

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

February 16, 2016

Introduction

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

- proposed amendments (the **Proposed TR Rule Amendments**) to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the **TR Rule**), and
- proposed changes (the **Proposed TR CP Changes**) to Companion Policy 96-101CP *Trade Repositories and Derivatives Data Reporting* (the **TR CP**).

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

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

Background

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

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

Local TR Rule Amendments) to corresponding instruments in Manitoba, Ontario and Québec¹ (collectively, the **Local TR Rules**). The Proposed Local TR Rule Amendments were published for comment on November 5, 2015.

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

Harmonization

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

Substance and Purpose

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

- make explicit the requirement that a local counterparty have a legal entity identifier (**LEI**), and revise the provisions relating to LEIs to reflect international developments;
- provide relief from the reporting obligations under the TR Rule for derivatives between two end-users (i.e., not derivatives dealers or affiliates of derivatives dealers, or clearing agencies or affiliates of clearing agencies) that are affiliated entities if either
 - each is a local counterparty in at least one jurisdiction in Canada, or
 - reporting is done in compliance with equivalent trade reporting laws of specified foreign jurisdictions or under the securities legislation of another jurisdiction of Canada;
- provide a transition period before the reporting obligations under the TR Rule become effective for an end-user that previously qualified for an exclusion from reporting derivatives under the TR Rule and becomes the reporting counterparty for the first time;
- set out the requirements for public dissemination of transaction-level data, balancing the objective of providing price information on the Canadian over-the-counter (**OTC**) derivatives market and the need to preserve the anonymity of counterparties to limit the negative impact of transparency on market participants; and

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

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

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

Implementation

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

Summary of the Proposed TR Rule Amendments

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

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

Question:

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

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

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

(c) *Section 28: Legal entity identifiers*

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

Under proposed paragraph 28(2)(a), each local counterparty, other than an individual, to a derivative that is required to be reported under the TR Rule would, if eligible, be required to have an LEI issued in accordance with the standards set by the Global LEI System. Absent this proposed requirement, the reporting counterparty would be responsible for ensuring that both counterparties to a derivative were identified using an LEI. Reporting counterparties have indicated that they have encountered challenges in complying with the Local TR Rules as some of their counterparties did not have LEIs. This amendment ensures that all local counterparties to reportable derivatives are under a direct obligation to have an LEI.

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

Questions:

2. Proposed subsection 28(2) excludes an individual from the requirement to obtain an LEI. Is it appropriate to exclude individuals from the requirement to obtain an LEI? Please identify and discuss any specific privacy law related concerns.
3. Proposed subsection 28(3) would require the reporting counterparty to identify a counterparty that is ineligible to receive an LEI by an alternate identifier. Proposed subsection 28(4) would require a recognized trade repository to identify a counterparty that is ineligible to receive an LEI with this alternate identifier assigned by the reporting counterparty.
 - a. Is it appropriate to place the responsibility on the reporting counterparty to assign the alternate identifier? Would a recognized trade repository be better situated to assign the alternate identifier?
 - b. Would current practices and technological capabilities permit a recognized trade repository to identify a counterparty by an alternate identifier supplied by the reporting counterparty?
 - c. Would current practices and technological capabilities permit a recognized trade repository to assign an alternate identifier to a counterparty, and to notify the reporting counterparty of the alternate identifier assigned?
4. Requiring a trade repository to identify a counterparty using an alternate identifier supplied by the reporting counterparty may result in a particular counterparty being

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

(d) *Section 34: Pre-existing derivatives*

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

(e) *Section 41.1: Derivative between affiliated entities*

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

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

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

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

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

Question:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Question:

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

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

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

Request for Comments

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

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

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

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

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

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

Martin McGregor
Legal Counsel
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Fax: 1-403-297-2082
Email: martin.mcgregor@asc.ca

Contents of Annexes

The following annexes form part of this CSA Notice:

- Annex A Proposed amendments to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*,
Annex B Proposed changes to Companion Policy 96-101CP *Trade Repositories and Derivatives Data Reporting*,

Questions

Please refer your questions to any of the following:

Martin McGregor
Legal Counsel
Alberta Securities Commission
Tel: 403-355-2804
Email: martin.mcgregor@asc.ca

Wendy Morgan
Senior Legal Counsel, Securities
Financial and Consumer Services Commission (New Brunswick)
Tel: 506-643-7202
Email: wendy.morgan@fcnb.ca

Abel Lazarus
Senior Securities Analyst
Nova Scotia Securities Commission
Tel: 902-424-6859
Email: abel.lazarus@novascotia.ca

Liz Kutarna
Deputy Director, Capital Markets, Securities Division
Financial and Consumer Affairs Authority of Saskatchewan
Tel: 306-787-5871
Email: liz.kutarna@gov.sk.ca

ANNEX A

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

1. *Multilateral Instrument 96-101 Trade Repositories and Derivatives Data Reporting is amended by this Instrument.*
2. *Paragraph 26(3)(a) is amended by adding the following subparagraph (iii):*
 - (iii) the counterparties to the derivative are affiliated entities at the time of the transaction and none of the counterparties is one or more of the following:
 - (A) a clearing agency;
 - (B) a derivatives dealer;
 - (C) an affiliated entity of a person or company referred to in clause (A) or (B);
3. *Paragraph 26(3)(b) is amended by adding the following subparagraph (iv):*
 - (iv) the laws of a foreign jurisdiction listed in Appendix B;.
4. *The Instrument is amended by replacing subsection 26(4) with the following:*
 - (4) A reporting counterparty must report all derivatives data relating to a derivative to the same recognized trade repository..
5. *The Instrument is amended by replacing section 28 with the following:*

Legal entity identifiers

28. (1) A recognized trade repository must identify each counterparty to a derivative that is required to be reported under this Instrument in all recordkeeping and all reporting required under this Instrument by means of a single legal entity identifier that is a unique identification code assigned to a counterparty in accordance with the standards set by the Global LEI System.
- (2) Each local counterparty to a derivative required to be reported under this Instrument that is eligible to receive a legal entity identifier as determined by the Global LEI System, other than an individual, must:
 - (a) prior to executing a transaction, obtain a legal entity identifier assigned in accordance with the requirements imposed by the Global LEI System;

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

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

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

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

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

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

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

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

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

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

Derivative between affiliated entities

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

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

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

(i) a clearing agency;

(ii) a derivatives dealer;

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

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

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

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

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

- 44.1 (1)** Despite sections 40, 41, 41.1, and 42, and subject to subsection 44(2), a local counterparty is required to report creation data in relation to a derivative if:
- (a) the derivative was not previously reported as a result of the operation of section 40, 41, 41.1 or 42;
 - (b) the local counterparty no longer satisfies the condition or conditions in section 40, 41, 41.1 or 42, as applicable;
 - (c) the derivative was entered into after May 1, 2016 and before the date on which the local counterparty no longer satisfies the condition or conditions in section 40, 41, 41.1 or 42, as applicable;
 - (d) there were outstanding contractual obligations with respect to the derivative on the earlier of the date that the derivative is reported or the date that is 180 days following the date on which the local counterparty no longer satisfies the condition or conditions in section 40, 41, 41.1 or 42, as applicable.
- (2)** Despite subsection (1) and subject to subsection 44(3), if the reporting counterparty to a derivative to which subsection (1) applies has not previously acted as a reporting counterparty under this Instrument or a similar instrument in another jurisdiction of Canada, the reporting counterparty is not required to report derivatives data in relation to the derivative, or any other derivative required to be reported under this Instrument, until the date that is 180 days following the date the local counterparty no longer satisfies the condition or conditions referred to in paragraph (1)(b).
- (3)** Despite section 31, a reporting counterparty to a derivative to which subsection (1) applies is only required to report, in relation to the transaction resulting in the derivative, the creation data indicated in the column in Appendix A entitled “Required for Pre-existing Derivatives”.
- (4)** Despite section 32, a reporting counterparty is not required to report life-cycle event data relating to a derivative to which subsection (1) applies until the reporting counterparty has reported creation data in accordance with subsections (1) and (2).

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

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

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

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

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

Trade Reporting Laws of Foreign Jurisdictions

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

<p>United States of America</p>	<p><i>CFTC Real-Time Public Reporting of Swap Transaction Data</i>, 17 C.F.R. pt. 43 (2013), as amended from time to time.</p> <p><i>CFTC Swap Data Recordkeeping and Reporting Requirements</i>, 17 C.F.R. pt. 45 (2013), as amended from time to time.</p> <p><i>CFTC Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps</i>, 17 C.F.R. pt. 46 (2013), as amended from time to time.</p>
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14. The Instrument is amended by inserting the following as Appendix C:

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

Requirements for the Public Dissemination of Transaction-level Data

Instructions

1. Subject to items 2 through 6, a recognized trade repository is required to disseminate to the public at no cost the information contained in Table 1 for a derivative in any of the Asset Classes and Underlying Asset Identifiers listed in Table 2 for:
 - (a) a derivative reported to the recognized trade repository under this Instrument;
 - (b) a life-cycle event that changes the pricing of an existing derivative reported to the recognized trade repository under this Instrument;
 - (c) a cancellation or correction of previously disseminated data relating to a transaction resulting in a derivative listed in paragraph (a) or a life-cycle event listed in paragraph (b).

Table 1

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

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

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

Table 2

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

Credit	All Indexes
Equity	All Indexes

Exclusions

2. Despite item 1, each of the following is excluded from the requirement to be publicly disseminated:
 - (a) a derivative that requires the exchange of more than one currency;
 - (b) a derivative resulting from a multilateral portfolio compression exercise;
 - (c) a derivative resulting from novation by a clearing agency.

Rounding of notional amount

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

Table 3

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

Capping of notional amount

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

Amount for the derivative in place of the Rounded Notional Amount.

5. When disseminating data in accordance with subsection 39(3) of this Instrument and this Appendix, a recognized trade repository must indicate if the Rounded Notional Amount for a derivative is a Capped Rounded Notional Amount.
6. For each derivative where the Capped Rounded Notional Amount is disseminated, a recognized trade repository must adjust, if part of the data to be disseminated, the option premium, in a consistent and proportionate manner.

Table 4

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

Timing

7. Subject to items 2 through 6, a recognized trade repository must disseminate the information contained in Table 1 no later than
 - (a) the end of the day following the day on which it receives the data from the reporting counterparty to the derivative, if one of the counterparties to the derivative is a derivatives dealer or a reporting clearing agency, or
 - (b) the end of the second day following the day on which it receives the data from the reporting counterparty to the derivative in all other circumstances..
15. This Instrument comes into force on [●].

ANNEX B

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

1. *Companion Policy 96-101 Trade Repositories and Derivatives Data Reporting is changed by this Instrument.*
2. *The Policy is changed by replacing the guidance relating to subsection 26(3) with the following:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) We are of the view that reporting counterparties will take steps to ensure that the non-reporting counterparty provides its LEI to facilitate reporting under the Instrument. If the reporting counterparty cannot, for any reason, obtain the LEI from the non-reporting counterparty, publicly accessible resources may be available for obtaining that information.
- (2) Paragraph 28(2)(a) requires each local counterparty to a derivative that is required to be reported under the Instrument, other than an individual, to acquire an LEI, regardless of whether the local counterparty is the reporting counterparty.
- (3) Some counterparties to a reportable derivative may not be eligible to receive an LEI. In such cases, the reporting counterparty must use an alternate identifier to identify each counterparty that is ineligible for an LEI when reporting derivatives data to a recognized trade repository..

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

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

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

Derivative between affiliated entities

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

9. *The Policy is changed by adding the following new guidance immediately following the*

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

guidance relating to section 42:

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

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

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

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

Effective date

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

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

APPENDIX C

Instructions

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

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

Table 1

Table 1 lists the data fields that must be publicly disseminated. Table 1 is a subset of the information that the trade repository is required to submit to the regulator and does not include all the fields required to be reported to a recognized trade repository

pursuant to Appendix A. For example, valuation data fields are not required to be publicly disseminated.

Table 2

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

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

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

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

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

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

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

Exclusions

2. Item 2 of this Appendix specifies the types of derivatives that are excluded from the public dissemination requirement in subsection 39(3) of the Instrument. An example

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

of a derivative excluded under item 2(a) is a cross-currency swap. The type of derivative excluded under item 2(b) results from portfolio compression activity which occurs whenever a derivative is amended or entered into in order to reduce the gross notional amount of an outstanding derivative or group of derivatives without impacting the net exposure. Item 2(c) excludes a derivative resulting from a novation on the part of a clearing agency when facilitating the clearing of a bi-lateral derivative.

Rounding of notional amount

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

Capping of notional amount

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

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

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

Timing

6. Item 7 of this Appendix sets out when a recognized trade repository must publicly disseminate the required information from Table 1. The purpose of the public reporting delays is to ensure that counterparties have adequate time to enter into any

offsetting derivative that may be necessary to hedge their positions. These time delays apply to all derivatives, regardless of size..

12. These changes become effective on [●].