

October 7, 2022

Via Electronic Submission

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Re: OSC Notice and Request for Comment-Proposed Amendments to Regulation 91-507 Trade Repositories and Derivatives Data Reporting and the Related Companion Policy 91-507CP and Companion Policy 91-506CP

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

Re: Autorité des marchés financiers Regulation to amend Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting and proposed changes to Policy Statement to Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting and to Policy Statement to Regulation 91-506 respecting derivatives determination

Re: Manitoba Securities Commission Notice and Request for Comment – Notice of proposed amendments to Manitoba Securities Commission Rule 91-507 Trade Repositories and Derivatives Data Reporting and proposed changes to Companion Policy 91-507CP Trade Repositories and Derivatives Data Reporting and proposed changes to MSC Companion Policy 91-506CP Product Determination, and MSC Staff Notice 91-701 Draft MSC Derivatives Data Technical Manual

Dear Sir/Madam:

ICE Trade Vault, LLC (“ICE Trade Vault”) appreciates the opportunity to provide comments to the Canadian Securities Administrators (“CSA”) in response to the notices and requests for comments (the “Notices”) on the above-noted proposed amendments (collectively the “Proposal” or “Proposed Amendments”). ICE Trade Vault is registered as a designated trade repository (“TR”) with the relevant regulatory authorities of each of the ten Canadian provinces and three Canadian territories.¹ ICE Trade Vault is also a registered Swap Data Repository (“SDR”) with the

¹ These regulatory authorities are the Ontario Securities Commission, the Québec Autorité des marchés financiers, the Manitoba Securities Commission, the Alberta Securities Commission, the British Columbia Securities Commission, the Nova Scotia Securities Commission, the Financial and Consumer Services Commission of New Brunswick, the Government of Prince Edward Island, Superintendent of Securities, Corporate and Insurance Services Division, the Financial and Consumer Affairs Authority of Saskatchewan, the Newfoundland and Labrador Securities N&L, the Yukon Government, Superintendent of Securities, the Government of Northwest Territories, Superintendent of Securities, Department of Justice, and the Government of Nunavut Superintendent of Securities, Department of Justice.



Commodity Futures Trading Commission (“CFTC”) and is registered with the Securities and Exchange Commission (“SEC”) as a security-based swap data repository (“SBSDR”). ICE Trade Vault is organized as a U.S. limited liability company and is a wholly-owned subsidiary of Intercontinental Exchange, Inc. (“ICE”). This comment letter is in response to the request for comment by the CSAs to the proposed trade reporting regulations and related Companion Policy amendments.

ICE supports harmonizing Canadian swap data reporting rules with global regulations and international data reporting standards. Global harmonization assists market participants and trade repositories in complying with swap data reporting obligations across various jurisdictions. ICE Trade Vault notes that the CFTC recently finalized swap data reporting amendments² and the SEC recently commenced its security-based swap data reporting regime.³ Given the subject matter overlap of the CFTC, SEC and the CSA, ICE urges coordination among the North American regulators on swap data reporting rules to enable dually-registered trade repositories to efficiently and effectively comply with all three agencies’ rules. Because of the automated nature of swaps data reporting, reporting requirements that are non-harmonized can require significant systems related development, resources and expense. Accordingly, ICE Trade Vault appreciates the CSA’s consideration of the comments below.

Verification of Data Accuracy (Section 23 and Section 26)

Currently, a TR is required to confirm data accuracy with reporting counterparties. The CSA has replaced this obligation with two specific obligations. Paragraph 26.1(1)(a) requires all reporting counterparties to ensure that reported derivatives data is accurate and contains no misrepresentation. To facilitate this requirement, Section 38 provides that a TR must provide counterparties to a transaction with timely access to all derivatives data relevant to the transaction submitted to the TR. In addition, Paragraph 26.1(1)(b) requires reporting counterparties that are derivatives dealers and recognized or exempt clearing agencies to verify the accuracy of data every 30 days.

While the non-reporting counterparty’s role may be smaller under the Proposal, it would nonetheless need equal access to a TR’s platform to fulfill its obligations. ICE Trade Vault requires all parties that access the platform to execute a Participant Agreement and verifies the identity of the market participant and its right to view the data requested. Pursuant to CSA regulations, TRs are required to have standard terms and conditions in place for providing access and must provide data through a secure means. These controls are necessary to protect data confidentiality and system integrity.

The CSA states in the Proposal that they are deviating from the CFTC requirements under 17 CFR § 45.14 and 17 CFR § 49.11 to lessen the burden on the non-dealer community. ICE notes that non-reporting parties will still need to enroll with a TR to view their data thus the burden reduction sought by the CSA may not be present.

² Real-Time Public Reporting Requirements, 85 Fed. Reg. 75422- 75503 (November 25, 2020); Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75503-75601 (November 25, 2020); Certain Swap Data Repository and Data Reporting Requirements, 85 Fed. Reg. 75601-75678 (November 25, 2020).

³ The SEC set the first compliance date for security-based swap data reporting for November 2021.



In addition, the CSA has requested comment on the necessity of a TR to implement policies and procedures to enable reporting counterparties to ensure that all reported derivatives data is accurate and contains no misrepresentation or to provide access to counterparties to fulfill this requirement. ICE agrees that reporting parties should be responsible to confirm the accuracy of reported data and appreciates the CSA aligning with the CFTC on this point. ICE, however, does not believe that it is necessary for the TR to implement policies and procedures to enable reporting counterparties to ensure that reported derivatives data is accurate. ICE Trade Vault provides the reporting party with reports and queries for all open swap transactions including valuation and collateral reports. It is incumbent upon the reporting party to utilize this information to verify the accuracy of the data. By providing system access to the reporting party, the TR discharges its duty to enable the reporting party to verify the accuracy of the data and this should be sufficient to fulfill the requirement.

Moreover, TRs already have robust policies and procedures in place which require reporting counterparties to comply with data validations and confirmation of data accuracy. ICE suggests that the current policies and procedures should suffice to meet the goals of the CSA to ensure high data quality.

Data Available to Regulators (Section 37)

Under the Proposed Amendments, a TR is required to provide the CSA with any corrections to data as soon as technologically practicable after recording the correction. The Proposed Amendment clarifies in Paragraphs 39(1)(b) that aggregate data and transaction level reports must be corrected following a correction to an error or omission in reported derivatives data.

The proposed changes would effectively require TRs to republish all aggregate reports each time a swap data correction is reported. Currently, all public reports are static and are not republished. ICE Trade Vault recommends that the CSA not adopt this requirement as it is overly burdensome to the TR and adds additional complexities to TR's systems. ICE Trade Vault does not believe the burden to republish swap reports is commensurate with the benefit as it is well understood and accepted by market participants that public aggregate reports are based on data received at a given time and not dynamic. If the CSA decides to move forward with this requirement, ICE Trade Vault recommends the CSA limit the republications to a weekly timeframe.

Alignment with the PFMI

The CSA has proposed amendments aimed at conforming the trade reporting rules to the Principles of Market Infrastructures ("PFMIs").⁴ Several of the Proposals create additional TR compliance obligations and introduce misalignment with North American regulations. The CSA has failed to identify the critical need warranting the creation of additional obligations and ICE believes the additional compliance burden and costs for TRs is not commensurate with the risk.

⁴ CPMI and IOSCO published a report in April 2012 final report entitled Principles for Financial Market Infrastructures.

⁵ Please refer to Rule 13n-1(d) of the Securities Exchange Act of 34. The SEC has also indicated that an SDR would generally be required to file such an amendment within 30 days from the time such information becomes inaccurate.



TRs currently have robust governance, operational and risk frameworks in place and comply with CFTC and SEC regulations. It is unclear why current TR policies and procedures do not suffice.

Operational Efficiency and Effectiveness (New Section 14.1)

The CSA has proposed to amend trade repository governance, risk and operational regulations to require trade repositories to implement mechanisms to review service levels, pricing structure, costs and operational reliability. Swap data reporting has been in place for over eight years in Canada. During this time, ICE Trade Vault is unaware of substantial issues related to service levels, pricing or operational reliability. Market competition pushes TRs to meet the needs of participants by providing TR services in a secure, efficient, and effective manner. ICE Trade Vault believes this new requirement is burdensome to implement without a corresponding benefit. In addition, the proposed new requirements do not align with CFTC and SEC rules. ICE Trade Vault has robust rules, policies and procedures and risk frameworks in place. The CSA also has supervisory tools to ensure TRs comply with existing reporting rules that address the efficiency and effectiveness of TR operations. ICE Trade recommends the CSA not adopt these new requirements and rely on current TR policies and procedures and CSA oversight authority.

Links and Tiered Participation Agreements (New Section 24.1)

The CSA proposed new Section 24.1, requiring a trade repository to adequately oversee and mitigate risks associated with tiered participation arrangements, such as indirect participants. The concept of tiered participation agreements is a clearing concept and not appropriate nor applicable in the context of trade reporting. Tiered participation agreements are typically seen in the clearing context where the clearing member has the direct relationship with the clearing house and the customer has the direct relationship with the clearing member. This arrangement is not present in trade reporting. ICE Trade Vault has a direct contractual relationship with all its participants. Even in the context of a third-party reporting arrangement, both the third-party reporter and party with the reporting obligation must be participants of the TR. Any failure to report or to review the accuracy of reported data is the responsibility of the party with the reporting obligation. As such, ICE Trade Vault requests the CSA not adopt proposed new Section 24.1 as it is not appropriate in the context of swap data reporting.

Additionally, the Proposed Amendment differs from the PFMI in defining link and linked entities. The PFMI define a link as “a set of contractual and operational arrangements between two or more financial market infrastructures (“FMIs”) that connect the FMIs directly or through an intermediary.” The Proposed Amendment defines a “link” as a contractual and operational arrangement that, directly or indirectly through an intermediary, connect the system of a trade repository with a system operated by another person or company for the acceptance, retention, use, disclosure or provision of access to derivatives data. The proposed definition expands the reach of links from other FMIs to any contractual or technical relationship of a TR. In ICE’s view, the proposed new CSA definition is unnecessary as current Rule 24 (Outsourcing) and Rule 21(1) (System and other operational risk) cover these concepts. Accordingly, ICE recommends not adopting this requirement as it is duplicative of existing regulations.



Ancillary Comments:

A. Change in Information (OSC Rule 91-507)

Pursuant to the OSC Rule 91-507, “Change in Information” section, subsection 3(1), a TR 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 Commission considers a change to be significant when it could impact a TR, its users, participants, market participants, investors, or the capital markets (including derivatives markets and the markets for assets underlying a derivative). ICE notes that the 45-day requirement to file an amendment is inconsistent with other regulatory regimes, specifically, the CFTC and SEC. The CFTC requires any updates to Form SDR and underlying exhibits be done promptly after updating such information. In addition, the CFTC allows registered entities to self-certify rules under Regulation 40.6 and the self-certification is effective ten business days after the filing. The SEC requires an SBSDR to promptly amend Form SDR if certain information such as fees or governance arrangements become inaccurate or is amended.⁵ The SEC also requires an SBSDR to file annually an amendment to Form SDR and list any updated application exhibits not required to be amended promptly. ICE Trade Vault requests the CSA more closely align their filing requirements with the CFTC and SEC to avoid impairing TRs ability to update their applications and change their rules in a timely manner.

B. Timing of Implementation

ICE Trade Vault requests the Commission provide a minimum of twelve months after publication of the final rule amendments and final technical specifications for implementation by TRs and market participants. If the technical specifications are not yet finalized when the final rule amendments are published, ICE Trade Vault requests a minimum of eighteen months for implementation. Based on our experience implementing the CFTC rule amendments, it is important to allow sufficient time for TRs to build to the reporting and system changes and for market participants to test with the TRs. In addition, the technical specifications are a critical part of the rule amendments and ICE Trade Vault requests that the technical specifications be finalized at the time of the final rule publication. If the technical specifications are not finalized, it introduces uncertainty into the implementation timeframe that the CSA must appropriately account for.

Conclusion

Thank you for your consideration for ICE Trade Vault’s comments above. Please do not hesitate to contact the undersigned [REDACTED] if you have any questions regarding its comments.

Sincerely,

⁵ Please refer to Rule 13n-1(d) of the Securities Exchange Act of 34. The SEC has also indicated that an SDR would generally be required to file such an amendment within 30 days from the time such information becomes inaccurate.



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