs/Mesdames,

The International Swaps and Derivatives Association, Inc. ("ISDA")[1] appreciates the opportunity to provide comments regarding the Proposed Amendments (the "Proposed Amendments") to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* and Proposed Changes to Companion Policy 96-101-CP *Trade Repositories and Derivatives Data Reporting* (together, "MLI") published by British Columbia Securities Commission and the securities regulatory authorities in Alberta, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon (each an "Authority" and collectively, the "Authorities"). We recognize that the Proposed Amendments reflect many of the concerns and suggestions provided in ISDA's letter regarding transaction level public dissemination sent to the Canadian Securities Administrators ("CSA") on January 16, 2015[2].

We greatly appreciate the efforts of the Authorities to propose requirements for the public reporting of transaction level data that align with existing requirements in the U.S., where appropriate, while also providing additional protections that are appropriate to the Canadian derivatives market. We also

[1] Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 850 member institutions from 67 countries. These members comprise a broad range of derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: www.isda.org.

[2] http://www2.isda.org/attachment/NzIxNw==/ISDA_Canada_PublicDisseminationLetter_16Jan2015_FINAL.pdf

appreciate the efforts of the Authorities to harmonize their Proposed Amendments with the amendments issued by the Ontario Securities Commission ("OSC"), the Autorité des marchés financiers ("AMF") and the Manitoba Securities Commission ("MSC") to their respective Regulation/Rule 91-507 *Trade Repositories and Derivatives Data Reporting* ("91-507"). Many of the comments contained in this letter are the same, or substantively the same, as the comments ISDA provided to the OSC, AMF and MSC with respect to their corresponding amendments to 91-507[3]; however, in some cases our feedback to the MLI includes suggestions not previously provided with respect to 91-507. This additional commentary to MLI reflects further feedback from some of our members regarding aspects of the MLI that we believe should be harmonized with 91-507. We ask that the Authorities consider these suggestions with an aim for national harmonization.

As a general matter, some of our members question whether transaction level public dissemination is warranted at all in Canada. The goal of such requirements is to increase price transparency. With a limited number of market makers in Canada, it is not clear that the public reporting of data at a transaction level provides useful or necessary additional transparency to market participants in Canada that outweighs the potential impact to liquidity that might result from compromised participant anonymity. We ask the Authorities to consider whether the public dissemination of aggregate derivatives data by trade repositories ("TRs") might sufficiently meet the commitments and goals of Canadian regulators to improve the transparency of derivatives markets. If the Authorities, OSC, AMF and MSC ultimately determine that transactional level public reporting will be required in Canada, then we ask you to consider revising and clarifying those obligations in accordance with the comments below.

I. Bilateral Compression

Section 2(b) of Appendix C of the Proposed Amendments exempts transactions resulting from multilateral portfolio compression exercises from the requirements for the public dissemination of transaction level data. We agree with this exclusion since the act of compression does not result in a new pricing event. For the same reason, we request that the exclusion be expanded to include transactions resulting from bilateral compression exercises. Such an approach would be in accordance with the definition of "publicly reportable swap transaction" in the Part 43 regulations of the Commodity Futures Trading Commission ("CFTC") which exempts portfolio compression exercises from the real time public reporting requirements and would align with current market practice.

II. Prime Brokerage Transactions

Some parties ("PB Clients") enter into derivatives transactions via agreements with a prime broker ("PB") which allow them to seek competitive pricing from a number of executing dealers ("EDs") while legally only entering into transactions with, having credit risk against, and executing transaction documentation (including Master Agreements and confirmations) with their PB. Under a basic prime brokerage arrangement there is a single execution event agreed between the ED and the PB Client which, upon acceptance by the PB under pre-agreed parameters, results in two off-setting trades – one between the PB and the ED and a mirror trade between the PB and the PB Client.

[3] http://www2.isda.org/attachment/ODE2Mg==/ISDA_Canada_TRRuleAmendments_21Jan2016_FINAL.pdf

Since there is a single execution event, there should only be one public report of transaction level data. Public dissemination of both transactions to a PB intermediated execution would negatively impact transparency by duplicating, offsetting and inflating the amount of market activity without providing any additional pricing information. In accordance with current market practice for CFTC reporting, we request that MLI only require the data for the ED-PB trade to be publicly disseminated, even though both the ED-PB and PB-PB Client mirror trades may be reported to the TR. The ED is best positioned to report the execution event timely and according to market practice should be the reporting counterparty for the ED-PB leg, while the PB should report the PB-PB Client leg. The CFTC acknowledged this approach in no-action relief they issued on the matter[4]. Although the relief has expired, there are currently discussions between market participants and CFTC staff to codify this approach to reporting PB intermediated transactions in future amendments to the CFTC's reporting rules (Parts 43 and 45). In the meantime, this approach remains the market practice and should be aligned across jurisdictions to promote efficiency and consistency.

III. Bunched Orders vs. Allocations

It is common market practice for an asset manager or investment advisor (an "advisor") to execute transactions on behalf of, and for the benefit of, funds which are the legal counterparties to derivatives transactions. The advisor traditionally executes an amalgamated notional once on behalf of a number of funds (the "bunched order") and then subsequently allocates that notional at varying levels to the funds (the "allocations"). In this scenario, the execution of the bunched order is the sole execution event and the associated price is based on the consolidated notional. Therefore, we request that for purposes of the transaction level public reporting requirements, only the bunched order should be required to be publicly reported with reporting eligibility based in part on the local counterparty status of the advisor.

If public reporting were done at an allocation level, transparency may be delayed since allocation occurs subsequent to execution of the bunched order and therefore may be sent to the TR only after allocation. Usually a bunched order is fully allocated on the trade date, but in certain cases (e.g. differences in locations of the advisor and the dealer counterparty) allocation may not be fully completed until after the trade date. More importantly, due to the fact that the price was executed at the level of the bunched order, dissemination of the price at an allocation level may appear off-market or be misleading. Additionally, reporting of both the bunched order and the allocations to the public would be duplicative and would inaccurately inflate the level of market activity.

ISDA understands that under 91-507 firms currently report only the allocations that result from a bunched order to a TR, based in part on the local counterparty status of the counterparty to each allocation. We believe the allocations should continue to be reported to the TR, but not publicly disseminated. Based on our suggestion above, reporting counterparties will need to build to report the data in Appendix C for bunched orders to the TR indicating that such data is subject to public reporting and the data for the associated allocations is not. The MLI places the responsibility on the TR to determine which transactions are subject to transaction level reporting, but based on the reporting architecture for the U.S., a reporting counterparty would make such determination itself and the TR would publicly disseminate data in accordance with the relevant specification in the messaging.

Transaction level public reporting of data solely for the bunched order would match current market practice under the CFTC's Part 43 regulations and be in accordance with *Regulation SBSR – Reporting*

[4] http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/12-53.pdf

and Dissemination of Security-Based Swap Information; Proposed Rule as issued by the Securities and Exchange Commission ("SEC") on March 19, 2015. Based on our experience in other regions, we think there is a strong benefit to the clarity and consistency of compliance to be gained by providing clear requirements and guidance that aligns with current market practice and global requirements.

IV. Clearing Transactions

ISDA understands that as the actual execution event, an alpha transaction would be subject to public dissemination, but that per 2(c) of Appendix C of the Proposed Amendments the related cleared transactions (beta and gamma) would not be subject to public reporting. We concur with that approach, since there is a single pricing event for a set of clearing transactions.

Based on our prior discussion with the OSC with respect to 91-507, we further understand that the T+1 dissemination timeframe in 7(a) of Appendix C for transactions where one of the counterparties is a recognized or exempt clearing agency is not intended to apply to betas and gammas since they result from clearing novation. Rather, the Authorities anticipate this timeframe would apply to transactions entered into directly by a clearing agency on its own behalf (e.g. as a result of a clearing default). We suggest that the Authorities provide additional clarity in the MLI regarding these expectations in order to avoid any inconsistent interpretations.

In addition, we recommend that the Authorities explicitly clarify in the MLI that a cleared transaction that has no alpha trade (e.g. "firm" or "forced" trades which result from the clearing agencies pricing process), is not considered to be "a transaction resulting from novation by a recognized or exempt clearing agency" and therefore is not subject to the exclusion in section 2(c) of Appendix C. We suggest the MLI make it clear that as a result these cleared transactions are subject to the transaction level reporting requirements and that the clearing agency would be responsible to report them in accordance with the reporting counterparty hierarchy. Based on our discussion with some clearing agencies that are currently completing the Part 43 reporting requirements for such transactions, we believe that clearing agencies can accommodate such reporting provided the regulatory obligation is clear.

V. Product Scope for Transaction Level Public Dissemination

ISDA agrees with the proposal to exclude commodity derivatives and foreign exchange transactions from public reporting due to the maturity and size of these markets in Canada.

Although we support the inclusion of equity indices in the product set, we believe that certain sub-indices which are illiquid in the Canadian derivatives market should be excluded from the public dissemination requirements; for example:

- S&P/TSX Capped Energy Index
- S&P/TSX Composite Banks Industry Group Index
- S&P/TSX Capped Utilities Sector Index
- S&P/TSX Composite Energy Sector Index

We appreciate the efforts of the Authorities to avoid the public dissemination of data in Canada for products that may qualify as security-based swaps in advance of corresponding requirements by the SEC.

It is worth noting that some credit and equity indices do not or may not meet the definition of a swap[5] and would not be subject to the CFTC's Part 43 regulations. As a result, it is possible that a trade on an index that qualifies as security-based swap would be subject to public reporting in Canada in advance of a requirement for public dissemination of that same transaction or type of transaction under the reporting requirements of the SEC.

Our members do not believe it is essential to align the product scope in Canada precisely with the distinctions between narrow and broad-based indices as defined by the CFTC and SEC[6]. However, as a more general matter, we would like to acknowledge that some of our members are concerned with the public dissemination of credit indices altogether. As these products are traded more thinly in Canada than they are in the U.S., there is greater likelihood of compromising anonymity. We ask the Authorities to carefully consider these concerns against the perceived benefit of public transparency.

VI. Rounding of notional amounts

ISDA supports the adoption of requirements and conventions for the rounding of notional amounts by a TR for the purposes of transaction level public dissemination as an important safeguard for the preservation of participant anonymity and market liquidity. We do not believe the proposed rounding conventions would adequately protect the relatively small size of the Canadian derivatives market. Instead we propose the following changes to Table 3:

- If the Reported Notional Amount is below $1 million, the rounded notional amount should be "<$1 million";
- If the Reported Notional Amount is equal to or greater than $1 million but less than $10 million, round to the nearest million (instead of $100,000); and
- If the Reported Notional Amount is equal to or greater than $10 million but less than $50 million, round to the nearest $5 million (instead of $1 million).

VII. Capping of notional amounts

ISDA believes the capping of notional amounts by a TR for the purposes of transaction level public dissemination is essential to preserve participant anonymity and market liquidity. We agree with the rounding conventions proposed in Table 3, but recommend the following changes to Table 4 for notional capping:

- Add a cap of CAD 20 million for Interest Rates with a maturity of greater than twenty years
- Change the cap for Credit and Equity from CAD 50 million to CAD 20 million

Employing these suggested thresholds would help preserve market liquidity for these types of transactions which are less liquid in the Canadian derivatives market and may take more time to hedge.

[5] http://www.gpo.gov/fdsys/pkg/FR-2012-08-13/pdf/2012-18003.pdf

[6] Id.

VIII. Public dissemination timing

Section 7 of Appendix C provides that a recognized trade repository must disseminate the information contained in Table 1 *no later than* the timeframes in 7(a) and 7(b). We suggest that "no later than" be replaced with "at". Although we understand that TRs intend to send an end-of-day report in accordance with the specified timelines applicable to the relevant counterparties, use of the phrase "no later than" implies that a TR could choose to publicly disseminate the trade data earlier than the deadlines in 7(a) and 7(b). Such outcome would be undesirable to market participants who are relying on equal treatment of transactions among TRs that guarantees that data will not be publicly disseminated in advance of the relevant deadline.

In addition, section 7 of Appendix C provides that a TR must disseminate the information contained in Table 1 based on timeframes initiated by the TR's *receipt* of such data from the reporting counterparty rather than when the transaction or pricing event was executed. This approach has the unintended effect of disadvantaging parties that report earlier and dis-incentivizing prompt reporting. For instance, if a dealer reports on the trade date ("T"), the TR would publicly disseminate the data at the end of the day following the trade date (T+1); whereas the transaction data that is reported by a dealer on T+1 would be publicly reported by the TR at the end of T+2. This creates a commercial disadvantage for the dealer which reports on T since its counterparties will not wish their trades to be publicly disseminated any earlier than mandated.

We believe the most efficient way to resolve this issue is to change the requirement in 7(a) of Appendix C to require the TR to disseminate the information in Table 1 of Appendix C at the end of the *second* day following the day on which the transaction was *executed* (based on the reported execution timestamp) and 7(b) to the end of the *third* day following the day on which the transaction was *executed*. In the event a transaction was reported after the TR's deadline for public dissemination, the transaction data would be subject to public reporting on the same day of receipt. We believe that TRs can more easily support this approach since public dissemination rules for the CFTC are based on the execution timestamp, but they will need notification in advance of the finalization of the Proposed Amendments (and ideally as soon as possible) so they can build their dissemination logic based on execution timestamp rather than time of receipt.

IX. Counterparty identification

We appreciate the inclusion of new section 28(2) which provides clarity regarding the obligation of each local counterparty intending to execute a transaction and which has an ongoing obligations pursuant to a reportable transaction to obtain, renew and maintain a Legal Entity Identifier ("LEI"). Our members recognize the value of LEIs for regulatory reporting and will continue to engage with their counterparties to obtain their LEI for purposes of reporting under the MLI, and could use this provision as evidence of the regulatory mandate.

The Financial Stability Board has stated that "Responsibility for the accuracy of reference data should rest with the LEI registrant"[7]. In accordance with this statement, we feel strongly that a party that has registered for an LEI is solely responsible for maintaining its LEI. A reporting counterparty should not be restricted from using an LEI that has not been renewed. A lapsed LEI still uniquely identifies a

[7] Financial Stability Board, "Recommendation 18 - LEI Data Validation," *A Global Identifier for Financial Markets* (June 12, 2012), page 46: http://www.leiroc.org/publications/gls/roc_20120608.pdf .

counterparty; therefore a prohibition on the use of such an LEI would only serve to undermine the quality of the data available to the Authorities.

X. Pre-existing derivatives

We appreciate and support the proposed amendment made to the MLI, sections 34(1) and 34(2), which permits deferred reporting of legacy transactions entered into before the reporting start dates applicable for dealers and non-dealers, respectively.

We would like to discuss, however, the rules which apply to ensure that legacy transactions that are no longer in force on December 1, 2016 (for trades involving dealers or reporting clearing agencies) and February 1, 2017 (for trades between non-dealers). To simplify this discussion, we will focus on trades involving dealers and section 34(1) and 44(2) which apply to trades involving dealers. (For sake of simplicity, we do not refer to trades for which the reporting counterparty is a reporting clearing agency since this is a direct parallel to the situation for trades for which the reporting counterparty is a dealer. Also, the same analysis which applies to ss. 34(1) and 44(2) for trades involving dealers also applies to the parallel ss. 34(2) and 44(3) for trades between non-dealers and so we have not repeated this discussion in respect of ss. 34(2) and 44(3)).

For transactions entered into before July 29, 2016 (the "Reporting Start Date"), Section 34(1) overrides the Section 31 requirement to report the transaction immediately (or as soon as technologically practicable). Section 34(1) provides that such transactions may be reported on or before December 1, 2016 (the "Legacy Trade Reporting Deadline") provided that the transaction continues to be outstanding on the date it is reported. This achieves the desired objective of permitting delayed reporting of legacy transactions in the same manner as OSC's 91-507 section 34(1).

The question then arises as to which provision of the MLI eliminates reporting obligations for transactions that are entered into before July 29, 2016 (the Reporting Start Date) and which are no longer in force on December 1, 2016 (the Legacy Trade Reporting Deadline) (and are not reported at an earlier date voluntarily).

Section 44(2) as currently drafted only applies to eliminate reporting obligations for transactions entered into before May 1, 2016 which expire or terminate on or before July 28, 2016. This differs from the approach of OSC's 91-507 section 43(5) which eliminated reporting obligations for transactions entered into before October 31, 2014 (the 91-507 Reporting Start Date) and which expired or terminated on or before April 30, 2015 (the 91-507 Legacy Trade Reporting Deadline).

For example, if a new trade is entered into on June 15, 2016 that is scheduled to expire on October 15, 2016, we understand that deferred reporting would be permitted pursuant to MLI section 34(1) but it is not clear whether there is no obligation to report the trade on the basis that it will expire prior to December 1, 2016. Our members understand that this trade does not need to be reported, but reaching that interpretive conclusion leads to the below recommended drafting change to bring the MLI in line with the 91-507 approach described above.

In order to clarify that transactions entered into before the Reporting Start Date are not required to be reported if the transactions are no longer in force on the Legacy Trade Reporting Deadline (and are not reported at an earlier date voluntarily), we would recommend amending Section 44(2) to read as follows:

44(2) Despite Part 3, a reporting counterparty is not required to report derivatives data relating to a derivative if all of the following apply:

(a) the derivative is entered into before ~~May 1, 2016~~ on or before July 28, 2016 ;
(b) the derivative expires or terminates on or before ~~July 28, 2016~~ the earlier of the date that the derivative is reported or December 1, 2016;
(c) the reporting counterparty is a reporting clearing agency or a derivatives dealer.

We note that some market participants have interpreted s. 34(1)(c) as suggesting that if a legacy transaction expires prior to December 1, 2016, then Section 34(1) will not apply and accordingly no reporting of the transaction is required. However, the alternative reading is that if Section 34(1) does not apply then that simply eliminates the ability to rely upon deferred reporting of legacy trades but does not eliminate the trade reporting obligation outright.

If the regulatory intention was that s. 34(1)(c) would eliminate reporting obligations for legacy transactions which expires or terminates on or before December 1, 2016, that could be clarified. However, in this case there would be a question whether s. 44(2) is required at all since 34(1)(c) would on that reading eliminate reporting obligations for all legacy transactions that are also covered under 44(2). Accordingly, we would recommend directly addressing this ambiguity as to whether 34(1) only provides an extended reporting window for legacy trades or also eliminates the reporting obligation.

Given that the MLI ss. 34(1) and 44(2) parallel the OSC's 91-507 ss. 34(1) and 43(5), and 91-507 specifies that no reporting is required for transactions entered into before the Reporting Start Date if the trade is no longer in force on the Legacy Trade Reporting Deadline, we would recommend that MLI s. 44(2) be edited as shown above to follow the same approach.

XI. Local counterparty definition

The "Jurisdiction of reporting counterparty" and "Jurisdiction of non-reporting counterparty" data fields in Appendix A to both MLI and 91-507 require reporting parties to indicate the Canadian jurisdictions in which they and the non-reporting party are a local counterparty under local derivatives data reporting rules, regardless of where the trade is reportable.

In section 1(1) of the MLI, subsection (b) of the local counterparty definition includes a counterparty that is a derivatives dealer (meaning a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives as principal or agent) in the local jurisdiction. In contrast, 91-507 limits the inclusion of dealers in their local counterparty definition to counterparties which are *registered* by an Authority as a derivatives dealer (currently only applicable in Quebec) or in an alternate category as a consequence of trading in derivatives.

As a result, Appendix A to both the MLI and 91-507 implies a requirement to indicate the MLI provinces and territories where counterparties are dealing in derivatives (in addition to their jurisdictions of incorporation, head office and principal place of business), but only the 91-507 provinces and territories where counterparties are *registered* dealers (in addition to their jurisdictions of incorporation, head office and principal place of business).

This creates the risk that the "Jurisdiction of reporting counterparty" and "Jurisdiction of non-reporting counterparty" would no longer be meaningful or aligned, and could potentially overload the data available to each Authority with transaction data that may not be relevant to its oversight function.

In addition, this would create substantial additional work because market participants currently do not track the jurisdictions where their counterparties are dealing in derivatives.

In order to facilitate the designation of a derivatives dealer as it pertains solely to the reporting counterparty hierarchy in 91-507 and MLI, the ISDA Canadian Representation Letter[8] and the ISDA 2014 Multilateral Canadian Reporting Party Agreement (Deemed Dealer Version)[9] provide an ability for a party to agree to accept the role of a dealer solely for purposes of the reporting counterparty hierarchy.

Part IV of the ISDA Canadian Representation Letter, which is optional when completed through ISDA Amend, provides an ability for a party to agree to accept or share the reporting responsibility in a particular jurisdiction if its counterparty is a local counterparty; however Part IV expressly indicates that by doing so a party is not providing any representation that it is a dealer in a particular jurisdiction. Therefore, a recipient of the ISDA Canadian Representation Letter could not rely on Part IV as a representation that its counterparty is a dealer in a particular jurisdiction, nor would it be able to ascertain that its counterparty is not a derivatives dealer in a particular jurisdiction.

Similarly, the ISDA 2014 Multilateral Canadian Reporting Party Agreement (Deemed Dealer Version) includes an agreement to be deemed to be, or to report as if it were, a derivatives dealer (regardless of the jurisdiction), for purposes of determining the reporting party to a trade. It does not include a representation that a party *is* a derivatives dealer. Rather, such party is agreeing to accept or share the reporting responsibility if the transaction is reportable, regardless of the jurisdiction.

Therefore, for the purposes of indicating the jurisdiction of counterparties in Appendix A, it is not possible, based on either of these documents, to identify a party as being or not being a derivatives dealer, other than a registered dealer, in a particular jurisdiction. Such a new representation would require a more detailed analysis than the current factual representation as to whether a counterparty is or is not registered as a dealer in Quebec. Nor would it be possible for a party to identify jurisdictions in which its counterparties have agreed to report as a dealer because this only applies in respect of jurisdictions in which a trade is reportable.

We do not believe this is the outcome intended by the Authorities with respect to either MLI or 91-507, and we request that prong (b) of the definition of local counterparty be amended to refer only to counterparties which are registered as derivatives dealers (or in an alternate category as a consequence of trading in derivatives). This change would clearly establish in the rule that derivatives dealers which are not registered (as such) in the relevant local jurisdiction do not have an obligation to report all their derivative trades (including those with non-local counterparties) but only those where they face a local counterparty without the need for section 42, while at the same time resolving the inadvertent issue pertaining to the identification of local counterparties. Alternatively, Appendix A to MLI could clarity that the "Jurisdiction of reporting counterparty" or the "Jurisdiction of non-reporting counterparty" is not required to be reported if the relevant party is a local counterparty solely because it falls within (b) of the local counterparty definition. However, this approach does not resolve the impact to 91-507 under which

[8] http://www2.isda.org/attachment/NjQ3Mg==/Cdn%20repletter2final.doc

[9] http://www2.isda.org/attachment/Njk3NA==/2014%20Sept%2022%20ISDA_2014_Multilateral_Canadian_Reporting_Party_Agreement_Dealer_FINAL.pdf

a party identified as a local counterparty under MLI would need to be identified as a local counterparty, therefore a revision to the local counterparty definition would be preferable.

XII. Inter-affiliate exemption

Although we appreciate that the Authorities have included an exemption for the reporting of derivatives between certain affiliated entities as specified in 41.1 of the Proposed Amendments, we believe the exemption is too narrow. Much of the derivatives activity between affiliates is transacted between a local counterparty and an affiliated entity that is not a local counterparty. Section 26(3) of the Proposed Amendments provides for the potential to satisfy the reporting requirements for such inter-affiliate transactions via substituted compliance. But as previously advised by ISDA in comment letters to the Authorities[10], the terms of such provisions are unworkable to the extent that no meaningful efficiency or benefit can be realized by reporting counterparties through the application of substituted compliance.

Specifically, the requirement in 26(3)(c) for a reporting counterparty to instruct a TR to provide the transactional data to the provincial regulator(s) still obligates a party to report the relevant provincial jurisdiction(s) to a recognized TR on a trade-by-trade basis. In addition, because the TR must be recognized or designated by the relevant Authority, reporting counterparties that utilize a TR for reporting in a jurisdiction listed in Appendix B to the MLI that is not recognized would not be eligible for deemed compliance.[11] Some accommodation should be made for TRs that are affiliate entities of a recognized TR and a streamlined recognition process should be allowed for TRs that only wish to obtain recognition for purposes of facilitating deemed compliance for their participants.

In order to more efficiently address both of these conditions, we encourage Canadian regulators to enter into a Memorandum of Understanding ("MOU") with regulators in other jurisdictions to obtain *direct* access to relevant derivatives data reported subject to another regime's requirements. An MOU between the CSA and a regime specified in MLI should negate the requirement in ss. 26(3)(b) that the relevant TR be recognized by the Authority and eliminate the requirement in ss. 26(3)(c) for a reporting counterparty to instruct a TR to provide access to the data.

Until these hurdles are addressed, it may be easier or necessary for counterparties that are affiliated entities to fully report their transactions to multiple jurisdictions. The operational complexity of meeting the conditions in §26(5) have the practical effect of negating any benefit or efficiency that should result from the application of substituted compliance. Many end users only trade external to their firms with parties that precede them in the reporting party hierarchy and thus will not bear an obligation to report their outward-facing derivatives transactions. Nonetheless, they may need to incur the cost and effort to build and maintain a reporting architecture or to engage a third party provider solely for the purpose of reporting their trades with an affiliate that is not a local counterparty.

The costs can be significant. ISDA, in coordination with certain end-user trade associations, recently conducted a survey on the costs for derivatives end users associated with dual-sided reporting under the European Market Infrastructure Regulation (EMIR). The survey asked end users to provide the initial cost to their firms of implementing reporting technologies, the annual cost of maintaining those technologies,

[10] http://www2.isda.org/attachment/NzM0MA==/ISDA_MultilateralTRInstrumentsLetter_24Mar2015_FINAL.pdf at pg. 3

[11] Notably, the TRs authorized for reporting in Europe are not currently recognized in Canada.

and the resources involved in reporting transaction data. The survey found that nearly 45% of respondents incurred annual costs of over €100,000 just to maintain their reporting architectures – a level that exceeds the total yearly compensation of at least one employee per firm. For some institutions, the burden is much greater: 7.3% of end users surveyed spent between €500,000 and €2 million per year, and 4.4% spent more than €2 million per annum. These costs are a significant burden, particularly for smaller end users. In many cases these end users engage dealers to perform delegated reporting on their behalf. But 75% of survey respondents said they still need to report intragroup transactions, so only 25% rely solely on a delegated reporting model. The requirement to report intragroup transactions under EMIR imposes a tremendous burden on end users that may limit their ability to participate in the derivatives markets.

CFTC staff acknowledged this burden when issuing CFTC Letter No. 13-09[12] which provides open-ended exemptive relief to certain affiliated entities with respect to obligations to report their swaps under regulations 45, 46 and 50.50(b). The relief applies to affiliated entities which are neither swap dealers nor major swap participants regardless of whether both entities are U.S. Persons subject to the CFTC's oversight. In issuing the relief, the CFTC acknowledged the rationale of market participants that since inter-affiliate transactions are used for managing risk within a corporate group of entities, they do not contribute to systemic risk and therefore are not meaningful to the analysis of reported trade data. ISDA encourages the Authorities to consider providing broader relief from the obligations under the MLI to all affiliated entities, regardless of whether both are local counterparties in Canada.

XIII. MLI Product Scope

Though outside of the scope of the Proposed Amendments, ISDA is including in this letter relevant comments it provided to the Authorities separately regarding sections 1(4) and 1(5) of Multilateral Instrument 91-101 *Derivatives Product Determination* (the "Product Determination Rule") for further consideration. The guidance says that the intention is that the same products be covered in each jurisdiction, but we believe that this formulation does not accomplish that and may lead to over-reporting.

For British Columbia ("B.C."), Newfoundland and Labrador ("Nfld"), Northwest Territories ("NWT"), Nunavut, Prince Edward Island ("PEI") and Yukon Territory ("Yukon") the coverage applies to "derivatives". A "derivative" requires two tests to be true. First it must meet a basic derivatives definition (swap, forward etc.) and second it must a "security" as defined in the specific securities legislation solely based on being in certain categories of the security definition, namely the option category, a "futures contract", an investment contract, or a document evidencing an option, subscription or other interest in a security.

To take Nfld as an example, the Nfld. Securities Act does not have a definition of a "futures contract" so only investment contracts or options would be covered. That means that only derivatives that are essentially securities are "derivatives" and based on the tests that have been traditionally applied that would exclude bilaterally negotiated OTC derivatives that are not distributed like securities (or essentially not retail). The Nfld Securities Act does not cover OTC derivatives so there does not appear to be sufficient jurisdiction to implement trade reporting in Nfld for OTC derivatives. In B.C, the definition would work differently because it does have a "futures contract" definition that would cover OTC derivatives.

[12] http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/13-09.pdf

The PEI, NWT and Yukon Securities Acts have a definition of "derivative", and it is unclear why these are not included in the list in section 1(4)(a). ISDA believes that such inclusion would the definition of derivatives more in line with B.C. since the B.C. "futures contract" definition is similar to the "derivatives" definition. Even so, the scope will end up being different than it is in the other provinces with a modernized definition of derivative.

ISDA encourages the Authorities to consider revisions to the Product Determination Rule that may better align the scope of products subject to the MLI in each jurisdiction. Otherwise, it is going to be very difficult for counterparties to determine which sub-set of transactions is reportable. Over-reporting can raise privacy issues if data is provided to an Authority that cannot be tied to an explicit regulatory requirement and may require reporting counterparties to obtain consent from their counterparties for the potential over-reporting of such transactions.

XIV. Timeline to compliance

The Proposed Amendments change the compliance date for transaction level public reporting by TRs from January 1, 2017 to July 29, 2016. July 29, 2016 is not a feasible compliance date, as further discussed below, however our members do support a single compliance date for transaction level public dissemination in Canada across the MLI and 91-507. We further note that establishing a compliance date in the weeks preceding or following the end of the calendar year is extremely challenging for the industry due to year-end code freezes at most institutions. We believe that a uniform date for transaction level of public dissemination on or after October 31, 2016, would solve all of these concerns.

TRs and reporting counterparties are concerned about the anticipated timeline to finalization of the Proposed Amendments. In order to be ready for a July 29, 2016 compliance date, TRs had anticipated needing 6 months from rule finalization for their build, internal testing and user testing. Market participants, including reporting counterparties and market infrastructure providers, also need several months from the availability of final specifications from their TR to develop the new functionality, performing internal testing and participate in TR user and testing. Even though TRs and reporting counterparties expect to leverage existing CFTC reporting architectures to a certain extent, separate messages and associated logic will need to be developed to comply with the transaction level public reporting requirements in Canada, and TRs will need new functionality to process and make such reports available to the public. In addition, the industry will need a substantive testing period to ensure that there are no unforeseen issues with compliance and to ensure transaction data is accurately and appropriately made available to the public.

The specifications for changes on the part of TRs, reporting counterparties and market infrastructure providers that offer reporting services cannot be finalized until rule requirements are final. Building based on the Proposed Amendments risks that changes may need to be made after the final rules are known that could not be accommodated in time for the compliance date.

A representative breakdown of the timeframe for planning, development and testing is as follows:

- TR development: 3 months
- TR internal testing (including regression testing): 2 months
- TR expedited customer testing: 1 month

Since the TRs support trade reporting regulations globally, their development is planned well in advance to accommodate the various and overlapping regulatory deadlines and the necessary development and testing windows. When one of these deadlines changes, TRs need to reassess their book of work and adjust their development and testing schedules in a way that does not disrupt their ability to deliver on other commitments. Rescheduling development of TR functionality is not necessarily based on a linear delay (i.e., a delay in one month of rule finalization translates to a one month delay in the availability of the associated functionality). Rather TRs need to ascertain where in their existing list of global development commitments they can refit the work; thus potentially requiring a later date for delivery of the functionality.

In order to address these concerns, we encourage the Authorities to publish the final version of the Proposed Amendments as soon as feasible. But we believe it is also imperative that the Authorities communicate to the industry, including TRs and reporting counterparties, the specifics of any substantive changes to the Proposed Amendments (e.g. basing the timeframe for reporting on the execution timestamp instead of time to receipt or bunched order reporting) as soon as agreed by the Authorities. Advance notice doesn't completely mitigate the associated risk of proceeding with planning and implementation in advance of rule finalization, but it would greatly improve the chances that the industry can meet an amended compliance date on or after October 31, 2016.

XV. Conclusion

ISDA and its members thank the Authorities for their consideration of the comments regarding the Proposed Amendments provided herein. We strongly support harmonized trade reporting requirements across Canada, and therefore encourage the Authorities to discuss our comments with the OSC, AMF and MSC in order to adopt amendments to MLI and 91-507 which are aligned. We welcome any questions you may have with respect to our recommendations and are happy to provide any additional feedback or information as may be helpful to your consideration.

Please contact me if you have any questions or require further input.

Sincerely,

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March 15, 2016

VIA ELECTRONIC MAIL

Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

c/o:
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Re: Comments on Proposed Amendments to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* and Companion Policy 96-101CP

Dear Sir or Madam:

I. INTRODUCTION

On behalf of The Canadian Commercial Energy Working Group (the "**Working Group**"), Sutherland Asbill & Brennan LLP hereby submits this letter in response to the request for public comment from the regulatory authorities in Alberta, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon (collectively, the "**Participating Jurisdictions**") on the proposed amendments to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the "**TR Rule**") and Companion Policy 96-101CP (the "**TR Companion Policy**").[1]

[1] *See* CSA Multilateral Notice and Request for Comments on the TR Rule and TR Companion Policy (Feb. 16, 2016) ("**CSA TR Notice**"), *available at* http://www.albertasecurities.com/Regulatory%20Instruments/5219901-v1-CSA_Notice_Proposed_Amendments_to_MI_96-101.PDF.

The Working Group welcomes the opportunity to provide comments on the proposed amendments to the TR Rule and the TR Companion Policy (collectively, the "**Proposed TR Amendments**").

The Working Group is a diverse group of commercial firms that are active in the Canadian energy industry whose primary business activity is the physical delivery of one or more energy commodities to others, including industrial, commercial, and residential consumers. Members of the Working Group are producers, processors, merchandisers, and owners of energy commodities. The Working Group considers and responds to requests for comment regarding developments with respect to the trading of energy commodities, including derivatives, in Canada.

The Working Group appreciates the Participating Jurisdictions' coordinated efforts with the Ontario Securities Commission (the "**OSC**"), the Manitoba Securities Commission (the "**MSC**"), and the Autorité des marchés financiers (the "**AMF**") in developing the Proposed TR Amendments.[2] In addition to this comment letter, the Working Group has submitted separate comment letters on the OSC/MSC/AMF Proposed TR Amendments.[3]

II. COMMENTS OF THE WORKING GROUP

By issuing the Proposed TR Amendments, the Participating Jurisdictions have moved closer to establishing a derivatives reporting regime that is workable. However, the Proposed TR Amendments raise a few issues for commercial energy companies doing business in Canada. Those issues include: (i) end-user affiliate reporting, generally; (ii) the proposed exception for end-user local counterparty affiliates; (iii) the proposed substituted compliance paradigm; (iv) the proposed public dissemination of derivatives data under Appendix C of the TR Rule; and (v) the definition of "end-user." Each of these issues will be discussed in detail below.

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[2] *See* CSA TR Notice at 1 (noting that the Proposed TR Amendments "have been developed in cooperation with staff from the securities regulatory authorities in Manitoba, Ontario, and Québec"). The Proposed TR Amendments are largely similar to the proposed amendments issued by the OSC, MSC, and AMF on November 5, 2015, to their respective local TR Rule. *See* OSC Notice on Proposed Amendments to the OSC TR Rule and OSC TR Companion Policy (Nov. 5, 2015) ("**OSC Proposed TR Amendments**"), *available at* http://www.osc.gov.on.ca/documents/en/Securities-Category9/rule_20151105_91-507_derivatives-data-reporting.pdf; MSC Notice on Proposed Amendments to the MSC TR Rule and MSC TR Companion Policy (Nov. 5, 2015) ("**MSC Proposed TR Amendments**"), *available at* http://docs.mbsecurities.ca/msc/notices/en/126316/1/document.do; AMF Notice on Proposed Amendments to the AMF TR Rule, AMF TR Companion Policy, AMF Scope Rule, and AMF Scope Companion Policy (Nov. 5, 2015) ("**AMF Proposed TR Amendments**"), *available at* https://www.lautorite.qc.ca/en/history-regulation-91-507-pro.html (collectively, the "**OSC/MSC/AMF Proposed TR Amendments**" and the "**OSC/MSC/AMF TR Notices**").

[3] The Working Group submitted separate comments letters to the OSC, MSC, and AMF on February 3, 2016.

A. THE PARTICIPATING JURISDICTIONS SHOULD EXEMPT FROM THE OBLIGATIONS OF THE TR RULE TRANSACTIONS BETWEEN END-USER AFFILIATES.

The Working Group respectfully urges the Participating Jurisdictions to exempt all transactions between end-user affiliates from the obligations of the TR Rule. The Working Group recognizes that the Proposed TR Amendments would take meaningful steps towards reducing reporting burdens for "end-users."[4] However, in order to have a derivatives reporting regime that appropriately balances the costs and benefits, the Participating Jurisdictions should exempt all inter-affiliate derivatives transactions between end-users from the obligations of the TR Rule. As discussed further herein, this is because the relief proposed in the Proposed TR Amendments is partial, reporting compliance costs are significant, and the utility of end-user affiliate reporting data to regulators is limited at best.

For these reasons, the Working Group's primary recommendation is that the Participating Jurisdictions provide an exemption from the obligations of the TR Rule for transactions between end-user affiliates similar to the relief provided by the U.S. Commodity Futures Trading Commission ("**CFTC**"). Specifically, the CFTC has provided conditional relief in CFTC No-Action Letter 13-09 so that certain end-user affiliate transactions do not have to be reported.[5] In providing CFTC No-Action Letter 13-09, the CFTC recognized that such end-user affiliate transactions are used for risk management within a corporate group and do not increase the overall systemic risk or warrant the same reporting requirements as external swaps.[6] Any such relief, however, should also be available to end-user affiliates with a derivatives dealer in their corporate group.

If the Participating Jurisdictions do not opt to provide relief for end-user affiliate transactions similar to the relief in CFTC No-Action Letter 13-09, the Working Group respectfully offers the specific comments contained herein in Section II.B and Section II.C, respectively, on the proposed exception in Section 41.1 of the TR Rule and the proposed substituted compliance paradigm in Section 26(3) of the TR Rule.

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[4] The Participating Jurisdictions attach a narrower meaning to the term "end-user" than the OSC, MSC, and AMF. *Compare* CSA TR Notice at 2 *with* OSC/MSC/AMF TR Notices at 2. Like the OSC, MSC, and AMF, the Participating Jurisdictions use the term "end-user" to mean a counterparty that is not a derivatives dealer and not a clearing agency. Unlike the OSC, MSC, and AMF, the Participating Jurisdictions further restrict "end-user" to mean a counterparty that is also not affiliated with a derivatives dealer or a clearing agency. As used in this comment letter, "end-user" has the same meaning as used by the OSC, MSC, and AMF. The term "end-user" is further discussed in Section II.E herein.

[5] CFTC No-Action Letter 13-09, *No-Action Relief for Swaps Between Affiliated Counterparties That Are Neither Swap Dealers Nor Major Swap Participants from Certain Swap Data Reporting Requirements under Parts 45, 46, and Regulation 50.50(b) of the Commission's Regulations* (Apr. 5, 2013), *available at* http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-09.pdf.

[6] *See* CFTC No-Action Letter 13-09 at 3 (explaining the reason market participants submitted requests for relief and noting that the relief is granted "[a]ccordingly").

B. THE PROPOSED EXCEPTION IN SECTION 41.1 OF THE TR RULE SHOULD BE AVAILABLE TO CORPORATE GROUPS WITH A DERIVATIVES DEALER.

The proposed exception in Section 41.1 would exclude from the derivatives data reporting obligations of the TR Rule derivatives transactions between end-user local counterparty affiliates. However, the proposed exception in Section 41.1 of the TR Rule should be available to end-user local counterparty affiliates that belong to a corporate group with a derivatives dealer.

As currently drafted, the proposed exception in Section 41.1 of the TR Rule for derivatives transactions between end-user local counterparty affiliates is not available for corporate groups with a derivatives dealer. Specifically, the Proposed TR Amendments prevent a counterparty from relying on this exception if it is affiliated with a derivatives dealer.[7] However, the relief should be available for all end-user-to-end-user intragroup transactions regardless of with whom the counterparties are affiliated. The focus should be on the character of the counterparties to a transaction and not their affiliates.

Not only would the proposed exception in Section 41.1 of the TR Rule place an unnecessary restriction on the relief, but given that the derivatives dealer regulatory paradigm is not finalized, it could also make planning difficult for market participants. Further, the parallel proposed exception in the AMF TR Rule does not place such restriction on the relief.[8] As such, the parallel proposed exception in the AMF TR Rule would be available for derivatives transactions between end-user local counterparty affiliates that have a derivatives dealer in their corporate group.

To reduce unnecessary regulatory burden, the Working Group respectfully suggests that the Participating Jurisdictions revise the proposed exception in Section 41.1 of the TR Rule to make the relief available for corporate groups with a derivatives dealer.

C. THE PROPOSED SUBSTITUTED COMPLIANCE PARADIGM IN SECTION 26(3) OF THE TR RULE SHOULD BE MODIFIED TO ADDRESS ISSUES WITH TWO CONDITIONS TO QUALIFY FOR RELIEF.

The Working Group appreciates that the Proposed TR Amendments would allow substituted compliance for end-users with respect to reporting derivatives data for transactions with their end-user non-local counterparty affiliates.[9] However, the Working Group respectfully notes that there are issues with two of the conditions to qualify for such relief.[10]

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7 *See* Proposed TR Amendments at Section 41.1(1)(b)(iii).

8 *Compare* Proposed TR Amendments at Section 41.1(1)(b) *with* AMF Proposed TR Amendments at Section 40.1(b).

9 *See* Proposed TR Amendments at Section 26(3).

10 *See, e.g., id*. at Section 26(3)(a)(iii)(C) and 26(3)(b).

1. The Proposed Exemption under Section 26(3) Should Be Available to Corporate Groups with a Derivatives Dealer.

The first problematic condition is that to be eligible for relief under Section 26(3) of the TR Rule, the affiliated counterparties cannot be affiliated with a derivatives dealer.[11] For the reasons stated in Section II.B herein, the proposed relief in Section 26(3) of the TR Rule should be available to corporate groups with a derivatives dealer.

2. A Derivatives Transaction Should Be Exempt under Section 26(3) Where Such Transaction Is Exempt under the Laws, Regulations, or Guidance of an Equivalent Foreign Jurisdiction.

The second problematic condition is that to be eligible for relief under Section 26(3) of the TR Rule, a derivatives transaction must be reported to a trade repository pursuant to the laws of certain foreign jurisdictions,[12] which includes the CFTC's reporting paradigm in the United States.[13] However, as noted earlier, the CFTC has provided conditional relief in CFTC No-Action Letter 13-09 so that certain end-user inter-affiliate transactions do not have to be reported. Thus, end-user inter-affiliate derivatives transactions that are exempt from reporting by CFTC No-Action Letter 13-09 would still need to be reported to qualify for the exemption under Section 26(3) of the TR Rule, thereby creating a disincentive for companies to use the efficient path of inter-affiliate derivatives transactions to transfer positions between Canadian entities and their non-local counterparty affiliates. Said another way, because the proposed relief under Section 26(3) of the TR Rule effectively requires cross-border inter-affiliate derivatives between Canadian entities and their non-local counterparty affiliates to be reported, it may cause companies to choose less efficient and more costly methods to address inter-company issues than a simple inter-affiliate derivatives transaction.

To prevent this unnecessary limitation, the Working Group respectfully requests that Section 26(3) of the TR Rule be modified to allow end-user affiliates to continue to rely on the relief provided by the CFTC while still qualifying for the exemption under Section 26(3).

Specifically, the Working Group offers the following suggested amendments to Section 26(3) of the TR Rule:

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11 *See id*. at Section 26(3)(a)(iii)(C).

12 *See id*. at Section 26(3)(b).

13 The TR Rule provides that the following CFTC Regulations are equivalent for the purposes of the substituted compliance provision in Section 26(3) of the TR Rule:

- CFTC Real-Time Public Reporting of Swap Transaction Data, 17 C.F.R. Part 43 (2013);
- CFTC Swap Data Recordkeeping and Reporting Requirements, 17 C.F.R. Part 45 (2013); and
- CFTC Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 17 C.F.R. Part 46 (2013).

Id. at Appendix B.

The Working Group's Proposed Revised Language for Section 26(3) of the TR Rule

Section 26(3)

(b) the derivative is reported to a recognized trade repository **or is exempt from such reporting** under one or more of the following:

…

(iv) the laws**, regulations, or guidance** of a foreign jurisdiction listed in Appendix B….

D. APPENDIX C OF THE TR RULE SHOULD BE AMENDED TO REQUIRE DERIVATIVES DATA TO BE HELD BY TRADE REPOSITORIES FOR A MINIMUM TIME PRIOR TO PUBLIC DISSEMINATION.

The Working Group commends the Participating Jurisdictions for their efforts in the Proposed TR Amendments to appropriately balance the benefits of post-trade transparency against the potential harm that may be caused to market participants' ability to hedge risk.[14] However, as currently drafted, the Proposed TR Amendments under Appendix C of the TR Rule do not achieve the proper balance.

This is because the Proposed TR Amendments provide the time frame by which derivatives data must be publicly disseminated by trade repositories, but still do not provide a minimum time that the data must be held prior to public dissemination.[15] As such, the Proposed TR Amendments still allow a trade repository to publicly disseminate the data as soon as it is received, which would defeat the stated purpose of the delay – "to ensure that counterparties have adequate time to enter into any offsetting derivative that may be necessary to hedge their positions."[16]

To provide market participants with necessary protection, the Working Group respectfully requests that the TR Rule be amended to provide a minimum time that the derivatives data be held before such data is permitted to be publicly disseminated by trade repositories. That minimum time should be determined based on the liquidity of the market for the relevant commodity.

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14 *See* CSA TR Notice at 2.

15 *See* Proposed TR Amendments at Appendix C.

16 Proposed TR Amendments at Appendix C of the TR Companion Policy.

E. IF THE PARTICIPATING JURISDICTIONS USE THE TERM "END-USER" IN A REGULATION, THAT TERM SHOULD BE DEFINED IN THE REGULATION.

For regulatory clarity purposes, if the Participating Jurisdictions use the term "end-user" in a regulation or companion policy, the Working Group respectfully requests for the Participating Jurisdictions to define that term in the regulation or companion policy. Because the term "end-user" may have different meanings to different people, providing a specific definition in the relevant instrument would help ensure a consistent interpretation and application of the law. To ensure a consistent interpretation and application of the law, the Participating Jurisdictions should align the term "end-user" with the meaning provided by the OSC, MSC, and AMF, which is a counterparty that is not a derivatives dealer and not a clearing agency.[17]

III. CONCLUSION

The Working Group appreciates this opportunity to provide input on the Proposed TR Amendments and respectfully requests that the comments set forth herein are considered as any final legislation or regulations are drafted.

If you have any questions, please contact the undersigned.

Respectfully submitted,
/s/ R. Michael Sweeney, Jr.
R. Michael Sweeney, Jr.
Alexander S. Holtan
Blair Paige Scott

[17] *See* OSC/MSC/AMF TR Notices at 2.

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VIA EMAIL

April 18, 2016

Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

c/o Martin McGregor
Legal Counsel, Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4

Email: martin.mcgregor@asc.ca

Dear Mr. McGregor:

TransCanada Corporation (**TransCanada**) is pleased to submit its comments in response to the proposed amendments to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the **TR Rule Amendments**) and proposed amendments to Companion Policy 96-101CP *Trade Repositories and Derivatives Data Reporting* (the **TR CP Amendments**, and together with the TR Rule Amendments, the **Proposed Amendments**) as published and solicited for comment by the Canadian Securities Administrators (the **CSA**). The current version of Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* is referred to as the "**TR Rule**", and the current version of Companion Policy 96-101CP *Trade Repositories and Derivatives Data Reporting* is referred to as the "**TR CP**".

TransCanada appreciates the opportunity to provide its comments on the Proposed Amendments. The comments below are provided with the goals of achieving effective regulatory oversight of the OTC market while not unduly burdening market participants and ensuring that the Proposed Rules contain the necessary clarity to be effectively applied.

TransCanada's comments include remarks on:

- Inter-Affiliate Exemptions
- Transition rules for exceeding threshold for exclusions and calculation of notional amounts
- Clarification on timing for reporting of pre-existing transactions

as more fully described below.

I. About TransCanada

With more than 65 years' experience, TransCanada is a leader in the responsible development and reliable operation of North American energy infrastructure including natural gas and liquids pipelines, power generation and gas storage facilities. TransCanada operates a network of natural gas pipelines that extends more than 67,000 kilometres, tapping into virtually all

major gas supply basins in North America. TransCanada is one of the continent's largest providers of gas storage and related services with 368 billion cubic feet of storage capacity. A growing independent power producer, TransCanada owns or has interests in over 11,400 megawatts of power generation in Canada and the United States. TransCanada is developing one of North America's largest liquids delivery systems. TransCanada's Common Shares trade on the Toronto and New York stock exchanges under the symbol TRP. For more information visit www.transcanada.com.

TransCanada constructs and invests in energy infrastructure projects, purchases and sells energy commodities, issues short-term and long-term debt, including amounts in foreign currencies, and invests in foreign operations. Certain of these activities expose the company to market risk from changes in commodity prices, foreign exchange rates and interest rates. TransCanada uses derivatives as part of its overall risk management strategy to assist in managing the exposure to market risk that results from these activities.

II. Comments

Inter-Affiliate Exemptions

TransCanada supports the approach taken by the Proposed Amendments in providing for an inter-affiliate exemption for derivatives transactions. In particular, since TransCanada does business through a variety of business structures which include corporations as well as partnerships and limited partnerships, the extension of inter-affiliate exemptions to all forms of corporate organizational structures is important to our business.

Transition Rules for Exceeding Threshold for Exclusions and Calculation of Notional Amounts

TransCanada appreciates the clarity given by detailing the timelines and process to follow pursuant to Section 44.1 of the Proposed Amendments, but without clarity on the calculation of the notional amount applicable to a given commodity transaction, it becomes difficult to ascertain when the threshold set out in Section 40 of the TR Rule has been crossed.

Section 40 of the TR CP provides guidance on how to translate the notional amount of a commodity into a dollar figure to which a local counterparty could apply the exclusion threshold. In performing our internal analysis of commodity derivatives transactions, difficulties in calculating notional amounts for commodity derivatives have become apparent. For example, when calculating the notional amount for a commodity derivative, it is unclear if the notional amount for the transaction should be calculated based on the then-current price for that future-dated commodity, or on the market price for that commodity product as of the date the derivative transaction was executed. The underlying quantity of gas, electricity, or other commodity is easily identified, but the value to assign to that underlying quantity is much more difficult to determine. It would be helpful to have clarity on whether the price of a single commodity derivative that has both pay and receive positions should be netted prior to multiplying the notional amount, or if this arrangement should be treated as two separate transactions. In addition, the market risk is far greater with an in-the-money sold option than an out of the-money sold option. How should the notional dollar value of such options be calculated, and is the methodology different for such options compared to a purchased option where there is no economic risk other than the premium paid?

Clarity on these issues would be useful in determining if local counterparties could apply the exclusion threshold.

Clarification on Timing for Reporting of Pre-Existing Transactions

TransCanada appreciates the clarification on which pre-existing transactions need to be reported pursuant to Section 34 of the TR Rule given the coming into force date and commencement of reporting for transactions involving reporting clearing agencies, derivatives dealers, and local counterparties. The revised timelines for pre-existing transactions should eliminate any gaps in reporting that may have arisen under the previously-published TR Rule.

III. Summary

TransCanada appreciates the collaborative approach taken by the CSA in developing a concise TR Rule and TR CP, while giving thoughtful consideration to the impact these instruments can have on derivatives market participants.

Sincerely,

Matthew Davies
Compliance Manager, Western Power