

## **Draft Regulation 91-506 respecting Derivatives Determination**

## **Draft Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting**

### Derivatives Act

(chapter I-14.01, s. 175, par. (2), (3), (7), (9), (12), (26), (27) and (29))

Notice is hereby given by the *Autorité des marchés financiers* (the "Authority") that, in accordance with section 175 of the *Derivatives Act* (chapter I-14.01) (the "QDA"), the following Regulations, the texts of which are published hereunder, may be made by the Authority and subsequently submitted to the Minister of Finance for approval, with or without amendment, after 90 days have elapsed since their publication in the Bulletin of the Authority:

- *Regulation 91-506 respecting Derivatives Determination* ("Regulation 91-506");
- *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* ("Regulation 91-507").

Collectively, the "Draft Regulations".

Draft of the following policy statements are also published hereunder:

- *Policy Statement to Regulation 91-506 respecting Derivatives Determination* (Policy Statement 91-506);
- *Policy Statement to Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* (Policy Statement 91-507).

## **Background**

On December 6, 2012, the Canada 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 invited public comment on all aspects of the Draft Model Rules. Thirty-five comment letters were received. A chart summarizing the comments received and the Committee's responses to them is attached at Appendix A to this Notice. Copies of the comment letters are posted at [www.lautorite.qc.ca](http://www.lautorite.qc.ca).

The Committee has reviewed the comments received and made final determinations on revisions to the Draft Model Rules (the "Updated Model Rules"). It is the intention of the Committee that each province will develop harmonized province-specific rules based on the Updated Model Rules, with minor variations to accommodate differences in provincial securities or derivatives legislation.

The Draft Regulations represent Québec's province-specific regulations which are based on the Updated Model Rules.

Provinces which are not in a position to publish province-specific rules because legislative amendments must first be implemented will publish a Multilateral Staff Notice and the Updated Model Rules<sup>1</sup>. The comment period for this publication will align with the comment periods for the Draft Regulations and other province-specific rules.

The Committee will review all comment letters on the Updated Model Rules, the Draft Regulations and other province-specific rules and will make any determinations on changes to the Updated Model Rules at a Committee level. Upon reaching agreement on changes to the Updated Model Rules, each province will publish substantially similar final province-specific rules.

## Regulation 91-506 and Policy Statement 91-506

The purpose of Regulation 91-506 is to define the types of derivatives that will be subject to reporting requirements under Regulation 91-507, and it will initially only apply for the purposes of Regulation 91-507. The excluded contracts or instruments are contracts or instruments that have not traditionally been considered to be over-the-counter derivatives.

The QDA governs both over-the-counter and exchange-traded derivatives. The treatment of certain contracts or instruments prescribed by the Updated Model Rule – *Derivatives Product Determination*, attached at Appendix B of this Notice, has already been implemented under the QDA. As such, the Authority does not propose the adoption of some sections of that Updated Model Rule in Regulation 91-506 because these sections are already covered by or excluded from the QDA or the *Securities Act* (chapter V-1.1) (the “QSA”).

The following is a list of the provisions that will not be adopted and the corresponding QDA or QSA provisions:

Updated Model Rule - Derivatives Product Determination	QDA or QSA
Insurance or annuity contracts adequately regulated by a domestic regulatory regime – subparagraph 2(b)(i)	This subparagraph is already covered by paragraph 6(3) of the QDA.
Evidence of a deposit – paragraphs 2(e) and (f)	Deposits are securities under the QSA - see paragraph 1(3) and would most certainly be predominantly a security according to section 4 of the QDA.
Investment contracts – section 3	This section is already covered by paragraph 6(2) of the QDA.
Hybrid products – section 4	This section is already addressed by the hybrid test under section 4 of the QDA.
Listed issuer compensation products – section 5	This section is already covered by paragraph 6(4) of the QDA.

## Regulation 91-507 and Policy Statement 91-507

The purpose of this Regulation is to improve transparency in the 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.

Regulation 91-507 is divided into two areas (i) regulation and oversight of trade repositories, including the recognition process, data access and dissemination, and operational requirements, and (ii) derivatives data reporting requirements by counterparties to derivatives transactions.

### (i) Regulation of trade repositories

To obtain and maintain recognition as a trade repository, a person or entity must apply to the Authority for recognition and must comply with the filing and recognized trade repository requirements set out in Regulation 91-507, as well as any condition determined by the Authority in its recognition order.

## *(ii) Reporting Requirement*

All derivatives transactions involving a local counterparty are required to be reported to a recognized trade repository or to the Authority. Regulation 91-507 sets out the hierarchy for determining which counterparty will be required to report a transaction.

In terms of timing, reporting is required to be completed on a real-time basis. However, where it is not technologically possible to do so, the reporting counterparty must 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 coming into force of Regulation 91-507 will be required to be reported provided unless they expire or terminate 365 days after Regulation 91-507 comes into force.

Three main types of data must be reported under Regulation 91-507 (i) creation data which includes operational data, product information, principle economic terms, counterparty information and underlier information (see Appendix A to Regulation 91-507 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 a transaction.

Please note that Policy Statement 91-507 does not provide guidance on Appendix A to Regulation 91-507. Guidance for Appendix A to Regulation 91-507 is included in the Description column of the reporting fields in the Appendix itself.

### **Request for comment**

Comments regarding the above may be provided in hard copy or electronic form by **September 6, 2013**, to the following:

M<sup>e</sup> Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montréal (Québec) H4Z 1G3  
Fax: (514) 864-6381  
E-mail: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

The Authority will publish all responses received on its website ([www.lautorite.qc.ca](http://www.lautorite.qc.ca))

### **Further information**

Further information is available from:

Derek West  
Senior Director, Derivatives Oversight  
Autorité des marchés financiers  
514-395-0337, ext. 4591  
Toll-free: 1 877 525-0337  
[derek.west@lautorite.qc.ca](mailto:derek.west@lautorite.qc.ca)

**June 6, 2013**

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<sup>i</sup> The provincial authorities involved will be the Alberta Securities Commission, the British Columbia Securities Commission, the New Brunswick Securities Commission, the Nova Scotia Securities Commission and the Financial and Consumer Affairs Authority of Saskatchewan.

**APPENDIX A**  
**COMMENT SUMMARY AND CSA RESPONSES**

**1. The Scope Regulation**

Section Reference	Issue/Comment	Response
<b>General Comments</b>	Two commenters urged the Committee to expressly provide that exchange-traded derivatives are excluded from the definition of “derivative”.	Change made. See new para. 2(g) of the Scope Regulation which excludes a derivative traded on certain prescribed exchanges from the definition of “derivative”. We note this change was necessary in Ontario because although commodity futures contracts and commodity futures options are excluded from the definition of “derivative” in the <i>Securities Act</i> (Ontario), other types of exchange-traded derivatives exist. Such exchange-traded derivatives will not be characterized as “derivatives” as a consequence of the application of para. 2(g) of the Scope Regulation.
	One commenter suggested that repurchase transactions or reverse repurchase transactions should be explicitly excluded from the definition of “derivative”.	No change. We believe an explicit exclusion for repurchase transactions or reverse repurchase transactions is unnecessary and would cause confusion because these products are not typically considered to be derivatives in the marketplace.
<b>Para. 2(a) – Gaming</b>	Three commenters expressed concern that gaming contracts not regulated by gaming control legislation in Canada should be explicitly excluded from the definition of “derivative”.	Change made. See new subpara. 2(a)(ii) of the Scope Regulation which provides that gaming contracts or instruments regulated by gaming control legislation of a foreign jurisdiction will be excluded from the definition of “derivative” if the contract was entered into outside Canada, is not in violation of Canadian law and would be regulated under Canadian gaming control legislation if it had been entered into in Canada.
<b>Para. 2(b) – Insurance</b>	Five commenters pointed out that in certain situations Canadian entities may enter into an insurance or annuity contract with a foreign insurer not licensed in Canada. For example, a Canadian entity may enter into an insurance contract with a foreign insurer to insure a risk outside of Canada. Commenters suggested that certain insurance contracts issued by foreign insurers should be explicitly excluded from the definition of “derivative”.	Change made. See new subpara. 2(b)(ii) of the Scope Regulation which provides that insurance or annuity contracts entered into with an insurer licensed in a jurisdiction outside of Canada will be excluded from the definition of “derivative” if the insurance or annuity contract would be regulated as insurance under Canadian insurance legislation if it had been entered into in Canada.
	Two commenters requested additional clarification that reinsurance will not be treated as a derivative.	Change made. Additional clarification has been added to the Scope Policy Statement which provides that, to the extent that

Section Reference	Issue/Comment	Response
		reinsurance falls within the exemption in para. 2(b) of the Scope Regulation, it will be treated as an insurance or annuity contract under that paragraph.
<b>Para. 2(c) – FX Spot Transactions</b>	Three commenters suggested that the Scope Regulation should exclude from the definition of “derivative” all deliverable foreign exchange forward contracts provided that there is an intention to physically deliver.	No change. We believe that deliverable foreign exchange forward transactions that are not settled within the timelines prescribed in subpara. 2(c)(i) should be treated as derivatives under the Scope Regulation for the purposes of trade reporting. We note that the United States and Europe are similarly requiring the reporting of deliverable foreign exchange forward transactions. We intend to revisit the treatment of deliverable foreign exchange forward transactions for other derivatives regulatory requirements such as clearing and margin requirements.
	One commenter suggested that non-deliverable foreign exchange forward transactions be excluded from the definition of “derivative”.	No change. Our view is that non-deliverable foreign exchange forward transactions should be treated as a “derivative”.
	A number of commenters pointed out that in certain situations foreign exchange transactions are entered into in order to hedge foreign currency risk in connection with the purchase of equity securities. Typically, the settlement cycle for most non-US denominated securities is trade date plus three days. The commenters were concerned that the current two day settlement requirement under subpara. 2(c)(i) of the Scope Regulation would prevent these transactions from being excluded for the definition of “derivative”.	Change made. See new clause 2(c)(i)(B) of the Scope Regulation which allows for settlement of deliverable foreign exchange forward transactions after two days provided such settlement coincides with the settlement of a related securities trade denominated in the underlying currency.
<b>Para. 2(d) – Non-Financial Commodities</b>	A number of commenters raised concerns with the term “physical commodity”. Two commenters questioned whether intangible products (such as carbon offset credits, environmental attributes and biofuel components) will be treated as physical commodities.	Change made. See amendment to para. 2(d) of the Scope Regulation which removes the term “physical commodity” and replaces it with the phrase “commodity other than cash or currency”. The corresponding guidance in the Scope Policy Statement also specifies that intangible commodities such as carbon credits and emission allowances will be considered to be non-financial commodities.
	A number of commenters raised concern regarding the requirement under subpara. 2(d)(ii) of the Scope Regulation that, in order to be excluded from the definition of “derivative”, amongst other things, physical commodity contracts must not	Change made. See amended para. 2(d) and accompanying guidance in the Scope Policy Statement which permits cash settlement where physical settlement is rendered impossible or commercially unreasonable as a result of events not reasonably

Section Reference	Issue/Comment	Response
	<p>allow for cash settlement in place of physical delivery. Commenters provided a number of examples of current transactions terms and market practices that permit some form of cash delivery in lieu of physical settlement, including:</p> <ul style="list-style-type: none"> <li>• A number of commenters pointed out that parties to physical commodity forward transactions commonly enter into book-out transactions. A book-out transaction is a subsequent, separately negotiated agreement whereby the purchaser under the original agreement sells some or all of the commodity back to the same counterparty or a third-party. The commenters raised concerns that these transactions may result in physical commodity transactions being improperly classified as “derivatives” as they would be considered to be cash settled under subpara. 2(d)(ii).</li> <li>• Two commenters expressed concern that netting arrangements may result in physical commodity transactions being improperly classified as “derivatives” as they would be considered to be cash settled under subpara. 2(d)(ii). The commenters pointed out these arrangements are standard industry practice and allow counterparties with offsetting delivery obligations to deliver just the net amount of commodity obligated to be transferred between the counterparties.</li> <li>• One commenter noted that standard industry contracts such as Gas Electronic Data Interchange Base Contract for Sale and Purchase of Natural Gas and North American Energy Standards Board Base Contract for the Purchase and Sale of Natural Gas contemplate cash settlement in place of physical delivery for reasons other than breach of contract, termination, or impossibility of delivery.</li> <li>• Four commenters pointed out that the Scope Regulation does not discuss contracts having an optional-pricing component, such as contracts which include floor or ceiling pricing provisions. These commenters were concerned that using optional-pricing may result in the contract being considered to be cash settled and treated as a “derivative”.</li> <li>• One commenter requested clarification as to whether power</li> </ul>	<p>within the control of the parties.</p> <p>Additional guidance has also been provided in the Scope Policy Statement outlining our position on the intention requirement in subpara. 2(d)(i). We take the view that a netting provision will not, in and of itself, be evidence of an intention not to settle by delivering the relevant commodity.</p>

Section Reference	Issue/Comment	Response
	purchase agreements will be treated as derivatives under the Scope Regulation. As power purchase agreements may include a take or pay option which in the event that the utility decides to not take full delivery of electricity there may be a requirement to compensate the producer for lost revenue due to reduced production.	
<b>Para. 2(d) – Physically Settled Commodity Transactions</b>	One commenter requested that transactions between provincially-owned utility companies and the Province owning such utility company should be excluded from the definition of “derivative”.	No change. The Scope Regulation has not been amended to deal specifically with these types of transactions although exemptions may be considered on a case-by-case basis.

## 2. The TR Regulation

Section Reference	Issue/Comment	Response
<b>General Comments</b>	One commenter suggested that there should be an explicit recognition that trade repositories and other service providers may not “tie” or “bundle” mandatory services with the trade repository function. It was argued that bundling of a mandated service with other mandated or ancillary services will only serve to limit reporting party choice and potentially result in data fragmentation as data is sent to multiple repositories complicating the ability of regulators or the public to get a comprehensive view of the market or a single firm’s exposures in any one place.	Change made. See new para. 13(2)(d) of the TR Regulation which provides that designated trade repositories will not require the use or purchase of another services for a person to utilize the trade reporting service.
	A number of commenters suggested that the TR Regulation should address the extent to which reporting derivatives data pursuant to foreign regulations would satisfy the reporting requirements under the TR Regulation. They argued that such “substituted compliance” should be allowed as long as the foreign jurisdiction has a reporting regime substantially similar to the reporting regime in the “home Province”.	We agree that where a transaction has been reported to a designated trade repository pursuant to the regulations of an equivalent jurisdiction, an exemption from reporting under the TR Regulation will be considered where the foreign report contains all of the information otherwise required to be reported under the TR Regulation. Such situations will be considered on a case-by-case basis under the exemption power in s. 41 of the TR Regulation or any other applicable provision under securities or derivatives legislation.
	Two commenters suggested that a system of reciprocity or recognition be developed to allow for a Trade Repository that is	No change. This issue is outside of the scope of the TR Regulation.



Section Reference	Issue/Comment	Response
	designated in any province to be automatically deemed designated in all provinces – “passport system”. It was suggested that a principal regulator model should be implemented, similar to that used to determine a principal regulator for registrants and for reporting issuers.	
<b>S. 1 “Local Counterparty”</b>	A number of commenters raised concerns that the definition of “local counterparty” is too broad and has extra-territorial implications. Particular concern was raised that paras. (c), (d), (e) and (f) may capture transactions where there is either no or insufficient connection to Canada.	Change made. See amended definition of “local counterparty” in subsection 1(1) of the TR Regulation. The amended definition includes parties to a transaction where (a) the party is a person, other than an individual, organized under the laws of Québec or that has its head office or principal place of business in Québec, (b) the party is registered as a dealer or subject to regulations providing that a person trading in derivatives must be registered in a category of registration prescribed by the regulations, or (c) the party is an affiliate of a person described in paragraph (a) or (b), and such person is responsible for the liabilities of that affiliated party.
<b>S. 2 – Initial filing and designation</b>	One commenter suggested that the requirement that the applicable local securities regulator have access to the trade repository’s books and records should be limited to matters that directly fall within the regulatory ambit of the local regulator.	Change made. The requirement to provide access to the trade repository’s books and records is intended to be limited to matters that directly fall within the regulatory ambit of the local regulator. See amendment to s. 5 of Exhibit A of Form F1 which removes the requirement that an applicant obtain a legal counsel opinion stating that the trade repository will be able to provide prompt access to “data that is required to be reported to the trade repository”.
	One commenter suggested that to provide greater legal certainty there should be more precise wording in para. 2(3)(b) to require applicants located outside of a province to certify that it “has the power and authority”, not just “is able”, to provide access to the regulator of its books and records.	Change made. See amendment made to subsection 2(3) and the certificate in Form F1. The phrase “is able” is replaced by “has the power and authority”.
<b>S. 3 – Change in Information</b>	One commenter argued that the requirement to provide 45 days’ advance notice of a significant change to Form F1 information is too onerous and in practice will be difficult to comply with.	No change. We believe that 45 days prior notice of significant changes is necessary in order for the Authority to address any potential concerns that may arise with such changes.
<b>S. 23 – Confirmation of Data and Information</b>	Three commenters supported the position that where a transaction is cleared through a clearing agency or traded on an exchange such clearing agency or exchange should be required to confirm the accuracy of any data required to be submitted to a	Change made. See new subsection 23(2) of the TR Regulation which provides that a designated trade repository will only be required to confirm the accuracy of derivatives data with counterparties that are participants of the designated trade

Section Reference	Issue/Comment	Response
	<p>trade repository. One commenter suggested that there be no confirmation requirement where derivatives data is reported by a clearing agency or exchange.</p> <p>Two commenters pointed out that placing an obligation on the trade repository to confirm data without placing a corresponding obligation on counterparties to provide such data would make it very difficult for a trade repository to fulfill its obligation.</p> <p>Two commenters took the position that requiring both counterparties to confirm the accuracy of derivatives data placed an unnecessary administrative and compliance burden on end-users.</p>	<p>repository. Since clearing agencies, exchanges and dealers that will report derivatives data to a designated trade repository will be required to be participants of such designated trade repository, they will be required to confirm derivatives data. The designated trade repository will only be obligated to confirm the accuracy of derivatives data with an end-user if the end-user is a participant of the trade repository.</p>
<b>S. 25 – Duty to Report</b>	<p>Three commenters took the position that requiring end-users or non-dealer counterparties to report derivatives data is overly burdensome. Commenters pointed to the fact that dealers will have systems in place for such reporting while end-users will bear substantial costs to develop such expertise and logistic capabilities.</p>	<p>No change. We agree that dealers are in a better position to report transactions than end-users. However, in situations where the dealer is foreign, the Authority may not have jurisdiction over such an entity. As such, the ultimate reporting obligation must fall on a local counterparty. Where a transaction is between two end-users it would be expected that at least one of the counterparties would have reporting capabilities.</p>
<b>S. 26 – Pre-existing Derivatives Data</b>	<p>A number of commenters raised concerns that the requirement to report derivatives data for pre-existing transactions will be problematic since not all information will be readily available to counterparties (for example, counterparties will not likely have in their possession certain creation data).</p> <p>One commenter pointed out that certain pre-existing transactions involving local-counterparties will have already been reported in the United States. They argued that it would be inefficient and costly to re-report such transactions or to require that additional information be provided for transactions which have already been reported.</p>	<p>Change made. The fields required to be reported for pre-existing transactions have been reduced. See column entitled “Required for Pre-existing Transactions” in Appendix A.</p> <p>We agree that where a transaction has been reported to a designated trade repository pursuant to the regulations of an equivalent jurisdiction, an exemption from reporting under the TR Regulation should be considered when the foreign report contains all of the information otherwise required to be reported under the TR Regulation. Such situations will be considered on a case-by-case basis under the exemption power in s. 41 of the TR Regulation or any other applicable provision under securities or derivatives legislation.</p>
<b>S. 27 – Reporting Counterparty</b>	<p>A number of commenters supported the position that where a transaction is cleared through a clearing agency, such clearing agency should be required to report any data required to be submitted to a trade repository.</p>	<p>Change made. See new para. 27(1)(a) of the TR Regulation which provides that where a transaction is cleared, the clearing agency will be responsible for reporting derivatives data.</p>

Section Reference	Issue/Comment	Response
	Four commenters requested that the term “derivatives dealer” be defined in the TR Regulation.	Change made. See new definition for “dealer” under subsection 1(1) which specifies that a “dealer” means a person engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives as a principal or agent.
<b>S. 28 – Real-time Reporting</b>	Three commenters suggested that it would be very difficult and costly for end-users to comply with a real-time reporting requirement. It was suggested that additional time be given for end-users reporting derivatives data.	No change. We note that the TR Regulation and the accompanying TR Policy Statement already provides for a delay where reporting in real time is not technologically practicable.
	One commenter noted that the TR Regulation does not contemplate circumstances where the trade repository ceases its operations or stops accepting data for a certain product. It was suggested that in such circumstances the TR Regulation should allow a reporting counterparty a reasonable period of time to transition to another trade repository without contravening the timing requirements under s. 28 of the TR Regulation provided that the reporting counterparty provides a copy of any notice it receives from the trade repository informing parties that it will be ceasing operations or stop accepting data for a certain product.	Change made. See amendment to subsection 28(3) of the TR Regulation.
<b>S. 30 – Legal Entity Identifier</b>	Two commenters suggested that if the Global Legal Entity Identifier System is unavailable when the TR Regulation comes into force other existing industry identifiers should be permitted to be used as a substitute pursuant to para. 30(3)(a) of the TR Regulation (for example, CFTC Interim Compliant Identifiers, Bank Identifier Codes, etc.)	Change made. See amendments to subsection 30(3) of the TR Regulation which allows for the use of substitute legal entity identifiers provided they comply with the standards established by the LEI Regulatory Oversight Committee for pre-LEI identifiers. Substitute legal entity identifiers which adhere to the requirements set by the LEI Regulatory Oversight Committee will in all likelihood convert to legal entity identifiers in their same form and will avoid the need for extensive mapping exercises.
<b>S. 31 – Unique Transaction Identifier</b>	Two commenters noted that unique transaction identifiers are commonly created by clearing agencies and exchanges. It was suggested that the TR Regulation be amended to take into account such market practices.	Change made. See amendments to subsection 31(2) of the TR Regulation which permits the use of unique transaction identifiers previously assigned by a clearing agency or an exchange.

Section Reference	Issue/Comment	Response
<b>S. 34 – Life-cycle Data</b>	Two commenters suggested that reporting counterparties be given the option of reporting life-cycle events through an end-of-day snapshot data report. Under this approach, lifecycle events that occur during the day would be aggregated to show the final position at the end of the day.	Change made. See amendments to s. 34 of the TR Regulation which permits the reporting of life-cycle data at the end of the business day that such life-cycle event occurred.
<b>S. 35 – Valuation Data</b>	Two commenters suggested that the TR Regulation should expressly provide that valuation data should be reported using the most current daily mark available. They noted that it is market standard that valuations of transactions are performed overnight and accordingly, the valuation data for a transaction will be first reported on the business day following the transaction date.	Change made. See amendment to para. 35(2)(a) of the TR Regulation which requires the reporting of valuation data daily using industry accepted valuation standards and relevant closing market data from the previous trading day.
	One commenter pointed out that para. 35(2)(a) requires valuation data reporting by “each local counterparty if that counterparty is a derivatives dealer”. Where both parties are dealers, this paragraph would seem to unnecessarily obligate both of them to do the reporting, despite an arrangement between them that one would be the reporting counterparty. It was recommended that the wording be changed such that the reporting is done by the reporting counterparty where at least one of the counterparties is a dealer.	No change. Having two derivative dealers report valuation data is useful from a regulatory perspective as it allows for the relevant authority to have access to two valuation data points for the same transaction.
<b>S. 36 – Record of Data Reported</b>	A number of commenters requested that the 7 year retention period be lowered to 5 years in order to comply with international practice.	No change. The seven year retention period is common practice in Canada and is in line with timing requirements under the <i>Limitations Act 2002</i> (Ontario).
	Three commenters cautioned that it would be overly burdensome for local counterparties to retain all transaction records particularly where they are not acting as reporting counterparty.	Change made. See amendments to subsection 36(1) of the TR Regulation which only requires the reporting counterparty to keep records in relation to a transaction. The non-reporting counterparty has no obligation to retain any transaction records.
	Two commenters suggested that clarification is needed with respect to what is required to be retained – whether it is simply whatever records a local counterparty has relating to the transaction, or whether it is all the information that has been reported to the trade repository under the TR Regulation.	Change made. See amendment to subsection 36(1) of the TR Regulation which requires the reporting counterparty to keep records of a transaction.
<b>S. 37 – Data available to Regulators</b>	One commenter pointed out that a number of foreign jurisdictions place restrictions on the counterparty details that	No change. We note that this issue is currently being addressed at the international level. To the extent that a reporting

Section Reference	Issue/Comment	Response
	may be reported to a trade repository under local data protection and confidentiality laws. It was suggested that either (1) the reporting obligations be exempt where such conflicts exist or (2) reporting counterparties be permitted to mask confidential data in their reports where necessary.	counterparty encounters obstacles complying with the TR Regulation as a result of foreign confidentiality laws, exemptions may be available on a case-by-case basis under the exemption power in s. 41 of the TR Regulation or any other applicable provision under securities or derivatives legislation.
<b>S. 38 – Data available to Counterparties</b>	Two commenters pointed out that the consent provided under subsection 38(3) is limited to the release by the trade repository to counterparties to the transaction of the data relevant to that transaction only. The consent does not cover the initial disclosure by a counterparty to the transaction under its obligation to report derivatives data to a trade repository under s. 25, disclosure by the trade repository to regulators under s. 37 or disclosure to the public under s. 39.	Change made. See amendment to subsection 38(3) of the TR Regulation which deems consent of a counterparty for all data required under the Regulation.
	One commenter recommended that s. 38 expressly include the imposition of timely requirements of the trade repository to make data available to the transacting counterparties.	Change made. Subsection 38(1) of the TR Regulation has been amended to require timely access to derivatives data by counterparties.
<b>S. 39 – Data available to the Public</b>	Many commenters were concerned that the requirement under subsection 39(3) to publicly provide data regarding the principal economic terms of a transaction does not go far enough to ensure confidentiality and anonymity of the derivatives data.	Change made. The fields required to be publically disseminated have been reduced. See “Required for Public Dissemination” in Appendix A.
	Two commenters suggested that the TR Regulation specify that the trade repository must not publicly disseminate inter-affiliate transaction data.	Change made. See new subsection 39(6) which exempts transactions between affiliates from public reporting. We agree that reporting inter-affiliate transactions may skew pricing information and note that the United States also exempts public reporting of these types of transactions.
	Four commenters questioned how data regarding block trades would be made available to the public. They argued that the current time frame under subsection 39(3) is not enough time in certain circumstances for a party to hedge its position in the market.	No change. The TR Regulation has not been amended to deal specifically with these block trades. Exemptions may be considered on a case-by-case basis under the exemption power in s. 41 of the TR Regulation or any other applicable provision under securities or derivatives legislation.
<b>S. 40 – Exemption</b>	Three commenters pointed out that the term physical commodity transaction is not defined in the TR Regulation and that physical commodity contracts are excluded from the definition of “derivative” under the Scope Regulation. Further guidance was	Change made. See amendment to TR Policy Statement which clarifies that the provision applies to all un-exempted physical commodity transactions.

Section Reference	Issue/Comment	Response
	requested as to what types of physical commodity transactions this exemption applies to.	

**3. List of Commenters**

1. Alternative Investment Management Association
2. BC Hydro
3. BP Canada Energy Group ULC
4. Canadian Bankers Association
5. Canadian Electricity Association
6. Canadian Life and Health Insurance Association Inc.
7. Canadian Market Infrastructure Committee
8. Canadian Oil Sands Limited
9. Capital Power Corporation
10. Central 1 Credit Union
11. The Depository Trust & Clearing Corporation
12. Deutsche Bank AG, Canada Branch
13. Direct Energy Marketing Limited
14. Encana Corporation
15. Fidelity Investments Canada ULC
16. FIRMA Foreign Exchange Corp.
17. FortisBC Energy Inc.
18. Global Foreign Exchange Division
19. ICE Trade Vault, LLC
20. International Swaps and Derivatives Association, Inc.

21. Investment Industry Association of Canada
22. Just Energy Group Inc.
23. MarkitSERV LLC
24. Mouvement des caisses Desjardins
25. Natural Gas Exchange Inc.
26. Ontario Teachers' Pension Plan
27. Pension Investment Association of Canada
28. RBC Global Asset Management Inc.
29. SaskPower
30. Shell Energy North America (Canada) Inc./Shell Trading Canada
31. State Street Global Advisors, Ltd.
32. Stewart McKelvey
33. Stikeman Elliott LLP
34. Suncor Energy Inc.
35. TransAlta Energy Marketing Corp.

## APPENDIX B

### MODEL PROVINCIAL RULE *DERIVATIVES: PRODUCT DETERMINATION*

#### Application

1. This Rule applies to Model Provincial Rule – *Trade Repositories and Derivatives Data Reporting*.

#### Excluded derivatives

2. A contract or instrument is prescribed not to be a derivative if it is
  - (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 [applicable province], and
      - (C) would be regulated under gaming control legislation of Canada or [applicable province] if it had been entered into in [applicable province];
  - (b) an insurance or annuity contract 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 [applicable province] if it had been entered into in Canada;
  - (c) a contract or instrument for the purchase and sale of currency that,
    - (i) except where all or part 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 affiliates or their agents, requires settlement by the delivery of the currency referenced in the contract or instrument,
      - (A) within two business days, or
      - (B) after two business days provided that the contract or instrument was entered into contemporaneously with a related security trade and the contract or instrument requires settlement on or before the relevant security trade settlement deadline,
    - (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) a contract or instrument 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 affiliates, 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 or league to which the *Credit Unions and Caisses Populaires Act, 1994* or a similar statute of Canada or a jurisdiction of Canada (other than Ontario) applies or by a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or a similar statute of a jurisdiction of Canada (other than Ontario); or
- (g) traded on an exchange recognized by a securities regulatory authority, an exchange exempt from recognition by a securities regulatory authority or an exchange that is regulated in a foreign jurisdiction by a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding.

#### **Investment contracts and over-the-counter options**

3. 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 an investment contract under paragraph X of the definition of "security" in subsection X [Definitions] of the Act, or being an option described in paragraph X of that definition, that is not described in section 5, is prescribed not to be a security

#### **Derivatives that are securities**

4. A contract or instrument, other than a contract or instrument to which any of sections 2 and 3 apply, that is a security and would otherwise a derivative is prescribed not to be a derivative.

#### **Derivatives prescribed to be securities**

5. A contract or instrument that is a security and would otherwise be a derivative, other than a contract or instrument to which any of sections 2 to 4 apply, is prescribed not to be a derivative if such contract or instrument is used by an issuer or affiliate of an issuer solely to compensate an employee or service provider or as a financing instrument and whose underlying interest is a share or stock of that issuer or its affiliate.

## REGULATION 91-506 RESPECTING DERIVATIVES DETERMINATION

Derivatives Act  
(chapter I-14.01, s. 175, par. (7))

### Application

1. This Regulation applies to Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting (*insert reference*).

### Interpretation

2. In this Regulation, the term “affiliate” has the same meaning as in subsection 1(3) of Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting.

### Excluded derivatives

3. The Derivatives Act (chapter I-14.01) does not apply to any of the following contract or instrument:

- (a) a contract or an instrument 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 Québec, and
    - (C) would be regulated under gaming control legislation of Canada or Québec if it had been entered into in Québec;
- (b) an insurance or annuity contract entered into 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 Québec if it had been entered into in Québec
- (c) a contract or instrument 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 affiliates or their agents, requires settlement by the delivery of the currency referenced in the contract or instrument,
    - (A) within two business days, or
    - (B) after two business days provided that the contract or instrument was entered into contemporaneously with a related security trade and the contract or instrument requires settlement on or before the relevant security trade settlement deadline,
  - (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; and

(d) a contract or instrument 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 affiliates, or their agents.

# POLICY STATEMENT TO REGULATION 91-506 DERIVATIVES DETERMINATION

## PART 1

### GENERAL COMMENTS

(1) This Policy Statement sets out the views of the *Autorité des marchés financiers* (“Authority” or “we”) on various matters relating to *Regulation 91-506 respecting Derivatives Determination (insert reference)* (the “Regulation”).

(2) Except for Part 1, the numbering and headings in this Policy Statement correspond to the numbering and headings in the Regulation.

(3) The Regulation applies only to *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting*.

(4) Unless defined in the Regulation or this Policy Statement, terms used in the Regulation and in this Policy Statement have the meaning given to them in the *Derivatives Act* (chapter I-14.01) (the “Act”), *Regulation 14-101 respecting Definitions* (chapter V-1.1, r. 3) and *Regulation 14-501Q respecting Definitions* (chapter V-1.1, r. 4).

(5) In this Policy Statement, the term “contract” is interpreted to mean “contract or instrument”.

(6) The Regulation excludes certain contracts from the application of the Act. The following exclusions are in addition to those already provided in section 6 of the Act, including an investment contract as defined in the second paragraph of section 1 of the *Securities Act* (chapter V-1.1) or an option or other non-traded derivative whose value is derived from, referenced to or based on the value or market price of a security, granted as compensation or as payment for a good or service.

(7) Section 4 of the Act remains applicable to a hybrid product, i.e. a product with features of both a derivative and a security, in order to determine if the Act applies to that product.

## PART 2

### EXCLUDED DERIVATIVES

#### Paragraph 3(a) Gaming contracts

Paragraph 3(a) of the Regulation excludes certain domestic and foreign gaming contracts from the application of the Act. 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 other derivatives products. In addition, the Authority does not believe that the derivatives regulatory regime will be 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 to provide protection to investors from unfair, improper or fraudulent practices.

With respect to subparagraph 3(a)(ii), a contract that is regulated by gaming control legislation of a foreign jurisdiction would only qualify for this exclusion if: (1) its execution does not violate legislation of Canada or Québec, and (2) it would be considered a gaming contract under domestic legislation. If a contract would be treated as a derivative if entered into in Québec, 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.

### **Paragraph 3(b) Insurance and annuity contracts**

Paragraph 6(3) of the Act and paragraph 3(b) of the Regulation exclude qualifying insurance or annuity contracts from the application of the Act. A reinsurance contract would be considered to be an insurance or annuity contract.

While an insurance 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 other derivatives products. The Authority does not believe that the derivatives regulatory regime will be 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, has consumer protection as an objective and is therefore aligned with the objective of securities legislation to provide protection to investors from unfair, improper or fraudulent practices.

Certain derivatives that have characteristics similar to insurance contracts, including credit derivatives and climate-based derivatives, will be treated as derivatives and not insurance or annuity contracts.

Paragraph 6(3) of the Act requires an insurance or annuity contract to be entered into with a domestically licenced insurer and that the contract be regulated as an insurance or annuity contract under the *Act respecting insurance* (chapter A-32) or Canadian insurance legislation in order to be excluded from the Act. Therefore, for example, an interest rate derivative entered into by a licensed insurance company would not be excluded from the application of the Act.

With respect to subparagraph 3(b) of the Regulation, an insurance 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 Québec if made in Québec. Where a contract would otherwise be treated as a derivative if entered into in Canada, 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. Paragraph 3(b) 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 licenced in Canada.

### **Paragraph 3(c) Currency exchange contracts**

Paragraph 3(c) of the Regulation excludes a short-term contract for the purchase and sale of a currency from the application of the Act if it is settled within the time limits set out in subparagraph 3(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 3(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 3(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 3(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 3(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 3(c)(i) in order for the exclusion in paragraph 3(c) to apply.

Settlement by delivery except where impossible or commercially unreasonable (subparagraph 3(c)(i))

Subparagraph 3(c)(i) requires that 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 the exclusion in paragraph 3(c) would not apply.

We 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 3(c)(ii))

Subparagraph 3(c)(ii) excludes 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 3(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 3(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 the 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 3(c). For example, where it could be inferred from the conduct that 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 this 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 3(c)(iii))

Subparagraph 3(c)(iii) provides that, in order to qualify for the exclusion in paragraph 3(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 3(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 3(c)(i), the Authority 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 in paragraph 3(c).

The Authority does not intend that the exclusion in paragraph 3(c) 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.

#### **Paragraph 3(d) Commodities**

Paragraph 3(d) of the Regulation excludes a contract for the delivery of a commodity from the application of the Act if it meets the criteria in subparagraphs 3(d)(i) and (ii).

#### Commodity

The exclusion available under paragraph 3(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. We take the position 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 3(d)(i))

Subparagraph 3(d)(i) of the Regulation requires that 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 take the position 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 3(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.

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, 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 3(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.

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 the conduct that 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 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. We will generally not consider a book-out to be a “derivative” 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 3(d)(ii))

Subparagraph 3(d)(ii) requires that a contract not permit cash settlement in place of delivery unless physical settlement is rendered impossible or commercially unreasonable as a result of an intervening event or occurrence not reasonably within the control of the counterparties, their affiliates or their agents. A change in the market value of the commodity itself will not render delivery commercially unreasonable. In general, we consider examples of events not reasonably within the control of the counterparties would 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 3(d)(i) from being satisfied.

**Additional contracts not considered to be derivatives**

Apart from the contracts expressly excluded from the application of the Act in section 6 of the Act and section 3 of the Regulation, there are other contracts that we do not consider 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.

# REGULATION 91-507 RESPECTING TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

Derivatives Act  
(chapter I-14.01, s. 175, par. (2), (3), (9), (12), (26), (27) and (29))

## PART 1 DEFINITIONS AND INTERPRETATION

### Definitions and interpretation

1. (1) In this Regulation

“asset class” means the broad asset category underlying a derivative including, but not limited to, interest rate, foreign exchange, credit, equity and commodity;

“associate” has the same meaning as in section 5 of the Securities Act (chapter V-1.1);

“counterparty information” means the information used to identify a counterparty to a transaction, including information regarding attributes of counterparties that include, at a minimum, the data in the applicable fields listed in Appendix A under the heading “Counterparty Information”;

“creation data” means operational data, principal economic terms, counterparty information and event data;

“derivatives data” means all data related to a transaction that is required to be reported pursuant to Part 3;

“event data” means the information that records the occurrence of an event and, at a minimum, includes the data in the applicable fields listed in Appendix A under the heading “Event Data”;

“interim period” has the same meaning as in section 1.1 of Regulation 51-102 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24);

“life-cycle data” means changes to creation data resulting from any life-cycle event;

“life-cycle event” means any event that results in a change to derivatives data previously reported to the recognized trade repository in respect of a transaction;

“local counterparty” means a counterparty to a transaction if, at the time of the transaction, any of the following applies:

(a) the counterparty is a person, other than an individual, organized under the laws of Québec or that has its head office or principal place of business in Québec;

(b) the counterparty is registered as a dealer under the Derivatives Act (chapter I-14.01) or the equivalent under applicable securities legislation of another jurisdiction of Canada;

(c) the counterparty is an affiliate of a person described in paragraph (a) or (b), and such person described in paragraphs (a) or (b) is responsible for the liabilities of that affiliated party;

“operational data” means the data related to how a transaction is executed, confirmed, cleared and settled and, at a minimum, includes the data in the applicable fields listed in Appendix A under the heading “Operational Data”;

“participant” means a person that has entered into an agreement with a recognized trade repository that allows them to access the recognized trade repository services;

“principal economic terms” means the material terms of a transaction and, at a minimum, includes the data in the applicable fields listed in Appendix A under the heading “Principal Economic Terms”;

“reporting counterparty” means the counterparty that is required to report derivatives data for a transaction to a recognized trade repository as determined under subsections 27(1) and (2);

“transaction” means entering into, assigning, selling or otherwise acquiring or disposing of a derivative or 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 Regulation; and

“valuation data” means data that reflects the current value of the transaction and, at a minimum, includes the data in the applicable fields listed in Appendix A under the heading “Valuation Data”.

(2) In this Regulation, each of the following terms has the same meaning as in Regulation respecting 52-107 Acceptable Accounting Principles and Auditing Standards (chapter V-1.1, r. 25): “accounting principles”; “auditing standards”; “U.S. AICPA GAAS”; “U.S. GAAP”; and “U.S. PCAOB GAAS”.

(3) In this Regulation, a legal person is considered to be an affiliate of another legal person if one is a subsidiary of the other or if both are subsidiaries of the same legal person, or if each of them is controlled by the same person.

(4) In this Regulation, a legal person is considered to be controlled by another person if

(a) voting securities of the legal person carrying more than 50% of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person, and

(b) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the legal person.

(5) In this Regulation, a legal person is considered to be a subsidiary of another legal person if

(a) it is controlled by,

(i) that other,

(ii) that other and one or more legal persons, each of which is controlled by that other, or

(iii) 2 or more legal persons, each of which is controlled by that other; or

(b) it is a subsidiary entity of a legal person that is that other's subsidiary.

(6) This Regulation applies only to derivatives that are not traded on an exchange.

## **PART 2**

### **TRADE REPOSITORY RECOGNITION AND ONGOING REQUIREMENTS**

#### **Trade repository initial filing of information and recognition**

2. (1) An applicant for recognition in accordance with sections 12 and 14 of the Act must file all of the following:

(a) a completed Form 91-507F1;

(b) an application letter that describes how it complies with or will comply with Parts 2 and 4 of this Regulation.

(2) In its Form 91-507F1 or application letter, the applicant must include information sufficient to demonstrate that

(a) it is in the public interest to recognize the applicant under section 15 of the Act,

(b) the applicant is or will be in compliance with securities legislation, and

(c) the applicant has established, implemented, maintained and enforced appropriate written rules, policies and procedures that are in accordance with standards applicable to trade repositories.

(3) In addition to the requirements set out in subsections (1) and (2), an applicant that is located outside of Québec that is applying for recognition in accordance with sections 12 and 14 of the Act must

(a) certify on Form 91-507F1 that it will provide the Authority with access to its books and records and will submit to onsite inspection and examination by the Authority,

(b) certify on Form 91-507F1 that it will provide the Authority with an opinion of legal counsel that the applicant has the power and authority to:

(i) provide the Authority with access to the applicant's books and records, and

(ii) submit to onsite inspection and examination by the Authority, and

(c) file a completed Form 91-507F2 if it is located outside of Canada.

(4) For the purposes of subsection (3), an applicant is located outside of Québec if the applicant does not have its head office or principal place of business anywhere in Québec.

(5) An applicant for recognition in accordance with sections 12 and 14 of the Act must inform the Authority in writing immediately of any change to the information provided in Form 91-507F1 or if any of the information becomes inaccurate for any reason, and the applicant must file an amendment to the information provided in Form 91-507F1 in

the manner set out in the Form no later than 7 days after the change occurs or after becoming aware of any inaccuracy.

### **Change in information**

**3.** (1) Subject to subsection (2), a recognized trade repository must not implement a significant change to a matter set out in Form 91-507F1 unless it has filed an amendment to the information provided in Form 91-507F1 in the manner set out in the Form at least 45 days before implementing the change.

(2) A recognized trade repository must file an amendment to the information provided in Exhibit J (Fees) of Form 91-507F1 at least 15 days before implementing a change to the information provided in the Exhibit.

(3) For any change to a matter set out in Form 91-507F1 other than a change referred to in subsection (1) or (2), a recognized trade repository must file an amendment to the information provided in the Form 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 discloses the change publicly.

### **Ceasing to carry on business**

**4.** (1) A recognized trade repository that intends to cease carrying on business in Québec as a trade repository must make an application and file a report in Form 91-507F3 at least 180 days 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 in Québec as a trade repository must file a report in Form 91-507F3 as soon as practicable after it ceases to carry on that business.

### **Filing of initial audited financial statements**

**5.** (1) A person must file, as part of its application for recognition as a recognized trade repository, together with Form 91-507F1, audited financial statements for its most recently completed financial year that

(a) are prepared in accordance with one of the following

(i) Canadian GAAP applicable to publicly accountable enterprises,

(ii) IFRS, or

(iii) U.S. GAAP, if the person is incorporated or organized under the laws 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) are accompanied by an auditor's report and are audited in accordance with one of the following

(i) Canadian GAAS,

- (ii) International Standards on Auditing, or
- (iii) U.S. AICPA GAAS or U.S. PCAOB GAAS, if the person is incorporated or organized under the laws of the United States of America.

- (2) The auditor's report must
  - (a) if paragraph (1)(d)(i) or (ii) applies, express an unmodified opinion,
  - (b) if paragraph (1)(d)(iii) applies, express an unqualified opinion,
  - (c) identify all financial periods presented for which the auditor's report applies,
  - (d) identify the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements,
  - (e) be prepared in accordance with the same auditing standards used to conduct the audit, and
  - (f) be prepared and signed by a person 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**

6. (1) A recognized trade repository must file annual audited financial statements no later than the 90th day after the end of its financial year that comply with the requirements described in section 5.

(2) A recognized trade repository must file interim financial statements no later than the 45th day after the end of each interim period that are:

- (a) prepared in accordance with accounting principles referred to in any one of the paragraphs 5(1)(a)(i) to (iii), and
- (b) identify in the notes to the interim financial statements the accounting principles used to prepare the interim financial statements.

#### **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 in all relevant jurisdictions.

(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) such rules, policies and procedures and the contractual arrangements are supported by the laws applicable to those rules, policies, procedures and contractual arrangements,
- (b) the rights and obligations of users, owners and regulators with respect to the use of its information are clear and transparent,

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

(d) the status of records of contracts in its repository and whether those records of contracts are the legal contracts of record are clearly established.

## **Governance**

**8.** (1) A recognized trade repository must have governance arrangements that

- (a) promote the safety and efficiency of the recognized trade repository,
- (b) ensure effective oversight of the recognized trade repository, and
- (c) support the stability of the broader financial system and other relevant public interest considerations.

(2) A recognized trade repository must establish, implement, maintain and enforce written governance arrangements that are well-defined and that include a clear organizational structure with consistent lines of responsibility and effective internal controls.

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

(4) A recognized trade repository must make the governance arrangements referred to in subsections (2) and (3) available to the public.

## **Board of directors**

**9.** (1) 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.

(2) 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.

(3) 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 specify, in writing, the roles and responsibilities of management and must establish, implement, maintain and enforce written policies and procedures to ensure that management has the experience, competencies, integrity and mix of skills necessary to discharge such roles and responsibilities.

(2) A recognized trade repository must notify the Authority no later than the 5th business day after appointing or replacing its chief compliance officer, chief executive officer or chief risk officer.



## **Chief compliance officer**

**11.** (1) A recognized trade repository must have a chief compliance officer and its board of directors must appoint an individual who has 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 determined 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 policies and procedures to identify and resolve conflicts of interest and to ensure that the recognized trade repository complies with securities legislation and must monitor compliance with these policies and procedures on an ongoing basis,

(b) report to the recognized trade repository's board of directors as soon as practicable if he or she becomes aware of any circumstances indicating that the recognized trade repository, or any individual acting on its behalf, is not in compliance with the securities or derivatives laws of any jurisdiction in which it operates and any of the following apply

(i) the non-compliance creates a risk of harm to a user,

(ii) the non-compliance creates a risk of harm to the capital markets,

(iii) the non-compliance is part of a pattern of non-compliance,

(iv) the non-compliance may have an impact on the ability of the recognized trade repository to carry on business as a trade repository in compliance with securities legislation,

(c) report to the recognized trade repository's board of directors as soon as practicable if he or she becomes aware of a conflict of interest that creates a risk of harm to a user or to the capital markets, and

(d) 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 paragraphs (3)(b), (c) or (d), the chief compliance officer must file a copy of the report with the 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 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 have objective, risk-based, and publicly disclosed criteria for participation that permit fair and open access.

(2) Without limiting the generality of subsection (1), a recognized trade repository must not do any of the following

- (a) unreasonably prohibit, condition or limit access by a person to the services offered by it,
- (b) permit unreasonable discrimination among its participants,
- (c) impose any burden on competition that is not reasonably necessary and appropriate,
- (d) require the use or purchase of another service for a person to utilize the trade reporting service offered by it.

### **Acceptance of reporting**

**14.** A recognized trade repository must accept derivatives data for reporting purposes from its participants for all derivatives of the asset class or classes set out in its recognition order.

### **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) exchanges, clearing houses and alternative trading systems, and
- (d) other service providers.

### **Due process**

**16.** For any decision made by a recognized trade repository that affects a participant or an applicant that applies to become a participant, the recognized trade repository must ensure that

- (a) the participant or applicant is given an opportunity to be heard or make representations, and
- (b) it keeps records of, gives reasons for, and provides for reviews of its decisions, including, for each applicant, the reasons for granting, denying or limiting access.

### **Rules**

**17.** (1) The rules and procedures of a recognized trade repository must

- (a) be clear, comprehensive and provide sufficient information to enable participants to have an accurate understanding of the rights and obligations of participants in accessing the services of the recognized trade repository and the risks, fees, and other material costs they incur by using the recognized trade repository,
- (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 completed transactions, and

(c) not be inconsistent with securities legislation.

(2) A recognized trade repository's rules and procedures, and the processes for adopting new rules and procedures or amending existing rules and procedures, must be transparent to participants and the general public.

(3) A recognized trade repository must monitor compliance with its rules and procedures on an ongoing basis.

(4) A recognized trade repository must have clearly defined and publicly disclosed processes for sanctioning non-compliance with its rules and procedures.

### **Records of data reported**

**18.** (1) A recognized trade repository must design its recordkeeping procedures so that derivatives data is recorded 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 derivative for the life of the derivative and for a further 7 years after the date on which the derivative expires or terminates.

(3) Throughout the period described in subsection (2), 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), in a safe location and in 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 sound risk-management framework for comprehensively managing risks including 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 so that it can continue operations and services as a going concern if those losses materialize.

(3) 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.

(4) A recognized trade repository must establish, implement, maintain and enforce written policies and procedures reasonably designed to facilitate its orderly wind-down based on the results of the assessment required by subsection (3).

(5) A recognized trade repository must establish, implement, maintain and enforce written policies and procedures to ensure that it or any successor entity, insolvency administrator or other legal representative, will continue to comply with the requirements of section 38 and subsection 5(2) 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 all 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 Authority of any material systems failure, malfunction, delay or other disruptive incident, or any 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 any disruptions,

(b) allow for the timely recovery of information, including derivatives data, in the event of a disruption, and

(c) cover the exercise of authority in the event of any 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 it is in compliance with paragraphs (3)(a) and (b) and subsections (4) and (5).

(7) A recognized trade repository must provide the report resulting from the review conducted under subsection (6) to

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

(b) the Authority not later than the 30th day after providing the report to its board of directors or audit committee.

(8) A recognized trade repository must make publicly available, in their final form, all technology requirements regarding interfacing with or accessing the recognized trade repository,

(a) if operations have not begun, for at least 3 months immediately before operations begin, and

(b) if operations have begun, for at least 3 months before implementing a material change to its technology requirements.

(9) After complying with subsection (8), a recognized trade repository must make available testing facilities for interfacing with or accessing the recognized trade repository,

(a) if operations have not begun, for at least 2 months immediately before operations begin, and

(b) if operations have begun, for at least 2 months before implementing a material change to its technology requirements.

(10) A recognized trade repository must not begin operations in Québec until 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 the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment and

(a) the designated trade repository immediately notifies the Authority of its intention to make the change, and

(b) the recognized trade repository publishes the changed technology requirements as soon as practicable.

### **Data security and confidentiality**

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

(2) A recognized trade repository may not release any derivatives data for commercial or business purposes, unless the data has otherwise been disclosed pursuant to section 39 or the counterparties to the transaction have expressly granted to the recognized trade repository their written consent to use the derivatives data.

### **Confirmation of data and information**

**23.** (1) A recognized trade repository must establish, implement, maintain and enforce written 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 Rule, is accurate.

(2) Despite subsection (1), 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 any of its key services or systems to a service provider, including an associate or affiliate of the recognized trade repository, it must

(a) establish, implement, maintain and enforce written policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of those outsourcing arrangements,

(b) identify any conflicts of interest between the recognized trade repository and the service provider to which key services and systems are outsourced, and establish, implement, maintain and enforce written policies and procedures to mitigate and manage those conflicts of interest,

(c) enter into a contract with the service provider that is appropriate for the materiality and nature of the outsourced activities and that provides for adequate termination procedures,

(d) maintain access to the books and records of the service provider relating to the outsourced activities,

(e) ensure that the 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 arrangements,

(f) ensure that all persons conducting audits or independent reviews of the recognized trade repository under this Regulation have 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 arrangements,

(g) take appropriate measures to determine that a service provider to which key services or systems are outsourced establishes, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan in accordance with section 21,

(h) take appropriate measures to ensure that the service provider protects the recognized trade repository users' confidential information and derivatives data in accordance with section 22, and

(i) establish, implement, maintain and enforce written policies and procedures to regularly review the performance of the service provider under the outsourcing arrangements.

## **PART 3 DATA REPORTING**

### **Duty to report**

**25.** (1) Subject to subsection (2), section 26 and Part 5, a local counterparty must, in accordance with this Part, report, or cause to be reported, to a recognized trade repository, derivatives data for each transaction to which it is a counterparty.

(2) If no recognized trade repository accepts derivatives data in respect of a derivative or of a derivative of a particular asset class, the local counterparty must, in accordance with this Part, electronically report, or cause to be reported, such derivatives data to the Authority.

(3) Each reporting counterparty that is required by this Part to report derivatives data to a recognized trade repository must report each error or omission in the derivatives data as soon as technologically possible after discovery of the error or omission.

(4) If a local counterparty, other than the reporting counterparty, discovers any error or omission with respect to any derivatives data reported in accordance with subsections (1) and (2), the local counterparty must promptly notify the reporting counterparty of that error or omission.

(5) For the purpose of complying with this Part, the reporting counterparty must ensure that all reported derivatives data relating to a particular transaction

(a) is reported to the Authority or the same recognized trade repository to which the initial report was made, and

(b) is accurate and contains no misrepresentations.

### **Pre-existing derivatives**

**26.** Despite subsection 25(1) and subject to subsection 41(4), a local counterparty to a transaction entered into before [*insert date*] that had outstanding contractual obligations on that day must report, or cause to be reported, the data indicated in the column entitled “Required for Pre-existing Transactions” in Appendix A in relation to that transaction to a recognized trade repository in accordance with this Part not later than 365 days after [*insert date*].

### **Reporting counterparty**

**27.** (1) The counterparty required to report derivatives data for a transaction to a recognized trade repository is,

(a) if the transaction is cleared through a clearing house, the clearing house,

(b) if the transaction is not cleared through a clearing agency and is between a dealer and a counterparty that is not a dealer, the dealer,

(c) if paragraphs (a) and (b) do not apply and both counterparties agree, in writing or otherwise, that one of them is required to report derivatives data for the transaction to the designated trade repository, the counterparty required to report the derivatives data under that agreement, and

(d) in any other case, both counterparties.

(2) Despite any other provision in this Regulation, if the reporting counterparty as determined under subsection (1) is not a local counterparty and that counterparty does not comply with the local counterparties reporting obligations under this Regulation, the local counterparty must act as the reporting counterparty.

(3) The reporting counterparty in respect of a transaction is responsible for ensuring that all reporting obligations in respect of that transaction have been fulfilled.

(4) The reporting counterparty may delegate its reporting obligations under this Regulation, but remains responsible for ensuring the timely and accurate reporting of derivatives data required by this Regulation.

## **Real-time reporting**

**28.** (1) The reporting counterparty for a transaction, subject to the reporting obligations under this Regulation, must make a report required by this Part in real time unless it is not technologically practicable to do so.

(2) If it is not technologically practicable to report in real time, the reporting counterparty must make the report as soon as technologically practicable and in no event later than the end of the next business day following the day of the entering into of the transaction, change or event that is to be reported.

(3) Despite subsections (1) and (2), where a recognized trade repository ceases its operations or stops accepting derivatives data for a certain asset class of derivatives, the reporting counterparty will be permitted a reasonable time to fulfill its reporting obligations under this Regulation through reporting the information otherwise required to be provided to the recognized trade repository to another recognized trade repository or the Authority.

## **Identifiers, general**

**29.** The reporting counterparty for a transaction must include in every report required by this Part in respect of the transaction all of the following:

(a) the legal entity identifier of each counterparty to the transaction as set out in section 30;

(b) the unique transaction identifier for the transaction as set out in section 31;

(c) the unique product identifier for the transaction as set out in section 32.

## **Legal entity identifiers**

**30.** (1) A recognized trade repository must identify each counterparty to a transaction that is subject to the reporting obligation under this Rule in all recordkeeping and all reporting required under this Rule by means of a single legal entity identifier.

(2) Each of the following rules apply to legal entity identifiers:

(a) a legal entity identifier must be a unique identification code assigned to a counterparty in accordance with the standards set by the Global Legal Entity Identifier System;

(b) each local counterparty must comply with all applicable requirements imposed by the Global Legal Entity Identifier System.

(3) Despite subsection (2), if the Global Legal Entity Identifier System is unavailable to a counterparty at the time when a reporting obligation under this Regulation arises, all of the following rules apply

(a) each counterparty must obtain a substitute legal entity identifier which complies with the standards established March 8, 2013 by the LEI 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 paragraph (2)(a);



(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 paragraph (2)(a), the local counterparty must ensure that it is identified only by the assigned identifier in all derivatives data reported pursuant to this Regulation in respect of transactions to which it is a counterparty.

#### **Unique transaction identifiers**

**31.** (1) A recognized trade repository must identify each transaction that is subject to the reporting obligation under this Regulation in all recordkeeping and all reporting required under this Regulation 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**

**32.** (1) A recognized trade repository must identify each transaction that is subject to the reporting obligation under this Regulation in all recordkeeping and all reporting required under this Regulation by means of a unique product identifier.

(2) For the purposes of this section, subject to subsection (4), a unique product identifier is a code that uniquely identifies derivative products and is assigned in accordance with international or industry standards.

(3) The international or industry standard referenced in subsection (2) must be made publicly available by the recognized trade repository.

(4) A recognized trade repository must not assign more than one unique product identifier to a transaction.

(5) If international or industry standards for unique product identifiers are unavailable for a particular derivative product when a reporting obligation under this Regulation arises, a recognized trade repository must assign a unique product identifier to the transaction using its own methodology.

#### **Creation data**

**33.** Upon execution of a transaction that is subject to the reporting obligations under this Regulation, the reporting counterparty must report the creation data relating to that transaction to a recognized trade repository.

#### **Life-cycle data**

**34.** For each transaction that is subject to the reporting obligations under this Regulation, the reporting counterparty must report all life-cycle data to a recognized trade repository at the end of each business day.

#### **Valuation data**

**35.** (1) For a transaction that is cleared, valuation data must be reported to the recognized trade repository daily by both the clearing house and the local counterparty using industry accepted valuation standards and relevant closing market data from the previous business day.

(2) Valuation data for a transaction that is not cleared must be reported to the recognized trade repository

(a) daily using industry accepted valuation standards and relevant closing market data from the previous business day by each local counterparty that is a dealer, and

(b) at the end of each calendar quarter for all local counterparties that are not dealers.

(3) For the purposes of paragraph (2)(b), and despite section 28, the report must set out the valuation data as of the last day of each calendar quarter and must be reported to the recognized trade repository not later than 30 days after the end of the calendar quarter.

### **Records of data reported**

**36.** (1) Reporting counterparties must keep transaction records for the life of each transaction and for a further 7 years after the date on which the transaction expires or terminates.

(2) Records to which these requirements apply must be kept 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 Authority direct, continuous and timely electronic access to such data in the recognized trade repository's possession as is required by the Authority in order to carry out the Authority's mandate,

(b) create and make available to the Authority aggregate data derived from data in the recognized trade repository's possession as required by the Authority in order to carry out the Authority's mandate, and

(c) disclose to the 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 local counterparty must take any action necessary to ensure that the Authority has access to all derivatives data reported to a recognized trade repository for transactions involving the local counterparty.

#### **Data available to counterparties**

**38.** (1) A recognized trade repository must provide 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 non-reporting counterparties 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 Regulation.

(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 prices, relating to the transactions reported to it pursuant to this Regulation.

(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, whether the transaction is cleared, maturity and geographic location and type of counterparty.

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

(a) the end of the day after receiving the data from the reporting counterparty to the transaction, if one of the counterparties to the transaction is a dealer, and

(b) the end of the second day after receiving the data from the reporting counterparty to the transaction in all other circumstances.

(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 designated 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 other publicly accessible technology or medium.

(6) Despite subsections (1) to (5), a recognized trade repository will not be required to make public any derivatives data for transactions entered into between affiliated legal persons.

## **PART 5 EXCLUSIONS**

### **Exclusions**

**40.** Despite any other section of this Regulation, there is no obligation under this Regulation for a local counterparty to report derivatives data in relation to a physical commodity transaction if all of the following apply:

(a) the local counterparty is not a dealer or adviser;

(b) 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;

(c) the local counterparty is not the reporting counterparty under paragraph 27(1)(c).

**PART 6**  
**EFFECTIVE DATE**

**Effective date**

- 41.** (1) Parts 1, 2, 4 and 5 come into force on *[insert date]*.
- (2) Part 3 comes into force *[insert date + 6 months]*.
- (3) Despite subsection (2), Part 3 does not apply so as to require a reporting counterparty that is not a dealer to make any reports under that Part until *[insert date + 9 months]*.
- (4) Despite the foregoing, Part 3 does not apply to a transaction entered into before *[insert date]* that expires or terminates not later than 365 days after that day.

## Appendix A

### 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. Where a field does not apply to the transaction, the reporting counterparty may respond that the field is non-applicable (N/A).

Data field	Description	Required for Public Dissemination	Required for Pre-existing Transactions
<b>1. Operational data</b>			
Transaction identifier	The unique transaction identifier as provided by the recognized trade repository or the identifier as identified by the two counterparties, electronic trading venue of execution or clearing house.	N	N
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 house.	Y	Y
Clearing house	LEI of the clearing house where the transaction was 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
End-user exemption	Indicate whether either counterparty to the transaction qualifies as an end-user.	Y	N
Broker	LEI of the broker acting as an intermediary for the reporting counterparty without becoming a counterparty.	N	N
Electronic trading venue	Indicate whether the transaction was executed on or off an electronic trading venue.	Y	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.	N	Y
Inter-affiliate	Indicate whether the transaction is between two affiliated entities.	N	N
Custodian	LEI of the custodian if collateral is held by a third party custodian.	N	N
Collateralization	Indicate whether the transaction is collateralized.  Field Values: Fully (initial and variation margin posted by both parties), Partially (variation only posted by both parties), One-way (one party will post some form of collateral), Uncollateralized.	Y	N
<b>2. Counterparty information</b>			
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
Reporting counterparty dealer or non-dealer	Indicate whether the reporting counterparty is a dealer or non-dealer.	N	N
Non-reporting counterparty local counterparty or not local	Indicate whether the non-reporting counterparty is a local counterparty or not.	N	N
<b>3. Principal economic terms</b>			
Fields do not have to be reported if the unique product identifier adequately describes those fields.			
<b>A. Common data</b>			

Data field	Description	Required for Public Dissemination	Required for Pre-existing Transactions
Unique product identifier	Unique product identification code based on the taxonomy of the product that is used by the trade repository.	Y	N
Contract type	The name of the contract 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 contract.	Y	Y
Underlying asset identifier 2	The unique identifier of the second asset referenced in the contract, if more than one. If more than two assets identified in the contract, 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
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

Data field	Description	Required for Public Dissemination	Required for Pre-existing Transactions
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 contract.	N	N
Notional amount leg 1	Total notional amount(s) of leg 1 of the contract.	Y	Y
Notional amount leg 2	Total notional amount(s) of leg 2 of the contract.	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
<b>B. Additional asset information</b>			
<b>i) Interest rate derivatives</b>			
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



Data field	Description	Required for Public Dissemination	Required for Pre-existing Transactions
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
<b>ii) Currency derivatives</b>			
Exchange rate	Contractual rate(s) of exchange of the currencies.	N	Y
<b>iii) Commodity derivatives</b>			
Sub-asset class	Specific information to identify the type of commodity derivative (e.g., Agriculture, Energy, Freights, Metals, Index, Environmental, Exotic).	Y	N
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
Delivery connection points	Description of the delivery route.	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
<b>C. Options</b>			
Embedded option	Indicate whether the option is an embedded option.	Y	N
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 contract (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
<b>4. Event data</b>			
Action	Describes the type of action to the transaction (e.g., new transaction, modification or cancellation of existing transaction, etc.).	Y	N
Execution timestamp	The time and date the transaction was executed on a trading venue, expressed using Coordinated Universal Time (UTC).	Y	Y
Confirmation timestamp	The time and date the transaction was confirmed by both counterparties (for non-electronic transactions), expressed using UTC.	N	N
Clearing timestamp	The time and date the transaction was cleared, expressed using UTC.	N	N
Reporting date	The time and date the transaction was submitted to the trade repository, expressed using UTC.	N	N
<b>5. Valuation data</b>			
Value of contract calculated by the reporting counterparty	Mark-to-market valuation of the contract, or mark-to-model valuation.	N	N
Value of contract calculated by the non-reporting counterparty	Mark-to-market valuation of the contract, or mark-to-model valuation.	N	N
Valuation date	Date of the latest mark-to-market or mark-to-model valuation.	N	N
Valuation type	Indicate whether valuation was based on mark-to-market or mark-to-model.	N	N

**FORM 91-507 F1  
APPLICATION FOR RECOGNITION – TRADE REPOSITORY INFORMATION  
STATEMENT**

**Filer:**             **TRADE REPOSITORY**

**Type of Filing:**             **INITIAL**                             **AMENDMENT**

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:

4. Head office

Address:

Telephone:

Facsimile:

5. Mailing address (if different):

6. Other offices

Address:

Telephone:

Facsimile:

7. Website address:

8. Contact employee

Name and title:

Telephone number:

Facsimile:

E-mail address:

9. Counsel

Firm name:

Contact name:

Telephone number:

Facsimile:

E-mail address:

10. Canadian counsel (if applicable)

Firm name:

Contact name:

Telephone number:

Facsimile:

E-mail address:

**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 Exhibit required is inapplicable, a statement to that effect shall be furnished instead 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 this Regulation, 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 this Regulation, 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 Québec that is applying for recognition as a trade repository in accordance with sections 12 and 14 of the Act 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 Authority with prompt access to the applicant's books and records and submit to onsite inspection and examination by the Authority, and

2. A completed Form 91-507F2.

***Exhibit B – Ownership***

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.

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 5 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 – Affiliates***

1. For each affiliate of the trade repository provide the name and head office address and describe the principal business of the affiliate.
2. For each affiliate of the trade repository
  - (i) to which the trade repository has outsourced any of its key services or systems described in Exhibit E, including business recordkeeping, recordkeeping of trade data, trade data reporting, trade data comparison, data feed, or
  - (ii) 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 affiliate.
2. The name and title of the directors and officers, or persons performing similar functions, of the affiliate.
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 affiliate 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 affiliate that has any outstanding loans or cross-guarantee arrangements with the trade repository, financial statements, which may be unaudited, prepared in accordance with:
  - a. Canadian GAAP applicable to publicly accountable enterprises;
  - b. IFRS; or
  - c. U.S. GAAP where the affiliate is incorporated or organized under the laws of the U.S.

### ***Exhibit E – Operations of the Trade Repository***

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.

The filer must provide all policies, procedures and manuals related to the operation of the trade repository.

#### ***Exhibit F – Outsourcing***

Where the trade repository has outsourced the operation of key services or systems described in Exhibit E 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 person (including any affiliates 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***

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 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 Exhibit E.4.
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 – Trade Repository Participants***

1. Provide an alphabetical list of all the trade repository's participants who are counterparties to a transaction whose derivatives data is required to be reported pursuant to this Regulation, including the following information:
  1. Name.
  2. Date of becoming a participant.
  3. Describe the type of derivatives reported whose counterparty is the participant.
  4. The class of participation or other access.
2. Provide a list of all local counterparties who were denied or limited access to the trade repository, indicating for each:
  1. Whether they were denied or limited access.
  2. The date the repository took such action.
  3. The effective date of such action.
  4. The nature and reason for any denial or limitation of access.

### ***Exhibit J – Fees***

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 QUÉBEC**

The undersigned certifies that

(a) it will provide the Authority with access to its books and records and will submit to onsite inspection and examination by the Authority ;

(b) as a matter of law, it has the power and authority to

- i. provide the Authority with access to its books and records, and
- ii. submit to onsite inspection and examination by the 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 91-507F2  
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 Trade Repository:

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

5. Address of Agent for service of process in Québec:

\_\_\_\_\_

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 Québec. 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 Québec 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 Québec.

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 Authority, to be in effect for 6 years from the date it ceases to be recognized or exempted unless otherwise amended in accordance with section 9.

9. Until 6 years after it has ceased to be recognized or exempted by the Authority from the recognition requirement under section 12 of the Act, the Trade Repository shall file an amended submission to jurisdiction and appointment of agent for service of process 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 Québec.

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 91-507F3  
CESSATION OF OPERATIONS REPORT FOR TRADE REPOSITORY**

1. Identification:
  - A. Full name of the recognized trade repository:
  - B. Name(s) under which business is conducted, if different from item 1A:
2. Date recognized trade repository proposes to cease carrying on business as a trade repository:
3. If cessation of business was involuntary, date trade repository has ceased to carry on business as a trade repository:

**Exhibits**

File all Exhibits with the Cessation of Operations Report. 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 Exhibit required is inapplicable, a statement to that effect shall be furnished instead 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 this Regulation and for whom the trade repository provided services during the last 30 days prior to ceasing business as a trade repository.

**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)

# POLICY STATEMENT TO REGULATION 91-507 RESPECTING TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

## PART 1 GENERAL COMMENTS

### Introduction

This Policy Statement sets out the views of the *Autorité des marchés financiers* (the “Authority” or “we”) on various matters relating to *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* (*insert reference*) (the “Regulation”) and related securities legislation.

The numbering of Parts, sections and subsections from Part 2 on in this Policy Statement generally corresponds to the numbering in the Regulation. Any general guidance for a Part appears immediately after the Part’s name. Any specific guidance on a section or subsection follows any general guidance. If there is no guidance for a Part, section or subsection, the numbering in this Policy Statement will skip to the next provision that does have guidance.

Unless defined in the Regulation or this Policy Statement, terms used in the Regulation and in this Policy Statement have the meaning given to them in the *Derivatives Act* (chapter I-14.01) (the “Act”), *Regulation 14-101 respecting Definitions* (chapter V-1.1, r. 3) and *Regulation 14-501Q respecting Definitions* (chapter V-1.1, r. 4).

### Definitions and interpretation

1. (1) In this Policy Statement,

“CPSS” means the Committee on Payment and Settlement Systems,

“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,

“LEI” means a legal entity identifier,

“LEI ROC” means the LEI Regulatory Oversight Committee,

“PFMI Report” means the April 2012 final report entitled *Principles for financial market infrastructures* published by CPSS and IOSCO, as amended from time to time,<sup>1</sup> and

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

(2) A “life-cycle event” is defined in the Regulation as any event that results in a change to derivatives data previously reported to a recognized trade repository. Where a life-cycle event occurs, the change must be reported under section 34 of the Regulation as life-cycle data by the end of the business day on which the life-cycle event occurs. 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. Examples of a life-cycle event would include

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<sup>1</sup> The PFMI Report is available on the Bank for International Settlements’ website ([www.bis.org](http://www.bis.org)) and the IOSCO website ([www.iosco.org](http://www.iosco.org)).

- 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 legal entity identifier 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. amortizing schedule),
- the exercise of a right or option that is an element of the expired transaction, and
- the satisfaction of a level, event, barrier or other condition contained in the original transaction.

(3) Paragraph (c) of the definition of “local counterparty” captures affiliates of parties mentioned in paragraphs (a) or (b) of the “local counterparty” definition, provided that such party guarantees the liabilities of the affiliate. It is our view that the guarantee must be for all or substantially all of the affiliate’s liabilities.

(4) The term “transaction” is defined in the Regulation in order to reflect the types of activities that require a unique transaction report, as opposed to the modification of an existing transaction report.

A material amendment is not referred to in the definition of “transaction” but is required to be reported as a life-cycle event in connection with an existing transaction under section 34. A termination is not referred to in the definition of “transaction”, as the expiry or termination of a transaction would be reported to a trade repository as a life-cycle event without the requirement for a new transaction record.

In addition, the definition of “transaction” includes a novation to a clearing house. A novation is required to be reported as a separate, new transaction with reporting links to the original transaction.

(5) The term “valuation data” is defined in the Regulation as data that reflects the current value of a transaction. It is the Authority’s 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.<sup>2</sup> The valuation methodology should be consistent over the entire life of a transaction.

(6) The term “derivative” is defined in section 3 of the Act and includes both “standardized” and “over-the-counter” derivatives, which are also defined under that section. As such, subsection 1(6) of the Regulation limits the application of the Regulation to derivatives that are not traded on an exchange.

## **PART 2 TRADE REPOSITORY RECOGNITION AND ONGOING REQUIREMENTS**

Part 2 contains rules for recognition of a trade repository and ongoing requirements for a recognized trade repository. These rules are in addition to the requirements applicable to trade repositories under the Act<sup>3</sup>.

<sup>2</sup> For example, see International Financial Reporting Standard 13, *Fair Value Measurement*.

<sup>3</sup> For example, see sections 26 to 31.

To obtain and maintain a 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 Authority. In order to comply with the reporting obligations contained in Part 3, counterparties must report to a recognized trade repository. While there is no prohibition on an unrecognized trade repository operating in Québec, a counterparty using it would not be in compliance with its reporting obligations.

### **Trade repository initial filing of information and recognition**

2. (1) 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 by other persons. In some cases, the applicant may operate more than one trade repository facility. In such cases, the trade repository 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 trade repository must clearly identify the facility to which the information or changes apply.

In addition to the filing of Form 91-507F1, a letter describing how the entity complies with or will comply with Part 2 and Part 4 of the Regulation should be included in the initial filing.

(2) Under paragraph 2(2)(a) in determining whether to recognize an applicant as a trade repository under section 15 of the Act, it is anticipated that the Authority will consider a number of factors, including

(a) the manner in which the trade repository proposes to comply with the Regulation,

(b) whether the trade repository has meaningful representation on its governing body,

(c) whether the trade repository has sufficient financial and operational resources for the proper performance of its functions,

(d) 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,

(e) 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,

(f) whether the requirements of the trade repository relating to access to its services are fair and reasonable,

(g) whether the trade repository's process for setting fees is fair, transparent and appropriate,

(h) 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,

(i) the manner and process for the Authority and other applicable regulatory agencies to receive or access derivatives data, including the timing, type of reports, and any confidentiality restrictions,

(j) whether the trade repository has robust and comprehensive policies, procedures, processes and systems to ensure the security and confidentiality of derivatives data, and

(k) whether the trade repository has entered into a memorandum of understanding with its local securities or derivatives regulator.

Under paragraph 2(2)(b), the Authority will examine whether the trade repository has been, or will be, in compliance with securities legislation. This includes compliance with the Regulation and any terms and conditions attached to the Authority's recognition order in respect of a recognized trade repository.

Under paragraph 2(2)(c), a trade repository that is applying for recognition must demonstrate that it has established, implemented, maintains and enforces appropriate written rules, policies and procedures that are in accordance with standards applicable to trade repositories. We consider that these rules, policies and procedures include, but are not 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 Regulation the interpretation of which we consider ought to be consistent with the principles:

<b><i>Principle in the PFMI Report applicable to a trade repository</i></b>	<b><i>Relevant section(s) of the Regulation</i></b>
Principle 1: Legal Basis	Section 7 – Legal Framework Section 17 – Rules (in part)
Principle 2: Governance	Section 8 – Governance Section 9 – Board of Directors Section 10 – Management
Principle 3: Framework for the comprehensive management of risks	Section 19 – Comprehensive Risk Management Framework Section 20 – General Business Risk (in part)
Principle 15: General business risk	Section 20 – General Business Risk
Principle 17: Operational risk	Section 21 – Systems and Other Operational Risk Requirements Section 22 – Data Security and Confidentiality Section 24 – Outsourcing
Principle 18: Access and participation requirements	Section 13 – Access to Recognized Trade Repository Services Section 16 – Due Process (in part) Section 17 – Rules (in part)
Principle 19: Tiered participation arrangements	No equivalent provisions in the Regulation; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.
Principle 20: FMI links	No equivalent provisions in the Regulation; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.



<b><i>Principle in the PFMI Report applicable to a trade repository</i></b>	<b><i>Relevant section(s) of the Regulation</i></b>
Principle 21: Efficiency and effectiveness	No equivalent provisions in the Regulation; 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 (in part)
Principle 24: Disclosure of market data by trade repositories	Sections in Part 4 – Data Dissemination and Access to Data

It is anticipated that the Authority will apply the principles in its oversight activities of recognized trade repositories. Therefore, in complying with the Regulation, recognized trade repositories will be expected to observe the principles.

The forms filed by an applicant or recognized trade repository under the Regulation will be kept confidential in accordance with the provisions of securities legislation. The Authority is 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, the Authority 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.<sup>4</sup> In addition, much of the information that will be included in the forms that are filed will be required to be made publicly available by a recognized trade repository pursuant to the Regulation or the terms and conditions of the recognition order imposed by the Authority.

While Form 91-507F1 and any amendments to it will be kept generally confidential, if the 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 such form, or amendments to it.

Notwithstanding the confidential nature of the forms, an application (excluding forms) may be published for comment pursuant to section 14 of the Act.

### **Change in information**

**3.** (1) Under subsection 3(1), a recognized trade repository is required to file an amendment to the information provided in Form 91-507F1 at least 45 days prior to implementing a significant change. The Authority considers 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). The Authority would consider a significant change to include, but not be limited to

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

(a) 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 have or may have a direct impact on users in Québec,

(b) a change to services provided by the recognized trade repository, including the hours of operation, that have or may have a direct impact on users in Québec,

(c) a change to means of access to the recognized trade repository's facility and its services, including changes to data formats or protocols, that have or may have a direct impact on users in Québec,

(d) a change to the types of derivative asset classes or categories of derivatives that may be reported to the recognized trade repository,

(e) a change to the systems and technology used by the recognized trade repository that collect, maintain and disseminate derivatives data, including matters affecting capacity,

(f) 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,

(g) a change in control of the recognized trade repository,

(h) a change in affiliates that provide key services or systems to, or on behalf of, the recognized trade repository,

(i) a change to outsourcing arrangements for key services or systems of the recognized trade repository,

(j) a change to fees and the fee model of the recognized trade repository,

(k) a change in the recognized trade repository's policies and procedure relating to risk-management, including policies and procedures relating to business continuity and data security, that have or may have an impact on the recognized trade repository's provision of services to its participants,

(l) commencing a new type of business activity, either directly or indirectly through an affiliate, and

(m) 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 and contingency sites are housed.

(2) The Authority generally considers a change in a recognized trade repository's fees or fee structure to be a significant change. However, the Authority recognizes that recognized trade repositories may frequently change their fees or fee structure and may need to implement fee changes within tight timeframes. To facilitate this process, subsection 3(2) provides that a recognized trade repository may provide information that describes the change in fees or fee structure in a shorter timeframe (at least 15 days before the expected implementation date of the change in fees or fee structure). See section 12 of this Policy Statement for an explanation of fee requirements applicable to recognized trade repositories.

The Authority will make best efforts to review amendments to Form 91-507F1 required under subsections 3(1) and 3(2) before the proposed date of implementation of the change. However, where the changes are complex, raise regulatory concerns, or when additional information is required, the period for review may exceed these timeframes.

(3) Subsection 3(3) sets out the filing requirements for changes to information other than those described in subsections 3(1) or (2). Such changes to information in Form 91-507F1 are not considered significant and include changes that:

(a) 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; or

(b) are administrative changes, such as

(i) changes in the routine processes, policies, practices, or administration of the recognized trade repository that would not impact participants,

(ii) changes due to standardization of terminology,

(iii) corrections of spelling or typographical errors,

(iv) changes to the types of participants in Québec of the recognized trade repository,

(v) necessary changes to conform to applicable regulatory or other legal requirements of Québec or Canada, and

(vi) minor system or technology changes that would not significantly impact the system or its capacity.

For the changes referred to in subsection 3(3), the Authority may review these filings to ascertain whether they have been categorized appropriately. If the Authority disagrees with the categorization, the recognized trade repository will be notified in writing. Where the Authority determines that changes reported under subsection 3(3) are in fact significant under subsection 3(1), the recognized trade repository will be required to file an amended Form 91-507F1 that will be subject to review by the Authority.

### **Ceasing to carry on business**

4. (1) In addition to filing Form 91-507F3, a recognized trade repository that intends to cease carrying on business in Québec as a recognized trade repository must make an application to voluntarily surrender its recognition to the Authority pursuant to section 53 of the Act. The Authority may authorize the voluntary surrender on the conditions it determines.<sup>5</sup>

### **Legal framework**

7. (1) Recognized trade repositories are required to have rules, policies, and procedures in place that provide a legal basis for their activities in all relevant jurisdictions, whether within Canada or any foreign jurisdiction where they have activities.

### **Governance**

8. Recognized trade repositories are required to have in place governance arrangements that meet the policy objectives set out in subsection 8(1). Subsections 8(2) and 8(3) explain the types of written governance arrangements and policies and procedures that are required from a recognized trade repository.

(4) Under subsection 8(4), a recognized trade repository is required to make the written governance arrangements required under subsections 8(2) and (3) available to the public. A recognized trade repository may fulfil this requirement by posting this information on a publicly accessible website, provided that interested parties are able to

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<sup>5</sup> The transfer of derivatives data/information can be addressed through the conditions imposed by the Authority on such application.

locate the information 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.

(1) Paragraph 9(1)(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(1)(b), the board of directors of a recognized trade repository must include individuals who are independent of the recognized trade repository. The Authority would view individuals who have no direct or indirect material relationship with the recognized trade repository as independent. The Authority would 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 dealers are considered.

### **Chief compliance officer**

**11.** (3) References to harm to the capital markets in subsection 11(3) may be in relation to domestic or international capital markets.

### **Fees**

**12.** Recognized trade repositories are responsible for ensuring that the fees they set are in compliance with section 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), the Authority will consider a number of factors, including

- (a) the number and complexity of the transactions being reported,
- (b) the amount of the fee or cost imposed relative to the cost of providing the services,
- (c) the amount of fees or costs charged by other comparable trade repositories, where relevant, to report similar transactions in the market,
- (d) 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
- (e) 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.** (2) Under subsection 13(2), a recognized trade repository is prohibited from unreasonably limiting access to its services, permitting unreasonable discrimination among its participants or imposing unreasonable burdens on competition. For example, a recognized trade repository should not engage in anti-competitive practices, such as requiring the use or purchase of another service in order for a person to utilize the trade reporting service, 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 counterparties located in Québec. It is possible that a recognized trade repository may accept 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 only certain types of commodity derivatives such as energy derivatives.

## **Communication policies, procedures and standards**

**15.** Section 15 sets out the required standard of communication to be used by a recognized trade repository with other specified entities. The reference in paragraph 15(d) to “other service providers” could include persons who offer technological or transaction processing services.

## **Rules**

**17.** Subsections 17(1) and (2) require that the publicly disclosed written rules 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 CPSS-IOSCO *Disclosure framework for financial market infrastructures*.

(3) Subsection 17(3) requires that recognized trade repositories monitor compliance with its rules and procedures. The methodology of monitoring the compliance should be fully documented.

(4) Subsection 17(4) requires a recognized trade repository to have clearly defined and publicly disclosed processes for dealing with non-compliance with its rules and procedures. This subsection does not preclude enforcement action by any other person, including the Authority or other regulatory body.

## **Records of data reported**

**18.** (2) Subsection 18(2) requires that records be maintained for 7 years after the expiration or termination of a transaction. 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 ongoing obligations and information is subject to change throughout the life of a transaction.

## **Comprehensive risk-management framework**

**19.** Requirements for a comprehensive risk-management framework of a recognized trade repository are set out in section 19.

### *Features of framework*

A recognized trade repository should have a sound risk-management framework (including policies, procedures, and systems) that enable it to identify, measure, monitor, and manage effectively the range of risks that arise in, or are borne by, a 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*

A recognized trade repository should 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) Subsection 20(1) requires a recognized trade repository to manage its general business risk appropriately. General business risk includes 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. At a minimum, however, the Authority is of the view that a recognized trade repository must hold liquid net assets funded by equity equal to at least six months of current operating expenses.

(3) For the purposes of subsections 20(3) and (4), and in connection with developing a comprehensive risk-management framework under section 19, a recognized trade repository should 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 recovery or orderly wind-down. These scenarios should take into account the various independent and related risks to which the recognized trade repository is exposed.

Based on the required assessment of scenarios under subsection 20(3) (and taking into account any constraints potentially imposed by legislation), the recognized trade repository should prepare appropriate written plans for its recovery or orderly wind-down.

The plan 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 (see also subsection 20(2) above). 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; and
- 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 and approve the recognized trade repository's operational risk-management framework.

(3) Paragraph 21(3)(a) requires a recognized trade repository to develop and maintain an adequate system of internal control over its systems as well as adequate general information-technology controls. The latter controls are 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. The 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 Authority of any material systems failure. The Authority would consider a failure, malfunction, delay or other disruptive incident to be "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 the incident would have an impact on participants. The Authority also expects 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) Subsection 21(4) requires that a recognized trade repository establish, implement, maintain and enforce business continuity plans, including disaster recovery plans. The Authority believes that these plans are intended to provide continuous and uninterrupted 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) Subsection 21(5) requires a recognized trade repository to test its business continuity plans at least once a year. The expectation is that the recognized trade repository would 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) Subsection 21(6) requires a recognized trade repository to engage a qualified party to conduct an annual independent assessment of the internal controls referred to in paragraphs 21(3)(a) and (b) and subsections 21(4) and (5). A qualified party is a person or a group of persons 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. Before engaging a qualified party, the recognized trade repository should notify the Authority.

(8) Subsection 21(8) requires a recognized trade repository to make its technology requirements regarding interfacing with, or accessing, the recognized trade repository publicly available in their final form for at least 3 months. If there are material changes to these requirements after they are initially made publicly available, the revised requirements should be made publicly available for a new 3-month period prior to implementation, where applicable.

(9) Subsections 21(9) and (10) require a recognized trade repository to provide testing facilities for interfacing with, or accessing, the trade repository for at least 2 months immediately prior to operations once the technology requirements have been made publicly available. Should the trade repository make its specifications publicly available for longer than 3 months, it may make the testing available during that period or thereafter as long as it is at least 2 months prior to operations. If the recognized trade repository, once it has begun operations, proposes material changes to its technology systems, it is required to make testing facilities publicly available for at least 2 months before implementing the material systems change.

(11) Subsection 21(11) provides that if a recognized trade repository must make a change to its technology requirements regarding interfacing with, or accessing, the recognized trade repository to immediately address a failure, malfunction or material delay of its systems or equipment, it does not have to comply with paragraphs 21(8)(b) and 21(9)(b) if it immediately notifies the Authority of the change and the amended technology requirements are made publicly available as soon as practicable, either while the changes are being made or immediately thereafter.

### **Data security and confidentiality**

**22.** (1) Subsection 22(1) provides that a recognized trade repository must establish policies and procedures to ensure the safety and confidentiality of derivatives data to be reported to it under the the Regulation. The policies must include limitations on access to confidential trade repository data and standards to safeguard against persons affiliated with the recognized trade repository from using trade repository data for their personal benefit or the benefit of others.



(2) Subsection 22(2) prohibits a recognized trade repository from utilizing reported derivatives data that is not required to be publicly disclosed for commercial or business purposes under section 39, without the written consent of the counterparties who supplied the derivatives data. The purpose of this provision is to ensure that participants of the recognized trade repository have some measure of control over their derivatives data.

### **Confirmation of data and information**

**23.** Subsection 23(1) requires a recognized trade repository to confirm the accuracy of the derivatives data it receives from a reporting counterparty. A recognized trade repository must confirm the accuracy of the derivatives data with each counterparty to a reported transaction provided that the non-reporting counterparty is a participant of the trade repository. Where the non-reporting counterparty is not a participant of the trade repository, there is no obligation to confirm with such non-reporting counterparty.

Pursuant to section 25, only one counterparty is required to report a transaction. The purpose of the confirmation requirement in subsection 23(1) is to ensure that the reported information is agreed to by both counterparties. However, in cases where a non-reporting counterparty is not a participant of the relevant recognized trade repository, the recognized trade repository would not be in a position to confirm the accuracy of the derivatives data with such counterparty. As such, under subsection 23(2) a recognized trade repository will not be obligated to confirm the accuracy of the derivatives data with a counterparty that is not a participant of the recognized trade repository. Additionally, similar to the reporting obligations in section 25, confirmation under subsection 23(1) can be delegated to a third-party representative.

### **Outsourcing**

**24.** Section 24 sets out requirements applicable to a recognized trade repository that outsources any of its key services or systems to a service provider. Generally, a recognized trade repository must establish policies and procedures to evaluate and approve these outsourcing arrangements. Such policies and procedures include 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 the service provider to which it outsources key services, systems or facilities. The requirements under section 24 apply regardless of whether the outsourcing arrangements are with third-party service providers, or affiliates of the recognized trade repository. A recognized trade repository that outsources its 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 transactions and includes a description of the counterparties that 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.

### **Duty to report**

**25.** Section 25 outlines the reporting duties and contents of derivatives data.

(2) With respect to subsection 25(2), prior to the reporting rules in Part 3 coming into force, the Authority will provide public guidance on how reports for derivatives that are not accepted for reporting by any recognized trade repository should be electronically submitted to the Authority.

(3) The Authority interprets the requirement in subsection 25(3) to report errors or omissions in derivatives data “as soon as technologically possible” after it is discovered, to mean on discovery and in any case no later than the end of the business day on which the error or omission is discovered.

(4) Under subsection 25(4), 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. Once the error or omission is reported to the reporting counterparty, the reporting counterparty then has an obligation to report the error or omission to the recognized trade repository, in accordance with subsection 25(3) or to the Authority in accordance with subsection 25(2). The Authority interprets the requirement in subsection 25(4) to notify the reporting counterparty of errors or omissions in derivatives data “promptly” after it is discovered, to mean on discovery and in any case no later than the end of the business day on which the error or omission is discovered.

(5) Paragraph 25(5)(a) requires that all derivatives data reported for a given transaction must be reported to the Authority or the same recognized trade repository to which the initial report is submitted. The purpose of this requirement is to ensure the 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. Where the entity to which the transaction was originally reported is no longer a recognized trade repository, all data relevant to that transaction should be reported to another recognized trade repository as otherwise required by the Regulation.

### **Pre-existing derivatives**

**26.** Section 26 requires that pre-existing transactions that have not expired or been terminated 365 days after the date prescribed in subsection 41(1) be reported to a recognized trade repository. Transactions that terminate or expire prior to the date prescribed in subsection 41(1) will not be subject to the reporting obligation. Further, pursuant to subsection 41(4), transactions that expire or terminate within 365 days of the date prescribed in subsection 41(1), will not be subject to the reporting obligation. These transactions are exempted from the reporting obligation in the Regulation, to relieve some of the reporting burden for counterparties, and because they would provide marginal utility to the Authority due to their imminent termination or expiry. In addition, only the data indicated in the column entitled “Required for Pre-existing Transactions” in Appendix A will be required to be reported for pre-existing transactions.

### **Reporting counterparty**

**27.** Reporting obligations on dealers apply irrespective of whether the dealer is a registrant.

(1) Under paragraph 27(1)(d), if the counterparties are unable to identify who should report the transaction, then both counterparties must act as reporting counterparty. However, it is the Authority’s view that one counterparty to every transaction should accept the reporting obligation to avoid duplicative reporting.

(2) Subsection 27(2) applies to situations where the reporting counterparty, as determined under subsection 27(1), is not a local counterparty. In situations where a non-local reporting counterparty does not report a transaction or otherwise fails to fulfil the local counterparties reporting duties, the local counterparty must act as the reporting counterparty. The Authority is of the view that non-local counterparties that are dealers or clearing houses should assume the reporting obligation for non-dealer counterparties. However, to the extent that non-local counterparties are not subject to the reporting obligation under the Regulation, it is necessary to impose the ultimate reporting obligation on the local counterparty.

(3) Under subsection 27(3), the reporting counterparty for a transaction must ensure that all reporting obligations are fulfilled. This includes ongoing requirements such as the reporting of life-cycle events and valuations.

(4) Subsection 27(4) permits the delegation of all reporting obligations of a reporting counterparty. This includes reporting of initial creation data, life-cycle data and valuation data. For example, some or all of the reporting obligations may be delegated to a third-party service provider. However, the local counterparty remains responsible for ensuring that the derivatives data is accurate and reported within the timeframes required under the Regulation.

### **Real-time reporting**

**28.** (1) Subsection 28(1) requires that reporting be made in real time, which means that derivatives 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”, the Authority will take into account the prevalence of implementation and use of technology by comparable counterparties located in Canada and in foreign jurisdictions. The Authority may also conduct independent reviews to determine the state of reporting technology.

(2) Subsection 28(2) is intended to take into account the fact that not all counterparties will have the same technological capabilities. For example, counterparties that do not regularly engage in transactions would, at least in the near term, likely not be as well situated to achieve real-time reporting. In all cases, the outside limit for reporting is the end of the business day following execution of the transaction.

### **Legal entity identifiers**

**30.** (1) Subsection 30(1) requires that a recognized trade repository identify all counterparties to a transaction by a legal entity identifier. It is envisioned that this identifier be a LEI under the Global LEI System. The Global LEI System is a G20 endorsed initiative<sup>6</sup> that will uniquely identify parties to transactions. It is currently being designed and implemented under the direction of the LEI ROC, a governance body endorsed by the G20.

(2) The “Global Legal Entity Identifier System” referred to in subsection 30(2) means the G20 endorsed system that will serve 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 counterparties are required to report their LEI under the Regulation, they must use a substitute legal entity identifier. The substitute legal entity identifier must be 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 identifier**

**31.** A unique transaction identifier will be assigned by the recognized trade repository to each transaction which has been submitted to it. The recognized trade repository may utilize its own methodology or incorporate a previously assigned identifier that has been assigned by, for example, a clearing house, trading platform, or third-party service provider. However, the recognized trade repository must ensure that no other transaction shares the same identifier.

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<sup>6</sup> See [http://www.financialstabilityboard.org/list/fsb\\_publications/tid\\_156/index.htm](http://www.financialstabilityboard.org/list/fsb_publications/tid_156/index.htm) for more information.

A transaction in this context 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.

### **Unique product identifier**

**32.** (1) Subsection 32(1) requires that a recognized trade repository identify each transaction that is subject to the reporting obligation under the Regulation by means of a unique product identifier. There is currently a system of product taxonomy that could be used for this purpose<sup>7</sup>. To the extent that unique product identifiers are unavailable for a particular transaction type, a recognized trade repository would be required to create one using an alternative methodology.

(5) Subsection 32(5) provides relief from the obligation of subsection 32(1) where no industry standards are available.

### **Valuation data**

**35.** Valuation data is required to be reported by both counterparties to a reportable transaction. For both cleared and uncleared transactions, counterparties may, as described in subsection 27(4), delegate the reporting of valuation data to a third party, but such counterparties remain ultimately responsible for ensuring the timely and accurate reporting of this data.

(1) Subsection 35(1) requires that valuation data for a transaction that is cleared must be reported daily. A transaction is considered to be “cleared” where it has been novated to a clearing house.

## **PART 4**

### **DATA DISSEMINATION AND ACCESS TO DATA**

#### **Data available to regulators**

**37.** (1) Subsection 37(1) requires recognized trade repositories to (at no cost to the Authority): (a) provide to the Authority continuous and timely electronic access to derivatives data and (b) provide aggregate derivatives data. Electronic access includes the ability of the Authority to access, download, or receive a direct real-time feed of derivatives data maintained by the recognized trade repository.

The derivatives data covered by this subsection are data necessary to carry out the Authority’s mandate to protect against unfair, improper or fraudulent practices, to foster fair and efficient capital markets, 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 Québec’s capital market.

Transactions that reference an underlying asset or class of assets with a nexus to Québec or Canada can impact Québec’s capital market even if the counterparties to the transaction are not local counterparties. Therefore, the Authority has a regulatory interest in transactions involving such underlying interests even if such data is not submitted pursuant to the reporting obligations in the Regulation, but is held by a recognized trade repository.

(2) Subsection 37(2) requires a recognized trade repository to conform to internationally accepted regulatory access standards applicable to trade repositories. Trade repository regulatory access standards are currently being developed by CPSS and IOSCO.<sup>8</sup> It is expected that all recognized trade repositories will comply with the access recommendations in the CPSS-IOSCO’s final report.

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

<sup>8</sup> See report entitled “Authorities’ Access to TR Data” available at <http://www.bis.org/publ/cpss108.pdf>.

## **Data available to counterparties**

**38.** Section 38 is intended to ensure that each counterparty, and any person acting on behalf of a counterparty, have access to all derivatives data relating to its transaction in a timely manner and for the duration of the transaction.

## **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 Regulation (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 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 aggregate data required under subsection 39(2):

- currency of denomination (the currency in which the derivative is denominated);
- geographic location of the underlying reference entity (e.g., Canada for derivatives which reference the TSX60 index);
- asset class of reference entity (e.g., fixed income, credit, or equity);
- product type (e.g., options, forwards, or swaps);
- cleared or uncleared;
- maturity ranges (broken down into maturity ranges, such as less than one year, 1-2 years, 2-3 years); and
- geographic location and type of counterparty (e.g., the United States, end user).

(3) Subsection 39(3) requires a recognized trade repository to publicly report the data indicated in the column entitled "Required for public dissemination" in Appendix A of the Regulation. For transactions where at least one counterparty is a dealer, such data must be publicly reported by the end of the day following the transaction being submitted to the recognized trade repository. For transactions where neither counterparties is a dealer, such data must be publicly reported by the end of the second day after the transaction has been reported to the recognized trade repository. 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) Subsection 39(4) provides that a recognized trade repository must not disclose the identity of either counterparty to the transaction. This means that 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**

**40.** Section 40 provides that the reporting obligation for a physical commodity transaction does not apply in certain limited circumstances. This exclusion only applies if a local 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 physical commodity transaction would be calculated by multiplying the quantity of the physical commodity by the price for that commodity. A counterparty that is above the \$500,000 threshold is required to act as reporting counterparty for a transaction involving a party that is exempt from the reporting obligation under section 40.

This relief applies to physical commodity transactions that are not excluded derivatives for the purpose of the reporting obligation in paragraph 3(d) of *Regulation 91-506 respecting Derivatives Determination (insert reference)*. An example of a physical commodity transaction that is required to be reported (and therefore could benefit from this relief) is a physical commodity contract that allows for cash settlement in place of delivery.

## **PART 6 EFFECTIVE DATE**

### **Effective date**

**41.** (2) Where the counterparty is a dealer or clearing house, subsection 41(2) provides that no reporting is required until 6 months after the provisions of the Regulation applicable to recognized trade repositories come into force.

(3) For non-dealers, subsection 41(3) provides that no reporting is required until 9 months after the provisions of the Regulation applicable to recognized trade repositories come into force. This provision only applies where both counterparties are non-dealers. Where the counterparties to a transaction are a dealer and a non-dealer, the dealer will be required to report according to the timing outlined in subsection 41(2).

(4) Subsection 41(4) provides that no reporting is required for pre-existing transactions that terminate or expire within 365 days of the date the provisions of the Regulation applicable to recognized trade repositories come into force.