



IN THE MATTER OF THE *SECURITIES ACT*, S.N.B. 2004, c. S-5.5 (the “*Act*”)

AND

IN THE MATTER OF

EXEMPTION FROM CERTAIN DERIVATIVES REPORTING REQUIREMENTS

Blanket Order 96-501 (as amended and restated)

Section 208

WHEREAS the Executive Director of Securities (**Executive Director**) issued a Blanket Order dated 17 June 2016 on behalf of the Financial and Consumer Services Commission (**Commission**), which provided exemptions from certain derivatives reporting requirements in Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (**MI 96-101**) (**Previous Blanket Order**);

AND WHEREAS the exemptions in the Previous Blanket Order expired on 15 December 2017;

AND WHEREAS the Executive Director has determined that it is not prejudicial to the public interest to issue a blanket order that amends and restates the Previous Blanket Order;

IT IS ORDERED pursuant to section 208(1) of the *Act* that the Previous Blanket Order be amended and restated as follows:

Definitions

1. Terms defined in the *Act*, in National Instrument 14-101 *Definitions* or in MI 96-101 have the same meaning in this Blanket Order.
2. In this Blanket Order, the following terms have the meanings defined below:
 - (a) “Appendix A” means Appendix A to MI 96-101;
 - (b) “Blocking Law” means any statute, law, enactment, rule, order, decision, judgment or decree by a government or a regulatory authority that would restrict the Reporting by a reporting counterparty of information relating to a Subject Derivative or the Non-Reporting Counterparty that could identify the Non-Reporting Counterparty;
 - (c) “Consent Requirement” means any statute, law, enactment, rule, order, decision, judgment or decree by a government or a regulatory authority that would restrict the Reporting by a reporting counterparty of information relating to a Subject Derivative or

the Non-Reporting Counterparty that could identify the Non-Reporting Counterparty without the consent of the Non-Reporting Counterparty;

- (d) “Compliance Report” means a compliance report in the form set out in the Annex to this Blanket Order;
- (e) “Corresponding Order” means an order or a decision of a regulator or securities regulatory authority in a jurisdiction of Canada that provides relief on terms substantially similar to those set out in this Blanket Order;
- (f) “Data Field” means a data field set out in Appendix A;
- (g) “Jurisdiction” means the province of New Brunswick;
- (h) “LEI” means a legal entity identifier assigned in accordance with the standards set by the Global LEI System;
- (i) “Non-Reporting Counterparty” means the counterparty to a derivative that is not the reporting counterparty;
- (j) “Report” means, in respect of derivatives data relating to a Subject Derivative, to report, update, amend or supplement, each in accordance with MI 96-101;
- (k) “Required Counterparty Feedback” means information needed to enable the reporting counterparty to determine whether the Non-Reporting Counterparty is a Resident Local Counterparty;
- (l) “Resident Local Counterparty” means a local counterparty under paragraph (a) or (c) of the definition of “local counterparty” under MI 96-101;
- (m) “Subject Derivative” means a derivative that is required to be reported under MI 96-101;
- (n) “Trade-Specific Requirement” means a Consent Requirement that applies on a transaction-by-transaction basis.

Background

3. Part 3 of MI 96-101 requires a reporting counterparty to Report derivatives data relating to a Subject Derivative by providing a response to each applicable Data Field, including
 - (a) the “Identifier of non-reporting counterparty” Data Field, in which the reporting counterparty is required to Report the LEI of the Non-Reporting Counterparty or, if the Non-Reporting Counterparty is an individual, an alternate identifier as contemplated in Part 3 of MI 96-101, and
 - (b) the “Broker/ Clearing intermediary” Data Field, in which the reporting counterparty is required to Report the LEI of its broker or clearing intermediary for the Subject Derivative.

4. Absent receiving the Required Counterparty Feedback, the reporting counterparty may be unable to fulfil its reporting obligations under MI 96-101 in respect of a Subject Derivative.
5. An applicable Blocking Law or Consent Requirement could restrict a reporting counterparty's ability to Report the derivatives data prescribed in the "Identifier of non-reporting counterparty" Data Field without violating the applicable Blocking Law or Consent Requirement.
6. Absent obtaining the LEI of an applicable broker or clearing intermediary, the reporting counterparty may be unable to Report the derivatives data prescribed in the "Broker/ Clearing intermediary" Data Field.
7. Part 3 of MI 96-101 requires a reporting counterparty that is a reporting clearing agency or a derivatives dealer to report valuation data relating to a Subject Derivative daily, based on relevant closing market data from the previous business day.
8. Relevant market data from the previous business day may not be available for a Subject Derivative based on an underlying asset for which the relevant market is in another jurisdiction if the previous business day was not a business day in that other jurisdiction.

Order

The Commission has delegated to the Executive Director the Commission's power under section 208 of the *Act* to exempt, in whole or in part, a person or class of persons from any requirement of any National Instrument, Multilateral Instrument, or Local Instrument, subject to such terms and conditions considered appropriate.

Considering that it would not be prejudicial to the public interest, the Executive Director makes the following orders under section 208(1) of the *Act*.

Relief Related to Required Counterparty Feedback

9. A reporting counterparty that is not a Resident Local Counterparty in the Jurisdiction is exempt from the requirement under Part 3 of MI 96-101 to Report derivatives data relating to a Subject Derivative if and for so long as all of the following apply:
 - (a) despite reasonable efforts by the reporting counterparty, it has not obtained sufficient Required Counterparty Feedback to enable it to determine whether the Non-Reporting Counterparty is a Resident Local Counterparty in the Jurisdiction;
 - (b) the reporting counterparty makes reasonable efforts to use information from its own systems to determine whether the Non-Reporting Counterparty is a Resident Local Counterparty in the Jurisdiction and, if so, Reports the Subject Derivative in the Jurisdiction;
 - (c) for so long as contractual obligations remain outstanding with respect to the Subject Derivative, the reporting counterparty makes reasonable efforts to obtain the Required Counterparty Feedback;

- (d) the reporting counterparty delivers to the Executive Director, within 30 days of first relying on the exemption under this section 9, either
 - (i) an undertaking that it will deliver a Compliance Report not later than 30 days after the end of each calendar year in which the exemption under this section 9 is relied on, or
 - (ii) a notice describing its obligations under a Corresponding Order to report information regarding its efforts to obtain Required Counterparty Feedback from the Non-Reporting Counterparty.
10. A reporting counterparty relying on the exemption under section 9 with respect to a Subject Derivative must, as applicable and as soon as reasonably practicable after it obtains the relevant Required Counterparty Feedback, if contractual obligations remain outstanding with respect to the Subject Derivative at that date,
- (a) correct any derivatives data it has Reported in relation to the Subject Derivative in reliance on the exemption under section 9, and
 - (b) if it has not Reported the Subjective Derivative in the Jurisdiction in reliance on the exemption under section 9, Report the Subject Derivative in accordance with MI 96-101.
11. The exemption under section 9 expires in respect of a Subject Derivative 90 days after the reporting counterparty obtains sufficient Required Counterparty Feedback to enable it to determine whether the Non-Reporting Counterparty is a Resident Local Counterparty in the Jurisdiction.

Relief Related to Blocking Laws

12. A reporting counterparty is exempt from the requirement under MI 96-101 to Report the derivatives data prescribed in the "Identifier of non-reporting counterparty" Data Field in respect of a Subject Derivative if and for so long as all of the following apply:
- (a) the reporting counterparty reasonably believes that, or has yet to determine whether, Reporting of the applicable derivatives data is restricted by a Blocking Law;
 - (b) the reporting counterparty Reports in the "Identifier of non-reporting counterparty" Data Field either
 - (i) an internal identifier code for the Non-Reporting Counterparty, or
 - (ii) that the LEI of the Non-Reporting Counterparty is undisclosed;
 - (c) the reporting counterparty makes reasonable efforts to determine whether Reporting of the applicable data is restricted by a Blocking Law;
 - (d) the reporting counterparty delivers to the Executive Director, within 30 days of first relying on the exemption under this section 12, either

- (i) an undertaking that it will deliver a Compliance Report not later than 30 days after the end of each calendar year in which the exemption under this section 12 is relied on, or
 - (ii) a notice describing its reporting obligations under a Corresponding Order with respect to any Blocking Law.
- 13. A reporting counterparty relying on the exemption under section 12 with respect to a Subject Derivative must, as applicable and as soon as reasonably practicable after it reasonably determines that a previously applicable Blocking Law no longer applies or that Reporting of the applicable derivatives data is not restricted by a Blocking Law, if contractual obligations remain outstanding in respect of the Subject Derivative at that date,
 - (a) correct any derivatives data that it has Reported in relation to the Non-Reporting Counterparty or the Subject Derivative in reliance on the exemption under section 12, and
 - (b) Report any derivatives data it has not Reported in relation to the Non-Reporting Counterparty or the Subject Derivative in reliance on the exemption under section 12.
- 14. The exemption under section 12 expires in respect of a Subject Derivative 90 days after the date on which the reporting counterparty reasonably determines that a previously applicable Blocking Law no longer applies or that Reporting of the applicable derivatives data is not restricted by a Blocking Law.

Relief Related to Consent Requirements

- 15. A reporting counterparty is exempt from the requirement under MI 96-101 to Report the derivatives data prescribed in the “Identifier of non-reporting counterparty” Data Field in respect of a Subject Derivative if and for so long as all of the following apply:
 - (a) the reporting counterparty reasonably believes that, or has yet to determine whether, Reporting of the applicable derivatives data is restricted by a Consent Requirement and it has not obtained any required consent;
 - (b) the reporting counterparty Reports in the “Identifier of non-reporting counterparty” Data Field either
 - (i) an internal identifier code for the Non-Reporting Counterparty, or
 - (ii) that the LEI of the Non-Reporting Counterparty is undisclosed;
 - (c) the reporting counterparty makes reasonable efforts to
 - (i) determine whether Reporting of the applicable data is restricted by a Consent Requirement, and

- (ii) for so long as contractual obligations remain outstanding with respect to the Subject Derivative, obtain any required consent from the Non-Reporting Counterparty, other than any consent that would arise in connection with a Trade-Specific Requirement;
 - (d) the reporting counterparty delivers to the Executive Director, within 30 days of first relying on the exemption under this section 15, either
 - (i) an undertaking that it will deliver a Compliance Report not later than 30 days after the end of each calendar year in which the exemption under this section 15 is relied on, or
 - (ii) a notice describing its reporting obligations under a Corresponding Order with respect to any Consent Requirement.
16. A reporting counterparty relying on the exemption under section 15 with respect to a Subject Derivative must, as applicable and as soon as reasonably practicable after the earlier of the reporting counterparty either (i) reasonably determining that Reporting of the applicable derivatives data is not restricted by a Consent Requirement or (ii) obtaining all consents required to satisfy a Consent Requirement in relation to such Reporting, if contractual obligations remain outstanding in respect of the Subject Derivative as of that date,
- (a) correct any derivatives data that it has Reported in relation to the Non-Reporting Counterparty or the Subject Derivative in reliance on the exemption under section 15, and
 - (b) Report any derivatives data that it has not Reported in relation to the Non-Reporting Counterparty or the Subject Derivative in reliance on the exemption under section 15.
17. The exemption under section 15 expires in respect of a Subject Derivative 90 days following the earlier of
- (a) the date on which the reporting counterparty reasonably determines that Reporting of the applicable derivatives data is not restricted by a Consent Requirement, and
 - (b) the date on which the reporting counterparty obtains all required consents applicable to the Non-Reporting Counterparty and the Subject Derivative.

Relief Related to Counterparty LEI

18. A reporting counterparty is exempt from the requirement under MI 96-101 to Report the derivatives data prescribed in the "Identifier of non-reporting counterparty" Data Field in respect of a Subject Derivative if and for so long as all of the following apply:
- (a) despite best efforts by the reporting counterparty, it has not obtained the LEI of the Non-Reporting Counterparty;

- (b) the reporting counterparty Reports in the “Identifier of non-reporting counterparty ” Data Field either
 - (i) an internal identifier for the Non-Reporting Counterparty, or
 - (ii) that the LEI of the Non-Reporting Counterparty is undisclosed;
 - (c) for so long as contractual obligations remain outstanding with respect to the Subject Derivative, the reporting counterparty continues to make best efforts to obtain the LEI of the Non-Reporting Counterparty.
- 19. A reporting counterparty relying on the exemption under section 18 with respect to a Subject Derivative must, as applicable and as soon as reasonably practicable after the reporting counterparty obtains the LEI of the Non-Reporting Counterparty, if contractual obligations remain outstanding with respect to the Subject Derivative at that date,
 - (a) correct any data it has Reported in relation to the Subject Derivative in reliance on the exemption under section 18, and
 - (b) Report any data it has not Reported in relation to the Subject Derivative in reliance on the exemption under section 18.
- 20. The exemption under section 18 expires in respect of a Subject Derivative 90 days after the date on which the reporting counterparty obtains the LEI of the Non-Reporting Counterparty.

Relief Related to Broker or Clearing Intermediary LEI

- 21. A reporting counterparty is exempt from the requirement under MI 96-101 to Report the derivatives data prescribed in the “Broker/Clearing intermediary” Data Field in respect of a Subject Derivative if and for so long as all of the following apply:
 - (a) despite reasonable efforts by the reporting counterparty, it has not obtained the LEI of its broker or clearing intermediary;
 - (b) the reporting counterparty Reports in the “Broker/Clearing intermediary” Data Field either
 - (i) an internal identifier for the broker or clearing intermediary, or
 - (ii) that the LEI of the broker or clearing intermediary is undisclosed;
 - (c) for so long as contractual obligations remain outstanding with respect to the Subject Derivative, the reporting counterparty makes reasonable efforts to obtain the LEI of the broker or clearing intermediary.
- 22. A reporting counterparty relying on the exemption under section 21 with respect to a Subject Derivative must, as applicable and as soon as reasonably practicable after the reporting counterparty obtains the LEI of the broker or clearing intermediary, if contractual obligations remain outstanding with respect to the Subject Derivative at that date,

- (a) correct any data it has Reported in relation to the Subject Derivative in reliance on the exemption under section 21, and
 - (b) Report any data it has not Reported in relation to the Subject Derivative in reliance on the exemption under section 21.
23. The exemption under section 21 expires in respect of a Subject Derivative 90 days after the date on which the reporting counterparty obtains the LEI of the broker or clearing intermediary.

Relief Related to Valuation Data

24. A reporting counterparty is exempt from the requirement under MI 96-101 to report daily valuation data relating to a Subject Derivative, based on relevant closing market data from the previous business day, if
- (a) the previous business day is not a business day in the foreign jurisdiction in which the reporting counterparty has its head office or principal place of business, or
 - (b) the relevant closing market data is not available because the previous business day is not a business day in the jurisdiction in which the provider of the relevant closing market data used by the reporting counterparty is located.
25. A reporting counterparty relying on the exemption under section 24 with respect to a Subject Derivative must report valuation data relating to the Subject Derivative on the day following the first day that relevant closing market data is available.
26. The exemptions under sections 9, 18 and 21 are available
- (a) in respect of a Subject Derivative entered into on or before 30 June 2018 with a Non-Reporting Counterparty with which the reporting counterparty does not have an existing contractual relationship relating to derivatives as of that date or involving a broker or clearing intermediary with which the reporting counterparty does not have an existing contractual relationship relating to derivatives as of that date, and
 - (b) in respect of any other Subject Derivative entered into on or before 18 December 2019.

27. To effect delivery of a document to the Executive Director for the purposes of this Blanket Order, the document must be delivered in electronic format to: info@fcnb.ca.
28. This Blanket Order takes effect on 15 December 2017.

Dated at Saint John, New Brunswick, this ___ day of December 2017.

“original signed by”

Kevin Hoyt
Executive Director

ANNEX

COMPLIANCE REPORT

Section 1 – Definitions

1. Terms defined in the *Act*, in National Instrument 14-101 *Definitions* or in Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting (MI 96-101)* have the same meaning in this Compliance Report.
2. In this Compliance Report
 - (a) “Blanket Order” means Blanket Order 96-501;
 - (b) “Blocking Law” means any statute, law, enactment, rule, order, decision, judgment or decree by a government or a regulatory authority that would restrict the Reporting by a reporting counterparty of information relating to a Subject Derivative or the Non-Reporting Counterparty that could identify the Non-Reporting Counterparty;
 - (c) “Compliant Non-Reporting Counterparty” means a Non-Reporting Counterparty in respect of which the Delivering Counterparty has obtained Required Counterparty Feedback;
 - (d) “Consent Requirement” means any statute, law, enactment, rule, order, decision, judgment or decree by a government or a regulatory authority that would restrict the Reporting by a reporting counterparty of information relating to a Subject Derivative or the Non-Reporting Counterparty that could identify the Non-Reporting Counterparty without the consent of the Non-Reporting Counterparty;
 - (e) “Delivering Counterparty” means the reporting counterparty that is delivering this Compliance Report;
 - (f) “New Non-Reporting Counterparty” means a Non-Reporting Counterparty to a Subject Derivative that was entered into during the calendar year for which this Compliance Report is delivered, with whom the Delivering Counterparty had not previously entered into a Subject Derivative;
 - (g) “Non-Compliant Non-Reporting Counterparty” means a Non-Reporting Counterparty in respect of which the Delivering Counterparty has not obtained the Required Counterparty Feedback;
 - (h) “Non-Reporting Counterparty” means the counterparty to a derivative that is not the reporting counterparty;
 - (i) “Report” means, in respect of derivatives data relating to a Subject Derivative, to report, update, amend or supplement, each in accordance with MI 96-101;

- (j) “Required Counterparty Feedback” means information needed to enable the reporting counterparty to determine whether the Non-Reporting Counterparty is a Resident Local Counterparty;
- (k) “Resident Local Counterparty” means a local counterparty under paragraph (a) or (c) of the definition of “local counterparty” under MI 96-101;
- (l) “Subject Derivative” means a derivative that is required to be reported under MI 96-101.

Section 2 – Information on the Delivering Counterparty

1. Provide the following information with respect to the Delivering Counterparty :

Full legal name:	•
Address of head office:	•
Mailing address (if different):	•
Telephone:	•
Legal entity identifier:	•
Contact employee name:	•
Title:	•
Telephone:	•
E-mail:	•

Section 3 – Relief Related to Blocking Laws and Relief Related to Consent Requirements

1. Provide the following information:

List each foreign jurisdiction in respect of which the reporting counterparty reasonably believes that a Blocking Law applies to restrict the Reporting by a reporting counterparty of derivatives data that could identify the Non-Reporting Counterparty. Please highlight jurisdictions added or removed since the last report.	•
List each foreign jurisdiction in respect of which the reporting counterparty reasonably believes that a Consent Requirement applies to restrict the Reporting by a reporting counterparty of derivatives data that could identify the Non-Reporting Counterparty, absent the consent of the Non-Reporting Counterparty. Please highlight jurisdictions added or removed since the last report.	•
List each jurisdiction in respect of which the reporting counterparty has yet to determine if a Blocking Law or Consent Requirement applies to restrict the Reporting by a reporting counterparty of derivatives data that could identify the Non-Reporting Counterparty. Please highlight jurisdictions added or removed since the last report.	•

Section 4 – Relief Related to Counterparty Feedback

1. If this Compliance Report is delivered in respect of a derivative entered into before 30 June 2018, describe the Delivering Counterparty's efforts to obtain Required Counterparty Feedback from a New Non-Reporting Counterparty.
2. If this Compliance Report is delivered in respect of a derivative entered into before 30 June 2018, describe the Delivering Counterparty's internal policies regarding acceptance of a New Non-Reporting Counterparty that is not a Compliant Non-Reporting Counterparty.
3. Describe the Delivering Counterparty's efforts to obtain Required Counterparty Feedback from existing Non-Compliant Non-Reporting Counterparties.
4. Describe the Delivering Counterparty's efforts to correct any Reporting it has made in relation to a Subject Derivative after the relevant Required Counterparty Feedback has been obtained, including the time required to correct or Report the relevant information once the Required Counterparty Feedback has been obtained.
5. Describe in general terms the type, level of sophistication, relative level of trading activity and, if known, geographic location of Non-Compliant Non-Reporting Counterparties.
6. Describe any other material obstacles relating to reporting of counterparty, broker or clearing intermediary information not discussed above in items 1 - 5 that impair the reporting counterparty's ability to fully comply with the reporting obligations under MI 96-101.

Section 5 – Compliance Rates

1. Provide the following information as at December 31 of the calendar year for which this Compliance Report is delivered:

	Canadian Counterparties			Foreign Counterparties		
	[Year]	[Year]	[Year]	[Year]	[Year]	[Year]
Required Counterparty Feedback						
Total number of Non-Reporting Counterparties	•	•	•	•	•	•
Number of Compliant Non-Reporting Counterparties	•	•	•	•	•	•
Compliance rate (total number of Non-Reporting Counterparties/ number of Compliant Non-Reporting Counterparties), expressed as a percentage	•	•	•	•	•	•
Blocking Laws & Consent Requirements						
Total number of outstanding Subject Derivatives in respect of which the Delivering Counterparty is relying on the exemption under either section 12 [Relief Related to Blocking Laws] or section 15 [Relief Related to Consent Requirements] of the Blanket Order	•	•	•	•	•	•