

ALBERTA SECURITIES COMMISSION

RECOGNITION ORDER:
TRADE REPOSITORY

Citation: Re DTCC Data Repository (U.S.) LLC, 2016 ABASC 194

Date: 20160713

DTCC Data Repository (U.S.) LLC

Background

1. DTCC Data Repository (U.S.) LLC (the **Applicant**) intends to carry on business as a trade repository in Alberta (the **Local Jurisdiction**).
2. Under the *Memorandum of Understanding Respecting the Oversight of Clearing Agencies, Trade Repositories and Matching Service Utilities* (the **Oversight Memorandum**) among the Alberta Securities Commission (the **Commission**) and other Canadian securities regulatory authorities, the Ontario Securities Commission (the **OSC**) has been selected as the lead authority for the Applicant and the Commission is a reliant authority.
3. Under the *Memorandum of Understanding Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Covered Entities* dated 25 March 2014 (the **Cross-Border Memorandum**) among the United States (US) Commodity Futures Trading Commission (the **CFTC**), the Commission and other Canadian securities regulatory authorities, the signatories have agreed to share information concerning cross-border covered entities, including the Applicant.
4. Section 3(1) of Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (**MI 96-101**) requires that, no later than 45 days before implementing a significant change to a matter set out in Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* (**Form 96-101F1**), a recognized trade repository must file an amendment to the information it had provided in Form 96-101F1 in the manner therein set out (the **Change Notification Requirement**).
5. Section 4(1) of MI 96-101 requires that a company applying for recognition as a trade repository file audited financial statements for its most recently completed financial year as part of its application (the **Application Requirement**).
6. Section 5(1) of MI 96-101 requires that a recognized trade repository file annual audited financial statements no later than the 90th day after the end of its financial year (the **Financial Statement Requirement**).
7. Section 20(2) of MI 96-101 requires that a recognized trade repository hold sufficient insurance coverage and liquid net assets funded by equity to cover potential general business losses (the **Insurance Requirement**).

8. Section 20(4) of MI 96-101 requires that a recognized trade repository 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 (the **Critical Operations Requirement**).
9. Section 20(5) of MI 96-101 requires that a recognized trade repository 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 section 20(4) of MI 96-101 (the **Wind-Down Requirement**).
10. Section 39(1) of MI 96-101 requires that a recognized trade repository create and make available on its website, on a reasonably frequent basis and in a manner that is easily accessible to the public at no cost, aggregate data on price (if applicable) relating to the derivatives reported to it under MI 96-101 (the **Price Data Requirement**), and section 39(2) of MI 96-101 requires that such data be broken down by geographic location (if applicable) (the **Geographic Data Requirement**).

Interpretation

11. Terms defined in the *Securities Act* (Alberta) (the **Act**), in National Instrument 14-101 *Definitions*, in Multilateral Instrument 91-101 *Derivatives: Product Determination* or in MI 96-101 have the same meaning in this order unless otherwise herein defined.

Representations

12. The Applicant makes the following representations:
 - (a) The Applicant is a limited liability company organized under the laws of New York.
 - (b) The Applicant is an indirect wholly-owned subsidiary of The Depository Trust & Clearing Corporation (**DTCC**).
 - (c) The Applicant is provisionally registered with the CFTC as a swap data repository (an **SDR**) and is in good standing as such.
 - (d) The Applicant is designated as a trade repository by the OSC under a 19 September 2014 order (the **OSC Designation Order**) and is in good standing in Ontario as such. The Applicant is also designated or recognized, as applicable, as a trade repository in Manitoba and Québec.
 - (e) Section 24 of Schedule "A" to the OSC Designation Order permits the Applicant, if it is required to file with the CFTC information relating to a significant change, to satisfy the Ontario equivalent of the Change Notification Requirement by providing the same information concurrently to the OSC.

- (f) Schedule "B" to the OSC Designation Order exempts the Applicant from the Ontario equivalents of the Application Requirement, the Financial Statement Requirement, the Insurance Requirement, the Critical Operations Requirement and the Wind-Down Requirement.
- (g) The CFTC does not currently impose on the Applicant requirements comparable to the Price Data Requirement and the Geographic Data Requirement.

Order

13. Based on the representations herein and considering that it would not be prejudicial to the public interest to do so, the Commission:
- (a) under section 67.3 of the Act, recognizes the Applicant as a trade repository;
 - (b) under section 43(2) of MI 96-101, orders that the Applicant is exempt from section 3(1) of MI 96-101 in respect of any significant change concerning which it is required to file information with the CFTC or the OSC (or both), if the Applicant files that information concurrently with the CFTC or the OSC (or both) and with the Commission's Executive Director (the **ED**);
 - (c) under section 43(2) of MI 96-101, orders that the Applicant is exempt from sections 4(1) and 5(1) of MI 96-101 provided that the Applicant files with the Commission, concurrently with filing with the CFTC but in any event not later than the 90th day after the end of its financial year:
 - (i) unaudited annual financial statements of the Applicant prepared in accordance with U.S. GAAP as that term is defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (**NI 52-107**); and
 - (ii) audited annual financial statements of the Applicant's ultimate parent, DTCC, prepared in accordance with U.S. GAAP and audited in accordance with U.S. AICPA GAAS or U.S. PCAOB GAAS (as those terms are defined in NI 52-107);
 - (d) under section 43(2) of MI 96-101, orders that the Applicant is exempt from section 20(2) of MI 96-101 provided that the Applicant complies with section 49.25 of the CFTC's rules relating to financial resources;
 - (e) under section 43(2) of MI 96-101, orders that the Applicant is exempt from sections 20(4) and (5) of MI 96-101 provided that if the CFTC implements requirements comparable in all material respects to the Critical Operations Requirement or the Wind-Down Requirement, the Applicant will comply with the relevant CFTC requirement within such time as the CFTC requires; and

- (f) under section 43(2) of MI 96-101, orders that the Applicant is exempt from the Price Data Requirement and the Geographic Data Requirement in sections 39(1) and (2) of MI 96-101, respectively, provided that if the CFTC implements requirements comparable to the Price Data Requirement or the Geographic Data Requirement, the Applicant will comply with the relevant CFTC requirement within such time as the CFTC requires;

in each case for so long as the Applicant satisfies the terms and conditions set out in the Appendix to this order.

For the Commission:

"original signed by"

Tom Cotter
Vice-Chair

"original signed by"

Stephen Murison
Vice-Chair

APPENDIX Terms and Conditions

Status with the CFTC and the OSC

1. The Applicant maintains in good standing registration with the CFTC as an SDR and remains subject to regulatory oversight by the CFTC.
2. The Applicant maintains in good standing its designation by the OSC as a trade repository and remains subject to regulatory oversight by the OSC.

Local Services

3. The Applicant provides services to its participants that are local counterparties (**Local Participants**) on the same terms and conditions, including fees, as it provides to comparable participants in other jurisdictions in Canada in which the Applicant is designated or recognized as a trade repository.
4. The Applicant operates a trade repository that enables Local Participants to fulfil their reporting obligations under MI 96-101.
5. The Applicant accepts derivatives data in relation to specified derivatives that are required under MI 96-101 to be reported in the following asset classes: interest rate; credit; commodity; foreign exchange; and equity.
6. The Applicant provides the services described in paragraphs 3, 4 and 5 during at least the hours of 8:00 to 20:00 (eastern time) Monday through Friday except when closed for maintenance.

Reporting Requirements

7. The Applicant will provide to the ED, promptly on request by the ED, to the extent that would not cause the Applicant to violate any applicable US law or any other applicable privacy or other laws governing the sharing of information and the protection of personal information to which the Applicant in each case is subject, any information that:
 - (a) has been reported to the Applicant under MI 96-101;
 - (b) is in the custody or control of the Applicant; and
 - (c) relates to a Local Participant, the operations of the Applicant as a recognized trade repository in the Local Jurisdiction or the Applicant's compliance with this order.
8. The Applicant will promptly notify the ED, to the extent that would not cause the Applicant to violate any applicable US law or any other applicable privacy or other laws governing the sharing of information and the protection of personal information to which the Applicant in each case is subject, of the occurrence of any of the following:

- (a) the Applicant's registration with the CFTC as an SDR is revoked, suspended or amended in a material respect;
 - (b) the Applicant's designation by the OSC as a trade repository is revoked, suspended or amended in a material respect;
 - (c) a material change to the regulatory oversight of the Applicant by the CFTC or the OSC;
 - (d) a material change in the control or ownership of the Applicant's ultimate parent, DTCC;
 - (e) to the extent not addressed by paragraph (a), (b), (c) or (d), a material change from any representation in this order;
 - (f) a local counterparty's application to become a Local Participant has been denied after exhaustion of the Applicant's appeal process;
 - (g) a Local Participant's access to the Applicant's services has been revoked or suspended; and
 - (h) any event, circumstance or situation about which the Applicant has notified or is required to notify the OSC in accordance with the part of the OSC Designation Order titled "Reporting Requirements".
9. The Applicant will provide a list of current Local Participants to the ED, in a manner and form acceptable to the ED and to the extent that would not cause the Applicant to violate any applicable US law or any other applicable privacy or other laws governing the sharing of information and the protection of personal information to which the Applicant in each case is subject, at such times as are prescribed for the provision of corresponding information to the OSC under the OSC Designation Order.

Data Availability

10. The Applicant will fulfil its obligations under section 37 of MI 96-101 by providing the relevant data and information, in a manner and at the times acceptable to the ED and to the extent that would not cause the Applicant to violate any applicable US law or any other applicable privacy or other laws governing the sharing of information and the protection of personal information to which the Applicant in each case is subject, to the ED and, if directed to do so in writing by the ED, to another Canadian securities regulatory authority that is a signatory to the Cross-Border Memorandum.

MI 96-101

11. The Applicant will carry on its business as a trade repository in compliance with MI 96-101, subject to this order.