**CSA Multilateral Notice and Request for Comment Proposed Multilateral Instrument 91-101 *Derivatives Product Determination* and Proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting***

**January 21, 2015**

**Introduction**

Staff of the Alberta Securities Commission, the British Columbia Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan, the New Brunswick Financial and Consumer Services Commission and the Nova Scotia Securities Commission (each an Authority and collectively, "we" or the Authorities) are publishing for a 60 day comment period expiring March 24, 2015:

- proposed Multilateral Instrument 91-101 *Derivatives: Product Determination* (the Scope Rule);

- proposed Companion Policy 91-101CP *Derivatives: Product Determination* (the Scope CP);

- proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the TR Rule);

- proposed Companion Policy 96-101CP *Trade Repositories and Derivatives Data Reporting* (the TR CP);

These documents will be referred to as the Proposed Instruments.

We are issuing this notice to provide interim guidance and solicit comments on the Proposed Instruments.

**Background**

On December 6, 2012, the Canadian Securities Administrators 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). The Committee requested public comment on all aspects of the Draft Model Rules. Thirty-five comment letters were received.

On June 6, 2013, the Authorities published CSA Staff Consultation Paper 91-302 Updated Model Provincial Rules *Derivatives: Product Determination* and *Trade Repositories and Derivatives Data Reporting* (the Updated Model Rules). Also on June 6, 2013, the securities regulatory authorities in Manitoba, Ontario and Quebec published corresponding proposed local rules and related companion policies for comment. The Updated Model Rules and the local rules

and related companion policies published in Manitoba, Ontario and Quebec were intended to be substantially similar.[1]

In developing the Proposed Instruments, we have reviewed the comment letters received in relation to both the Updated Model Rules and the local rules published in Manitoba, Ontario and Quebec, and have considered the final local rules adopted in each of those provinces, including recent amendments. We intend that the Proposed Instruments will be consistent with the local rules in Manitoba, Ontario and Quebec, other than minor variations to accommodate differences in provincial securities legislation and those specific proposals discussed in this notice.

Staff of the Authorities intend to work together to review the comment letters and will make any determinations on changes to the Proposed Instruments as a group. Upon reaching agreement on any changes to the Proposed Instruments with the goal of implementing harmonized instruments.

**Substance and Purpose of the Proposed Instruments**

With respect to Nova Scotia and Saskatchewan, the Proposed Instruments should be read in the context of the amendments to the local securities legislation that have not yet been proclaimed. The securities regulatory authorities in each of these jurisdictions anticipates that the respective amendments will be proclaimed and in force at or before the time that the Proposed Instruments become final.

*(a) The Scope Rule*

The purpose of the Scope Rule is to establish the types of derivatives that will be subject to the requirements of the TR Rule. We anticipate that the Scope Rule will, with appropriate adjustment, also apply to future instruments relating to derivatives. The Scope Rule does not apply to other elements of securities legislation.

The Scope Rule provides that the TR Rule does not apply to certain contracts or instruments that fall within the broad definition of "derivative" in local securities legislation. The excluded contracts are contracts that have not traditionally been considered over-the-counter derivatives. The Scope Rule also addresses the fact that the definitions of "derivative" and "security" in securities legislation are expansive and, in some cases, overlapping. Except in Alberta, the Scope Rule resolves conflicts that arise when a contract or instrument meets both the definition of "derivative" and "security". In Alberta, because the definition of security and derivative do not overlap, the Scope Rule designates certain types of contracts or instruments to be derivatives to which the requirements in the TR Rule apply.

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[1] In each of Manitoba, Ontario and Quebec, the *Derivatives: Product Determination* rule or regulation currently in effect is numbered 91-506 and its related companion policy is numbered 91-506CP; the *Trade Repositories and Derivatives Data Reporting* rule or regulation currently in effect is numbered 91-507 and its related companion policy is numbered 91-507CP.

*(b) The TR Rule*

The purpose of the TR Rule is to improve transparency in the OTC derivatives market and to ensure that recognized trade repositories operate in a manner that promotes the public interest. Derivatives data is essential for effective regulatory oversight of the derivatives market, including the ability to identify and address systemic risk and the risk of 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 derivatives market.

The TR Rule focuses on two regulatory areas: (i) the regulation and oversight of trade repositories, including the recognition process, data access and dissemination, and operational requirements, and (ii) establishing derivatives data reporting requirements for counterparties to derivatives transactions.

Appendix A to the TR Rule sets out the data fields required to be reported for transactions subject to the reporting requirement in the TR Rule. Guidance for the data fields in Appendix A is included in the Description column in the reporting fields table in Appendix A.

**Summary of the Proposed Instruments**

*(a) The Scope Rule*

The definition of "derivative" in the securities legislation of each of Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan (each a jurisdiction) is intended to include the types of instruments traditionally referred to as derivatives (for example, options, swaps and forwards) as well as other novel instruments. The definition of "derivative" is broad enough to capture many contracts and instruments that have not traditionally necessarily been considered to be derivatives. The Scope Rule tailors the application of the TR Rule to certain existing and emerging products.

Contracts or instruments to which the TR Rule would not apply include:

- gaming and insurance contracts where such contracts are regulated by a domestic or an equivalent foreign legislation;

- contracts for the purchase and sale of currency provided that the contract (i) settles by delivery of the contracted currency within prescribed timelines, (ii) is intended by the parties to be settled by delivery of the currency referenced in the contract, and (iii) does not allow for roll-over;

- contracts for the delivery of a commodity provided that the contract (i) is intended by the parties to be settled by delivery of the commodity, and (ii) does not provide for cash settlement in place of the delivery of the commodity;

- evidences of deposit issued by certain Canadian financial institutions;

- contracts or instruments traded on certain exchanges;

- except in Alberta and British Columbia, contracts that meet the definition of both "derivative" and "security" in the local securities legislation, provided that such contract is not a security solely by virtue of being an "investment contract" or,

- in Alberta, a contract or instrument that is not a security solely by virtue being an "investment contract" or an "option";

- in British Columbia, a contract or instrument that is a derivative but is also a security solely because it is an "investment contract", a "futures contract" or an "option"; and

- contracts or instruments issued by an issuer, a control person of an issuer or an insider of an issuer where the underlying interest of that contract or instrument is a security of the issuer or an affiliated entity of the issuer and the contract or instrument is used (i) to compensate or incent the performance of a director, employee or service provider of the issuer or an affiliated entity of the issuer or (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.

### (b) The TR Rule

The TR Rule focuses on two regulatory areas: (i) requirements relating to the regulation and oversight of trade repositories, including the recognition process, data access and dissemination, and operational requirements, and (ii) establishing derivatives data reporting requirements by counterparties to derivatives transactions.

### (i) Regulation of Trade Repositories

To be recognized as a trade repository in a jurisdiction under the TR Rule, a person or company will be required to apply to the relevant Authority. An applicant for recognition will be required to file with the relevant Authority a completed Form F1, financial statements and a letter describing how the entity complies, or will comply, with the TR Rule.

A recognized trade repository will be required to comply with the requirements in the TR Rule in addition to the terms and conditions of its recognition order. It will be required to provide the Authority with interim and year-end financial statements and before implementing any significant changes to the information submitted in its application, to provide notice to the Authority. In addition, recognized trade repositories will be subject to a variety of ongoing requirements including ensuring the adequacy of its governance arrangements, meeting board composition requirements, clearly defining management roles and responsibilities, maintaining policies and procedures for material aspects of its business, retaining records, ensuring data security and confidentiality, establishing a comprehensive risk management and compliance framework and meeting other requirements related to systems and operational risks. A recognized trade repository will be expected to accept derivatives data for each class of derivatives described in its 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 will be required to be fairly and equitably allocated amongst its participants and be publicly disclosed. Further, a recognized trade repository will be required to have rules, policies and procedures to confirm the accuracy of reported data with its participants.

Additionally, we propose that a recognized trade repository will be subject to requirements to provide access to trading data to regulators and to the public.

*(ii) Reporting Requirements*

Under the TR Rule, all derivatives transactions involving a local counterparty will be required to be reported to a recognized trade repository or, in limited circumstances, to the relevant Authority. The TR Rule sets out the following hierarchy for determining which counterparty is the reporting counterparty and has the obligation to report a transaction:

  (i)   where a transaction is cleared, the clearing agency;

  (ii)  where a transaction is not cleared and is between a derivatives dealer and a non-dealer, the derivatives dealer;

  (iii) where a transaction in not cleared and is between a Canadian financial institution and a counterparty that is neither a Canadian financial institution nor a dealer, the Canadian financial institution;

  (iv)  where a transaction is not cleared and is between two derivatives dealers, two Canadian financial institutions or two counterparties that are neither derivatives dealers nor Canadian financial institutions, the counterparty that is identified as the reporting counterparty in a written agreement between the counterparties;
  (v)   where the counterparties cannot agree, both counterparties will have an obligation to report.

The TR Rule requires that reporting be completed on a real-time basis. However, where it is not technologically possible 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. Transactions 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 rule contemplates this date will be the $91^{st}$ day following the implementation of the TR Rule. We encourage comment on the appropriate period.

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

  (i)   creation data, which includes operational data, product information, principal economic terms, counterparty information, underlier information and relevant identifiers (see Appendix A to TR Rule for more details);

(ii) lifecycle data which includes any change to derivatives data previously reported; and

(iii) valuation data, which includes the current value of the transaction.

**Key Differences between the TR Rule and the trade reporting rules in effect Manitoba, Ontario and Quebec**

Subject to exception noted in this part, we intend that the Scope Rule and the TR Rule be consistent with the corresponding local rules in Manitoba, Ontario and Quebec. We do not intend that the Scope Rule to have material differences from the corresponding rules in those provinces.

We are seeking comment on the TR Rule and the corresponding local rules in Manitoba, Ontario and Quebec. In particular we are seeking comment on:

(i)   whether the proposed differences are appropriate for market participants in our jurisdictions; and

(ii)  whether the proposed differences will result in consequences or issues that are detrimental to market participants, industries or the derivatives market in the jurisdictions and/or in Canada.

We encourage each commenter to provide specific analysis in order to assist the Authorities in understanding the specific issues being raised.

*(a) The definition of "local counterparty" in the TR Rule*

The definition of "local counterparty" in the local trade reporting rules in place in Manitoba, Ontario and Quebec includes not just an entity organized or with it head or principal place of business in a jurisdiction (or its guaranteed affiliate), but also a counterparty that is registered under the securities legislation of the local jurisdiction as a derivatives dealer or in another category as a consequence of trading in derivatives (i.e., is a locally-registered entity).

As a result, in each of Manitoba, Ontario and Quebec, a counterparty that is a registrant in the jurisdiction, regardless of where its head office or principal place of business is located, would be considered to be a local counterparty in that jurisdiction for all of its derivatives transactions. Consequently, subject to any deemed substitute compliance, all transactions entered into by that registrant are required to be reported even if neither the registrant or its counterparty is situate in the jurisdiction.

In contrast, the definition of "local counterparty" in the TR Rule does not include a registrant unless that registrant is organized or has its head or principal office in the jurisdiction.

As a result of this difference in the "local counterparty" definition in the TR Rule, a transaction involving a registrant in the local jurisdiction will only be required to be reported under the laws of that local jurisdiction if any one of the following applies:

- the derivatives dealer is organized under the laws of the jurisdiction, or has its head office or principal place of business in the jurisdiction,

- the derivatives dealer is an affiliate of a person referenced in the bullet-point above and that party is responsible for the liabilities of the derivatives dealer, or

- the other counterparty to the trade is a local counterparty.

## *(b) Reporting counterparty waterfall and record-keeping and additional requirements*

The reporting counterparty waterfall in section 25 of the TR Rule establishes which counterparty to a transaction is the reporting counterparty and is responsible for reporting the transaction to a recognized trade repository. The waterfall in the TR Rule is harmonized with the corresponding provisions, as amended, in the local trade reporting rules in effect in Manitoba and Quebec. The reporting waterfall is different from the trade reporting rule in Ontario. These differences are:

- "reporting clearing agency" – the TR Rule, similar to the local rules in Manitoba and Quebec, contemplates that a clearing agency which has not yet been recognized or exempted from recognition in the local jurisdiction may undertake to the Authorities to fulfill the TR Rule reporting obligations for a transaction cleared through its facilities;

- "Canadian financial institution" – for a transaction that is not cleared through a reporting clearing agency and is between a Canadian financial institution and a counterparty that is neither a derivatives dealers nor a Canadian financial institution, the TR Rule, similar to the corresponding rules in Manitoba and Quebec, the Canadian financial institution will be the reporting counterparty; and

- "written agreement" – for a transaction involving two counterparties that are either both derivatives dealers, both Canadian financial institutions or both local counterparties that are not derivatives dealers or Canadian financial institutions, the TR Rule, similar to the corresponding rules in Manitoba and Quebec, permits the counterparties to agree in writing which counterparty will be the reporting counterparty. If the counterparties do not agree, in writing, which counterparty will act as a reporting counterparty, each local counterparty to the transaction is a reporting counterparty.[2] If the counterparties cannot agree, each local counterparty will be required to report transaction identifiers to the relevant Authorities under subsection 25(4).

Section 25 of the TR Rule also sets out record-keeping requirements for the written agreement referred to above.

These differences are intended to reduce the regulatory burden, particularly for counterparties to derivatives transactions that are not derivatives dealers or Canadian financial institutions. In addition, the changes will reduce the incidents of double reporting of derivatives transactions.

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[2]  Note that the corresponding provision in the Ontario 91-507 rules requires that the reporting counterparty be determined pursuant to the ISDA methodology, as defined in the Ontario 91-507 rule.

*(c) Exemptions from reporting trades of commodities derivatives*

Section 40 of the TR Rule includes an exemption for a reporting counterparty from the reporting obligations where:

- the transaction is in a derivative based on a commodity, other than cash or currency;

- the counterparty is not a derivatives dealer, a Canadian financial institution or an entity organized in a foreign jurisdiction that is analogous to a Canadian financial institution; and

- at the time of the execution of the transaction, the counterparty's aggregate notional exposure under all contracts based on commodities, other than cash or currency, is less than $250 million (CAD).

The proposed threshold is very different than the exemptions thresholds in the trade reporting rules in Manitoba, Ontario and Quebec. This exemption is intended to reduce the regulatory burden on commodity derivatives market end-users, such as commodity producers, commodity processors and commodity consumers, while still ensuring that the majority of derivatives transaction activity will continue to be reported. Transactions in commodity derivatives where a counterparty is a derivatives dealer or financial institution or has a gross notional exposure exceeding the $250 million threshold will still be required to be reported in accordance with the regulatory requirements applicable to that counterparty. The exemption is not available for transactions involving derivatives based on assets other than commodities.

The threshold has been established based on analysis conducted by staff of the Authorities. In developing the proposal staff have considered:

- the potential burden on market participants associated with trade reporting,

- benefits that trade reporting provide to regulators and market participants, and

- whether there would be systemic risks associated with derivatives trades that would not be reported.

We encourage comment on whether the proposed threshold is appropriate and the implementations of the threshold. If commenters suggest alternative thresholds, we request that they explain their suggestions and encourage them to provide data or other information to support their suggestions.

**Contents of Annexes**

The following annexes form part of this CSA Notice:

- Annex A – Proposed Multilateral Instrument 91-101 *Derivatives: Product Determination*;
- Annex B – Proposed Companion Policy 91-101;
- Annex C - Proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*; and
- Annex D – Proposed Companion Policy 96-101.

**Questions**

While we encourage comments on all aspects of the Proposed Instrument, we are seeking comments on the following specific aspects of the Scope Rule and Scope CP and the TR Rule and TR CP:

*(a) The Scope Rule and Scope CP*

1. Does the Scope CP provide sufficient clarity as to the contracts and instruments that are subject to trade reporting? Please provide specific examples where there is not sufficient clarity.

2. The Scope Rule and Scope CP indicate that 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? Please explain.

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 subsection 3(6) necessary given that these provinces have such a carve-out?

*(b) The TR Rule and TR CP*

*Local counterparty definition*

4. Is it appropriate to exclude derivatives dealers from the definition of local counterparty appropriate? Please explain. Do you foresee any issues in the jurisdictions adopting a different definition from Manitoba, Ontario and Quebec? Please explain.

*Definition of affiliated entity*

5. Subsections 1(4) and (5) of the proposed TR Rule include a harmonized interpretation of the terms "affiliated entity" and "control" that is different from the concept of

"affiliate" that applies in the corresponding local rules in Manitoba, Ontario and Québec in that it contemplates that a counterparty may control or be under common control with not just a corporate entity but also a partnership or a trust. Is the TR Rule proposal appropriate? What are the implications of the Authorities adopting an interpretation of "affiliated entity" that is different than the corresponding local rules in Manitoba, Ontario and Québec? Please explain.

*Reporting counterparty waterfall*

6. Section 25 of the proposed TR Rule allows the counterparties to a transaction where either both are derivatives dealers, Canadian financial institutions or not derivatives dealers or Canadian financial institutions to agree on who will be the reporting counterparty. Is this appropriate? Will this be effective in ensuring that the reporting obligation will be applied to the appropriate counterparty? Please provide specific examples or analysis.

7. Do you foresee any difficulties in counterparties agreeing as to who will be the reporting counterparty? If so, explain.

8. Does the inclusion of a Canadian financial institution in the reporting counterparty waterfall create any issues? Please provide specific examples of complications or analysis of potential scenarios.

*End-user Commodity Transactions Exemption*

9. Section 40 of the proposed TR Rule contemplates an exemption from trade reporting for commodity-based derivatives transactions that differs from the section 40 exemption in the existing TR rules in Manitoba, Ontario and Quebec. The proposed TR Rule would exempt commodity-based transactions between two end-users provided each counterparty is below a threshold of $250,000,000 aggregate notional value, without netting, under all of its outstanding commodity-based derivatives transactions.

(a) Does the proposed threshold reflect those entities in the local jurisdiction that you would consider significant participants in the derivatives market? If not, what threshold would more accurately reflect that threshold for the local jurisdiction? The Authorities welcome specific data on the local provincial, national and product-specific derivatives markets.

(b) Are there certain types of counterparties e.g., those in certain industries, that you anticipate will be most likely to qualify for and rely on the exemption? Please explain.

(c) What are the implications of the Authorities adopting a different threshold from the section 40 threshold in the existing Manitoba, Ontario and Québec TR rules?

(d) The proposed TR Rule presently contemplates one threshold applicable across all of the jurisdictions participating in the TR Rule. Please describe in detail, to the extent possible, any implications that would result if different thresholds were applicable in different jurisdictions within the proposed TR rule

(e) The proposed TR Rule contemplates that the aggregate outstanding notional value be calculated with reference to outstanding commodity derivatives transactions only. The threshold in section 40 of the corresponding local rules in Manitoba, Ontario and Québec is calculated with respect to all outstanding derivatives transaction, regardless of underlying asset or product. Please describe how the proposed modified calculation basis would affect your organization.

(f) One of the policy rationales for requiring derivatives trade reporting is to increase transparency. To what extent is lack of transparency in respect of commodity derivatives a concern? Please explain.

(g) Another policy rationale for requiring derivatives trade reporting is to provide regulators with greater ability to monitor trading for market manipulation, misleading appearance of trading, artificial prices and other practices that might perpetrate a fraud or market abuse. To what extent do concerns exist that these types of practices are occurring in the commodity derivatives market? Please explain.

(h) Would the adoption of a section 40 exemption threshold at $250 million, or at a significantly higher level, result in systemic risk in Canada or in any of the participating jurisdictions? Please specify and explain.

*Implementation and Transition Period*

10. We have contemplated that there should be some transitional period between the date on which the proposed TR Rule becomes effective and the date that the first reporting obligations will apply. Is a three month period sufficient for trade repositories to seek and obtain recognition? If not, what period would be sufficient?

11. As outlined in the proposed TR CP, we have considered staged implementation of the trade reporting obligations such that the requirement might apply to those lower in the trade reporting waterfall at successively later dates. Given that trade reporting obligations will likely apply to end-users in Manitoba, Ontario and Québec by the time the proposed TR Rule becomes effective, is it necessary for the Authorities to consider staged implementation? Is the staged implementation in the proposed TR CP appropriate?

**Comments**

Please submit your comments in writing on or before March 23, 2015.  If you are sending your comments by email, please also send an electronic file containing the submissions (in Microsoft Word format).

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

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

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission

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

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**Questions**

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

**Definitions and interpretation**

**1. (1)** In this instrument, "specified instrument" means 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) if the second party is a trust and a trustee of the trust is the first party.

**(4)** In British Columbia, "derivative" in this instrument means a contract or instrument that 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.

**Excluded derivatives**

**2. (1)** The specified instrument does not apply to a contract or instrument that is a derivative, if the contract or instrument is one or more of the following:

(a) regulated by

(i) gaming control legislation of Canada or a jurisdiction of Canada, or

(ii)     gaming control legislation of a foreign jurisdiction, if the contract or instrument

(A)     is entered into outside of Canada,

(B)     is not in violation of legislation of Canada or the local jurisdiction, and

(C)     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)     for the purchase and sale of currency that

(i)     except where 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 parties, their affiliated entities or their agents, requires settlement by the delivery of the currency referenced in the contract or instrument,

(A)     on or before the 2nd business day after the date of execution of the transaction, or

(B)     if the contract or instrument was entered into contemporaneously with a related trade in a security, on or before the settlement date for the related trade in a security,

(ii)     is intended by the counterparties, at the time of the execution of the transaction, to be settled by the delivery of the currency referenced in the contract within the time periods set out in subparagraph (i), and

(iii)     does not allow for the contract or instrument to be rolled over;

(d)      for delivery of a commodity other than cash or currency that

         (i)      is intended by the counterparties, at the time of execution of the transaction, to be settled by delivery of the commodity, and

         (ii)      does not allow for cash settlement in place of delivery except where 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)      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)      evidence of a deposit issued by a credit union, league, caisse populaire, loan corporation, treasury branch or trust company operated under legislation in any jurisdiction of Canada;

(g)      traded on an exchange that is

         (i)      recognized by a securities regulatory authority,

         (ii)      exempt from recognition by a securities regulatory authority, or

         (iii)      regulated in a foreign jurisdiction by a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding.

**(2)**      For the purposes of paragraph (1)(g), an 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 organized in a foreign jurisdiction that is similar to an entity described in any of paragraphs (a) to (d).

**Investment contracts and options**

**3. (1)** In Alberta, a contract or instrument, other than a contract or instrument to which section 2 applies, that is a contract or instrument referred to under subparagraph (i) of the definition of "derivative" and that is a security solely by reason of being an investment contract or option is designated to be a derivative to which the specified instrument applies.

**(2)** Subsection (1) does not apply to a contract or instrument to which all of the following apply:

    (a) the contract or instrument 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) the contract or instrument 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.

> Under the securities legislation of Alberta, a contract or instrument is not both a "derivative" and a "security" for the same purpose at the same time.

**(3)** In British Columbia, the specified instrument applies to a contract or instrument, other than a contract or instrument to which section 2 applies, that is a derivative, and that is otherwise a security solely by reason of being one or more of the following:

    (a) a document evidencing an option, subscription or other interest in a security;

    (b) a futures contract;

    (c) an investment contract;

    (d) an option.

**(4)** In British Columbia, despite subsection (3), the specified instrument does not apply to a contract or instrument that is a security and would otherwise be a derivative to which all of the following apply:

    (a)       the contract or instrument 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)       the contract or instrument 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.

**(5)** In New Brunswick, Nova Scotia and Saskatchewan, the specified instrument does not apply to a contract or instrument, other than a contract or instrument to which section 2 applies, that is a derivative and that, but for the exclusion of derivatives from the definition of security, would be a security unless the contract or instrument would be a security solely by reason of being an investment contract.

**(6)** In New Brunswick, Nova Scotia and Saskatchewan, the specified instrument does not apply to a contract or instrument to which all of the following apply:

    (a)       the contract or instrument 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)       the contract or instrument 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.

> Under the securities legislation of New Brunswick, Nova Scotia and Saskatchewan, a contract or instrument is not both a "derivative" and a "security" for the same purpose at the same time.

**Derivatives that are securities**

**4.**     In British Columbia, the specified instrument does not apply to a contract or instrument, other than a contract or instrument to which section 3 applies, that is a security and would otherwise be a derivative.

> The definitions of "derivative" and "security" under the securities legislation of Alberta, and the definition of "security" under the securities legislation of New Brunswick, Nova Scotia and Saskatchewan, provide the same effect.

**Effective date**

**5.**     This instrument comes into force on **[date to be determined]**.

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

## 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 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.

The Instrument applies to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the "specified instrument").

The Instrument includes a definition of the term "derivative" that will apply in British Columbia. A comparable definition is not needed in other local jurisdictions as "derivative" is defined in the securities legislation of each of the other local jurisdictions. It is intended that the term "derivative" will capture the same contracts and instruments in each of the local jurisdictions.

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*.

In this Policy, the term "contract" is interpreted to mean "contract or instrument".

## PART 2
## GUIDANCE

### 2. Excluded derivatives

Section 2 provides that the specified instrument does not apply to specified categories of contracts that fall under the definition of derivative but, for a variety of reasons, should be excluded from the requirements in the specified instrument.

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

Paragraph 2(1)(a) of the Instrument excludes certain domestic and foreign gaming contracts from the requirements in the specified instrument.

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. In addition, we are of the view that the derivatives regulatory regime is not appropriate for this type of contract. Further, gaming control legislation of Canada (or a jurisdiction of Canada), or equivalent gaming control legislation of a foreign jurisdiction, generally has consumer protection as an objective and is therefore aligned with the objective of securities legislation.

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; (B) its execution does not violate legislation of Canada or the local jurisdiction, and (C) 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 requirements in the specified instrument 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 the derivatives regulatory regime is not appropriate for this type of contract. Further, a comprehensive regime is already in place that regulates the insurance industry in Canada and the insurance legislation of Canada or a jurisdiction of Canada, or equivalent insurance legislation of a foreign jurisdiction, generally has consumer protection as an objective and is therefore aligned with the objective of securities legislation.

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 application of the specified instrument 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 requirements in the specified instrument 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 application of the specified instrument 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 the 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, and

- 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 a rollover of the contract. 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 requirements in the specified instrument 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 and not merely an option to make or take delivery. 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; and

- 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 1(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 will not qualify for this exclusion where it can be inferred that the counterparties intend to enter into the contract to achieve an economic outcome that is, or is akin to, an option.

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.

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

Subparagraph 2(1)(d)(ii) requires that, to benefit from the exclusion from the requirements in the specified instrument, 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, the 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, and

- 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 requirements in the specified instrument. 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 requirements in the specified instrument if it is traded on one or more certain 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 the requirements of the specified instrument. A transaction that is cleared through a clearing agency, but not traded on an exchange, is not considered to be exchange-traded and is subject to the requirements in the specified instrument, where applicable.

*Additional contracts not considered to be derivatives*

Apart from the contracts expressly excluded from the requirements in the specified instrument in 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; and

- 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.

**3. Investment contracts and options**

<u>Contracts to which the requirements in the specified instrument apply</u>

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. Except in Alberta, this section provides that such contracts will be treated as derivatives. In Alberta, these contracts are designated to be derivatives, but only for the purposes of the specified instrument. Accordingly, where applicable, the requirements in the specified instrument apply to such contracts.

In Alberta, subsection 3(1) of the Instrument provides that the requirements in the specified instrument apply to a contract (to which section 2 of the Instrument does not apply) that meets the first prong of the definition of "derivative" and is a security solely by reason of being either an investment contract or an option under the definition of "security" in the securities legislation of Alberta.

In the securities legislation of Alberta, an option falls within both the definition of "derivative" and the definition of "security". Subsection 3(2) of the Instrument designates an option that is only a security because the definition of "security" includes an option to be a derivative for the purposes of the specified instrument. Options, such as stock options, that are also securities under other prongs of the definition of security, for example, because they are commonly known a security, remain securities. Where applicable, the requirements in the specified instrument 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 not subject to the requirements in the specified instrument.

In British Columbia, subsection 3(3) of the Instrument provides that the requirements in the specified instrument apply to a contract (to which section 2 of the Instrument does not apply) that is a derivative and is a security solely by reason of being an option, subscription or other interest in a security, a futures contract, an investment contract or an option (other than an option in a security) under the definition of "security" in the securities legislation of British Columbia.

The securities legislation in New Brunswick, Nova Scotia and Saskatchewan provides that a contract that is a derivative and, but for the exclusion of derivatives from the definition of "security", would be a security, is a derivative. Subsection 3(5) provides that such a contract will not be subject to requirements in the specified instrument unless the contract would be security solely because it is an investment contract.

Options do not fall within the definition of "security" in the securities legislation of New Brunswick, Nova Scotia and Saskatchewan, but do fall within the definition of "derivative" and are therefore subject to the requirements in the specified instrument. Subsection 3(6) reflects that a "derivative" under the securities legislation in each of these jurisdictions does not include a contract that would otherwise be a derivative if the contract is an interest in or to a security and a trade in the security under the contract would constitute a distribution.

<u>Contracts to which the requirements in the specified instrument do not apply</u>

Some types of contracts that meet the definition of derivative, or in Alberta meet the first prong of the definition, and 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, this section also provides that the requirements in the specified instrument will not apply to such contracts.

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.

## 4. Derivatives that are securities

Except in Alberta, section 4 of the Instrument provides that the requirements in the specified instrument do not apply to a contract (to which section 3 of the Instrument does not apply) that meets both the definition of "derivative" and the definition of "security" under the securities legislation of the local jurisdiction. Contracts contemplated as falling within this section include structured notes, asset-backed securities, exchange-traded notes, capital trust units, exchangeable or convertible securities, income trust units, and securities of investment funds.

This section ensures that such instruments will continue to be subject to applicable prospectus disclosure and continuous disclosure requirements in securities legislation as well as to applicable registration requirements for securities dealers and advisers. The participating jurisdictions anticipate that the categorization of instruments as securities and derivatives will be reviewed once the comprehensive derivatives regime has been implemented.

Under the securities legislation of Alberta, absent a designation order, a contract that meets both the first prong of the definition of "derivative" and the definition of "security" is a security. Such a contract is therefore subject to applicable prospectus disclosure and continuous disclosure requirements in securities legislation as well as to applicable registration requirements for securities dealers and advisers and is not subject to the requirements in the specified instrument.

## PROPOSED MULTILATERAL INSTRUMENT 96-101
### *TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING*

## PART 1
## DEFINITIONS AND INTERPRETATION

**Definitions and interpretation**

**1.  (1)**   In this Instrument

"asset class" means the asset category underlying a derivative and includes 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 the data in the fields listed in Appendix A;

"derivatives data" means all data related to a transaction that is required to be reported pursuant to 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 Legal Entity Identifier System" means the system for unique identification of parties to financial transactions developed by the Legal Entity Identifier System Regulatory Oversight Committee;

"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 previously reported to a recognized trade repository in respect of a transaction;

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

"local counterparty" means a counterparty to a transaction if, at the time of execution of the transaction, either of the following apply:

(a)     the counterparty is a person or company 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 an affiliated entity of a person or company to which one or more of subparagraphs (a)(i) to (iii) apply and the person or company to which one or more of subparagraphs (a)(i) to (iii) apply is responsible for 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;

"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 in the local jurisdiction;

(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 transactions cleared by it that are subject to the reporting obligations under this Instrument;

"reporting counterparty" means a counterparty identified in accordance with section 25;

"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;

"user" means, in respect of a recognized trade repository, a counterparty (or delegate of a counterparty) to a transaction reported to that recognized trade repository pursuant to this Instrument;

"valuation data" means data that reflects the current value of the transaction and includes the data in the applicable fields listed in Appendix A under the heading "Valuation Data".

**(2)**      In this Instrument, each of the following terms has the same meaning as in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*: "accounting principles"; "auditing standards"; "publicly accountable enterprise"; "U.S. AICPA GAAS"; "U.S. GAAP"; and "U.S. PCAOB GAAS".

**(3)**     In this Instrument, "interim period" has the same meaning as in section 1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*.

**(4)**     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.

**(5)**     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)     if the second party is a trust and a trustee of the trust is the first party.

## 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 outside of the local jurisdiction must

(a)     provide 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

(b)     provide an undertaking to provide the regulator or securities regulatory authority with an opinion of legal counsel that

(i)    the person or company has the power and authority to provide the regulator or securities regulatory authority with access to its books and records, and

(ii)   the person or company has the power and authority to submit to onsite inspection and examination by the regulator or securities regulatory authority.

**(3)**    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 – Appointment of Agent for Service of Process*.

**(4)**    No later than the 7$^{th}$ day after becoming aware of an inaccuracy in or making a change to the information provided in Form 96-101F1 *Application for Recognition – Trade Repository Information Statement*, the person or company who has filed the Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* must file an amendment to Form 96-101F1 *Application for Recognition – Trade Repository Information Statement*. in the manner set out in Form 96-101F1 *Application for Recognition – Trade Repository Information Statement*.

**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 *Application for Recognition – Trade Repository Information Statement* in the manner set out in Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* no later than 45 days before implementing the change.

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

**(3)**    For a change to a matter set out in Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* 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 *Application for Recognition – Trade Repository Information Statement* in the manner set out in Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* 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, and

(b)     the time the recognized trade repository publicly 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 the requirements set out in subsections 4(2) and 4(3) no later than the $90^{th}$ day after the end of its financial year.

**(2)** A recognized trade repository must file interim financial statements no later than the $45^{th}$ 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 make an application and file a report on Form 96-101F3 *Cessation of Operations Report For Recognized Trade Repository* no later than the $180^{th}$ 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 *Cessation of*

*Operations Report for Recognized Trade Repository* as soon as practicable after it ceases to carry on that business.

**Legal framework**

**7. (1)** A recognized trade repository must establish, implement, maintain and enforce written rules, policies and procedures reasonably designed to ensure a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities.

**(2)** Without limiting the generality of subsection (1), a recognized trade repository must establish, implement, maintain and enforce written rules, policies and procedures that are not contrary to the public interest and that are reasonably designed to ensure that

(a)     its rules, policies and procedures and contractual arrangements are consistent with applicable law,

(b)     the rights and obligations of its users, owners and regulators with respect to the use of its information are clear and transparent, and

(c)     the agreements that it enters into and supporting documentation clearly state service levels, rights of access, protection of confidential information, intellectual property rights and operational reliability.

**(3)** Without limiting the generality of subsection (1), a recognized trade repository must implement and enforce policies that clearly establish the status of records of contracts in its 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 written governance arrangements that are well-defined, clear and transparent, set out a clear organizational structure with consistent lines of responsibility, and are reasonably designed to do each of the following:

(a)     provide for effective internal controls;

(b)     promote the safety and efficiency of the recognized trade repository;

(c)     ensure effective oversight of the recognized trade repository;

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

(e)     properly balance the interests of relevant stakeholders.

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

**(3)** A recognized trade repository must publicly disclose on its website

(a) the governance arrangements established in accordance with subsection (1), and

(b) the rules, policies and procedures established in accordance with 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 an appropriate level of skill and experience to effectively and efficiently oversee the management of its operations in accordance with all relevant laws, and

(b) appropriate 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, resolve conflicts of interest identified by the chief compliance officer.

**(4)** The board of directors of a recognized trade repository must meet with the chief compliance officer of the recognized trade repository on a regular basis.

**Management**

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

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

(b) ensure that management has the experience, competencies, integrity and mix of skills necessary to discharge its roles and responsibilities.

**(2)** A recognized trade repository must notify the regulator or securities regulatory authority no later than the $5^{th}$ business day after appointing or replacing any of 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 the appropriate experience, competencies, integrity and mix of skills necessary to 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, maintain and enforce written rules, policies and procedures designed to identify and resolve conflicts of interest,

(b) establish, implement, maintain and enforce 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 a jurisdiction in which it operates and one or more 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 may 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), 3(e) or 3(f), the chief compliance officer must file a copy of the report with the regulator or securities regulatory authority.

**Fees**

**12.**    All fees and other material costs imposed by a recognized trade repository on its participants must be

    (a)    fairly and equitably allocated among participants, and

    (b)    publicly disclosed on its website 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, maintain and enforce written rules, policies and procedures that establish objective risk-based criteria for participation that permit fair and open access to the services it provides.

    **(2)**    A recognized trade repository must publicly disclose on its website the rules, policies and procedures referred to in subsection (1).

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

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

    (b)    permit unreasonable discrimination among its participants;

    (c)    impose a burden on competition that is not reasonably necessary and appropriate;

    (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 a transaction in a derivative of the asset class or classes 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 in order to 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)    other service providers.

**Due process**

16. (1)    Prior to 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 or to make representations.

    (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)    The rules, policies and procedures of a recognized trade repository must

    (a)    be clear and comprehensive and provide sufficient information to enable a participant to understand its rights and obligations in accessing the services of the recognized trade repository and the risks, fees, and other material costs that will be incurred by it in using the services of the recognized trade repository, and

    (b)    be reasonably designed to govern all aspects of the services offered by the recognized trade repository with respect to the collection and maintenance of derivatives data and other information on a completed transaction.

    (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, maintain and enforce written rules, policies and procedures for sanctioning non-compliance with its rules, policies and procedures.

**(5)**     A recognized trade repository must publicly disclose on its website

    (a)     the rules, policies and procedures referred to in this section, and

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

**(6)**     A recognized trade repository must file its proposed new or amended rules, policies, and procedures for approval in accordance with the terms and conditions of its recognition order, unless the order explicitly exempts the recognized trade repository from this requirement.

**Records of data reported**

**18. (1)**     A recognized trade repository must design its recordkeeping procedures 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 in relation to a transaction for 7 years after the date on which the transaction 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 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 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 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 six months of current operating expenses.

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

**(5)** A recognized trade repository must establish, implement, maintain and enforce 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, maintain and enforce written rules, policies and procedures to ensure that it or a successor entity, insolvency administrator or other legal representative, will 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, maintain and enforce appropriate systems, controls and procedures 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 established pursuant to 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 transactions 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, maintain and enforce 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 prepared in accordance with subsection (6) to

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

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

**(8)**     A recognized trade repository must publicly disclose on its website 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 publicly discloses on its website the changed technology requirements as soon as practicable.

**Data security and confidentiality**

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

**(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 pursuant to section 39;

    (b)    the counterparties to the transaction 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)** Subject to subsection (2), a recognized trade repository must establish, implement, maintain and enforce written rules, policies and procedures to confirm with each counterparty to a transaction, or agent acting on behalf of such counterparty, that the derivatives data that the recognized trade repository receives from a reporting counterparty, or from a party to whom a reporting counterparty has delegated its reporting obligation under this Instrument, is accurate.

  **(2)** A recognized trade repository need only confirm the accuracy of the derivatives data it receives with those counterparties that are participants 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, maintain and enforce 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 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 conducting an audit or independent review of the recognized trade repository under this Instrument has appropriate access to all data, information and systems maintained by the service provider on behalf of the recognized trade repository that such persons 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)**  The reporting counterparty with respect to a transaction involving a local counterparty is

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

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

(c)     if neither paragraph (a) nor (b) applies to the transaction and the transaction is between a Canadian financial institution that is not a derivatives dealer and a counterparty that is not a Canadian financial institution or a derivatives dealer, the Canadian financial institution,

(d)     if none of paragraphs (a) to (c) apply to the transaction and the counterparties have, at the time the transaction occurs, 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

(e)     in each other case, each local counterparty to the transaction other than an individual.

**(2)**  Each local counterparty to a transaction to which paragraph (1)(d) applies must keep a record of the written agreement referred to in paragraph (1)(d) for 7 years after the date on which the transaction expires or terminates.

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

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

    (b)    provided to the regulator within a reasonable time following request.

**(4)** No later than the end of the 5$^{th}$ day after the day of execution of a transaction to which paragraph (1)(e) applies, each local counterparty to the transaction must submit to the regulator, in an electronic format, a document identifying each of the following:

    (a)    the unique transaction identifier assigned to the transaction by the recognized trade repository to which the local counterparty reported the transaction;

    (b)    the unique transaction identifier assigned to the transaction by the recognized trade repository to which the other local counterparty reported the transaction.

**Duty to report**

**26. (1)** A reporting counterparty to a transaction 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)** A reporting counterparty in respect of a transaction is responsible for ensuring that all reporting obligations in respect of that transaction have been fulfilled.

**(3)** A reporting counterparty may delegate its reporting obligations under this Instrument, but remains responsible for ensuring the timely and accurate reporting of derivatives data required by this Instrument.

**(4)** 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.

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

    (a)    the transaction is required to be reported solely because a counterparty to the transaction is a local counterparty pursuant to paragraph (b) of the definition of "local counterparty";

    (b)    the transaction is reported to a recognized trade repository pursuant to

        (i)    the securities legislation of a province of Canada other than the local jurisdiction, or

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

(c)     the reporting counterparty instructs the recognized trade repository referred to in paragraph (a) 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.

**(6)**  A reporting counterparty must report all derivatives data relating to a transaction to the same recognized trade repository to which the initial report was made or, if the initial report was made to the regulator or securities regulatory authority under subsection (4), to the regulator or securities regulatory authority.

**(7)**  A reporting counterparty must not submit a report to a recognized trade repository that is false, inaccurate or misleading.

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

**(9)**  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 transaction to which it is a counterparty, as soon as technologically practicable upon discovery of the error or omission, and in no event later than the end of the business day following the day of discovery of the error or omission.

**(10)** A reporting clearing agency must report derivatives data to the recognized trade repository specified by a local counterparty and may not report derivatives data to another trade repository without the consent of the local counterparty if each of the following applies:

(a)     the reporting counterparty to a transaction is the reporting clearing agency;

(b)     the local counterparty to the transaction that is not a reporting clearing agency has specified a recognized trade repository to which derivatives data in respect of that transaction is to be reported.

**Identifiers, general**

**27.**    A reporting counterparty must include the following in every report required by this Part:

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

(b)      the unique transaction identifier for the transaction as set out in section 29;

(c)      the unique product identifier for the transaction as set out in section 30.

## Legal entity identifiers

**28. (1)**    A recognized trade repository must identify each counterparty to a transaction 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 (4), 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 Legal Entity Identifier System.

**(3)**    Subject to subsection (4), a local counterparty must comply with all applicable requirements imposed by the Global Legal Entity Identifier System.

**(4)**    If the Global Legal Entity Identifier System is unavailable to a counterparty to a transaction at the time when a report under this Instrument is required to be made, each of the following applies:

(a)      each counterparty to the transaction 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 Legal Entity Identifier 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 Legal Entity Identifier 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 pursuant to this Instrument in respect of transactions to which it is a counterparty.

## Unique transaction identifiers

**29. (1)**    A recognized trade repository must identify each transaction 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 derivative and is assigned in accordance with international or industry standards.

**(2)** A reporting counterparty must identify each transaction that is required to be reported under this Instrument in all recordkeeping and all reporting required under this Instrument by means of a unique product identifier.

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

**(4)** If international or industry standards for a unique product identifier are unavailable for a particular derivative when a report is required to be made to a recognized trade repository under this Instrument, a reporting counterparty must assign a unique product identifier to the transaction using its own methodology.

## Creation data

**31. (1)** A reporting counterparty, upon execution of a transaction that is required to be reported under this Instrument, must report the creation data relating to that transaction to a recognized trade repository.

**(2)** A reporting counterparty in respect of a transaction must report creation data in real time.

**(3)** Despite subsection (2), if it is not technologically practicable to report creation data in real time, a reporting counterparty must report creation data as soon as technologically 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 reporting a transaction required to be reported under this Instrument must report all life-cycle event data 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 technologically 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 reporting a transaction required to be reported under this Instrument must report valuation data based on industry accepted valuation standards to a recognized trade repository

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

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

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

**Pre-existing transactions**

**34. (1)** Despite section 31 and subject to subsection 43(2), a reporting counterparty to a transaction required to be reported under this Instrument is required to report only the creation data indicated in the column in Appendix A entitled "Required for Pre-existing Transactions" on or before **[date to be determined]** if each of the following applies:

    (a)    the reporting counterparty is a reporting clearing agency, a derivatives dealer or a Canadian financial institution;

    (b)    the transaction was entered into before **[date to be determined]**;

    (c)    there were outstanding contractual obligations with respect to the transaction on **[date to be determined]**.

    **(1.1)** Despite section 31 and subject to subsection 43(3), a reporting counterparty to a transaction required to be reported under this Instrument is required to report only the creation data indicated in the column in Appendix A entitled "Required for Pre-existing Transactions" on or before **[date to be determined]** if each of the following applies:

    (a)    the reporting counterparty is not a reporting clearing agency, a derivatives dealer or a Canadian financial institution;

    (b)    the transaction was entered into before **[date to be determined]**;

(c)      there were outstanding contractual obligations with respect to the transaction on **[date to be determined]**.

**(2)**    If subsection (1) or (1.1) applies to a transaction, the obligation of a reporting counterparty to report life-cycle event data under section 32 commences only after the reporting counterparty has reported creation data in accordance with subsection (1) or (1.1).

**(3)**    If subsection (1) or (1.1) applies to a transaction, the obligation of a reporting counterparty to report valuation data under section 33 commences only after the reporting counterparty has reported creation data in accordance with subsection (1) or (1.1).

**Timing requirements for reporting data to another recognized trade repository**

**35**.    Despite subsection 26(6) and the data reporting timing requirements set out in sections 31, 32, 33 and 34, if a recognized trade repository ceases operations or stops accepting derivatives data for a certain 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 transaction records for 7 years after the date on which the transaction expires or terminates.

**(2)**    A reporting counterparty must keep 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, at no cost,

(a)      provide to the regulator or securities regulatory authority direct, continuous and timely electronic access to such data in the possession of the recognized trade repository as is required by the securities regulatory authority,

(b)      accept and promptly fulfil a data request from the regulator or securities regulatory authority,

(c)    create and make available to the regulator or securities regulatory authority aggregate data derived from data in the possession of the recognized trade repository as is required by the regulator or securities regulatory authority, and

(d)    disclose to the regulator or securities regulatory authority the manner in which the derivatives data provided under paragraph (c) has been aggregated.

**(2)** A recognized trade repository must conform to internationally accepted regulatory access standards applicable to trade repositories.

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

**Data available to counterparties**

**38. (1)** A recognized trade repository must provide all counterparties to a transaction with timely access to all derivatives data relevant to that transaction 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 party acting on behalf of a non-reporting counterparty.

**(3)** Each counterparty to a transaction is deemed to have consented to 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 transaction.

**Data available to public**

**39. (1)** A recognized trade repository must, on a periodic basis, create and make available to the public, at no cost, aggregate data on open positions, volume, number and, where applicable, price, relating to the transactions reported to it pursuant to this Instrument.

**(2)** The periodic aggregate data made available to the public pursuant to subsection (1) must be complemented at a minimum by breakdowns, where applicable, by currency of denomination, geographic location of reference entity or asset, asset class, contract type, maturity and whether the transaction is cleared.

**(3)** A recognized trade repository must make transaction level reports of the data indicated in the column in Appendix A entitled "Required for Public Dissemination" for each transaction reported pursuant to this Instrument available to the public at no cost not later than

(a)     the end of the day following the day on which it receives the data from the reporting counterparty to the transaction, if at least one of the counterparties to the transaction is a reporting clearing agency, a derivatives dealer or a Canadian financial institution, or

(b)     the end of the second day following the day on which it receives the data from the reporting counterparty to the transaction, if none of the counterparties to the transaction is a reporting clearing agency, a derivatives dealer or a Canadian financial institution.

**(4)**     In disclosing transaction level reports required by subsection (3), a recognized trade repository must not disclose the identity of either counterparty to the transaction.

**(5)**     A recognized trade repository must make the data required to be made available to the public under this section available in a usable form through a publicly accessible website or similar medium.

**(6)**     Despite subsections (1) to (5), a recognized trade repository is not required to make public derivatives data for transactions entered into between affiliated entities.

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**PART 5**
**EXCLUSIONS**

</div>

**Exclusion from reporting trades of commodities derivatives**

**[Option #1] 40.** Despite Part 3, a reporting counterparty is not required to report derivatives data for a  transaction to which each of the following applies:

(a)     the transaction relates to a derivative the asset class of which is a commodity other than cash or currency;

(b)     each counterparty is not a derivatives dealer or a Canadian financial institution;

(c)     each counterparty has, at the time of the transaction, less than $250,000,000 aggregate notional value, without netting, under all its outstanding transactions in derivatives the asset class of which is a commodity other than cash or currency, including the additional notional value related to that transaction.

**[Option #2] 40.** Despite Part 3, a local counterparty is under no obligation to report derivatives data for a transaction if each of the following applies:

(a)     the transaction relates to a derivative the asset class of which is a commodity other than cash or currency;

(b)      the local counterparty is not a derivatives dealer;

(c)      the local counterparty has less than $500,000 aggregate notional value, without netting, under all its outstanding transactions, at the time of the transaction including the additional notional value related to that transaction.

**41.**      Despite any other section of this Instrument, a reporting counterparty is not required to report derivatives data for a transaction between

(a)      the government of a local jurisdiction, and

(b)      a crown corporation or agency that forms part of a consolidated entity with that government for accounting purposes.

## PART 6
## EXEMPTIONS

**42.**      The regulator or securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

## PART 7
## TRANSITION PERIOD AND EFFECTIVE DATE

**Transition period**

**43. (1)**      Part 3 does not apply so as to require a reporting counterparty that is not a reporting clearing agency, a derivatives dealer or a Canadian financial institution to make a report under Part 3 until **[date to be determined]**.

**(2)**      Part 3 does not apply to a transaction entered into before [**date to be determined**] that expires or terminates not later than **[date to be determined]** if the reporting counterparty to the transaction is a reporting clearing agency, a derivatives dealer or a Canadian financial institution.

**(3)**      Part 3 does not apply to a transaction entered into before [**date to be determined**] that expires or terminates not later than **[date to be determined]** if the reporting counterparty to the transaction is not a reporting clearing agency, a derivatives dealer or a Canadian financial institution.

**Effective date**

**44. (1)**      Parts 1, 2, 4, and 6 come into force on **[date to be determined]**.

**(2)** Despite subsection (1), subsection 39(3) comes into force on **[date to be determined]**.

**(3)** Parts 3 and 5 come into force on **[date to be determined]**.

**APPENDIX A**
**to**
**PROPOSED 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 transaction.

| Data field | Description | Required for Public Dissemination | Required for Pre-existing Transactions |
|---|---|---|---|
| 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. | N | Y |
| Master agreement type | The type of master agreement, if used for the reported transaction. | N | N |
| Master agreement version | Date of the master agreement version (e.g., 2002, 2006). | N | N |
| Cleared | Indicate whether the transaction has been cleared by a clearing agency. | Y | Y |
| Intent to clear | Indicate whether the transaction will be cleared by a clearing agency. | N | N |
| Clearing agency | LEI of the clearing agency where the transaction is or will be cleared. | N | Y |
| Clearing member | LEI of the clearing member, if the clearing member is not a counterparty. | N | N |
| Clearing exemption | Indicate whether one or more of the counterparties to the transaction are exempted from a mandatory clearing requirement. | Y | N |
| Broker/Clearing intermediary | LEI of the broker acting as an intermediary for the reporting counterparty without becoming a counterparty. | N | N |

| Data field | Description | Required for Public Dissemination | Required for Pre-existing Transactions |
|---|---|---|---|
| Electronic trading venue identifier | LEI of the electronic trading venue where the transaction was executed. | Y (Only "Yes" or "No" to be publicly disseminated) | Y |
| Inter-affiliate | Indicate whether the transaction is between two affiliated entities. (This field is only required to be reported as of **[insert date]**.) | N | N |
| Collateralization | Indicate whether the transaction is collateralized.<br>Field Values:<br>• Fully (initial and variation margin required to be posted by both parties);<br>• Partially (variation only required to be posted by both parties);<br>• One-way (one party will be required to post some form of collateral);<br>• Uncollateralized. | Y | N |
| Identifier of reporting counterparty | LEI of the reporting counterparty or, in case of an individual, its client code. | N | Y |
| Identifier of non-reporting counterparty | LEI of the non-reporting counterparty or, in case of an individual, its client code. | N | 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. | N | Y |
| Identifier of agent reporting the transaction | LEI of the agent reporting the transaction if reporting of the transaction has been delegated by the reporting counterparty. | N | 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. | N | N |

| Data field | Description | Required for Public Dissemination | Required for Pre-existing Transactions |
|---|---|---|---|
| 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. | N | N |
| **A. Common Data** | • These fields are required to be reported for all derivative transactions even if the information may be entered in an Asset field below.<br>• Fields do not have to be reported if the unique product identifier adequately describes those fields. | | |
| Unique product identifier | Unique product identification code based on the taxonomy of the product. | Y | N |
| Transaction type | The name of the transaction type (e.g., swap, swaption, forwards, options, basis swap, index swap, basket swap, other). | Y | Y |
| Underlying asset identifier 1 | The unique identifier of the asset referenced in the transaction. | Y | Y |
| Underlying asset identifier 2 | The unique identifier of the second asset referenced in the transaction, if more than one.<br>If more than two assets identified in the transaction, report the unique identifiers for those additional underlying assets. | Y | Y |
| Asset class | Major asset class of the product (e.g., interest rate, credit, commodity, foreign exchange, equity, etc.). | Y | N |
| Effective date or start date | The date the transaction becomes effective or starts. | Y | Y |
| Maturity, termination or end date | The date the transaction expires. | Y | Y |
| Payment frequency or dates | The dates or frequency the transaction requires payments to be made (e.g., quarterly, monthly). | Y | Y |
| Reset frequency or dates | The dates or frequency at which the price resets (e.g., quarterly, semi-annually, annually). | Y | Y |

| Data field | Description | Required for Public Dissemination | Required for Pre-existing Transactions |
|---|---|---|---|
| Day count convention | Factor used to calculate the payments (e.g., 30/360, actual/360). | Y | Y |
| Delivery type | Indicate whether transaction is settled physically or in cash. | N | Y |
| Price 1 | The price, yield, spread, coupon, etc., of the derivative. The price/rate should not include any premiums such as commissions, collateral premiums, accrued interest, etc. | Y | Y |
| Price 2 | The price, yield, spread, coupon, etc., of the derivative. The price/rate should not include any premiums such as commissions, collateral premiums, accrued interest, etc. | Y | Y |
| Price notation type 1 | The manner in which the price is expressed (e.g., percent, basis points, etc.). | Y | Y |
| Price notation type 2 | The manner in which the price is expressed (e.g., percent, basis points, etc.). | Y | Y |
| Price multiplier | The number of units of the underlying reference entity represented by 1 unit of the transaction. | N | N |
| Notional amount leg 1 | Total notional amount(s) of leg 1 of the transaction. | Y | Y |
| Notional amount leg 2 | Total notional amount(s) of leg 2 of the transaction. | Y | Y |
| Currency leg 1 | Currency(ies) of leg 1. | Y | Y |
| Currency leg 2 | Currency(ies) of leg 2. | Y | Y |
| Settlement currency | The currency used to determine the cash settlement amount. | Y | Y |
| Up-front payment | Amount of any up-front payment. | N | N |
| Currency or currencies of up-front payment | The currency in which any up-front payment is made by one counterparty to another. | N | N |
| Embedded option | Indicate whether the option is an embedded option. | Y | N |

| Data field | Description | Required for Public Dissemination | Required for Pre-existing Transactions |
|---|---|---|---|
| **B. Additional Asset Information** | These additional fields are required to be reported for transactions in the respective types of derivatives set out below, even if the information is entered in a Common Data field above. | | |
| **i)  Interest rate derivatives** | | | |
| Fixed rate leg 1 | The rate used to determine the payment amount for leg 1 of the transaction. | N | Y |
| Fixed rate leg 2 | The rate used to determine the payment amount for leg 2 of the transaction. | N | Y |
| Floating rate leg 1 | The floating rate used to determine the payment amount for leg 1 of the transaction. | N | Y |
| Floating rate leg 2 | The floating rate used to determine the payment amount for leg 2 of the transaction. | N | Y |
| Fixed rate day count convention | Factor used to calculate the fixed payer payments (e.g., 30/360, actual/360). | N | Y |
| Fixed leg payment frequency or dates | Frequency or dates of payments for the fixed rate leg of the transaction (e.g., quarterly, semi-annually, annually). | N | Y |
| Floating leg payment frequency or dates | Frequency or dates of payments for the floating rate leg of the transaction (e.g., quarterly, semi-annually, annually). | N | Y |
| Floating rate reset frequency or dates | The dates or frequency at which the floating leg of the transaction resets (e.g., quarterly, semi-annually, annually). | N | Y |
| **ii)  Currency derivatives** | | | |
| Exchange rate | Contractual rate(s) of exchange of the currencies. | N | Y |

| Data field | Description | Required for Public Dissemination | Required for Pre-existing Transactions |
|---|---|---|---|
| **iii) Commodity derivatives** | | | |
| Sub-asset class | Specific information to identify the type of commodity derivative (e.g., Agriculture, Power, Oil, Natural Gas, Freights, Metals, Index, Environmental, Exotic). | Y | Y |
| Quantity | Total quantity in the unit of measure of an underlying commodity. | Y | Y |
| Unit of measure | Unit of measure for the quantity of each side of the transaction (e.g., barrels, bushels, etc.). | Y | Y |
| Grade | Grade of product being delivered (e.g., grade of oil). | N | Y |
| Delivery point | The delivery location. | N | N |
| Load type | For power, load profile for the delivery. | N | Y |
| Transmission days | For power, the delivery days of the week. | N | Y |
| Transmission duration | For power, the hours of day transmission starts and ends. | N | Y |
| **C. Options** | These additional fields are required to be reported for options transactions set out below, 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 | Y |
| Option premium | Fixed premium paid by the buyer to the seller. | Y | Y |
| Strike price (cap/floor rate) | The strike price of the option. | Y | Y |
| Option style | Indicate whether the option can be exercised on a fixed date or anytime during the life of the transaction (e.g., American, European, Bermudan, Asian). | Y | Y |
| Option type | Put/call. | Y | Y |

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

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

**Equivalent Trade Reporting Laws of Foreign Jurisdictions**
**Subject to Deemed Compliance Pursuant to Subsection 26(5)**

The securities regulatory authority has determined that the laws and regulations of each of the following jurisdictions outside of the local jurisdiction are considered equivalent for the purposes of subsection 26(5) of this Instrument.

| Jurisdiction | Law, Regulation and/or Instrument |
|---|---|
|  |  |
|  |  |
|  |  |
|  |  |
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**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 offices

>       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 MI 96-101 *Trade Repositories and Derivatives Data Reporting* (the "TR 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 pursuant to section 17 of the TR 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 [*insert 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, and

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

### *Exhibit B – Ownership*

1.      A list of the registered or beneficial holders of securities of, partnership interests in, or other ownership interests in, the trade repository. For each of the persons listed in the Exhibit, please provide the following:

      (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 five percent or more of a class of a security with voting rights.

## *Exhibit C – Organization*

1.  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.  A list of the committees of the board, including their mandates.

3.  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, data feed, or

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

    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, 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 where 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. This should include, but not be limited to, a description of 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)     A description of 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)    Description of 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)    A description of the trade repository's risk management framework for comprehensively managing risks including business, legal, and operational risks.

2.    The filer must 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 arms-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 arms-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)     A description of 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)     A description of the data format or formats that will be available to the securities regulatory authority and other persons receiving trade reporting data.

## Exhibit H – Access to Services

1.     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.

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

## CERTIFICATE OF TRADE REPOSITORY

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

DATED at _____ this _____ day of _____, 20_____

_____
(Name of trade repository)

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

_____
(Signature of director, officer or partner)

_____
(Official capacity – please type or print)

## IF APPLICABLE, ADDITIONAL CERTIFICATE
## OF TRADE REPOSITORY THAT IS LOCATED OUTSIDE OF [*insert local jurisdiction*]

The undersigned certifies that

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

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

> (a)      provide the securities regulatory authority with access to its books and records, and
>
> (b)      submit to onsite inspection and examination by the securities regulatory authority.

DATED at _____ this _____ day of _____, 20_____

_____
(Name of trade repository)

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

_____

(Signature of director, officer or partner)

_____
(Official capacity – please type or print)

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

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

_____

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

_____

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

_____

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

_____

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

_____

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

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

8.    The Trade Repository shall 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 six years from the date it ceases to be recognized or exempted unless otherwise amended in accordance with item 9.

9.    Until six years after it has ceased to be a recognized or exempted by the Commission from the recognition requirement under the securities legislation of [*insert local*

*jurisdiction*], the Trade Repository shall 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 Agent

_____

Print name of person signing and, if Agent is not an individual, the title of the person

## FORM 96-101F3
### *CESSATION OF OPERATIONS REPORT FOR RECOGNZED TRADE REPOSITORY*

1.  Identification:

    (1)   Full name of the recognized trade repository:

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

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**

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

**Exhibit B**

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**

A list of all participants who are counterparties to a transaction whose derivatives data is required to be reported pursuant to MI 96-101 *Trade Repositories and Derivatives Data Reporting* and for whom the recognized trade repository provided services during the last 30 days prior to ceasing business as a trade repository.

## CERTIFICATE OF RECGONIZED 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)

**PROPOSED COMPANION POLICY 96-101**
*TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING*

**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 91-601 *Trade Repositories and Derivatives Data Reporting* (the "Instrument") interpret various matters in the Instrument.

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

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

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

**1. (1)** In this Policy

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

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

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

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

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

"LEI" means a legal entity identifier;

"LEI ROC" means the LEI Regulatory Oversight Committee;

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

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

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

**(2)** 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 with respect to a transaction would include:

- a change to the termination date for the transaction:

- a change in the cash flows, payment frequency, currency, numbering convention, spread, benchmark, reference entity or rates originally reported;

- the availability of a LEI for a counterparty previously identified by name or by some other identifier;

- a corporate action affecting a security or securities on which the transaction is based (e.g., a merger, dividend, stock split, or bankruptcy);

- a change to the notional amount of a transaction including contractually agreed upon changes (e.g., amortization schedule);

- the exercise of a right or option that is an element of the transaction; and

- the satisfaction of a level, event, barrier or other condition contained in the contract for the transaction.

**(3)** Paragraph (b) of the definition of "local counterparty" captures entities affiliated with a person or company referred to in paragraph (a) of the definition, provided that such person or company is responsible for the liabilities of the affiliated entity. The participating jurisdictions are of the view that this responsibility must be for all or substantially all of the affiliated entity's liabilities.

While the definition of local counterparty captures an individual resident in the local jurisdiction, paragraph 25(e) of the Instrument excludes individuals from having to report a transaction.

**(4)** The term "transaction" is used in the Instrument instead of the statutorily defined term "trade", in order to reflect that certain types of activities or events relating to a derivative transaction require the modification of an existing transaction report while others require a unique transaction report. The primary differences between the two definitions are that (i) the term "trade" as defined in the 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 the securities legislation does not.

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

A material amendment is not referred to in the definition of "transaction", as a material amendment to an existing transaction is required to be reported as a life-cycle event under section 32. Similarly, a termination is not referred to in the definition of "transaction", as the expiry or termination of a transaction is required to be reported as a life-cycle event under section 32 and would not trigger the requirement for a new transaction report.

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

**(5)** The term "valuation data" is defined in the Instrument as data that reflects the current value of a transaction. 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 transaction.[3] We expect that the methodology used to calculate valuation data that is reported with respect to a transaction would be consistent over the entire life of the transaction.

## 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 authority and establishes ongoing requirements for a recognized trade repository. To obtain and maintain recognition as a trade repository, a person or entity must comply with these rules and requirements in addition to all of 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 transaction involving a local counterparty must report the transaction to a recognized trade repository. Except in Alberta, there is no prohibition on an unrecognized trade repository operating in a local jurisdiction; however, a reporting counterparty that reports a transaction to an unrecognized trade repository would not be in compliance with its reporting obligations under this Instrument with respect to that transaction. In Alberta, securities legislation prohibits a person or company from carrying on business as a trade repository in the province 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 completed transactions reported to the trade repository by other persons or companies. In some cases, the applicant may operate more than one trade repository facility. In such cases, the applicant may file separate forms in respect of each trade repository facility, or it may choose to file one form to cover all of the different trade repository facilities. 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.

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

**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 anticipate that the securities regulatory authority 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 on its governing body;

- whether the trade repository has sufficient financial and operational resources for the proper performance of its functions;

- whether the rules and procedures of the trade repository 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 or 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 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; and

- 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, maintained and enforced appropriate written rules, policies and procedures that are in accordance with standards applicable to trade repositories. We anticipate that these rules, policies and procedures will include, but will not necessarily be limited to, 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 the interpretation of which we consider ought to be consistent with the principles:

| *Principle in the PFMI Report applicable to a trade repository* | *Relevant section(s) of the Instrument* |
|---|---|
| Principle 1: Legal Basis | Section 7 – Legal framework<br><br>Section 17 – Rules, Policies, and Procedures (in part) |
| Principle 2: Governance | Section 8 – Governance<br><br>Section 9 – Board of directors<br><br>Section 10 – Management |
| Principle 3: Framework for the comprehensive management of risks | Section 19 – Comprehensive risk management framework<br><br>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<br><br>Section 22 – Data security and confidentiality<br><br>Section 24 – Outsourcing |
| Principle 18: Access and participation requirements | Section 13 – Access to recognized trade repository services<br><br>Section 16 – Due process (in part)<br><br>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 in the PFMI Report applicable to a trade repository | Relevant section(s) of the Instrument |
|---|---|
| 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 each of the securities regulatory authorities will apply the principles in its oversight activities of a recognized trade repository. Accordingly, in complying with the Instrument, recognized trade repositories will be expected to observe the principles.

We anticipate that 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. We are of the view that the forms generally contain proprietary financial, commercial and technical information, and that the cost and potential risks to the filers of disclosure outweigh the benefit of the principle requiring that forms be made available for public inspection. However, we would expect a recognized trade repository to publicly disclose its responses to the CPSS-IOSCO consultative report entitled *Disclosure framework for financial market infrastructures*, which is a supplement to the PFMI Report.[4] In addition, much of the information that will be 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 and Trade Repository Information Statement* and any amendments to such information confidential, if a securities regulatory authority considers that it is in the public interest to do so, it may require the applicant or recognized trade repository to publicly disclose a summary of the information contained in the form, or in any amendments to the information in the Form..

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

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.

**Change in information by a recognized trade repository**

**3.** The participating jurisdiction with which an amendment to the information provided in Form 96-101F1 *Application for Recognition and 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 (included 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; and

- 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 and 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 in Canada; and

- 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 *Application for Recognition and Trade Repository Information Statement* that will be subject to review by the securities regulatory authority.

**Ceasing to carry on business**

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

**Legal framework**

**7. (1)** A recognized trade repository is required 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.** A recognized trade repository is required to have in place governance arrangements that meet the minimum requirements and policy objectives set out in subsections 8(1) and 8(2).

**(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

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

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 and efficiently 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.

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.** In assessing whether a recognized trade repository's fees and costs are fairly and equitably allocated among participants as required under paragraph 12(a), we anticipate that the relevant securities regulatory authority will consider a number of factors, including the following:

- the number and complexity of the transactions 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 transactions 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; and

- 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 other fees and costs 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 limiting access to its services, permitting unreasonable discrimination among its participants, imposing unreasonable burdens on competition or requiring the use or purchase of another service in order for a person or company to utilize its trade reporting service. For example, 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.

**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 transaction 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 "other service providers" may include persons or companies who offer technological or transaction processing or post-transaction services.

**Rules, policies and procedures**

**17.** The rules, policies, and procedures of a recognized trade repository must 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 CPSS-IOSCO *Disclosure framework for financial market infrastructures*.

**(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 non-compliance with its rules and procedures do not preclude enforcement action by any other person or company, including a securities regulatory authority or other regulatory body.

**(6)** A participating jurisdiction 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 and Trade Repository Information Statement*. In such cases, the recognized trade repository will be required to file an amendment to Form 96-101F1 *Application for Recognition and Trade Repository Information Statement* with the securities regulatory authority. See section 3 of this Policy for a discussion of filing requirements.

**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 transaction, rather than from the date the transaction was entered into, reflects the fact that transactions create on-going obligations and information is subject to change throughout the life of a transaction.

**Comprehensive risk-management framework**

**19.** Section 19 sets out requirements for a comprehensive risk-management framework of a recognized trade repository. 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 purposes 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 trade repository 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 transaction as agreed to by both counterparties.

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

A recognized trade repository may satisfy its obligation under section 23 to confirm the derivatives data reported with respect to a transaction by notice to each counterparty to the transaction 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 transaction, 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 transaction that involves a local counterparty and includes a determination of which counterparty to the transaction 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 transaction 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 transaction will be the reporting counterparty is intended to reflect the counterparty to the transaction that is best suited to fulfill the reporting obligation. For example, for a transaction that is cleared through a clearing agency, the clearing agency is best positioned to report derivatives data and is therefore determined to be 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 transaction is a derivatives dealer, as defined in the Instrument, the reporting obligations with respect to the transaction apply irrespective of whether the derivatives dealer is a registrant in the local jurisdiction. Where a person or company that meets the definition of "derivatives dealer" is also a Canadian financial institution, its status as a derivatives dealer prevails for the purposes of section 25.

Paragraph 25(1)(c) reflects our view that a Canadian financial institution, regardless of whether it considers itself derivatives dealer, would be better suited to report a transaction between the Canadian financial institution and a counterparty that is neither a derivatives dealer nor a Canadian financial institution.

For a transaction that is not cleared and is between two derivatives dealers, two Canadian financial institutions or two end-users – that is, a transaction to which none of paragraphs 25(1)(a), (b), or (c) apply – paragraph 25(1)(d) 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 transaction. The intention of paragraph 25(1)(d) is to facilitate one 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 the to determine the reporting counterparty to a transaction is the ISDA methodology, publicly available at www.isda.org, developed for Canada in order to facilitate one-sided transaction reporting and provide a consistent method for determining the party required to act as reporting counterparty.

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

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

**(4)** The reporting requirement in subsection 25(4) is designed to be an incentive for the counterparties to come to an agreement to avoid dual reporting. Dual reporting – where both counterparties independently report the transaction – skews the TR data for the overall market, drastically diminishing the value of the TR data in identifying systemically important entities and informing policy development.

Reporting unique transaction identifiers to the securities regulatory authority will enable the securities regulatory authority to match the two derivatives data reports relating to the single dual-reported transaction. Without the UTI for each transaction, these reports cannot be matched.

We are of the view that the reporting requirement in subsection 25(4) may be satisfied by submitting a facsimile or email containing the required unique transaction identifiers to the securities regulatory authority. No special systems or reporting infrastructure are anticipated to be required to satisfy this requirement.

**Duty to report**

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

**(2)** Under subsection 26(2), the reporting counterparty for a transaction must ensure that all reporting obligations are fulfilled. This includes reporting of creation data and ongoing requirements such as the reporting of life-cycle event data and valuation data.

**(3)** Subsection 26(3) permits the delegation of all reporting obligations of a reporting counterparty. This includes reporting of initial creation data, life-cycle event data and valuation data. For example, some or all of the reporting obligations may be delegated to a third-party service provider.

**(4)** With respect to subsection 26(4), prior to the reporting requirements in Part 3 coming into force, the participating jurisdictions will provide public guidance on how reports for transactions that are not accepted for reporting by any recognized trade repository should be electronically submitted to the local securities regulatory authority.

**(5)** Subsection 26(5) provides for limited substituted compliance with this Instrument where a transaction has been reported to a recognized trade repository pursuant to the laws of a province of Canada other than the local jurisdiction or of a foreign jurisdiction listed in Appendix B, provided that the additional conditions set out in paragraphs 26(5)(a) and (c) are satisfied.

**(6)** Subsection 26(6) requires that all derivatives data reported for a given transaction be reported to the same recognized trade repository to which the initial report is submitted or, with respect to transactions reported under subsection 26(4), to the local securities regulatory authority.

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

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

(**7**) We interpret the requirement in subsection 26(7), to report errors or omissions in derivatives data "as soon as technologically 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.

(**8**) Under subsection 26(8), 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 transaction. 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(7) to report the error or omission to the recognized trade repository or to the securities regulatory authority in accordance with subsection 26(6). We interpret the requirement in subsection 26(8) 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[6] for uniquely identifying parties to 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 to counterparties who enter into transactions.

(**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 a transaction, a counterparty must use a substitute legal entity identifier. The substitute legal entity identifier must be set in accordance with the standards established by the LEI ROC for pre-LEI identifiers. At the time the Global LEI System is operational, counterparties must cease using their substitute LEI and commence reporting their LEI. The substitute LEI and LEI could be identical.

## Unique transaction identifiers

**29.** A transaction in the context of assigning a unique transaction identifier means a transaction from the perspective of all counterparties to the transaction. For example, both counterparties to a single swap transaction would identify the transaction by the same single identifier. For a bi-lateral transaction that is novated to a clearing agency, the reporting of the novated transactions should reference the unique transaction identifier of the original bi-lateral transaction.

## Unique product identifiers

**30.** Section 30 requires that a reporting counterparty identify each transaction that is subject to the reporting obligation under the Instrument by means of a unique product identifier. There is

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[6] See http://www.financialstabilityboard.org/list/fsb_publications/tid_156/index.htm for more information.

currently a system of product taxonomy that may be used for this purpose.[7]  To the extent that a unique product identifier is not available for a particular transaction type, a reporting counterparty would be required to create one using an alternative methodology.

**Creation data**

**31. (2)** Subsection 31(2) requires that reporting of creation data be made in real time, 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 "technological practicable", we will take into account the prevalence of implementation and use of technology by comparable counterparties located in Canada and in foreign jurisdictions.  The participating jurisdictions may also conduct independent reviews to determine the state of reporting technology.

**(3)** Subsection 31(3) 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 transactions 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 transactions, such as trade compressions involving numerous transactions, real time 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 – only new data and changes to previously reported data need to be reported. Life-cycle event data is not required to be reported in real time but rather at the end of the business day on which the lifecycle 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 transactions**

**34.** Section 34 outlines reporting obligations in relation to transactions that were entered into prior to the commencement of the reporting obligations.  Some pre-existing transactions are exempted from the reporting obligations in the Instrument, to relieve some of the reporting burden for counterparties and because derivatives data relating to such pre-existing transactions would provide marginal utility to the securities regulatory authority due to the imminent termination or expiry of the transaction.

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[7] See http://www2.isda.org/identifiers-and-otc-taxonomies/ for more information.

The derivatives data required to be reported for pre-existing transactions 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 transaction 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 transactions.

Only the data indicated in the column entitled "Required for Pre-existing Transactions" in Appendix A is required to be reported for pre-existing transactions.

## 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 transaction or transactions that may impact capital markets in Canada.

Transactions 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 transaction are not local counterparties. Therefore, the participating jurisdictions have a regulatory interest in transactions involving such underlying interests even if such data is not submitted pursuant to the reporting obligations in the Instrument, but is held by a recognized trade repository.

**(1)** For the purpose of subsection 37(1) electronic access includes the ability of the securities regulatory authority to access, download, or receive a direct real-time feed of derivatives data maintained by the recognized trade repository.

**(2)** It is expected that all recognized trade repositories will comply with the access standards and recommendations developed by CPMI (formerly CPSS) and IOSCO and contained in the CPSS-IOSCO final report entitled *Authorities Access to Trade Repository Data*. [8]

**(3)** We interpret the requirement for a reporting counterparty to use best efforts to provide the securities regulatory authority with access to derivatives data to mean, at a minimum, instructing the recognized trade repository to release derivative data to the securities regulatory authority.

**Data available to counterparties**

**38.** Section 38 is intended to ensure that each counterparty, and any person acting on behalf of a counterparty, has access to all derivatives data relating to its transaction(s) in a timely manner. The participating jurisdictions are of the view that where a counterparty has provided consent to

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

a recognized trade repository to grant access to data to 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 transactions reported to it under the Instrument (including open positions, volume, number of transactions, and price). 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; and

- maturity (broken down into maturity ranges, such as less than one year, 1-2 years, 2-3 years).

**(3)** The purpose of the public reporting delays is to ensure that counterparties have adequate time to enter into any offsetting transaction that may be necessary to hedge their positions. These time delays apply to all transactions, regardless of transaction size.

**(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 transaction.

## PART 5
## EXCLUSIONS

**[Option #1] 40.** Section 40 provides that the reporting obligations under the Instrument do not apply with respect to a commodity derivatives transaction between two end-users in certain limited circumstances. The exclusion in this section applies only to a transaction relating to a derivative the asset class of which is a commodity other than cash or currency.

The objective of the exclusion is to reduce the reporting burden with respect to commodity derivatives transactions on end-users that may not be systemically important. As such, the

exclusion applies only to a transaction where each counterparty is neither a derivatives dealer nor a Canadian financial institution. In accordance with the reporting counterparty waterfall in subsection 25(1), for a transaction with an end-user counterparty, a derivatives dealer or Canadian financial institution would be the reporting counterparty and would therefore have the obligation to report the transaction.

In order for this exclusion to apply, paragraph 40(c) requires that each counterparty to the transaction have less than $250,000,000 aggregate notional value under all outstanding commodity derivatives transactions, including the additional notional value related to that transaction. In calculating this exposure, the notional value of all outstanding transactions relating to a commodity other than cash or currency, with all counterparties, domestic and foreign, should be included. The notional value of a commodity derivatives transaction would be calculated by multiplying the quantity of the commodity by the price for that commodity.

**[Option #2] 40.** Section 40 provides that the reporting obligations do not apply in certain limited circumstances with respect to a commodity derivatives transaction between two entities that are not derivatives dealers. The exclusion in this section applies only to a transaction relating to a derivative the asset class of which is a commodity other than cash or currency.

This exclusion only applies if a local counterparty that is determined to be the reporting counterparty to a transaction has less than $500,000 aggregate notional value under all outstanding derivatives transactions, including the additional notional value related to that transaction. In calculating this exposure, the notional value of all outstanding transactions, including transactions from all asset classes and with all counterparties, domestic and foreign, should be included. The notional value of a commodity transaction would be calculated by multiplying the quantity of the commodity by the price for that commodity. For a transaction between two local counterparties that are not derivatives dealers, if the reporting counterparty as determined under subsection 25(1) is below the $500,000 threshold and is relying on the section 40 exclusion and the other local counterparty is above the $500,000 threshold, that other local counterparty is required to act as the reporting counterparty for the transaction.

## PART 7
## TRANSITION PERIOD AND EFFECTIVE DATE

**Effective date**

**44. (2)** 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 **[date TBD plus [6] months]**.