

**CSA Multilateral Notice of Amendments to
Multilateral Instrument 91-101 *Derivatives: Product Determination*
and
Multilateral Instrument 96-101 *Trade Repositories and Derivatives
Data Reporting*
and Changes to Related Companion Policies**

June 30, 2016

Introduction

The securities regulatory authorities (each an **Authority** and collectively the **Authorities** or **we**) in Alberta, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan¹ and Yukon are making:

- amendments (the **Product Determination Rule Amendments**) to Multilateral Instrument 91-101 *Derivatives: Product Determination* (the **Product Determination Rule**),
- amendments (the **TR Rule Amendments**) to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the **TR Rule**),
- changes to Companion Policy 91-101 *Derivatives: Product Determination* (the **Product Determination CP**), and
- changes to Companion Policy 96-101 *Trade Repositories and Derivatives Data Reporting* (the **TR CP**)

collectively, the **Amendments**.

While the British Columbia Securities Commission (**BCSC**) is not participating in this notice, staff of the BCSC has worked with staff of the Authorities in developing the Amendments. Subject to receipt of ministerial approval, BCSC staff anticipate publishing notice of implementation of versions of the Product Determination Rule and the TR Rule that incorporate the Amendments.

Background

We announced the implementation of the Product Determination Rule and the TR Rule on January 22, 2016, with an effective date of May 1, 2016, subject in certain participating jurisdictions to Ministerial approval and legislative amendments. In February 2016 we published for comment proposed amendments to the TR Rule (the **Proposed TR Amendments**) which

¹ In Saskatchewan, the amendments to the Product Determination Rule are not being implemented but will be published for comment under a separate notice.

were intended to be substantively harmonized with proposed amendments to corresponding local rules² (collectively, the **Local TR Rules**), published in November 2015 by the securities regulatory authorities in Manitoba, Ontario and Québec.

Harmonization

We have developed the Amendments in cooperation with staff from the securities regulatory authorities in British Columbia, Manitoba, Ontario and Québec with the goal of substantive harmonization among the jurisdictions.

Substance and Purpose

Product Determination Rule Amendments

The Product Determination Rule Amendments clarify the definition of “derivative” for the purpose of the Product Determination Rule in Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Yukon, in order to better harmonize the definition of “specified derivative” among the MI Jurisdictions.

The Product Determination Rule Amendments also reflect recent amendments to the *Securities Act* (Alberta) (the **Alberta Act**), which received royal assent on May 27, 2016. Among other things, the amendments to the Alberta Act revised the definition of “derivative”, such that a contract or instrument may now be both a “derivative” and a “security” at the same time, without the need for a designation order.

Prior to the statutory amendments, the definition of “derivative” in the Alberta Act excluded a security. In order to have the Product Determination Rule have the same effect in Alberta as in other MI Jurisdictions, the Alberta Securities Commission previously issued an order (the **Designation Order**) designating certain contracts and instruments to be derivatives for the purpose of the Product Determination Rule.³ With the statutory amendments, the Designation Order is no longer necessary and accordingly, the Alberta Securities Commission has issued an order revoking the Designation Order, effective September 30, 2016 which is the date on which the Amendments will become effective.

Product Determination CP Changes

The changes to the Product Determination CP reflect the Product Determination Rule Amendments, and clarify certain guidance relating to: (i) physically-settled commodity derivatives, settlement by delivery except where impossible or commercially unreasonable; and (ii) investment contracts in New Brunswick, Nova Scotia and Saskatchewan.

TR Rule Amendments

The key objectives of the TR Rule Amendments are to:

² Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* and Québec Regulation 91-507 respecting trade repositories and derivatives data reporting, CQLR, c. I-14.01, r. 1.1

³ Alberta Securities Commission, *Re Designation of certain investment contracts and options to be derivatives*, 2016 ABASC 15, January 22, 2016.

- make explicit the requirement that a local counterparty have a legal entity identifier (**LEI**), and revise the provisions relating to LEIs to reflect international developments;
- provide relief from the reporting obligations under the TR Rule for derivatives between affiliated entities where each counterparty is not a derivatives dealer, clearing agency or an affiliate of a derivatives dealer or clearing agency;
- provide a transition period before the reporting obligations under the TR Rule become effective for a counterparty that is not a derivatives dealer or a clearing agency, or an affiliate of a derivatives dealer or clearing agency, that previously qualified for an exclusion from reporting derivatives under the TR Rule or a Local TR Rule and becomes the reporting counterparty for the first time;
- set out the requirements for public dissemination of transaction-level data, balancing the objective of providing price information on the Canadian over-the-counter (**OTC**) derivatives market and the need to preserve the anonymity of counterparties to limit the negative impact of transparency on market participants; and
- specify certain laws, regulations or instruments of foreign jurisdictions in Appendix B, for the purpose of providing that, for certain derivatives, reporting in compliance with these specified laws, regulations or instruments satisfies the reporting obligations under the TR Rule.

TR CP Changes

The changes to the TR CP reflect the changes to the TR Rule Amendments.

Implementation

The Amendments will become effective September 30, 2016, subject in certain jurisdictions to Ministerial approval. The January 16, 2017 start date for transaction-level public dissemination is harmonized across with the corresponding start date in the Local TR Rules.

Summary of the TR Rule Amendments

(a) *Subsection 26(3): Substituted Compliance and Appendix B: Trade Reporting Laws of Foreign Jurisdictions*

Amended subsection 26(3) provides that, in certain circumstances, a reporting counterparty may satisfy the reporting requirements under the TR Rule if it reports the derivative to a recognized trade repository pursuant to the trade reporting laws of a jurisdiction of Canada or a foreign jurisdiction specified in Appendix B (**substituted compliance**).

New Appendix B specifies the European Union (**EU**) trade reporting rules and the U.S. Commodity Futures Trading Commission (**CFTC**) swap data reporting rules. This amendment harmonizes the substituted compliance provision in the TR Rule with the corresponding provision in the Local TR Rules and permits certain OTC derivatives market participants that are subject to the reporting obligation under the TR Rule to benefit from substituted compliance when they report pursuant to the EU trade reporting rules or the CFTC swap data reporting rules.

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

We have amended subsection 26(4) of the TR Rule to provide that all derivatives data in respect of a derivative must be reported to the same recognized trade repository, but not necessarily to the recognized trade repository to which the initial report relating to the derivative was made. This amendment is intended to facilitate the porting of derivatives data from one recognized trade repository to another while ensuring that all data relating to a derivative is available in a single facility.

(c) Section 28: Legal entity identifiers

The identification of counterparties by an LEI is an initiative endorsed by G20 nations and provides a globally recognized and standardised identification system of legal entities engaged in financial transactions. LEIs support authorities and market participants in identifying and managing financial risks, simplifying reporting and simplifying authorities access to reported data across jurisdictions.

We have amended section 28 of the TR Rule to require each local counterparty (other than an individual) that is party to a derivative which is required to be reported under the TR Rule, if eligible, to obtain an LEI issued in accordance with the standards set by the Global LEI System. Reporting counterparties have indicated that they have encountered challenges in reporting derivatives as some of their counterparties do not have LEIs. This amendment ensures that all eligible local counterparties to reportable derivatives are under a direct obligation to have an LEI. Amended subsections 28(3) and (4) set out the requirements that apply where the non-reporting counterparty is not eligible to receive an LEI.

(d) Section 34: Pre-existing derivatives and Section 44: Transition period

We have amended sections 34 and 44 to correct errors in the dates that were included in the January 22, 2016 publication of the TR Rule, with respect to derivatives entered into before the reporting requirements under the TR Rule become effective.

(e) Subsection 39(3) and Appendix C: Requirements for the Public Dissemination of Transaction-level Data

Amended subsection 39(3) of the TR Rule requires a recognized trade repository to publicly disseminate transaction-level data for certain derivatives reported to it, in accordance with the detailed requirements in new Appendix C. Appendix C sets out the asset classes and underlying identifiers subject to transaction-level public dissemination, as well as the subset of reported derivatives data that will be publicly disseminated. The requirement to publicly disseminate transaction-level data becomes effective January 16, 2017, consistent with the effective date in the Local TR Rules.

Public dissemination of derivatives data provides important information to the OTC derivatives market to facilitate price discovery. This will allow market participants to more accurately value existing derivatives and to assess the pricing they receive when entering into new derivatives.

While transparency can be beneficial, we also appreciate the importance of maintaining the anonymity of OTC derivative counterparties in the context of publicly disseminating transaction-level data. The publication of transaction-level data, even anonymised data, could potentially

allow market participants to determine the identity and exposure of one or both of the counterparties to a specific derivative through, for example, the size and/or underlying interest of the derivative. The indirect identification of counterparties to a derivative could make future transactions in derivatives, including derivatives hedging the risks of a particular published derivative, more difficult and expensive as market participants adjust pricing in anticipation of the counterparties' immediate hedging needs. This is a particularly relevant risk for counterparties engaged in derivatives related to asset classes that are relatively illiquid in the Canadian market.

Therefore, to protect the anonymity of counterparties while providing appropriate transparency, we have limited the application of the transaction-level public dissemination requirement at this time to OTC derivatives of asset classes and underlying benchmarks that exhibit sufficient market activity to make it difficult to identify a specific counterparty. Appendix C also provides for anonymising measures, such as the rounding and capping of notional amounts, to further protect counterparty identity without eliminating the value of the published information to the market. Capping levels for each asset class and category were determined by assessing the unique characteristics of each group, including the relative size and frequency of trades.

Appendix C provides for a uniform publication delay for all transaction-level reports. In response to public comments, we amended the time delay for public dissemination so that it is linked to the execution timestamp of the transaction.

The details for transaction-level public dissemination in Appendix C have been harmonized as between the TR Rule and Local TR Rules in Manitoba, Ontario and Québec. Those jurisdictions have had several months experience of derivatives data being reported under their respective Local TR Rules. We anticipate pursuing further harmonized amendments to Appendix C over a series of future phases following additional study of trade repository data and public consultation. The purpose of this study and consultation will be to determine whether additional data and product types are appropriate for public dissemination and to consider shortening the timing delay for the release of such data to the public.

(f) Section 41.1: Derivatives between affiliated entities

We have amended the TR Rule to provide an exemption from the reporting requirement for derivatives between affiliated entities where each counterparty is not a derivatives dealer or a clearing agency, or an affiliated entity of a derivatives dealer or a clearing agency. The amendment is broader than proposed in the February 2016 publication for comment.

The exemption proposed in the February 2016 publication was limited to derivatives between end-user affiliates that are both local counterparties in Canada. Commenters unanimously remarked that the proposed exclusion for derivatives between local counterparty end-user affiliates was too restrictive. In light of the public comments, the exemption has been broadened to apply to all derivatives between affiliated parties provided neither counterparty is a derivatives dealer or a clearing agency, or an affiliate of a derivatives dealer or clearing agency. As a result of the broader exemption, it is not necessary to implement the substituted compliance for derivatives between affiliated entities as was contemplated in the February 2016 proposed amendments.

We recognize that derivatives between affiliated entities are typically used for managing risk within a corporate group and that the primary source of market risk to a corporate group related to its derivatives transactions arises from its market-facing transactions. However, reporting of derivatives between affiliated entities can provide the securities regulatory authorities with information regarding the redistribution of risk between legal entities, highlighting market activity and trends. We intend to study the use of inter-affiliate derivatives transactions as a strategy of corporate group risk distribution and to monitor international regulators' approaches to inter-affiliate trade reporting. We may consider amending the TR Rule to require reporting of derivatives data for inter-affiliate derivatives involving an affiliated entity that is not a local counterparty pursuant to the laws of a jurisdiction of Canada that introduce risk to the local or national market.

(g) Section 42.1: Reporting by a local counterparty that ceases to benefit from an exclusion

New section 42.1 provides a transition period for a counterparty that is not a derivatives dealer or a clearing agency, or an affiliated entity of a derivatives dealer or a clearing agency, that has not previously acted as the reporting counterparty under the TR Rule or a Local TR Rule because it qualified at the relevant time for an exemption under section 40 from the reporting requirements under the TR Rule. We are aware that some local counterparties may not be required to act as the reporting counterparty for a derivative because they are able to rely on the commodity derivative exemption in section 40 of the TR Rule.

For such a local counterparty, the reporting obligations under the TR Rule become effective 180 days after the date on which the local counterparty no longer qualifies for the exemption in section 40. Immediately following the expiry of the 180-day transition period, the local counterparty is required to report all of its outstanding derivatives that have not already been reported pursuant to the TR Rule – for example, by its counterparty.

(h) Appendix A: Minimum Data Fields Required to be Reported to a Recognized Trade Repository

In response to public comments, we have amended the descriptions of the “Jurisdiction of reporting counterparty” and “Jurisdiction of non-reporting counterparty” data fields in Appendix A. This amendment reflects the intention of section 42 of the TR Rule, that a reporting counterparty is not required to report a derivative in the local jurisdiction if neither counterparty is a local counterparty under paragraph (a) or (c) of the definition of local counterparty. The amended data field descriptions are harmonized with the Local TR Rules.

Summary of written comments

We received comments on the proposed amendments from 7 commenters. We have considered all of the comments received and thank all of the commenters for their input.

Contents of Annexes

The following annexes form part of this CSA Notice.

| | |
|---------|---|
| Annex A | Amendments to Multilateral Instrument 91-101 <i>Derivatives: Product Determination</i> |
| Annex B | Changes to Companion Policy 91-101 <i>Derivatives: Product Determination</i> |
| Annex C | Amendments to Multilateral Instrument 96-101 <i>Trade Repositories and Derivatives Data Reporting</i> |
| Annex D | Changes to Companion Policy 96-101 <i>Trade Repositories and Derivatives Data Reporting</i> |

Questions

Questions with respect to this Notice or the Amendments may be referred to:

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ANNEX A

Amendments to Multilateral Instrument 91-101 *Derivatives: Product Determination*

1. *Multilateral Instrument 91-101 Derivatives: Product Determination is amended by this Instrument.*
2. *Paragraph 1(4)(b) is replaced with the following:*
 - (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) in British Columbia and Newfoundland and Labrador, a futures contract;
 - (iii) an investment contract;
 - (iv) in British Columbia and Newfoundland and Labrador, an option;
 - (v) in Northwest Territories, Nunavut, Prince Edward Island and Yukon, a derivative..
3. *Subsection 2(1) is amended by*
 - (a) *adding the following paragraph:*
 - (h.1) in Alberta, a contract or instrument that is a derivative and is a security unless the contract or instrument is a security only by reason of it being an investment contract or an option;, **and**
 - (b) *inserting “Alberta” before “British Columbia” in subsection (i).*
4. *Subsection 3(2) is amended by inserting the words “British Columbia and” before the word “Saskatchewan”.*
5. This Instrument comes into force on September 30, 2016.

ANNEX B

Changes to Companion Policy 91-101 *Derivatives: Product Determination*

1. *Companion Policy 91-101 Derivatives: Product Determination is changed by this Instrument.*

2. *Section 1 is changed by inserting the following subsection:*

(4) Section 1(4) establishes a common definition of “derivative” in British Columbia, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Yukon that is exclusive of the definition of “security” in the securities legislation of those jurisdictions for the purposes of the Instrument..

3. *Paragraph 2(1)(d) is changed by replacing the first sentence after the underlined subheading “Settlement by delivery except where impossible or commercially unreasonable (subparagraph 2(1)(d)(ii))” with the following:*

Subparagraph 2(1)(d)(ii) requires that, to be excluded from the definition of “specified derivative”, a contract must not, other than as described above under subparagraph 2(1)(d)(i), 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..

4. *Paragraph 2(1)(h) is replaced with the following:*

(h) Securities in New Brunswick, Nova Scotia and Saskatchewan and (h.1) Securities in Alberta

Some types of contracts traded over-the-counter, including some types of 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 or options) in the securities legislation of the local jurisdiction.

In New Brunswick, Nova Scotia and Saskatchewan, these contracts would meet the definition of “security” (because they are investment contracts) but for the exclusion of derivatives from the definition of “security”. Paragraph 2(1)(h) provides that, in New Brunswick, Nova Scotia and Saskatchewan, these contracts are not excluded from the definition of “specified derivative”; as a result, these contracts are subject to certain requirements relating to OTC derivatives.

In Alberta, these contracts would meet the definition of “derivative” and the definition of “security” (because they are investment contracts or options). Paragraph 2(1)(h.1) provides that, in Alberta, these contracts are not excluded from the definition of “specified derivative”; as a result, these contracts are subject to certain requirements relating to OTC derivatives..=

5. *The heading to paragraph 2(1)(i) is changed by adding “Alberta” before “British Columbia”.*
6. *The Policy is changed by deleting the guidance under the heading “Investment contracts and options, stock options, warrants and similar instruments in Alberta”.*
7. These changes become effective on September 30, 2016.

ANNEX C

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

1. *Multilateral Instrument 96-101 Trade Repositories and Derivatives Data Reporting is amended by this Instrument.*
2. *Subsection 26(3) is changed by*
 - (a) *replacing paragraph (b) with the following:*
 - (b) the derivative is reported to a recognized trade repository under one or more of the following:
 - (i) Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*, as amended from time to time, if reported under the requirements of a jurisdiction other than the local jurisdiction;
 - (ii) Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, as amended from time to time;
 - (iii) Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, as amended from time to time;
 - (iv) Québec Regulation 91-507 respecting trade repositories and derivatives data reporting, as amended from time to time;
 - (v) the trade reporting law of a foreign jurisdiction listed in Appendix B; *and*
 - (b) *replacing paragraph (c) with the following:*
 - (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 data that is reported under paragraph (b) and otherwise uses its best efforts to provide the regulator or securities regulatory authority with access to such data..
3. *Subsection 26(4) is replaced with the following:*
 - (4) A reporting counterparty must report all derivatives data relating to a derivative to the same recognized trade repository..

4. Section 28 is replaced with the following:

Legal entity identifiers

- 28. (1)** A recognized trade repository must identify each counterparty to a derivative that is required to be reported under this Instrument in all recordkeeping and all reporting required under this Instrument by means of a single legal entity identifier that is a unique identification code assigned to the counterparty in accordance with the standards set by the Global LEI System.
- (2)** A person that is eligible to receive a legal entity identifier as determined by the Global LEI System, other than an individual, that is a local counterparty to a derivative required to be reported under this Instrument, must
- (a)** before executing a transaction, obtain a legal entity identifier assigned in accordance with the requirements imposed by the Global LEI System, and
 - (b)** for as long as it is a counterparty to a derivative required to be reported under this Instrument, maintain and renew the legal entity identifier referred to in paragraph (a).
- (3)** If a local counterparty to a derivative required to be reported under this Instrument is an individual or is not eligible to receive a legal entity identifier as determined by the Global LEI System, the reporting counterparty must identify the counterparty by a single alternate identifier.
- (4)** Despite subsection (1), if subsection (3) applies to a counterparty to a derivative, the recognized trade repository to which a report has been made in relation to the derivative must identify the counterparty with the alternate identifier supplied by the reporting counterparty..

5. Section 34 is amended by

(a) replacing paragraph (1)(b) with the following:

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

(b) replacing paragraph (2)(b) with the following:

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

6. Subsection 39(3) is replaced with the following:

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

7. *The Instrument is amended by adding the following section:*

Derivative between affiliated entities

- 41.1.** Despite Part 3, a counterparty is not required to report derivatives data relating to a derivative if, at the time of the transaction
- (a) the counterparties to the derivative are affiliated entities, and
 - (b) 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)..

8. *The Instrument is amended by adding the following section:*

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

- 42.1 (1)** Despite section 40, and subject to section 44, a local counterparty must report creation data in relation to a derivative if all of the following apply:
- (a) the derivative was not previously reported as a result of the operation of section 40;
 - (b) a condition in section 40 is no longer satisfied;
 - (c) the derivative was entered into after May 1, 2016 but before the date on which the condition in section 40 is no longer satisfied;
 - (d) there are outstanding contractual obligations with respect to the derivative on the earlier of
 - (i) the date that the derivative is reported, and
 - (ii) the date that is 180 days following the date on which the condition in section 40 is no longer satisfied.
- (2)** Despite subsection (1), and subject to subsection 44(3), a local counterparty is not required to report derivatives data in relation to a derivative to which subsection (1) applies, or any other derivative required to be reported under this Instrument, until the date that is 180 days following the date on which a

condition referred to in paragraph (1)(b) is no longer satisfied.

- (3) Subsection (2) does not apply to a local counterparty that has previously acted as a reporting counterparty in relation to a derivative in any jurisdiction of Canada.
- (4) Despite section 31, a reporting counterparty to a derivative to which subsection (1) applies is required to report, in relation to the transaction resulting in the derivative, only the creation data indicated in the column in Appendix A entitled "Required for Pre-existing Derivatives".
- (5) Despite section 32, a reporting counterparty is not required to report life-cycle event data relating to a derivative to which subsection (1) applies until the reporting counterparty has reported creation data in accordance with subsections (1) and (2).
- (6) Despite section 33, a reporting counterparty is not required to report valuation data relating to a derivative to which subsection (1) applies until the reporting counterparty has reported creation data in accordance with subsections (1) and (2)..

9. Section 44 is replaced with the following:

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 July 29, 2016;
 - (b) the derivative expires or terminates on or before November 30, 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 November 1, 2016;
 - (b) the derivative expires or terminates on or before January 31, 2017;

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

10. Section 45 is amended by

(a) *inserting “British Columbia and” before “Saskatchewan” in subsection (2), and*

(b) *replacing subsection (4) with the following:*

- (4) Despite subsection (1) and, in Saskatchewan, subject to subsection (2), subsection 39(3) comes into force on January 16, 2017..

11. Appendix A is amended by

(a) *replacing the word “indicate”, wherever it occurs, with “state”,*

(b) *replacing the description for the data field “Jurisdiction of reporting counterparty” with the following:*

If the reporting counterparty is a local counterparty under the derivatives data reporting rules of Manitoba, Ontario or Québec, or is a local counterparty under paragraph (a) or (c) of the definition of location counterparty in the derivatives data reporting rules of any other jurisdiction of Canada, state all such jurisdictions.,

(c) *replacing the description for the data field “Jurisdiction of non-reporting counterparty” with the following:*

If the non-reporting counterparty is a local counterparty under the derivatives data reporting rules of Manitoba, Ontario or Québec, or is a local counterparty under paragraph (a) or (c) of the definition of location counterparty in the derivatives data reporting rules of any other jurisdiction of Canada, state all such jurisdictions., *and*

(d) *replacing the description for the data field “Option type” with the following:*

Put, call..

12. The Instrument is amended by adding the following as Appendix B:

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

Trade Reporting Laws of Foreign Jurisdictions

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

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

APPENDIX C
to
MULTILATERAL INSTRUMENT 96-101
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING
Requirements for the Public Dissemination of Transaction-level Data

Instructions

1. Subject to items 2 through 6, a recognized trade repository must make available to the public, at no cost, the information contained in Table 1 for a derivative in any of the asset classes and underlying asset identifiers listed in Table 2 for all of the following:
- (a) a derivative reported to the recognized trade repository under this Instrument;
 - (b) a life-cycle event that changes the pricing of an existing derivative reported to the recognized trade repository under this Instrument;
 - (c) a cancellation of a reported transaction or a correction of data relating to a transaction that was previously made available to the public, in each case resulting in a derivative referred to in paragraph (a) or a life-cycle event referred to in paragraph (b).

Table 1

| Data field | Description |
|-------------------------------------|--|
| Cleared | State whether the derivative has been cleared by a clearing agency. |
| Electronic trading venue identifier | State whether the transaction was executed on an electronic trading venue. |
| Collateralization | State whether the derivative is collateralized. |
| Unique product identifier | Unique product identification code based on the taxonomy of the product. |
| Contract or instrument type | The name of the contract of instrument type (e.g., swap, swaption, forward, option, basis swap, index swap, basket swap). |
| Underlying asset identifier 1 | The unique identifier of the asset referenced in the derivative. |
| Underlying asset identifier 2 | The unique identifier of the second asset referenced in the derivative, if more than one. If more than two assets identified in the derivative, report the unique identifiers for those additional underlying assets. |
| Asset class | Major asset class of the product (e.g., interest rate, credit, commodity, foreign exchange, equity). |
| Effective date or start date | The date the derivative becomes effective or starts. |

| Data field | Description |
|-----------------------------------|--|
| Maturity, termination or end date | The date the derivative expires. |
| Payment frequency or dates | The dates or frequency the derivative requires payments to be made (e.g., quarterly, monthly). |
| Reset frequency or dates | The dates or frequency at which the price resets (e.g., quarterly, semi-annually, annually). |
| Day count convention | Factor used to calculate the payments (e.g., 30/360, actual/360). |
| Price 1 | The price, rate, yield, spread, coupon or similar characteristic of the derivative. This should not include any premiums such as commissions, collateral premiums or accrued interest. |
| Price 2 | The price, rate, yield, spread, coupon or similar characteristic of the derivative. This should not include any premiums such as commissions, collateral premiums or accrued interest. |
| Price notation type 1 | The manner in which the price is expressed (e.g., percentage, basis points). |
| Price notation type 2 | The manner in which the price is expressed (e.g., percentage, basis points). |
| Notional amount leg 1 | Total notional amount(s) of leg 1 of the derivative. |
| Notional amount leg 2 | Total notional amount(s) of leg 2 of the derivative. |
| Currency leg 1 | Currency of leg 1. |
| Currency leg 2 | Currency of leg 2. |
| Settlement currency | The currency used to determine the cash settlement amount. |
| Embedded option | State whether the option is an embedded option. |

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

Table 2

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

Exclusions

2. Item 1 does not apply to the following:
 - (a) a derivative that requires the exchange of more than one currency;
 - (b) a derivative resulting from a bilateral or multilateral portfolio compression exercise;
 - (c) a derivative resulting from novation by a clearing agency.

Rounding of notional amount

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

Table 3

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

Capping of notional amount

4. If the rounded notional amount, as determined under item 3, of a derivative referred to in item 1 exceeds the capped rounded notional amount, in Canadian dollars, according to the asset class and maturity date less execution time stamp date set out in Table 4 for that derivative, a recognized trade repository must make available to the public the capped rounded notional amount for the derivative in place of the rounded notional amount.
5. When making transaction-level data for a derivative to which item 4 applies available to the public under subsection 39(3) of this Instrument and in accordance with this Appendix, a recognized trade repository must state that the notional amount for the derivative has been capped.
6. For each derivative referred to in item 1 for which the capped rounded notional amount is made available to the public, if the data to be made available to the public includes an option premium, the recognized trade repository must adjust the option premium in a manner that is consistent with and proportionate to the capping and rounding of the reported notional amount of the transaction.

Table 4

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

Timing

7. Subject to items 2 through 6, a recognized trade repository must make the information contained in Table 1 available to the public 48 hours after the time reported in the execution timestamp field for the derivative..

15. This Instrument comes into force on September 30, 2016.

ANNEX D

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

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

2. *The first bullet in subsection 1(4) is replaced with the following:*

- a change to the expiry or termination date for the derivative;.

3. *The second paragraph in subsection 1(5) is replaced with the following:*

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”; the expiry or termination of a derivative other than in accordance with the terms of the contract is required to be reported as a life-cycle event under section 32..

4. *The last paragraph in subsection 26(3) is replaced with the following:*

In each instance, the counterparties can benefit from substituted compliance where the data relating to the derivative has been reported to a recognized trade repository pursuant to the law of a jurisdiction of Canada other than the local jurisdiction or of a foreign jurisdiction listed in Appendix B, provided that the additional conditions set out in paragraph 26(3)(c) are satisfied. The data relating to the derivative that is reported to a recognized trade repository under subparagraph 26(3)(b)(iv) may be provided to the securities regulatory authority under paragraph (c) in the same form as required to be reported under the applicable derivative transaction reporting requirements listed in paragraph (b)..

5. *Subsection 26(4) is replaced with the following:*

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

The purpose of subsection 26(4) is to ensure the securities regulatory authority has access to all derivatives data reported to a recognized trade repository for a particular derivative (from the initial report to the designated trade repository through all life-cycle event reports to termination or maturity) from a single recognized trade repository. It is not intended to restrict counterparties’ ability to report to multiple trade repositories nor to begin reporting derivatives data relating to a particular derivative to a different recognized trade repository. We expect that, if a reporting counterparty begins reporting derivatives data relating to a particular derivative in respect of which contractual

obligations remain outstanding to a different recognized trade repository, all derivatives data relevant to the derivative will be reported to the successor recognized trade repository. We expect that trade repositories would cooperate with reporting counterparties to facilitate the provision of data to the successor trade repository.

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

6. *Subsection 26(6) is replaced with the following:*

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

7. *Subsection 26(7) is replaced with the following:*

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

8. *Section 28 is replaced with the following:*

28. The Global LEI System is a G20 endorsed initiative⁶ for uniquely identifying parties to financial transactions, designed and implemented under the direction of the LEI ROC, a governance body endorsed by the G20. The Global LEI System serves as a public-good utility responsible for overseeing the issuance of legal entity identifiers globally, including to counterparties who enter into derivatives or that are involved in a derivatives transaction.

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

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

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

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

9. *Section 29 is changed by replacing the word “bi-lateral” with the word “bilateral”.*

10. *Subsection 39(3) is deleted.*

11. *The Policy is changed by adding the following section:*

Derivative between affiliated entities

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

12. *The Policy is changed by adding the following section:*

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

42.1. (1) Subsection 42.1(1) provides that a derivative that was excluded under section 40 from the reporting requirements under the Instrument, but which no longer meets a condition in section 40, must be reported in accordance with the Instrument.

(2)–(6) Subsections 42.1(2)–(6) are intended to provide a person or company that has previously benefitted from an exclusion from trade reporting under section 40, and has not previously acted as a reporting counterparty under the Instrument or a similar instrument in another jurisdiction of Canada, with a reasonable transition period to allow them to develop the resources and implement policies and procedures necessary to meet the requirements applicable to a reporting counterparty..

13. *Subsection 45(4) is replaced with the following:*

Effective date

45. (4) The requirement under subsection 39(3) for a recognized trade repository to make transaction-level data reports available to the public does not apply until January 16, 2017..

14. The Policy is changed by adding the following immediately following section 45:

APPENDIX C

Instructions

1. The instructions provided at item 1 of Appendix C describe the types of derivatives for which a recognized trade repository must make the data in the fields described in Table 1 available to the public.

The effect of item 1(b) is that a recognized trade repository is not required to make available to the public data that relates to a life-cycle event that does not contain new price information compared to the derivatives data initially reported for the transaction.

Table 1

Table 1 lists the data fields in which data must be made available to the public. Table 1 is a subset of the information that the trade repository is required to submit to the regulator and does not include all the fields required to be reported to a recognized trade repository in accordance with Appendix A. For example, valuation data fields are not required to be made available to the public under subsection 39(3) and in accordance with Appendix C.

Table 2

Only derivatives in the Asset Class and Underlying Asset Identifiers fields listed in Table 2 are subject to the requirement under subsection 39(3) of the Instrument that transaction-level data be made available to the public.

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

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

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

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

“GBP-LIBOR-BBA” means all tenors of the GBP Pound Sterling ICE LIBOR. ICE LIBOR is a benchmark currently administered by ICE Benchmark Administration and provides an indication of the average rate at which a contributor bank can obtain unsecured funding in the London interbank market for a given period, in a given currency.

“All Indexes” means any statistical measure of a group of assets that is administered by an organization that is not affiliated with the counterparties and whose value and calculation methodologies are publicly available. Examples of indexes that would satisfy this meaning are underlying assets that would be included in ISDA’s Unique Product Identifier Taxonomy⁹ under (i) the categories of Index and Index Tranche for credit products and (ii) the Single Index category for equity products.

Exclusions

2. Item 2 of Appendix C specifies certain types of derivatives that are excluded from the requirement under subsection 39(3) of the Instrument that transaction-level data be made available to the public. An example of a derivative excluded under item 2(a) is a cross-currency swap. The type of derivative excluded under item 2(b) results from portfolio compression activity which occurs whenever a derivative is amended or entered into in order to reduce the gross notional amount of an outstanding derivative or group of derivatives without impacting the net exposure. Item 2(c) excludes a derivative resulting from a novation on the part of a clearing agency when facilitating the clearing of a bilateral derivative. As a result of item 2(c), with respect to derivatives involving a recognized or exempt clearing agency, the timing under item 7 for making transaction-level data available to the public applies only to derivatives entered into by a clearing agency on its own behalf.

Rounding of notional amount

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

Capping of notional amount

4. Item 4 of Appendix C requires a recognized trade repository to compare the rounded notional amount of a derivative denominated in a non-CAD currency to the capped rounded notional amount in CAD that corresponds to the asset class and tenor of that derivative, each as set out in Table 4. Therefore, the recognized trade repository must convert the rounded notional amount in the non-CAD currency into CAD in order to determine whether it would exceed the capping threshold. The recognized trade repository must use a consistent and transparent methodology for converting to and from CAD for the purposes of comparing and publishing the capped notional amount.

⁹ ISDA’s Unique Product Identifier Taxonomy can be found at www.isda.org.

For example, in order to compare the rounded notional amount of a derivative denominated in UK Pounds (GBP) to the thresholds in Table 4, the recognized trade repository must convert this amount to a CAD-equivalent amount. If the CAD-equivalent notional amount of the GBP denominated derivative exceeds the capping threshold, the recognized trade repository must make available to the public the capped rounded notional amount converted back into the currency of the derivative using a consistent and transparent methodology.

6. Item 6 of Appendix C requires a recognized trade repository to adjust the data in the Option premium field in a consistent and proportionate manner if the rounded notional amount of a derivative is greater than the applicable capped rounded notional amount, as set out in Table 4. The Option premium field adjustment should be proportionate to the size of the capped rounded notional amount compared to the rounded notional amount.

Timing

7. Item 7 of Appendix C sets out when a recognized trade repository must make the required information from Table 1 available to the public. The purpose of the public reporting delays is to ensure that counterparties have adequate time to enter into any offsetting derivative that may be necessary to hedge their positions. The time delay applies to all derivatives, regardless of size, that are subject to the requirement under subsection 39(3) of the Instrument that transaction-level data be made available to the public in accordance with Appendix C..

15. These changes become effective on September 30, 2016.