

**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***

**January 22, 2016**

## **Introduction**

The securities regulatory authorities (each an **Authority** and collectively the **Authorities** or **we**) in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon (the **Participating Jurisdictions**) are adopting Multilateral Instrument 91-101 *Derivatives: Product Determination* (the **Product Determination Rule**) and Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the **TR Rule**) (together the **Instruments**).

In addition, we are implementing Companion Policy 91-101CP *Derivatives: Product Determination* (the **Product Determination CP**) and Companion Policy 96-101CP *Trade Repositories and Derivatives Data Reporting* (the **TR CP**) (together the **Companion Policies**).

In some jurisdictions, government Ministerial approvals are required for the adoption of the Instruments. Subject to obtaining all necessary Ministerial approvals, and in some Participating Jurisdictions, proclamation of certain amendments to applicable securities legislation, the Instruments are targeted to come into force in each of the Participating Jurisdictions on May 1, 2016.

## **Background**

On December 6, 2012, the Canadian Securities Administrators (**CSA**) Derivatives Committee (the **Committee**) published CSA Staff Consultation Paper 91-301 *Model Provincial Rules – Derivatives: Product Determination and Trade Repositories and Derivatives Data Reporting* (the **Draft Model Rules**). Thirty-five comment letters were received.

On June 6, 2013 the Authorities in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan published for comment Staff Consultation Paper 91-302 *Updated Model Provincial Rules – Derivatives: Product Determination and Trade Repositories and Derivatives Data Reporting* (the **Updated Draft Models Rules**). On the same date the securities regulatory authorities in Manitoba, Ontario and Quebec published for comment corresponding proposed local rules and companion policies, based on the Updated Draft Model Rules. Twenty-seven comments letters were received on the Updated Draft Model Rules.

After reviewing the comments received and making determinations on revisions to the Updated Draft Models Rules, the Authorities in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan published Proposed Multilateral Instrument 91-101 *Derivatives: Product Determination* and Proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* and the related companion policies (the **Proposed Instruments**) on January 21, 2015. We received eighteen comment letters. A list of those who submitted comments and a chart summarizing the comments received and responses to those comments are attached at Annex A to this Notice.

We anticipate that we will publish proposed amendments to the TR Rule in the near future (the **Proposed Amendments**). We anticipate that the Proposed Amendments will be generally consistent with the proposed amendments to the corresponding local rules published for comment by the Manitoba Securities Commission, the Ontario Securities Commission and the Autorité des marchés financiers on November 5, 2015.

### **Substance and purpose of the Product Determination Rule**

The purpose of the Product Determination Rule is to define the types of over-the-counter (**OTC**) derivatives that will be subject to reporting requirements under the TR Rule. These OTC derivatives are defined as “specified derivatives”. The Product Determination Rule will initially only apply to identify the types of OTC derivatives subject to the TR Rule; however, we expect that it will be used to also define the types of OTC derivatives subject to future rules relating to OTC derivatives. The Product Determination Rule does not apply to other elements of securities legislation. Any other legislation, rules, notice or other policies applicable to derivatives will continue to apply to all products meeting that definition.

The Product Determination Rule provides that certain types of contracts or instruments that fall within the broad definition of “derivative” in the securities legislation of the applicable Participating Jurisdiction are excluded from the definition of “specified derivative”; as a result, these contracts or instrument are excluded from the requirements in the TR Rule. The excluded contracts are contracts that have not traditionally been considered to be OTC derivatives.

### **Substance and purpose of the TR Rule**

The TR Rule has three main objectives. First, it will improve transparency in the OTC derivatives market for regulators. Derivatives data is essential for effective regulatory oversight of the OTC derivatives market, including the ability to identify and address systemic risk and market abuse. Derivatives data reported to recognized trade repositories will also support policy-

making by providing regulators with information on the nature and characteristics of the Canadian OTC derivatives market.

Second, the TR Rule contemplates public dissemination of certain transaction-level data to improve transparency in the OTC derivatives market for participants. Derivatives data will provide participants with information relating to the OTC derivatives market to allow them to assess their own derivatives and to value their positions. Detailed requirements for public dissemination of transaction-level data are anticipated to set out in the Proposed Amendments.

Finally, the rule imposes requirements relating to the governance and operation of trade repositories. These requirements are designed to ensure that trade repositories act in a way that is consistent with the public interest.

The requirements in the TR Rule:

- facilitate the regulation and oversight of trade repositories, including requirements for the recognition process, operations and data access and dissemination; and
- mandate that counterparties to derivatives report specific data about those derivatives.

### **Summary of the Product Determination Rule**

The definition of “derivative”<sup>1</sup> in applicable securities legislation includes the types of instruments traditionally referred to as “derivatives” (for example, swaps and forwards) as well as other novel instruments. However, the definition of “derivative” is broad enough to capture many contracts and instruments that have not traditionally been considered to be “derivatives”. The Product Determination Rule tailors the application of the regulatory requirements in the TR Rule to certain existing and emerging products referred to as “specified derivatives”. Contracts or instruments that are not “specified derivatives” will not be subject to trade reporting requirements under the TR Rule.

In Alberta, the Alberta Securities Commission has issued an order designating certain types of investment contracts and options to be “derivatives” and not to be “securities” for the purpose of the Product Determination Rule. As a result, these designated contracts and instruments are “specified derivatives”. The designation order is available on the website of the Alberta Securities Commission and is included as Annex F to this Notice.

In British Columbia, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Yukon, a contract or instrument is a “derivative” if it meets the criteria in paragraph 1(4)(a) or if it is a security solely because it is an investment contract, option, futures contract or document evidencing an option, subscription or other interest in a security.

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<sup>1</sup> Subsection 1(4) of the Product Determination Rule defines “derivative” for the Participating Jurisdictions that do not have a definition of derivatives in their local securities legislation that is consistent with the definitions in the securities legislation in Alberta, New Brunswick, Nova Scotia and Saskatchewan.

The following contracts are not “specified derivatives” under the Product Determination Rule:

- gaming and insurance contracts that are regulated by a domestic or a foreign regulatory regime;
- contracts for the purchase and sale of currency provided that the contract (i) settles within prescribed timelines, (ii) is intended by the counterparties to be settled by delivery of the currency referenced in the contract, and (iii) is not rolled-over;
- commodity forward and option contracts provided that physical delivery of the commodity is intended and the contract does not permit cash settlement unless an intervening cause makes physical delivery impossible or commercially unreasonable;
- evidence of a deposit with a bank, credit union or certain other federally or provincially regulated entities;
- contracts or instruments traded on certain exchanges;
- certain instruments such as warrants, where an issuer of a security is a counterparty and the underlying interest of the derivative is a “security” of the issuer.

In New Brunswick, Nova Scotia or Saskatchewan, a contract or instrument that would be a security but is not as a result of the exclusion of “derivatives” from the statutory definition of “security” is excluded from the definition of “specified derivative” unless that contract or instrument is a security solely by reason of being an investment contract.

As noted above, any contract or instrument excluded from the definition of “specified derivative” under the Product Determination Rule will not be subject to trade reporting requirements under the TR Rule.

### **Summary of the TR Rule**

As noted above, the requirements in the TR Rule generally fall into two categories: (i) requirements that facilitate the regulation and oversight of trade repositories, and (ii) requirements that counterparties to derivatives report specific data about those derivatives.

#### *(i) Regulation and oversight of trade repositories*

To obtain recognition as a trade repository in a Participating Jurisdiction, a person or company must apply to the relevant Authority for recognition. The TR Rule establishes the process for making this application.

A person or company that applies to be a recognized trade repository in a Participating Jurisdiction will need to file a completed Form 96-101F1 and financial statements. Factors that may be considered by the applicable Authority in assessing an application for recognition are described in the TR CP.

The TR Rule also establishes on-going requirements that will apply to recognized trade repositories in each Participating Jurisdiction. A recognized trade repository must comply with the trade repository requirements set out in the TR Rule, as well as all terms and conditions imposed by each applicable recognition order.

A recognized trade repository will be required to provide each applicable Authority with interim and year-end financial statements and to provide notice of any significant changes to the information submitted in its Form 96-101F1 before implementing the changes.

Once operational, a recognized trade repository will be required to accept derivatives data for each asset class set out in an Authority's recognition order. A recognized trade repository will be required to ensure that its rules, policies and procedures permit fair and open access to its services. Any fees charged by a recognized trade repository are expected to be fairly and equitably allocated amongst its participants and must be publicly disclosed. Further, a recognized trade repository will be required to have rules, policies and procedures to allow its participants to confirm the accuracy of reported data.

A recognized trade repository will be required to provide the following access to derivatives data:

- each Authority will have access to all relevant derivatives data reported to the recognized trade repository in accordance with the Authority's mandate;
- counterparties to a derivative will have access to derivatives data relevant to their derivatives; and
- the public will have access to aggregate data on open derivatives including volume, number and prices related to derivatives.

*(ii) Derivatives data reporting requirements*

Under the TR Rule all derivatives involving a local counterparty are required to be reported to a recognized trade repository or, in limited circumstances, to the applicable Authority. The TR Rule establishes a hierarchy for determining which counterparty will be required to report a derivative. This hierarchy is intended to place the reporting burden on the counterparty most capable of fulfilling the reporting obligations. For example, in the case of a derivative (assuming that it is not cleared through a clearing agency) that involves one counterparty that is a derivatives dealer and another that is not, the derivatives dealer will be required to fulfill the reporting obligations.

Three main types of data must be reported under the TR Rule:

- creation data, which includes specific terms relating to the derivative;
- life-cycle event data, which includes any change to derivatives data previously reported; and

- valuation data, which includes the current value of the derivative.

Appendix A to the TR Rule provides specific details on each type of data that the reporting counterparty to a derivative must report. Guidance for the data fields in Appendix A is included in the Description column in the reporting fields table.

The TR Rule requires that reporting be completed immediately following a transaction. However, where it is not technologically practicable to do so, the reporting counterparty will be required to report as soon as possible but not later than the end of the next business day following the day that the transaction was entered into.

Derivatives that were entered into prior to the TR Rule coming into force will be required to be reported provided they have not expired or been terminated within a prescribed period after the TR Rule comes into force. The TR Rule provides specific deadlines for the reporting of these pre-existing derivatives.

The TR Rule provides certain exclusions from the requirement to report derivatives data. These are:

- an exclusion for a local counterparty that has not had, in the preceding twelve months, an aggregate month-end gross notional amount under commodity-based derivatives exceeding \$250 000 000;
- an exclusion from the requirement to report a derivative between a non-resident derivatives dealer and another non-resident counterparty where the derivative is reported in a jurisdiction solely because one or both counterparties is a non-resident derivatives dealer in that jurisdiction; and
- an exclusion from the requirement to report a derivative between a government of a local jurisdiction and a crown corporation or agency that is consolidated with the government for accounting purposes.

In addition, the TR Rule provides for a temporary exclusion from the reporting obligations for derivatives between counterparties that are affiliated entities and are neither derivatives dealers (or affiliated with a derivatives dealer) nor clearing agencies (or affiliated with a clearing agency). We expect this exclusion to apply until we have implemented final requirements relating to reporting derivatives between two affiliated entities. We expect that a proposed exclusion from the obligation to report certain derivatives between affiliated entities will be published for comment as part of the Proposed Amendments.

### **Summary of changes**

After considering the comments received on the Proposed Instruments, we have made certain revisions. These revisions are reflected in the Instruments and Companion Policies that we are publishing concurrently with this CSA Multilateral Notice. As these revisions are not material, we are not republishing the Instruments or Companion Policies for a further comment period.

*(i) Changes to the Product Determination Rule*

We have deleted certain provisions relating to investment contracts and options as these provisions are not necessary, because of (i) the designation order issued by the Alberta Securities Commission, discussed below; and (ii) the operation of the securities legislation in New Brunswick, Nova Scotia and Saskatchewan. In addition, we have deleted a provision relating to contracts or instruments that would meet the definition of both “derivative” and “security” in British Columbia as this provision is not necessary, because of the operation of the securities legislation in British Columbia.

*(ii) Changes to the TR Rule*

The definition of “local counterparty” has been harmonized with the corresponding definition in the Local TR Rules, by capturing a derivatives dealer as a local counterparty. A corresponding new exclusion has been added, excluding derivatives between a non-resident derivatives dealer and another non-resident counterparty from the reporting requirements. This will help to ensure that the Authorities only receive reports of derivatives involving a counterparty that is resident in the jurisdiction.

The exclusion relating to commodity derivatives has been clarified, including with respect to when and how a counterparty’s notional amount outstanding should be calculated for the purpose of the threshold.

Other changes in the TR Rule include changes to the requirements for assigning a unique product identifier. The changes increase flexibility in how that identifier is assigned, and reflect current market practices.

Additionally, we have clarified the requirements relating to reporting pre-existing derivatives, including with respect to reporting pre-existing derivatives before the relevant deadline.

**Summary of written comments**

We received submissions relating to the Proposed Instruments from 18 commenters. We have considered all of the comments received and thank all of the commenters for their input. The names of commenters, a summary of their comments, and our responses to the comments are contained in Annex A of this notice.

**Local Matters**

*Alberta – Ministerial approval of provisions relating to corporate governance*

In Alberta, sections 8, 9 and 10 of the TR Rule relate to corporate governance of a recognized trade repository. Because these provisions relate to corporate governance, they require Ministerial approval. These provisions will become effective on May 1, 2016 with the TR Rule if Ministerial approval has been granted on or prior to May 1, 2016. Otherwise, these provisions will become effective on the date that Ministerial approval is granted.

*Alberta – Designation order of the Alberta Securities Commission*

Attached as Annex F is an order of the Alberta Securities Commission designating certain contracts and instruments to be derivatives for the purposes of the Product Determination Rule. This order applies only in Alberta, and has the effect of harmonizing the outcome of the Product Determination Rule in Alberta with the outcome in the other Participating Jurisdictions.

**Contents of Annexes**

The following annexes form part of this CSA Multilateral Notice:

Annex A	Summary of Comments and Responses
Annex B	Multilateral Instrument 91-101 <i>Derivatives: Product Determination</i>
Annex C	Companion Policy 91-101CP <i>Derivatives: Product Determination</i>
Annex D	Multilateral Instrument 96-101 <i>Trade Repositories and Derivatives Data Reporting</i>
Annex E	Companion Policy 96-101CP <i>Trade Repositories and Derivatives Data Reporting</i>
Annex F	Local Matters – Designation order of the Alberta Securities Commission

**Questions**

Questions with respect to this Notice, the final approved Instruments or Companion Policies may be referred to:

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**ANNEX A**

**SUMMARY OF COMMENTS AND RESPONSES**

to

**Proposed Multilateral Instrument 91-101 *Derivatives: Product Determination* (the Proposed Product Determination Rule) and  
Proposed Companion Policy 91-101 *Derivatives: Product Determination* (the Proposed Product Determination CP)**

and

**Proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the Proposed TR Rule) and  
Proposed Companion Policy 96-101 *Trade Repositories and Derivatives Data Reporting* (the Proposed TR CP)**

**1. Proposed Product Determination Rule and Proposed Product Determination CP**

<u>Section or Reference</u>	<u>Comment Summary</u>	<u>Response</u>
<b>Q. 1 – Does the Proposed Product Determination CP provide sufficient clarity as to the contracts and instruments that are subject to trade reporting?</b>		
<b>Q. 1</b>	Two commenters appreciated the additional explanatory guidance provided in the Proposed Product Determination CP and felt that it provides sufficient clarity.	No change required. We thank the commenters for their submissions.
<b>S. 2 – Excluded derivatives</b>		
<b>s. 2(1)</b>	<p>One commenter urged the Authorities to copy the CFTC and SEC approaches in further defining a derivative to provide an interpretation regarding the applicability of the exclusion in either paragraph 2(1)(c) (foreign exchange contracts) or 2(1)(d) (commodity contracts) from the derivative definition in the particular province.</p> <p>One commenter encouraged implementation of a system for submitting a request to the regulator to provide an interpretation of whether the exclusion in paragraph 2(1)(c) or paragraph 2(1)(d) would apply to a particular instrument.</p>	<p>No change. We believe that the Product Determination CP provides adequate guidance on the applicability of the exclusions under paragraphs 2(1)(c) and 2(1)(d) of the Product Determination Rule.</p> <p>No change. The suggested approach does not reflect the practice of the Authorities.</p>
<b>S. 2(1)(d) –</b>	A number of commenters appreciated the additional	No change. We believe that the Product Determination

<b>Commodities contracts</b>	guidance in the Proposed Product Determination CP, but urged additional clarity relating to physically delivered commodity contracts, including with respect to the intention element.	CP provides adequate guidance with respect to the intention of the counterparties.
	<p>One commenter noted that the nuances of certain commodity contracts structured to achieve balance in the supply and demand of the commodity and for risk management purposes do not easily fit into the exclusion in s. 2(1)(d).</p> <p>One commenter suggested transferring some wording from the Proposed Product Determination CP into the Proposed Product Determination Rule to provide additional clarity and commercial certainty with respect to the contracts and instruments that are or are not subject to trade reporting. The commenter suggested adding the following words to section 2(1)(d) of the Proposed Product Determination Rule: “or where cash settlement of a physical commodity contract is triggered by a termination right arising as a result of the breach of the terms of the contract or an event of default thereunder.”</p> <p>One commenter expressed a concern that the discussion of the application of s. 2(1)(d) in the Proposed Product Determination CP could suggest that standard termination provisions in a physical commodity contract could result in the contract not qualifying for the carve out from trade reporting requirements and recommended that additional clarification be provided in the Proposed Product Determination CP.</p>	No change. We believe that the Product Determination CP provides adequate guidance with respect to the contracts excluded under the Product Determination Rule.

<p><b>S. 2(1)(d)(i) – Intention requirement</b></p>	<p>One commenter noted the importance of book-outs for physical commodity market participants to manage risk, including in the natural gas and electricity markets, and recommended excluding book-outs from the requirements in the TR Rule.</p> <p>One commenter noted that book-outs provide flexibility for utility end-users in managing customer load variability and costs. The commenter was concerned with the reference to the frequency of delivery (rather than cash settlement) as a factor in inferring the intention of the counterparties.</p>	<p>No change. We believe that the Product Determination CP provides adequate guidance with respect to book-outs.</p> <p>No change. The Authorities believe that the frequency with which a counterparty to a physical commodity contract makes or takes delivery is one of a number of factors that are relevant to determining the intention of the counterparty at the time of entering into a transaction.</p>
<p><b>Q. 2 – The Proposed Product Determination Rule and Proposed Product Determination CP indicate that options to purchase commodities are derivatives but that certain optionality embedded in an agreement to purchase commodities for future delivery will not, in itself, result in the agreement being a derivative. Do you agree with this approach?</b></p>		
<p><b>Q. 2</b></p>	<p>A number of commenters supported the notion that optionality embedded in a physical commodity contract should not, in itself, result in the contract or instrument being a reportable derivative.</p>	<p>No change. We thank the commenters for their submissions.</p>
<p><b>S. 2(1)(d) – Intention requirement: embedded optionality and physically settled options</b></p>	<p>A number of commenters sought clarification whether certain types of contracts were excluded:</p> <ul style="list-style-type: none"> <li>• Variable quantity contracts (e.g., peaking contracts), including for zero-volume optionality, which may include a premium for the flexibility afforded though an additional premium included in the price for the volumes ultimately delivered or as an up-front premium or reservation fee.</li> <li>• Contracts for physical delivery of a commodity that provide for embedded optionality where the dominant characteristic of the arrangement is for physical delivery.</li> </ul>	<p>Change made. The Product Determination CP contains additional guidance with respect to embedded optionality and physically-settled commodity options.</p>

	<ul style="list-style-type: none"> <li>• Contracts that provide for a true-up mechanism.</li> <li>• Physical option contracts, where physical delivery (or purchase) of an agreed-upon quantity of a commodity is required upon election by the other counterparty or by occurrence of an external condition precedent, with no option to settle by cash or any other means.</li> <li>• Power pool contracts, where cash settlement is not allowed in place of the statutory requirement to exchange electricity through the pool.</li> <li>• Retail electricity contracts which oblige the retailer to arrange for delivery of the electricity through the power pool to the customer’s meter through the electricity system and for the customer to accept and pay for the electricity.</li> </ul> <p>A number of commenters requested clarification of the phrase “achieve an economic outcome that is, or is akin to, an option”.</p>	<p>Change made. The Product Determination CP provides additional guidance with respect to regulated pool arrangements.</p> <p>Change made. This phrase has been removed from the Product Determination CP.</p>
<p><b>S. 2(1)(d)(ii) – Settlement by delivery except where impossible or commercially unreasonable</b></p>	<p>One commenter expressed a concern that the Proposed Product Determination CP guidance on s. 2(1)(d)(ii) is confusing, as force majeure clauses typically relieve a party from any performance obligation.</p>	<p>No change. We believe that the Product Determination CP provides adequate guidance with respect to excluded contracts.</p>
<p><b>S. 2(1)(g) – Exchange-traded derivatives</b></p>	<p>One commenter proposed that block trades that are transacted subject to the rules of an exchange and disclosed to regulators in the same manner as screen-traded derivatives transactions be included in the carve-out for exchange-traded derivatives.</p>	<p>Change made. The Product Determination CP contains additional guidance interpreting “traded on an exchange” to include a contract that is made pursuant to the rules of an exchange and reported to the exchange after execution.</p>

	<p>One commenter sought clarification that a futures contract resulting from an off-facility future or an Exchange for Related Position (EFRP) is not required to be reported.</p> <p>One commenter recommended that trades of “Ancillary Services” related to the distribution of electricity in Alberta executed on WattEx should be considered to be exchange-traded and therefore not subject to trade reporting.</p>	<p>No change. We believe that the Product Determination Rule and CP provide adequate guidance with respect to excluded contracts.</p> <p>No change. We believe that the Product Determination Rule and CP provide adequate guidance with respect to excluded contracts.</p>
<p><b>Proposed Product Determination CP –</b> <i>Additional contracts not considered to be derivatives</i></p>	<p>One commenter sought confirmation that natural gas storage contracts fit the description of provision of a service, and therefore are not derivatives as defined in the Securities Act.</p> <p>One commenter encouraged moving the list of “Additional contracts not considered to be derivatives” from the Proposed Product Determination CP into the Proposed Product Determination Rule to provide greater clarity and certainty.</p>	<p>No change. We believe that the Product Determination Rule and CP provide adequate guidance with respect to excluded contracts, and note that the Product Determination Rule applies only to the TR Rule at this time.</p> <p>No change. We believe that the Product Determination Rule and CP provide adequate guidance with respect to excluded contracts.</p>
<p><b>Q. 3 – In New Brunswick, Nova Scotia and Saskatchewan the definition of derivative specifically excludes a contract or instrument if the contract or instrument is an interest in or to a security and a trade in the security under the contract or instrument would constitute a distribution. In these provinces these contracts or instruments are defined as securities. Is the inclusion of (former) subsection 3(6) necessary given that these provinces have such a carve-out?</b></p>		
<p><b>Q. 3</b></p>	<p>One commenter submitted that the inclusion of s. 3(6) is necessary so that market participants would not have to refer to their applicable Securities Act.</p>	<p>Change made. We have taken this comment into consideration, but have removed the provision as it is redundant. We note that former s. 3 has been collapsed into s. 2.</p>

## 2. Proposed TR Rule and Proposed TR CP

<u>Section or Reference</u>	<u>Comment Summary</u>	<u>Response</u>
<b>General (unassigned)</b>		
<b>Harmonization</b>	<p>One commenter urged harmonization of trade reporting requirements in all Canadian jurisdictions.</p> <p>One commenter stressed the importance of harmonizing definitions (such as “derivative” and “security”) in each Canadian jurisdiction, as participants operate on a national basis and derivatives cross provincial borders on a regular basis.</p>	<p>We thank the commenters for their submissions, and continue to work with our CSA colleagues to reach appropriate harmonization on the requirements and exemptions under the TR Rule.</p> <p>However, we note that statutory harmonization is outside the scope of the Instruments.</p>
<b>Inter-affiliate derivatives reporting</b>	<p>A number of commenters urged that derivatives between affiliated entities not be subject to derivatives trade reporting requirements, for reasons that include: (i) such derivatives do not create systemic risk; (ii) reporting of inter-affiliate derivatives would result in an end-user being the reporting counterparty for its inter-affiliate derivatives, with the resulting financial burden associated with reporting; (iii) the limited and conditional No-Action Relief for inter-affiliate derivatives under CFTC jurisdiction in the U.S.</p> <p>One commenter suggested that the test for an inter-affiliate exemption from reporting should be with respect to ownership as financial reporting requirements may exist that could complicate a test based on financial reporting practices.</p>	<p>No change. We direct the commenters to proposed amendments to the Local TR Rules in Manitoba, Ontario and Québec and note that we anticipate publishing corresponding proposed amendments in the near future. We have taken these comments into consideration and are working with our CSA colleagues towards a harmonized approach to inter-affiliate derivatives reporting.</p>

<b>Part 1 – Definitions and interpretation</b>		
<b>S. 1 – Definitions and interpretation</b>		
<b>“derivatives dealer”</b>	<p>A number of commenters noted concerns with the definition of derivatives dealer in the TR Rule and urged greater clarity with respect to:</p> <ul style="list-style-type: none"> <li>• the jurisdiction in which an entity must be “engaging in the business of trading in derivatives”;</li> <li>• the concept of “engaging in the business of trading in derivatives”;</li> <li>• whether the derivatives dealer concept will be applied on a transaction-specific basis or more generally based on the entity’s collective business activities;</li> </ul> <p>One commenter noted that concepts applicable to securities markets, such as the concept of being “in the business of trading in derivatives” and elements determinative of securities dealing activity, when applied with only nominal changes to elements intended to be determinative of derivatives dealing activity, are poorly suited to derivatives markets, which are fundamentally different from securities markets.</p> <p>One commenter indicated that a de minimis exemption from qualification as a derivatives dealer should be included in the discussion of factors to consider when determining whether an entity is a derivatives dealer for the purpose of the trade reporting rule.</p>	<p>Change made. Additional guidance has been added to the TR CP in the guidance relating to the definition of “derivatives dealer” with respect to:</p> <ul style="list-style-type: none"> <li>• the jurisdiction in which an entity conducts activities of a derivatives dealer;</li> <li>• the factors to be considered in determining whether an entity is a derivatives dealer for the purpose of the TR Rule;</li> <li>• a holistic consideration of an entity’s activities, rather than a transaction-specific approach, to determine whether an entity is a derivatives dealer for the purpose of the TR Rule.</li> </ul> <p>No change. The objective of determining whether an entity is a derivatives dealer for the purpose of the TR Rule is to assign the reporting obligations to the more sophisticated counterparty. We do not believe that a de minimis exemption from the concept of “derivatives dealer” in the TR Rule will help to achieve that objective.</p>

<p><b>“local counterparty”</b></p>	<p><i>Exclusion of “derivatives dealer”</i></p> <p>A number of commenters supported the exclusion of derivatives dealers from the definition of local counterparty in the TR Rule.</p> <p>Comments were mixed on whether the exclusion may lead to uncertainty in whether a foreign counterparty that is the derivatives dealer for the derivative would be required to act as the reporting counterparty.</p>	<p>Change made. “Derivatives dealer” has been reinserted into the definition of “local counterparty” to harmonize with the corresponding definition in the local TR Rules in Manitoba, Ontario and Québec.</p> <p>At the same time, the Authorities believe that derivatives data relating to derivatives that do not involve a resident counterparty is not necessary to further our respective mandates. New section 42 excludes such derivatives from the reporting requirements.</p>
	<p><i>Affiliates</i></p> <p>One commenter requested that additional guidance be provided in relation to the concept of “guaranteed affiliate” referenced in the “local counterparty” definition. In particular does the “all or substantially all” refer to all liabilities, liabilities relating to derivatives trades, derivatives obligations on a trade-by-trade or counterparty-by-counterparty basis or something else?</p> <p>One commenter suggested revising the phrase to “responsible for the liabilities related to derivative trading”.</p>	<p>Change made. The “all or substantially all” language has been moved from the TR CP into the TR Rule. We are of the view that the phrase “all or substantially all of the liabilities of the counterparty” provides sufficient clarity with respect to the extent of the guarantee expected.</p>
	<p><i>Inclusion of Individual</i></p> <p>One commenter submitted that the inclusion of “individual” is a significant divergence from the Local TR Rules and will cause significant new compliance costs for market participants.</p>	<p>Change made. “Individual” has been removed from the definition of “local counterparty” to harmonize with the corresponding definition in the local TR Rules in Manitoba, Ontario and Québec.</p>
<p><b>“reporting clearing</b></p>	<p>One commenter expressed concern arising from the use of the term “reporting clearing agency”:</p>	



	<ul style="list-style-type: none"> <li>• There should be certainty for clearing agencies that when they assume the role of a reporting clearing agency in a province that they will not be subject to any obligations beyond those prescribed in the TR Rules.</li> </ul>	<p>No change. Obligations on clearing agencies operating in a jurisdiction are set out in the securities legislation of the jurisdiction and in any recognition or exemption order granted by the Authority.</p>
	<ul style="list-style-type: none"> <li>• The Authorities should maintain a list of clearing agencies that are recognized, exempted or have provided a written undertaking, to provide greater transparency with respect to which clearing agencies have officially assumed the role of a reporting clearing agency.</li> <li>• There may be gaps in the reporting of cleared derivatives, as a clearing agency that is not recognized or exempted in the jurisdiction is not obligated to accept the role of a reporting clearing agency.</li> </ul>	<p>No change. We believe that counterparties to cleared derivatives should ascertain from the clearing agency whether the clearing agency intends to comply with its obligations under the TR Rule. We note that the website of each Authority contains information about clearing agencies that have been recognized or exempted from recognition in the jurisdiction.</p>
	<ul style="list-style-type: none"> <li>• Neither a prescribed form nor specifications for a written undertaking to be provided by the clearing agency is included in TR Rule or the TR CP. The undertaking may not be necessary, as clearing agencies are voluntarily fulfilling the role of the reporting clearing agency under the Manitoba and Quebec Local TR Rules, without such an agreement.</li> </ul>	<p>No change. The Authorities will monitor compliance with the reporting obligations under the TR Rule and determine whether changes are necessary.</p>
<p><b>“affiliated entity” and “control”</b></p>	<p>One commenter strongly urged a singular, broad definition of affiliated entity across all of the derivatives rules in Canada, including in the trade reporting rules for determining local counterparty status or in the context of an inter-affiliate exemption. Absent harmonization, the derivatives of a pair of counterparties may be subject to public reporting under one province’s rule and not the other.</p>	<p>We continue to work with our CSA colleagues to reach harmonization on definitions, including the definition of “affiliated entity” for the purpose of the TR Rule and other OTC derivatives rules.</p>

	<p>One commenter submitted that absent harmonization, a reporting counterparty would have no choice but to obtain and rely on a representation from its counterparties with respect to their status as an affiliate under the relevant local counterparty definition without certainty as to whether provincial distinctions have been appropriately considered.</p>	<p>We understand that reporting counterparties must rely on representations made by their non-reporting counterparties, with respect to a number of elements of the reporting requirements.</p>
	<p>With respect to agreeing to a harmonized definition of affiliate, we received the following comments:</p> <ul style="list-style-type: none"> <li>• A number of commenters supported the proposed definition.</li> <li>• One commenter submitted that a wider definition of affiliate is preferable, as corporate structures may involve a variety of entities for tax purposes.</li> <li>• One commenter submitted that the definition of affiliated entity in the TR Rule seems to be sufficiently broad as it includes both partnerships and trusts.</li> <li>• One commenter appreciated that the definition in the TR Rule does not include the term “deemed”, which would imply that other relationships may also be affiliates.</li> </ul>	<p>No change. We thank the commenters for their submissions.</p>
<p><b>Part 2 – Trade Repository Recognition and Ongoing Requirements</b></p>		
<p><b>Harmonization and coordinated</b></p>	<p>Two commenters recommended the Authorities adopt identical recognition requirements to Ontario, Manitoba and Quebec.</p>	<p>No change. A trade repository recognition order granted by an Authority is outside the scope of the TR Rule.</p>

	<p>One commenter urged the Authorities to coordinate the review of trade repository applications, including a single application to for recognition from all of the Authorities.</p> <p>One commenter recommended that the Authorities review and approve trade repositories without a public comment process, in order to shorten the process and contain application costs.</p>	<p>No change. Review of applications for recognition of a trade repository is outside the scope of the TR Rule.</p> <p>No change. An Authority’s policy on public comment periods for recognition orders is outside the scope of the TR Rule.</p>
<p><b>S. 2 – Filing of initial information on application for recognition as a trade repository</b></p>		
<p><b>Former s. 2(2)(b)</b></p>	<p>One commenter recommended allowing trade repositories to file entity-level unaudited financial statements and group-level audited financial statements, consistent with exemptive relief granted in Ontario, Manitoba and Québec.</p>	<p>No change in policy. The Authorities are aware of the exemptive relief granted in relation to trade repository recognition orders in Manitoba, Ontario and Québec. We note that former s. 2(2)(b) has been moved into the TR CP.</p>
<p><b>S. 3 – Change in information by a recognized trade repository</b></p>		
<p><b>S. 3(1)</b></p>	<p>One commenter recommended that trade repositories be permitted to make immaterial changes to fees with notification the following business day, consistent with practices in Ontario, Manitoba and Québec.</p>	<p>No change. We believe that fee structures and changes to fees may have a significant impact on certain market participants, even where the changes may seem, on the whole, immaterial.</p>
<p><b>S. 12 – Fees</b></p>		
<p><b>S. 12</b></p>	<p>One commenter recommended clarifying that a trade repository is not expected to disclose confidential, proprietary or competitively-sensitive information on a public website.</p> <p>One commenter emphasized that access and data reporting fees charged by trade repositories should not be material in amount or change significantly from year to year.</p>	<p>No change. We believe that disclosure of fee structures is important because fees and fee structures may have a significant impact on certain market participants.</p>

<b>S. 15 – Communication policies, procedures and standards</b>		
<b>S. 15</b>	One commenter recommended deleting section 15, in the belief that certain data standards should not be forced upon participants for submitting to trade repositories and that trade repositories should not be forced to interconnect to one another.	No change. We note that these requirements are based on the Principles for Market Infrastructures (the “principles”). The TR CP notes that each Authority will consider the principles in its review of a trade repository’s application for recognition and in ongoing oversight.
<b>S. 17 – Rules, policies and procedures</b>		
<b>S. 17(6)</b>	One commenter recommended amending or deleting subsection 17(6) to alleviate the requirement to file proposed new or amended rules, policies and procedures for approval unless such changes apply specifically to Canadian participants.	No change in policy. We are of the view that new or amended rules, policies and procedures that do not specifically apply to Canadian participants may still indirectly affect Canadian participants, particularly where those new or amended rules apply to a Canadian participant’s counterparties. We note that former s. 17(6) has been moved into the TR CP.
<b>S. 21 – System and other operational risk requirements</b>		
<b>S. 21(8)</b>	One commenter recommended clarifying that a trade repository is not expected to disclose confidential, proprietary or competitively-sensitive information on a public website.	No change. We note that these requirements are based on the principles. The TR CP notes that each Authority will consider the principles in its review of a trade repository’s application for recognition and in ongoing oversight.
<b>S. 25 – Reporting counterparty waterfall</b>		
<b>S. 25(1)</b>	A number of commenters submitted that the streamlined reporting counterparty waterfall was clear, elegant and non-convoluted, and that the reporting obligation rests appropriately with the parties best placed to report.	No change. We thank the commenters for their submissions.

	<p>One commenter suggested that additional reporting tie-breakers should be considered, such as threshold-based distinctions, to ensure that the burden is imposed on the appropriate party, particularly in the case of disparate market participants.</p> <p>One commenter suggested clarifying that the non-reporting counterparty has no obligations to verify a report and will not be liable for a reporting counterparty's failures to comply.</p>	<p>No change. We believe that the reporting counterparty waterfall provides sufficient clarity in assignment of the reporting obligations and sufficient flexibility for counterparties at the same level of the hierarchy.</p> <p>No change. We believe that the TR Rule and the TR CP provide adequate guidance with respect to the obligations of reporting and non-reporting counterparties.</p>
<p><b>S. 25(1)</b></p>	<p>One commenter suggested a list of which companies are derivatives dealers, advisers, large derivatives participants and end users be maintained to help participants determine their roles in reporting and other obligations under the TR Rule.</p>	<p>No change. We believe that participants in the OTC derivatives market will be able to determine their roles and responsibilities under the TR Rule, including through the use of industry-standard representation letters such as those developed by ISDA and IECA.</p>
<p><b>S. 25(1)(a)</b></p>	<p>A number of commenters urged clarification in the TR Rule with respect to reporting responsibilities for cleared derivatives; in particular, the act of submitting a derivative to a clearing agency for clearing should completely discharge any reporting obligation for either counterparty to the original derivative.</p>	<p>No change. We note that reporting obligations with respect to cleared derivatives are being discussed by a number of regulators. We are monitoring these discussions and will determine whether changes are appropriate.</p>
<p><b>S. 25(1)(b)</b></p>	<p>A number of commenters were concerned that the reporting waterfall is dependent on appropriately identifying derivatives dealers, and noted the importance of this concept being clear.</p> <p>One commenter was concerned that a foreign entity that otherwise met the definition of derivatives dealer would simply refuse to act as the reporting counterparty to the derivative.</p>	<p>Change made. Additional guidance has been added to the TR CP with respect to the concept of derivatives dealer for the purpose of the TR Rule.</p>

<p><b>Former s. 25(1)(c)</b></p>	<p>One commenter urged that the “Canadian financial institution” prong be deleted from the reporting counterparty waterfall, to conform with the waterfall in Ontario Local TR Rule.</p> <p>Another commenter urged that the reference to financial institution be expanded to include foreign financial institutions, as foreign financial entities that may not qualify as a derivatives dealer in a jurisdiction should still bear the burden of trade reporting when transacting with an end-user.</p>	<p>Change made. “Canadian financial institution” has been removed from the TR Rule, including from the reporting counterparty waterfall.</p>
<p><b>Renumbered s. 25(1)(c)</b></p>	<p>A number of commenters supported the approach of allowing parties to enter into agreements regarding reporting obligations.</p> <p>Another commenter foresaw no issue with respect to parties at the same level in the reporting counterparty waterfall agreeing on whom will be the reporting counterparty.</p>	<p>No change. We thank the commenters for their submissions.</p>
<p><b>Renumbered s. 25(1)(d)</b></p>	<p>One commenter was concerned about potentially inconsistent reporting requirements for two local counterparties who are neither derivatives dealers nor Canadian financial institutions, and do not agree in writing who will report. The commenter suggested that the ISDA methodology in the Ontario TR Rule provides certainty and is well understood by market participants.</p>	<p>No change. The TR CP provides that the ISDA methodology referred to in the OSC Local TR Rule is an acceptable form of agreement.</p> <p>We note that renumbered paragraph 25(1)(d) now refers to “each counterparty”.</p>
<p><b>Former s. 25(4)</b></p>	<p>A number of commenters expressed concern relating to the proposed requirement for counterparties, who cannot agree as to which will be the reporting counterparty, to each submit the unique transaction identifier (UTI) assigned by the trade repository to the derivative:</p> <ul style="list-style-type: none"> <li>• The additional burden will create a compliance risk for</li> </ul>	<p>Change made. In consideration of comments received and in the interest of harmonization with the Local TR Rules, the proposed provision has been deleted.</p>

	<p>otherwise compliant and reporting parties if the other party fails to, or is unwilling to, provide the requisite information.</p> <ul style="list-style-type: none"> <li>• The requirement should not apply (i) to parties that report the same UTI as their counterparty, or (ii) where there is only one local counterparty in the applicable province, given that the local regulator will not gain any additional information from the stand-alone UTI report.</li> <li>• The requirement would complicate post-trade processes for non-dealers while doing little to improve the accuracy of UTIs in the regulator’s records.</li> </ul>	
<p><b>S. 26 – Duty to report</b></p>		
<p><b>S. 26(1)</b></p>	<p>One commenter sought more information about penalties for non-compliance with reporting requirements, and recommended a grace period following implementation.</p>	<p>No change. Enforcement actions and penalties for non-compliance are outside the scope of the TR Rule.</p>
<p><b>Renumbered s. 26(3)</b></p>	<p>One commenter expressed concern that a reporting counterparty is still obligated to report a derivative to a recognized trade repository, limiting the value of substituted compliance.</p> <p>One commenter encouraged Canadian regulators to enter into a Memorandum of Understanding with regulators in other jurisdictions to obtain direct access to relevant derivatives data reported pursuant to the foreign requirements, to eliminate the need for the conditions in s. 26(5)(b) and s. 26(5)(c).</p>	<p>No change. The limitations of the substituted compliance provision are necessary to ensure the Authorities’ access to trade repository data, in light of certain foreign legislative requirements that are outside of our control.</p> <p>No change. A Memorandum of Understanding with foreign regulators is outside the scope of the TR Rule.</p>

	<p>One commenter suggested that the concept of substituted compliance in s. 26(5) of the TR Rule be expanded to apply to all reporting counterparties.</p>	<p>No change. We believe that the objectives of the TR Rule are better served by data that is comparable across derivatives; data reported pursuant to foreign regimes will not necessarily be comparable, as different data fields maybe required to be reported.</p>
	<p>One commenter encouraged accommodation for a trade repository that (i) is a subsidiary entity of a recognized trade repository, or (ii) wishes to obtain recognition only for the purposes of facilitating substituted compliance. However, another commenter submitted that all trade repositories operating under the Authorities’ oversight should be subject to the application process, to ensure all applicants fully meet the TR Rule’s core principles and operating requirements.</p>	<p>No change. Each Authority will undertake an appropriate review of an application for recognition by any trade repository.</p>
	<p>Another commenter noted that, if derivatives data resides in a trade repository in another jurisdiction, there is additional complexity for data access by the Authorities and further costs to this trade repository to ensure this access, and that a trade repository operating under substituted compliance will need to pass these additional costs along to the reporting parties.</p>	<p>No change. We note that the trade repository would not be operating under substituted compliance; rather, the reporting counterparty would benefit from substituted compliance with its reporting obligations.</p>
	<p>One commenter requested clarity on when the list of equivalent trade reporting laws will be provided in Appendix B.</p>	<p>No change. We anticipate publishing proposed amendments to the TR Rule in the near future.</p>
<p><b>Renumbered s. 26(6) and TR CP</b></p>	<p>One commenter wrote that the phrase “as soon as technologically practicable” implies “as soon as the fastest available technology allows” and, inconsistent with the guidance offered in the TR CP, does not consider costs or intermediary administrative steps on behalf of the user. The commenter suggested using a term such as “as soon as commercially reasonable” or “as soon as reasonably</p>	<p>Change made. Renumbered s. 26(6) now requires a reporting counterparty to report an error or omission as soon as practicable after discovery of the error or omission.</p>



	practicable”.	
<b>S. 28 – Legal entity identifiers</b>		
<b>S. 28</b>	<p>One commenter urged a direct obligation in the TR Rule requiring all counterparties to obtain a LEI.</p> <p>A number of commenters urged that the Authorities permit a reporting counterparty to submit an alternative identifier or client code in limited circumstances such as:</p> <ul style="list-style-type: none"> <li>• while the requirement to obtain an LEI expands globally;</li> <li>• where the non-reporting party has not obtained a LEI;</li> <li>• where the non-reporting party is not eligible for an LEI.</li> </ul>	<p>We direct the commenters to proposed amendments to the Local TR Rules in Manitoba, Ontario and Québec and note that staff anticipate publishing corresponding proposed amendments in the near future. We are working with our CSA colleagues towards a harmonized approach to legal entity identifiers.</p>
<b>S. 29 – Unique transaction identifiers (UTIs)</b>		
<b>S. 29(2)</b>	<p>One commenter urged that the TR rule should state that a trade repository should only create a UTI where: (i) the trade is not centrally cleared and not executed on a trading platform; (ii) where there is not already an existing unique identifier assigned to the transaction; or (iii) at the request of the reporting party.</p>	<p>No change. We believe that subsection 29(2) of the TR Rule provides sufficient flexibility with respect to UTI assignment. We note efforts are under way to develop international standards for UTIs.</p>
<b>S. 30 – Unique product identifiers</b>		
<b>S. 30</b>	<p>One commenter recommended flexibility with respect to product taxonomies, to ensure more useful reporting to the Authorities, relieve reporting counterparties of the burden of creating a unique product identifier (UPI) when a UPI is not available in a particular taxonomy, and conform to other trade reporting rules.</p>	<p>Change made to introduce flexibility into the assignment of a UPI. We note efforts are under way to develop international standards for UTIs.</p>

<b>S. 33 – Valuation data</b>		
<b>S. 33(1)</b>	One commenter urged that Canadian financial institutions that are not derivatives dealers should not be required to submit valuation data on a daily basis but instead on a quarterly basis like other non-dealers, to harmonize with Ontario and the U.S.	Change made. “Canadian financial institution” has been removed from the TR Rule, including from the provisions relating to valuation data reporting.
<b>S. 34 – Pre-existing derivatives</b>		
<b>S. 34</b>	One commenter expressed concern that a reporting counterparty may not be able to predict which derivatives may be subject to a negotiated unwind, novation, credit event or other termination event that would render the trade no longer subject to reporting and, therefore, to the deemed consent provision, and thus may breach data privacy restrictions. The commenter suggested clarifying that the scope of reportable pre-existing derivatives excludes those which are no longer live as of the deadline or the date on which the reporting counterparty fulfills its obligation.	Change made. Paragraphs 34(1)(c) and 34(2)(c) of the TR Rule now provide that contractual obligations be outstanding as of the earlier of the date that the derivative is reported and the relevant deadline for reporting pre-existing derivatives.
<b>S. 37 – Data available to regulators</b>		
<b>S. 37(1)(c)</b>	One commenter recommended conforming valuation data reporting with the approach under trade repository recognition orders in Ontario, Quebec and Manitoba and under CFTC rules.	No change. We anticipate that trade repository recognition orders granted by the Authorities will be consistent with those granted in Manitoba, Ontario and Québec.
<b>S. 37(3)</b>	One commenter suggested replacing the phrase “best efforts” with the phrase “reasonable efforts”. Another commenter requested clarification on what would	No change. We believe that the TR CP provides adequate guidance on the obligations of a reporting counterparty.

	be expected of a reporting counterparty under this section – e.g., is instructing the trade repository to provide access sufficient?	
<b>S. 38 – Data available to counterparties</b>		
<b>S. 38(4)</b>	One commenter expressed concern that the “deemed consent” provision in subsection 38(3) would override any confidentiality agreement or section within an agreement between the counterparties and requested the inclusion of an explicit safe harbour that is similar to the safe harbour in U.S. rules for large trader reporting of physical commodity swaps.	No change. The large trader reporting of physical commodity swaps rules in the U.S. do not serve a comparable objective to the TR Rule.
<b>S. 39 – Data available to public</b>		
<b>s. 39</b>	<p><i>Confidentiality concerns</i></p> <p>Two commenters expressed concern that publicly disseminating trade data relating to illiquid derivative markets within one or two days of trade execution may disclose commercially sensitive information, compromising the ability to effectively hedge or conduct business, including entering into pricing/ supply agreements, by (1) enabling the identification of one or both of the counterparties, (2) providing information relating to a key business contracts, or (3) increasing the total cost of transacting to end-users hedging commercial exposures.</p> <p>One commenter noted that making transaction data available to the public was not part of the G20 Commitments.</p>	We direct the commenters to proposed amendments to the Local TR Rules in Manitoba, Ontario and Québec and note that staff anticipate publishing corresponding proposed amendments in the near future. We are working with our CSA colleagues towards a harmonized approach that we believe adequately balances the objectives of confidentiality of market participants and transparency in the market.
	<p><i>Timing of public dissemination</i></p> <p>A number of commenters urged harmonization by Canadian authorities with respect to timing for public</p>	We direct the commenters to proposed amendments to the Local TR Rules in Manitoba, Ontario and Québec and note that staff anticipate publishing

	dissemination of transaction-level data for derivatives involving different types of counterparties, including Canadian financial institutions.	corresponding proposed amendments in the near future.
<b>S. 40 – Commodity derivative</b>		
<b>S. 40</b>	<p><i>Harmonization</i></p> <p>One commenter submitted that, while it supports an exclusion for the reporting of commodity derivatives for end-users, it urged harmonization across trade reporting rules in Canada. If it is determined that the threshold amount or calculation should be different than currently provided in the Local TR Rules, the Local TR Rules should be harmonized with the TR Rule.</p>	We continue to work with our CSA colleagues to reach appropriate harmonization on the requirements and exemptions under the TR Rule.
	<p><i>Market impact of the exemption</i></p> <p>A number of commenters submitted that, regardless of approach, the exemption will not have a significant impact, because:</p> <ul style="list-style-type: none"> <li>• The nature of the commodity derivatives market does not lend itself to speculation; rather commodity derivatives tend to serve an end-user community with direct exposures.</li> <li>• There are few commodity derivative derivatives between end-users. Derivatives involving only one end-user would be required to be reported by the other party.</li> </ul>	We have carefully reviewed all of the comments received, and thank the commenters for their submissions.
	<p><i>Proposed \$250 million notional threshold</i></p> <ul style="list-style-type: none"> <li>• One commenter submitted that the \$500 000 threshold is so low that it is almost equivalent to having no exemption.</li> </ul>	We have carefully reviewed all of the comments received, and thank the commenters for their submissions. After considering the comments and weighing a number of factors we believe that we have struck an appropriate balance between

	<ul style="list-style-type: none"> <li>• One commenter suggested that a threshold in the order of \$10 million would be more appropriate than the \$500 000 threshold for smaller participants in the natural gas market.</li> <li>• A number of commenters were supportive of the \$250 million threshold.</li> <li>• One commenter suggested that the exemption be available where only one counterparty is below the \$250 million threshold and neither party is a derivatives dealer.</li> <li>• Some commenters were concerned that the \$250 million threshold remains too low and may result in reporting for derivatives users who pose little or no systemic risk.</li> <li>• One commenter submitted that a number of companies who trade in commodity-based OTC derivatives may still do so for speculative purposes at amounts far lower than \$250 million and that these derivatives should be reportable.</li> <li>• Three commenters suggested a threshold of at least \$1 billion</li> </ul>	<p>achieving the policy aims of the TR Rule and mitigating the regulatory burden on smaller end-users of commodity-based derivatives.</p> <p>We have retained the \$250 million threshold amount, but have altered the calculation of the notional amount outstanding for the purposes of the threshold. The revised provision requires including all outstanding commodity-based derivatives entered into by a local counterparty and each affiliated entity that is also a local counterparty in a jurisdiction of Canada, excluding inter-affiliate derivatives.</p>
	<p><i>Calculation method and threshold metric</i></p> <ul style="list-style-type: none"> <li>• A number of commenters urged that the threshold be based on net exposure, e.g., for derivatives executed with the same counterparty under the same master agreement, as net exposure is seen as a better measure of the potential risk that the entity represents to the market.</li> </ul>	<p>No change. We believe that a counterparty’s month-end gross notional amount outstanding provides a useful proxy for the counterparty’s derivatives activity.</p>

	<ul style="list-style-type: none"> <li>• One commenter noted that it may be easier for some parties to calculate their aggregate notional based on a single asset class rather than on all outstanding derivatives.</li> </ul> <p>Several commenters sought clarification on whether the \$250 million aggregate notional value calculation includes:</p> <ul style="list-style-type: none"> <li>• transactions entered into on an exchange,</li> <li>• derivatives with Canadian financial institutions, and</li> <li>• derivatives with affiliated entities.</li> </ul>	<p>No change. We thank the commenters for their submissions.</p> <p>Changes made. The TR Rule now explicitly refers to the scope of instruments considered to be “derivatives” under the TR Rule, and specifies the scope of contracts to be included in the calculation of a counterparty’s month-end gross notional amount outstanding.</p>
	<p><i>Implementation considerations</i></p> <p>A number of commenters were concerned that Option #1 in the Proposed TR Rule implied that the parties must know each others’ status under the provision to determine whether the derivative may be exempted from reporting, which would require specific representations and separate systems logic to determine whether the exemption applies in each province relevant to a local counterparty. Such complexity and burden would undermine the value of the exclusion.</p>	<p>Change made. The exemption provision has been redrafted to clarify that the exemption applies to a local counterparty if it is below the prescribed threshold.</p>
	<p>A number of commenters noted the importance of an exemption that can be practically administered, and raised practical concerns with calculating a fluctuating aggregate notional value:</p> <ul style="list-style-type: none"> <li>• At what point in time do the reporting requirements apply to a counterparty that temporarily exceeds the threshold?</li> <li>• If a counterparty’s exposure moves above and below the threshold, are they then obliged to report existing contracts?</li> </ul>	<p>No change. We direct the commenters to proposed amendments anticipated to be published in the near future.</p> <p>No change. We direct the commenters to proposed amendments anticipated to be published in the near future.</p>

	<ul style="list-style-type: none"> <li>• Can an entity qualify for the exemption again at a later date if the aggregate notional value of outstanding commodity derivatives falls below \$250 million?</li> <li>• Assuming notional amounts should be converted to Canadian dollars for aggregation, at what date and/or exchange rate should they be converted?</li> </ul>	<p>Change made. The TR Rule now provides that a local counterparty qualifies for the exemption if it stays below the threshold for 12 months.</p> <p>Change made. The TR CP now provides that notional amount currency conversions are made at the time of the transaction, based on official published exchange rates.</p>
<b>S. 43 – Exemption – general</b>		
<b>Renumbered s. 43</b>	One commenter urged the Authorities to offer a mechanism for a participant to make a single request for exemptive relief under the TR Rule from all or more than one of the Authorities.	No change. Cross-jurisdictional coordination on applications for exemptive relief is outside the scope of the Instruments.
<b>S. 44 – Transition period</b>		
<b>Renumbered s. 44(1)</b>	<p>A number of commenters supported staged implementation for non-dealers as both necessary and appropriate.</p> <p>One commenter suggested that staged implementation of reporting requirements would not be necessary if sufficient time is given before the obligations commence.</p>	No change. The separate phase-in dates for the start of reporting obligations on (i) clearing agencies and derivatives dealers and (ii) all other counterparties have been retained in the TR Rule.
<b>Ss. 43(2) and (3)</b>	One commenter submitted that a separate, subsequent phase for reporting pre-existing derivatives will benefit data quality as reporting counterparties will not be working to prepare for and comply with the requirements to report both new derivatives and pre-existing derivatives simultaneously.	No change. The separate phase-in period for pre-existing derivatives has been retained in the TR Rule.
<b>S 45 – Effective Date</b>		
<b>Renumbered s. 45</b>	Comments were mixed on an appropriate phase-in of obligations under the TR Rule to allow reporting counterparties to onboard to a recognized trade repository	Change made. We have provided a phase-in period of more than 6 months following publication of the final TR Rule before the reporting obligations begin for clearing agencies and derivatives dealers, and an

	<p>and implement and test systems:</p> <ul style="list-style-type: none"> <li>• One commenter supported the proposed three month period for trade repositories to seek and obtain recognition.</li> <li>• A number of commenters urged a minimum period of 6 months from the effective date of the final instrument and/or the recognition of at least one TR in the jurisdiction.</li> <li>• Two commenters suggested a period of 1 year from the date final rules are released.</li> <li>• One commenter recommended that implementation and transition dates not coincide with the end of the natural gas contract year, as companies’ resources are focused on negotiating physical natural gas annual contracts.</li> </ul>	<p>additional three month period before reporting obligations begin for all other counterparties.</p>
<p><b>Appendix A – Data fields</b></p>		
<p><b>General</b></p>	<p>One commenter commended the Authorities for harmonizing the data fields in Appendix A to the corresponding data fields in Ontario, Quebec and Manitoba, and urged that, as in Ontario, Quebec and Manitoba, the field names reported on derivatives should not have to exactly match the field names listed in Appendix A, as long as the necessary data is reported.</p>	<p>No change. We note that the Authorities seek an approach to reporting of data fields that is harmonized across the CSA.</p>
<p><b>“delivery type” and “delivery point”</b></p>	<p>One commenter requested clarification on the “delivery type” and “delivery point” data fields, which indicate whether a derivative is settled physically or in cash, despite the exclusion in the Product Determination Rule for derivatives that are intended to be settled physically.</p>	<p>No change. We believe that the Product Determination Rule and Product Determination CP provide adequate guidance on what derivatives are subject to the reporting requirements under the TR Rule. We also note that the instructions in Appendix A state that the reporting counterparty is not required to provide a response to a field that is not applicable to the derivative.</p>



**List of Commenters:**

1. BP Canada Energy Group ULC
2. The Canadian Advocacy Council (CFA Institute)
3. The Canadian Market Infrastructure Committee
4. Capital Power
5. Enbridge Inc.
6. Encana Corporation
7. Enmax Corporation
8. Fasken Martineau DuMoulin LLP
9. Intercontinental Exchange Trade Vault, LLC
10. The International Energy Credit Association
11. The International Swaps and Derivatives Association, Inc.
12. Markit North America Inc.
13. SaskEnergy Incorporated
14. Sutherland Asbill & Brennan LLP
15. TMX Group Limited
16. TransCanada Corporation
17. FortisBC Energy Inc. and FortisBC Inc.
18. Dentons LLP

## ANNEX B

### MULTILATERAL INSTRUMENT 91-101 *DERIVATIVES: PRODUCT DETERMINATION*

#### Definitions and interpretation

1. (1) This Instrument applies to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*.
- (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 British Columbia, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Yukon, in this Instrument, “derivative” means a contract or instrument if each of the following apply:
  - (a) it is an option, swap, future, forward, or other financial or commodity contract or instrument whose market price, value, or delivery, payment or settlement obligations are derived from, referenced to or based on an underlying interest including a value, price, index, event, probability or thing;
  - (b) it is a “security”, as defined in securities legislation, solely by reason of it being one or more of the following:
    - (i) a document evidencing an option, subscription or other interest in a security;

- (ii) a futures contract;
- (iii) an investment contract;
- (iv) an option.

(5) In this Instrument, subject to subsection 2(1), “specified derivative” means

- (a) in Alberta, New Brunswick, Nova Scotia and Saskatchewan, a “derivative” as defined in the securities legislation of the local jurisdiction, and
- (b) in British Columbia, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Yukon, a “derivative” as defined in subsection 1(4).

### **Excluded contracts and instruments**

2. (1) Despite subsection 1(5), in this Instrument, “specified derivative” does not include any of the following:

- (a) a contract or instrument that is regulated by any of the following:
  - (i) gaming control legislation of Canada or of a jurisdiction of Canada;
  - (ii) gaming control legislation of a foreign jurisdiction, if each of the following apply to the contract or instrument:
    - (A) it is entered into outside of Canada;
    - (B) it would be regulated under gaming control legislation of Canada or the local jurisdiction if it had been entered into in the local jurisdiction;
- (b) an insurance contract or an income or annuity contract or instrument, entered into
  - (i) with an insurer holding a licence under insurance legislation of Canada or a jurisdiction of Canada and regulated as insurance under that legislation, or
  - (ii) outside of Canada with an insurer holding a licence under insurance legislation of a foreign jurisdiction, if it would be regulated as insurance under insurance legislation of Canada or of the local jurisdiction if it had been entered into in the local jurisdiction;

- (c) a contract or instrument for the purchase and sale of currency if all of the following apply:
  - (i) except if all or part of the delivery of the currency referenced in the contract or instrument is rendered impossible or commercially unreasonable by an intervening event or occurrence not reasonably within the control of the counterparties to the contract or instrument, their affiliated entities or their agents, the contract or instrument requires settlement by the delivery of the currency referenced in the contract or instrument on or before either of the following:
    - (A) the 2nd business day after the date of execution of the transaction;
    - (B) if the contract or instrument was entered into concurrently with a related trade in a security, the settlement date for the related trade in the security;
  - (ii) the counterparties intended, at the time of the execution of the contract or instrument, that the contract or instrument would be settled by the delivery of the currency referenced in the contract or instrument within the time periods set out in subparagraph (i);
  - (iii) the counterparties to the contract or instrument do not enter into an arrangement or practice that would permit the settlement date of the contract or instrument to be extended or that has the effect of extending the settlement date of the contract or instrument, whether by simultaneously terminating the contract or instrument and entering into another contract or instrument with similar terms or otherwise;
- (d) a contract or instrument for delivery of a commodity, other than currency, to which each of the following apply:
  - (i) the counterparties intended, at the time of execution of the transaction, that the contract or instrument would be settled by delivery of the commodity;
  - (ii) the contract or instrument does not permit cash settlement in place of delivery of the commodity except if all or part of the delivery is rendered impossible or commercially unreasonable by an intervening event or occurrence not reasonably within the control of the counterparties, their affiliated entities or their agents;
- (e) a contract or instrument that is evidence of a deposit issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada), by an association to which the

*Cooperative Credit Associations Act* (Canada) applies or by a company to which the *Trust and Loan Companies Act* (Canada) applies;

- (f) a contract or instrument that is evidence of a deposit issued by a credit union, league, caisse populaire, loan corporation, treasury branch or trust company operated under legislation in a jurisdiction of Canada;
- (g) a contract or instrument that is traded on an exchange if that exchange is any of the following:
  - (i) recognized by a securities regulatory authority in a jurisdiction of Canada;
  - (ii) exempt from recognition by a securities regulatory authority in a jurisdiction of Canada;
  - (iii) an exchange in a foreign jurisdiction that is a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding;
  - (iv) in Northwest Territories, Nunavut, Prince Edward Island and Yukon, designated under the securities legislation of the local jurisdiction;
- (h) in New Brunswick, Nova Scotia and Saskatchewan, a contract or instrument that would be a security but for the exclusion of derivatives from the definition of security, unless the contract or instrument would be a security solely by reason of it being an investment contract;
- (i) in British Columbia, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Yukon, a contract or instrument to which all of the following apply:
  - (i) the contract or instrument is issued by any of the following:
    - (A) an issuer;
    - (B) a control person of an issuer;
    - (C) an insider of an issuer;
  - (ii) the underlying interest of the contract or instrument is a security of the issuer or of an affiliated entity of the issuer;
  - (iii) the contract or instrument is used for either or both of the following purposes:

- (A) to compensate or incent the performance of a director, employee or service provider of the issuer or an affiliated entity of the issuer;
- (B) as a financing instrument in connection with the raising of capital for the issuer or an affiliated entity of the issuer or for the acquisition of a business or property by the issuer or an affiliated entity of the issuer.

In the securities legislation of New Brunswick, Nova Scotia and Saskatchewan, contracts or instruments referred to in paragraph 2(1)(i) are securities and do not fall within the definition of “derivative” and, as a result, these contracts or instruments are not subject to the requirements in the specified instrument.

The Alberta Securities Commission has made an order designed to achieve the same effect as subparagraphs 1(4)(b)(iii) and (iv) and paragraph 2(1)(i).

- (2) For the purposes of paragraph (1)(g), a reference to “exchange” does not include the following:
  - (a) a swap execution facility as that term is defined in the Commodity Exchange Act, 7 U.S.C. §1a(50) (United States);
  - (b) a security-based swap execution facility as that term is defined in the 1934 Act;
  - (c) a multilateral trading facility as that term is defined in Directive 2014/65/EU Article 4(1)(22) of the European Parliament;
  - (d) an organized trading facility as that term is defined in Directive 2014/65/EU Article 4(1)(23) of the European Parliament;
  - (e) an entity organised in a foreign jurisdiction that is similar to an entity described in any of paragraphs (a) to (d).

### **Effective date**

- 3. (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.

**ANNEX C**

**COMPANION POLICY 91-101  
*DERIVATIVES: PRODUCT DETERMINATION***

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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 91-101 *Derivatives: Product Determination* (the “Instrument”) interpret various matters in the Instrument.

Except for Part 1, the numbering and headings of sections and subsections in this Policy generally correspond to the numbering and headings in the Instrument. Any general guidance for a section appears immediately after the section name. Any specific guidance on a section in the Instrument 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, “contract” is interpreted to mean “contract or instrument”.

**(2)** The Instrument includes a definition of the term “derivative” that will apply in local jurisdictions that do not have a definition of derivatives in their securities legislation that is consistent with the definitions in the securities legislation in Alberta, New Brunswick, Nova Scotia and Saskatchewan. In Alberta, the definition of “derivative” in the *Securities Act* (Alberta) includes a security or class of securities designated to be a derivative.

**(3)** The Instrument is drafted in the form of a definition of the term “specified derivative”, to specify the scope of derivatives to which certain references and requirements relating to over-the-counter (**OTC**) derivatives apply. It is intended that the term “specified derivative” will capture the same contracts and instruments in each of the participating jurisdictions.

## **PART 2 GUIDANCE**

### **Excluded contracts and instruments**

Section 2(1) provides that “specified derivative”, as defined in subsection 1(5), does not include certain categories of contracts that fall under the definition of derivative but, for a variety of reasons, should be excluded from certain requirements relating to OTC derivatives.



## **2. (1)(a) *Gaming contracts***

Paragraph 2(1)(a) of the Instrument excludes certain domestic and foreign gaming contracts from the definition of “specified derivative”.

While a gaming contract may come within the definition of “derivative”, it is generally not recognized as being a financial derivative and typically does not pose the same potential risk to the financial system as do other derivatives products. The participating jurisdictions are of the view that certain requirements relating to OTC derivatives are not appropriate for a product that is subject to gaming control legislation of Canada (or a jurisdiction of Canada), or equivalent gaming control legislation of a foreign jurisdiction.

With respect to subparagraph 2(1)(a)(ii), a contract that is regulated by gaming control legislation of a foreign jurisdiction would only qualify for this exclusion if: (A) it is entered into outside of Canada, and (B) it would be considered a gaming contract under domestic legislation. If a contract would be treated as a derivative if entered into in the local jurisdiction, but would be considered a gaming contract in a foreign jurisdiction, the contract does not qualify for this exclusion, irrespective of its characterization in the foreign jurisdiction.

## **(b) *Insurance contracts and income or annuity contracts***

Paragraph 2(1)(b) of the Instrument excludes an insurance contract or income or annuity contract from the definition of “specified derivative” if the contract meets the criteria in subparagraphs 2(1)(b)(i) and (ii). A reinsurance contract would be considered to be an insurance contract or income or annuity contract.

While an insurance contract or income or annuity contract may come within the definition of “derivative”, it is generally not recognized as a financial derivative and typically does not pose the same potential risk to the financial system as do other derivatives products. The participating jurisdictions are of the view that certain requirements relating to OTC derivatives are not appropriate for contracts governed by the insurance legislation of Canada or a jurisdiction of Canada, or equivalent insurance legislation of a foreign jurisdiction.

Certain derivatives that have characteristics similar to insurance contracts or income or annuity contracts but that are not subject to regulation under insurance legislation, including credit derivatives and climate-based derivatives, will be treated as derivatives and are not excluded from the definition of “specified derivative” under paragraph 2(1)(b) as insurance contracts or income or annuity contracts.

In order to qualify for this exclusion, subparagraph 2(1)(b)(i) requires an insurance contract or income or annuity contract to be entered into with a domestically licensed insurer and to be regulated as an insurance contract or income or annuity contract under insurance legislation of Canada or a jurisdiction of Canada. Therefore, for example, an interest rate derivative entered into by a licensed insurance company would not be an excluded derivative.

With respect to subparagraph 2(1)(b)(ii), an insurance contract or income or annuity contract that is made outside of Canada would only qualify for this exclusion if it would be regulated under insurance legislation of Canada or the local jurisdiction if made in the local jurisdiction. Where a contract would otherwise be treated as a derivative if entered into in the local jurisdiction, but is considered an insurance contract in a foreign jurisdiction, the contract does not qualify for this exclusion, irrespective of its characterization in the foreign jurisdiction. Subparagraph 2(1)(b)(ii) is included to address the situation where a local counterparty purchases insurance for an interest that is located outside of Canada and the insurer is not required to be licensed in Canada or any jurisdiction of Canada.

**(c) *Currency exchange contracts***

Paragraph 2(1)(c) of the Instrument excludes a short-term contract for the purchase and sale of a currency from the definition of “specified derivative” if the contract is settled within the time limits set out in subparagraph 2(1)(c)(i). This provision is intended to apply exclusively to contracts that facilitate the conversion of one currency into another currency specified in the contract. These currency exchange services are often provided by financial institutions or other businesses that exchange one currency for another for clients’ personal or business use (e.g., for purposes of travel or to make payment of an obligation denominated in a foreign currency).

Timing of delivery (subparagraph 2(1)(c)(i))

To qualify for this exclusion, the contract must require physical delivery of the currency referenced in the contract within the time periods prescribed in subparagraph 2(1)(c)(i). If a contract does not have a fixed settlement date or otherwise allows for settlement beyond the prescribed periods or permits settlement by delivery of a currency other than the currency referenced in the contract, it will not qualify for this exclusion.

Clause 2(1)(c)(i)(A) applies to a transaction that settles by delivery of the referenced currency within two business days – being the industry standard maximum settlement period for a spot foreign exchange transaction.

Clause 2(1)(c)(i)(B) allows for a longer settlement period if the foreign exchange transaction is entered into contemporaneously with a related securities trade. This exclusion reflects the fact that the settlement period for certain securities trades can be three or more days. In order for the provision to apply, the securities trade and foreign exchange transaction must be related, meaning that the currency to which the foreign exchange transaction pertains was used to facilitate the settlement of the related security purchase.

Where a contract for the purchase or sale of a currency provides for multiple exchanges of cash flows, all such exchanges must occur within the timelines prescribed in subparagraph 2(1)(c)(i) in order for the exclusion to apply.

Settlement by delivery except where impossible or commercially unreasonable  
(subparagraph 2(1)(c)(i))

Subparagraph 2(1)(c)(i) requires that, to qualify for the exclusion, a contract must not permit settlement in a currency other than what is referenced in the contract unless delivery is rendered impossible or commercially unreasonable as a result of events not reasonably within the control of the counterparties.

Settlement by delivery of the currency referenced in the contract requires the currency contracted for to be delivered and not an equivalent amount in a different currency. For example, where a contract references Japanese Yen, such currency must be delivered in order for this exclusion to apply. We consider delivery to mean actual delivery of the original currency contracted for either in cash or through electronic funds transfer. In situations where settlement takes place through the delivery of an alternate currency or account notation without actual currency transfer, there is no settlement by delivery and therefore this exclusion would not apply.

The participating jurisdictions consider events that are not reasonably within the control of the counterparties to include events that cannot be reasonably anticipated, avoided or remedied. An example of an intervening event that would render delivery to be commercially unreasonable would include a situation where a government in a foreign jurisdiction imposes capital controls that restrict the flow of the currency required to be delivered. A change in the market value of the currency itself will not render delivery commercially unreasonable.

Intention requirement (subparagraph 2(1)(c)(ii))

Subparagraph 2(1)(c)(ii) excludes from the definition of “specified derivative” a contract for the purchase and sale of a currency that is intended to be settled through the delivery of the currency referenced in such contract. The intention to settle a contract by delivery may be inferred from the terms of the relevant contract as well as from the surrounding facts and circumstances.

When examining the specific terms of a contract for evidence of intention to deliver, we take the position that the contract must create an obligation on the counterparties to make or take delivery of the currency and not merely an option to make or take delivery. Any agreement, arrangement or understanding between the parties, including a side agreement, standard account terms or operational procedures that allow for settlement in a currency other than the referenced currency or on a date after the time period specified in subparagraph 2(1)(c)(i) is an indication that the parties do not intend to settle the transaction by delivery of the prescribed currency within the specified time periods.

We are generally of the view that certain provisions, including standard industry provisions, the effect of which may result in a transaction not being physically settled, will not necessarily negate the intention to deliver. The contract as a whole needs to be reviewed in order to determine whether the counterparties’ intention was to actually deliver the contracted currency. Examples of provisions that may be consistent with the intention requirement under subparagraph 2(1)(c)(ii) include:

- a netting provision that allows two counterparties who are party to multiple contracts that require delivery of a currency to net offsetting obligations, provided that the counterparties intended to settle through delivery at the time each contract was created and the netted settlement is physically settled in the currency prescribed by the contract;
- a provision where cash settlement is triggered by a termination right that arises as a result of a breach of the terms of the contract.

Although these types of provisions permit settlement by means other than the delivery of the relevant currency, they are included in the contract for practical and efficiency reasons.

In addition to the contract itself, intention may also be inferred from the conduct of the counterparties. Where a counterparty's conduct indicates an intention not to settle by delivery, the contract will not qualify for the exclusion in paragraph 2(1)(c). For example, where it could be inferred from the conduct that one or both counterparties intend to rely on breach or frustration provisions in the contract in order to achieve an economic outcome that is, or is akin to, settlement by means other than delivery of the relevant currency, the contract will not qualify for the exclusion. Similarly, a contract would not qualify for this exclusion where it can be inferred from their conduct that the counterparties intend to enter into collateral or amending agreements which, together with the original contract, achieve an economic outcome that is, or is akin to, settlement by means other than delivery of the relevant currency.

#### Rolling over (subparagraph 2(1)(c)(iii))

Subparagraph 2(1)(c)(iii) provides that, in order to qualify for the exclusion in paragraph 2(1)(c), a currency exchange contract must not permit an extension of the settlement date or have the effect of extending the settlement date of a contract. This is commonly referred to as a rollover. Therefore, physical delivery of the relevant currencies must occur in the time periods prescribed in subparagraph 2(1)(c)(i). To the extent that a contract does not have a fixed settlement date or otherwise allows for the settlement date to be extended beyond the periods prescribed in subparagraph 2(1)(c)(i), we would consider it to permit a rollover of the contract. Similarly, any terms or practice that permits the settlement date of the contract to be extended by simultaneously closing the contract and entering into a new contract without delivery of the relevant currencies would also not qualify for the exclusion.

We do not intend that the exclusion will apply to contracts entered into through platforms that facilitate investment or speculation based on the relative value of currencies. These platforms typically do not provide for physical delivery of the currency referenced in the contract, but instead close out the positions by crediting client accounts held by the person operating the platform, often applying the credit using a standard currency.

#### **(d) *Commodities contracts***

Paragraph 2(1)(d) of the Instrument excludes a contract for the delivery of a commodity from the definition of "specified derivative" if the contract meets the criteria in subparagraphs 2(1)(d)(i) and (ii).

## Commodity

The exclusion available under paragraph 2(1)(d) is limited to commercial transactions in goods that can be delivered either in a physical form or by delivery of the instrument evidencing ownership of the commodity. The participating jurisdictions are of the view that commodities include goods such as agricultural products, forest products, products of the sea, minerals, metals, hydrocarbon fuel, precious stones or other gems, electricity, oil and natural gas (and by-products, and associated refined products, thereof), and water. We also consider certain intangible commodities, such as carbon credits and emission allowances, to be commodities. In contrast, this exclusion will not apply to financial commodities such as currencies, interest rates, securities and indexes.

### Intention requirement (subparagraph 2(1)(d)(i))

Subparagraph 2(1)(d)(i) of the Instrument requires that the counterparties *intend* to settle the contract by delivering the commodity. Intention can be inferred from the terms of the relevant contract as well as from the surrounding facts and circumstances.

When examining the specific terms of a contract for evidence of an intention to deliver, we are of the view that the contract must create an obligation on the counterparties to make or take delivery of the commodity. Subject to the comments below on subparagraph 2(1)(d)(ii), we are of the view that a contract containing a provision that permits the contract to be settled by means other than delivery of the commodity, or that includes an option or has the effect of creating an option to settle the contract by a method other than through the delivery of the commodity, would not satisfy the intention requirement and therefore does not qualify for this exclusion.

The participating jurisdictions are generally of the view that certain provisions, including standard industry provisions, the effect of which may result in a transaction not being physically settled, may not necessarily negate the intention to deliver. The contract as a whole needs to be reviewed in order to determine whether the counterparties' intention was to actually deliver the commodity. Examples of provisions that may be consistent with the intention requirement under subparagraph 2(1)(d)(i) include:

- an option to change the volume or quantity, or the timing or manner of delivery, of the commodity to be delivered;
- a netting provision that allows two counterparties who are party to multiple contracts that require delivery of a commodity to net offsetting obligations provided that the counterparties intended to settle each contract through delivery at the time the contract was created;
- an option that allows the counterparty that is to accept delivery of a commodity to assign the obligation to accept delivery of the commodity to a third-party;
- a provision where cash settlement is triggered by a termination right arising as a result of the breach of the terms of the contract or an event of default thereunder.

Although these types of provisions permit some form of cash settlement, they are included in the contract for practical and efficiency reasons.

Embedded optionality with respect to the volume or quantity, or the timing or manner of delivery, of the commodity to be delivered may be consistent with the intention requirement in subparagraph 2(1)(d)(i) where the terms of the contract make it clear that the parties intend to settle the contract by physical delivery of the commodity and not by cash or any other means.

A contract that is an option for the delivery of a commodity which, if exercised, results in an obligation to make or take delivery of the commodity referenced in the contract may be consistent with the intention requirement in subparagraph 2(1)(d)(i) where the terms of the contract make it clear that the parties intend to settle the contract by physical delivery of the commodity and not by cash or any other means.

In addition to the contract itself, intention may also be inferred from the conduct of the counterparties. For example, where it could be inferred from their conduct that the counterparties intend to rely on breach or frustration provisions in the contract in order to achieve an economic outcome that is, or is akin to, cash settlement, the contract will not qualify for this exclusion. Similarly, a contract will not qualify for this exclusion where it can be inferred from their conduct that the counterparties intend to enter into collateral or amending agreements which, together with the original contract, achieve an economic outcome that is, or is akin to, cash settlement of the original contract.

When determining the intention of the counterparties, we will examine their conduct at execution and throughout the duration of the contract. Factors that we will generally consider include whether a counterparty is in the business of producing, delivering or using the commodity in question and whether the counterparties regularly make or take delivery of the commodity relative to the frequency with which they enter into such contracts in relation to the commodity.

Situations may exist where, after entering into the contract for delivery of the commodity, the counterparties enter into an agreement that terminates their obligation to deliver or accept delivery of the commodity (often referred to as a “book-out” agreement). Book-out agreements are typically separately negotiated, new agreements where the counterparties have no obligation to enter into such agreements and such book-out agreements are not provided for by the terms of the contract as initially entered into. A book-out will generally be considered to qualify for this exclusion provided that, at the time of execution of the original contract, the counterparties intended that the commodity would be delivered.

The participating jurisdictions are of the view that, in the context of a commodity that is marketed or distributed through a regulated pool arrangement, such as electricity or natural gas, and taking into account the intention of the counterparties at the time of the transaction, a transaction in a contract for the delivery of the commodity through the pool would constitute “physical delivery” of the commodity for the purposes of paragraph 2(1)(d) in the Instrument and the guidance in this section.

Settlement by delivery except where impossible or commercially unreasonable  
(subparagraph 2(1)(d)(ii))

Subparagraph 2(1)(d)(ii) requires that, to be excluded from the definition of “specified derivative”, a contract must not permit cash settlement in place of delivery unless physical settlement is rendered impossible or commercially unreasonable as a result of an intervening event or occurrence not reasonably within the control of the counterparties, their affiliates or their agents. A change in the market value of the commodity itself will not render delivery commercially unreasonable. In general, we consider examples of events not reasonably within the control of the counterparties to include:

- events to which typical *force majeure* clauses would apply;
- problems in delivery systems such as the unavailability of transmission lines for electricity or a pipeline for oil or gas where an alternative method of delivery is not reasonably available;
- problems incurred by a counterparty in producing the commodity that they are obliged to deliver such as a fire at an oil refinery or a drought preventing crops from growing where an alternative source for the commodity is not reasonably available.

In our view, cash settlement in these circumstances would not preclude the requisite intention under subparagraph 2(1)(d)(i) from being satisfied.

**(e) and (f) *Evidences of deposit***

Paragraphs 2(1)(e) and (f) of the Instrument exclude certain evidences of deposit from the definition of “specified derivative”. Paragraph 2(1)(f) references deposits issued by any credit union, league, caisse populaire, loan corporation or trust company that is operating under the legislation of the federal government (in addition to the specific legislation referenced in paragraph 2(1)(e)) or under the legislation of any province or territory of Canada.

**(g) *Exchange-traded derivatives***

Paragraph 2(1)(g) of the Instrument excludes a contract from the definition of “specified derivative” if it is traded on one or more prescribed exchanges. Exchange-trading of derivatives provides certain benefits to the derivatives market and the financial system in general, including a measure of transparency to regulators and to the public with respect to trading activity, as well as processing through an accepted clearing and settlement system. For this reason, exchange-traded derivatives are not subject to certain requirements relating to OTC derivatives. A transaction that is cleared through a clearing agency, but not traded on an exchange, is not considered to be exchange-traded and is a specified derivative and subject to certain requirements relating to OTC derivatives, as applicable. The participating jurisdictions interpret a contract “traded on an exchange” to include a contract that is made pursuant to the rules of an exchange and reported to the exchange after execution.

***(h) Securities in New Brunswick, Nova Scotia and Saskatchewan***

Some types of contracts traded over-the-counter, such as foreign exchange contracts and contracts for difference, meet the definition of “derivative” (because their market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest) in the securities legislation of the local jurisdiction, but also meet the definition of “security” (because they are investment contracts) in the securities legislation of the local jurisdiction. In New Brunswick, Nova Scotia and Saskatchewan, these contracts would meet the definition of “security” but for the exclusion of derivatives from the definition of “security”. This paragraph provides that such contracts are excluded from the definition of “specified derivative”.

***(i) Stock options, warrants and similar instruments in British Columbia, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Yukon***

Some types of contracts that meet the definition of derivative but that also meet the definition of “security” can have a similar or identical economic effect as a security. We are of the view that the requirements generally applicable to securities are more appropriate for these types of contracts. As a result, in certain jurisdictions, paragraph 2(1)(i) provides that such contracts are excluded from the definition of “specified derivative”.

Examples of the types of contracts contemplated as being more appropriately subject to the requirements generally applicable to securities include the following: compensation or incentive instruments such as stock options, phantom stock units, restricted share units, deferred share units, restricted share awards, performance share units, stock appreciation rights and compensation instruments provided to service providers, such as broker options; and contracts issued for the purpose of raising capital, including any of the aforementioned instruments as well as rights, warrants and special warrants, or subscription rights/receipts or convertible instruments issued to raise capital for any purpose. A contract that is issued with a profit motive would not generally be considered to be a financing instrument issued in connection with the raising of capital. An equity swap, for example, would generally not be considered a financing instrument issued in connection with the raising of capital.

In New Brunswick, Nova Scotia and Saskatchewan, these types of contracts or instruments are securities and do not fall within the definition of “derivative” and, as a result, these contracts are excluded from the definition of “specified derivative”.

***Investment contracts and options, and stock options, warrants and similar instruments in Alberta***

In Alberta, the definition of “derivative” in the securities legislation excludes a contract or instrument that is a security. Options and certain investment contracts fall within the definition of a “security”. They also fall within the first prong of the definition of “derivative” but are excluded by the second prong because they are securities. However, in Alberta, the Alberta Securities Commission has authority to designate a security or class of securities to be a derivative. In Alberta, certain options and certain investment contracts are designated pursuant



to an order of the Alberta Securities Commission to be derivatives and not to be securities, but only for the purpose of the Instrument.

As a result of the designation order, in Alberta, the following are derivatives and are therefore included in the definition of “specified derivative” unless otherwise excluded under section 2 of the Instrument:

- a contract that meets the first prong of the definition of “derivative” and is a security solely by reason of being an investment contract under the definition of “security”;
- an option that is only a security because the definition of “security” includes an option.

In Alberta, options, such as stock options, that are also securities under other prongs of the definition of “security”, for example, because they are commonly known as a security, remain securities. Where applicable, certain requirements relating to OTC derivatives apply to those options that do not meet other prongs of the definition of security. This treatment applies only to options that are traded over-the-counter; under paragraph 2(1)(g), transactions involving exchange-traded options are excluded from the definition of “specified derivative”.

***Additional contracts not considered to be derivatives***

Apart from the contracts expressly excluded from the definition of “specified derivative” by section 2 of the Instrument, there are other contracts that are not considered to be “derivatives” for the purposes of securities or derivatives legislation. A feature common to these contracts is that they are entered into for consumer, business or non-profit purposes that do not involve investment, speculation or hedging. Typically, they provide for the transfer of ownership of a good or the provision of a service. In most cases, they are not traded on a market.

These contracts include, but are not limited to:

- a consumer or commercial contract to acquire or lease real or personal property, to provide personal services, to sell or assign rights, equipment, receivables or inventory, or to obtain a loan or mortgage, including a loan or mortgage with a variable rate of interest, interest rate cap, interest rate lock or embedded interest rate option;
- a consumer contract to purchase non-financial products or services at a fixed, capped or collared price;
- an employment contract or retirement benefit arrangement;
- a guarantee;
- a performance bond;
- a commercial sale, servicing, or distribution arrangement;

- a contract for the purpose of effecting a business purchase and sale or combination transaction;
- a contract representing a lending arrangement in connection with building an inventory of assets in anticipation of a securitization of such assets;
- a commercial contract containing mechanisms indexing the purchase price or payment terms for inflation such as via reference to an interest rate or consumer price index.

## ANNEX D

### 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 7<sup>th</sup> 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 90<sup>th</sup> day after the end of its financial year.
- (2)** A recognized trade repository must file interim financial statements no later than the 45<sup>th</sup> 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 180<sup>th</sup> 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 5<sup>th</sup> 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 30<sup>th</sup> 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”;
  - (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;
  - (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.
- (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.
- (4) If a local counterparty to a derivative required to be reported under this Instrument is not eligible to receive a legal entity identifier assigned by the Global LEI System, the reporting counterparty must identify the counterparty by a single alternative identifier.

#### **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, 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, 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.
  - (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 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).

**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.

**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.

<b>Data field</b>	<b>Description</b>	<b>Required for Pre-existing Derivatives</b>
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: <ul style="list-style-type: none"> <li>Fully (initial and variation margin required to be posted by both parties);</li> <li>Partially (variation only required to be posted by both parties);</li> <li>One-way (one party will be required to post some form of collateral);</li> <li>Uncollateralized.</li> </ul>	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)
<b>A. Common Data</b>	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>B. Additional Asset Information</b>	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.	
<b>i) Interest rate derivatives</b>		
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
<b>ii) Currency derivatives</b>		
Exchange rate	Contractual rate(s) of exchange of the currencies.	Y
<b>iii) Commodity derivatives</b>		
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
<b>C. Options</b>	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

<b>D. Event Data</b>		
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
<b>E. Valuation data</b>	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
<b>F. Other details</b>		
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)

**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”):  

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

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

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

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

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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 E**

**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;<sup>1</sup>

“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;<sup>2</sup>

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<sup>1</sup> 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

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<sup>2</sup> The PFMI Report is available on the Bank for International Settlements’ website ([www.bis.org](http://www.bis.org)) and the IOSCO website ([www.iosco.org](http://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.<sup>3</sup> 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;

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<sup>3</sup> 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.

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



<b><i>Principle in the PFMI Report applicable to a trade repository</i></b>	<b><i>Relevant section(s) of the Instrument</i></b>
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*,<sup>4</sup> 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.

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<sup>4</sup> Publication available on the BIS website ([www.bis.org](http://www.bis.org)) and the IOSCO website ([www.iosco.org](http://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.<sup>5</sup>

### **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.

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<sup>5</sup> 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](http://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 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.

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, 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 derivatives 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 transaction 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 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 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 on which the error or omission is discovered.

## **Legal entity identifiers**

**28.** The Global LEI System is a G20 endorsed initiative<sup>6</sup> for uniquely identifying parties to financial transactions, designed and implemented under the direction of the LEI ROC, a

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<sup>6</sup> 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/>>.

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 to counterparties who enter into derivatives or that are involved in a derivatives transaction.

(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.

### **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.<sup>7</sup> 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

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<sup>7</sup> See e.g., <<http://www2.isda.org/identifiers-and-otc-taxonomies/>> for more information.



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.

### **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*.<sup>8</sup>

(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

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<sup>8</sup> Publication available on the BIS website <[www.bis.org](http://www.bis.org)> and the IOSCO website <[www.iosco.org](http://www.iosco.org)>.

(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) 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 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**

#### **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.

## ANNEX F

### ALBERTA SECURITIES COMMISSION

#### DESIGNATION ORDER

**Citation: Re Designation of certain investment contracts and options to be derivatives,  
2016 ABASC 15**

**Date: 20160122**

#### **Definitions and interpretations**

1. Unless otherwise defined or interpreted herein, terms defined in the *Securities Act* (Alberta) (the **Act**) have the same meaning in this Designation Order.
2. In this Designation Order, 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 Designation Order, 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.

#### **Background**

4. Under Multilateral Instrument 91-101 *Derivatives: Product Determination (MI 91-101)*, a "specified derivative is a "derivative" as defined in the securities legislation of Alberta that is not excluded by section 2 of MI 91-101.
5. The definition of "derivative" in the Act excludes a contract or instrument that is a security, but includes a security or class of securities that has been designated by the Commission to be a derivative.
6. In the absence of this Designation Order, certain contracts or instruments that, for certain purposes, are appropriately regulated as derivatives would be securities and not derivatives.

**Order**

7. Subject to section 8 of this Designation Order, the Commission, considering that it would not be prejudicial to the public interest to do so, orders under section 10 of the Act that a contract or instrument to which both of the following apply is designated to be a derivative and is designated not to be a security for the purpose of MI 91-101:
- (a) it is a contract or instrument referred to under subclause (i) of the definition of "derivative" in the Act;
  - (b) it is a security solely by reason of being an investment contract or an option.
8. Section 7 of this Designation Order does not apply to a contract or instrument to which all of the following apply:
- (a) it is issued by any of the following:
    - (i) an issuer;
    - (ii) a control person of an issuer;
    - (iii) an insider of an issuer;
  - (b) the underlying interest of the contract or instrument is a security of the issuer or an affiliated entity of the issuer;
  - (c) it is used for either or both of the following:
    - (i) to compensate or incent the performance of a director, employee or service provider of the issuer or an affiliated entity of the issuer;
    - (ii) as a financing instrument in connection with the raising of capital for the issuer or an affiliated entity of the issuer or the acquisition of a business or property by the issuer or an affiliated entity of the issuer.
9. This Designation Order takes effect on 1 May 2016.

**For the Commission:***"original signed by"*


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 Tom Cotter  
 Vice Chair
*"original signed by"*


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 Stephen Murison  
 Vice Chair