



Canadian Market
Infrastructure Committee

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August 21, 2014

Dear Sirs/Mesdames:

Re: Draft Regulation to amend Regulation 91-507 Respecting Trade Repositories and Derivatives Data Reporting and Blanket Decision Regarding Exemption from Reporting Obligation under Regulation 91-507

INTRODUCTION

The Canadian Market Infrastructure Committee (“**CMIC**”)¹ welcomes the opportunity to comment on the draft regulation to amend Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting (the “**Québec Trade Reporting Rules**”) which was published by the Autorité des marchés financiers (“**AMF**”) on July 3, 2014 (the “**Draft Regulation**”)² and the Blanket decision No. 2014-PDG-

¹ CMIC was established in 2010, in response to a request from public authorities, to represent the consolidated views of certain Canadian market participants on proposed regulatory changes. The membership of CMIC consists of the following: Bank of America Merrill Lynch, Bank of Montreal, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, Canadian Imperial Bank of Commerce, Deutsche Bank A.G., Canada Branch, Healthcare of Ontario Pension Plan, HSBC Bank Canada, JPMorgan Chase Bank, N.A., Toronto Branch, Manulife Financial Corporation, National Bank of Canada, OMERS Administration Corporation, Ontario Teachers' Pension Plan Board, Royal Bank of Canada, The Bank of Nova Scotia, The Fédération des Caisses Desjardins du Québec, and The Toronto-Dominion Bank. CMIC brings a unique voice to the dialogue regarding the appropriate framework for regulating the Canadian OTC derivatives market. The membership of CMIC has been intentionally designed to present the views of both the ‘buy’ side and the ‘sell’ side of the Canadian OTC derivatives market, including both domestic and foreign owned banks operating in Canada. As it has in all of its submissions, this letter reflects the consensus of views within CMIC’s membership about the proper Canadian regulatory regime for the OTC derivatives market.

0084 regarding exemption from reporting obligations under the amended Québec Trade Reporting Rules which was published by the AMF on July 31, 2014 (the “**Blanket Exemption**”).³

DISCUSSION

This letter will outline our concerns with the Draft Regulation and Blanket Exemption from the perspective of harmonization with Ontario and Manitoba trade reporting rules.

On June 26, 2014, the Ontario Securities Commission and the Manitoba Securities Commission published amendments to their respective Rule 91-507 on Trade Repositories and Derivatives Data Reporting (“**Rule 91-507**”).⁴ The amendments permit certain market participants to comply with Rule 91-507 by allowing such market participants to report under the U.S. Commodity Futures Trading Commission’s (CFTC) swap data reporting rules and to utilize the ISDA Canadian Transaction Reporting Party Requirements (the “**ISDA methodology**”),⁵ which will assist market participants in determining the reporting counterparty for a derivatives transaction and to avoid duplicative reporting.

We understand that by publishing the Blanket Exemption, it is the AMF’s intention to harmonize with Ontario’s and Manitoba’s Rule 91-507. We also understand that the Draft Regulation was drafted with the objective of achieving harmonization while taking into account legal and regulatory issues specific to the Province of Québec. For example, the term “dealer” was replaced by “Canadian financial institution” in an effort to explicitly capture Canadian banks as reporting parties under the Québec Trade Reporting Rules.

However, the amendments proposed in the Draft Regulation, including taking into account the effect of the Blanket Exemption, will, if implemented, result in the Québec Trade Reporting Rules being inconsistent with Ontario and Manitoba trade reporting rules in a number of respects. Lack of harmonization among Canadian provinces will likely result in dual reporting of trades entered into with Québec counterparties, potentially creating not only confusion and inefficiencies but also depreciating the value of trade data for systemic risk monitoring purposes. We have identified the following inconsistencies with Manitoba and Ontario trade reporting rules:

1. While the Blanket Exemption provides an exemption from the reporting obligations to the party that is not the reporting counterparty under the ISDA methodology, **the ISDA methodology applies only if the trade is between two dealers, or if neither party is a dealer (i.e. two end-users).**⁶ The specific reference to “Canadian financial institutions”, which was added by the Draft Regulation to (i) the reporting party hierarchy set out in Section 25 of the Québec Trade Reporting Rules, (ii) the pre-existing transaction provisions under Section 34 of the Québec Trade Reporting Rules and (iii) the effective date provisions under Section 42 of the Québec Trade Reporting Rules, will result in a lack of harmonization with Manitoba and Ontario. One reason is that the ISDA methodology does not make a distinction between “Canadian financial entities” and

² Available at: <http://www.lautorite.qc.ca/files/pdf/reglementation/instruments-derives/reglements/91-507/2014-07-03/2014juil03-91-507-cons-en.pdf>

³ Available at: <http://www.lautorite.qc.ca/files/pdf/reglementation/instruments-derives/reglements/91-507/2014-07-03/2014juil31-91-507-avis-prolongement-dispense-en.pdf>

⁴ Ontario Securities Commission Rule 91-507: Trade Repositories and Derivatives Data Reporting, available at: https://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20140626_91-507_derivatives-data-reporting.htm, and Manitoba Securities Commission Rule 91-507: Trade Repositories and Derivatives Data Reporting, available at: http://www.msc.gov.mb.ca/legal_docs/legislation/notices/91_507_notice_am_package.pdf

⁵ Available at: <http://www2.isda.org/regions/canada/>

⁶ See section 5 of the ISDA methodology.

“derivatives dealers”. By adding the specific references to Canadian financial institutions, Canadian financial institutions (which term includes, but is not limited to, banks) will be treated differently than non-Canadian financial institutions under the Québec Trade Reporting Rules in the following five important respects:

- The reporting obligation with respect to a trade entered into between a Canadian financial institution that is an end-user, such as an insurance company, and a non-Canadian financial institution, such as a foreign bank, will rest with the end-user Canadian financial institution. The ISDA methodology would not apply since the trade is between an end-user and a derivatives dealer. A different result occurs in Manitoba and Ontario where the reporting obligation would rest with the foreign bank.
- The reporting obligation with respect to a trade entered into between two Canadian financial institutions, one that is an end-user, such as an insurance company, and one that is a Canadian bank, will rest with both the end-user and the Canadian bank. Again, the ISDA methodology would not apply in this scenario since the trade is between an end-user and a derivatives dealer. A different result occurs in Manitoba and Ontario where the reporting obligation would rest with the Canadian bank.
- The reporting obligation with respect to a trade entered into between a Canadian financial institution that is not a “swap dealer” under the Dodd-Frank Act, including a Canadian financial institution end-user, and a non-Canadian “swap dealer” will rest with the Canadian financial institution (whether an end-user or a dealer). The ISDA methodology would not apply since the hierarchy in the Québec Trade Reporting Rules provides that only the Canadian financial institution will be the reporting party. A different result occurs in Manitoba and Ontario where, if the trade is between two dealers, the ISDA methodology applies and the reporting obligation would rest with the “swap dealer”, and if the trade is between a Canadian end-user and a non-Canadian “swap dealer”, the reporting obligation would rest with the non-Canadian swap dealer.
- The reporting obligation with respect to a trade entered into between a Quebec end-user (that is not a Canadian financial institution) and a counterparty that is not a Canadian financial institution nor is subject to the registration requirement as a dealer under the Quebec Derivatives Act, such as a foreign bank, will rest with both the Quebec end-user and the foreign bank. The ISDA methodology would not apply since the trade is between an end-user and a derivatives dealer. A different result occurs in Manitoba and Ontario where the reporting obligation would rest with the foreign bank.
- Canadian financial institutions are required to report transactions as of October 31, 2014 with pre-existing transactions required to be reported by April 30, 2015. Non-Canadian financial institutions, such as foreign banks, would not be required to report transactions until June 30 2015, with pre-existing transactions required to be reported by December 31, 2015. A different result occurs in Manitoba and Ontario where foreign banks that are derivatives dealers would be required to report transactions as of October 31, 2014 with pre-existing transactions required to be reported by April 30, 2015.

The Ontario and Manitoba rules do not distinguish between “Canadian financial institutions” and “Non-Canadian financial institutions”. We do not see a basis for such a distinction and for the AMF to introduce such a distinction would be inconsistent with the goal of harmonization across Canada.

2. Recognition of the Commodity Futures Trading Commission's reporting rules for substituted compliance purposes should also be added to the Quebec Trade Reporting Rules to achieve harmonization with the rules in Ontario and Manitoba.

MEANS OF ACHIEVING HARMONIZATION

CMIC submits that the goal of harmonization across Canada is of utmost importance. We understand that it is the AMF's intention to continue to harmonize with the other provinces on Rule 91-507. Changing the draft Québec regulation to reflect the inconsistencies identified above would be the simplest approach and the one CMIC would prefer. Alternatively, CMIC recognizes that exemptive relief by the AMF is a possible means to achieve harmonization as well, however the Blanket Exemption and the ISDA methodology would need to be revised to address the inconsistencies identified above.

CMIC welcomes the opportunity to discuss this response with representatives from the AMF. The views expressed in this letter are the views of the following members of CMIC:

Bank of America Merrill Lynch
Bank of Montreal
Caisse de dépôt et placement du Québec
Canada Pension Plan Investment Board
Canadian Imperial Bank of Commerce
Deutsche Bank A.G., Canada Branch
Healthcare of Ontario Pension Plan
HSBC Bank Canada
JPMorgan Chase Bank, N.A., Toronto Branch
Manulife Financial Corporation
National Bank of Canada
OMERS Administration Corporation
Ontario Teachers' Pension Plan Board
Royal Bank of Canada
The Bank of Nova Scotia
The Fédération des Caisses Desjardins du Québec
The Toronto-Dominion Bank