

BY E-MAIL

January 21, 2016

Ontario Securities Commission (“OSC”) (comments@osc.gov.on.ca)

Autorité des marchés financiers (“AMF”) (consultation-en-cours@lautorite.qc.ca)

Manitoba Securities Commission (“MSC”) (paula.white@gov.mb.ca; chris.besko@gov.mb.ca)

Re: Request for Comments on Amendments to Regulation/Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, the Companion Policy to each 91-507, and the AMF’s Regulation 91-506 respecting *Derivatives Determination*

Dear Sirs/Mesdames,

The International Swaps and Derivatives Association, Inc. (“ISDA”)¹ and the Global Foreign Exchange Division (“GFXD”) of the Global Financial Markets Association (“GFMA”)² (the “Associations”) appreciate the opportunity to provide comments regarding the proposed amendments (the “Proposed Amendments”) to the respective Regulation/Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (collectively, “91-507” or the “TR Rules”) of the OSC, AMF and MSC (the “Authorities”) and their corresponding Companion Policies (the “TR CPs”) as well as to the AMF’s Regulation 91-506 *respecting Derivatives Determination* (“91-506”). We recognize that the Proposed Amendments reflect many of the concerns and suggestions provided in ISDA’s letter regarding transaction level public dissemination sent to the Canadian Securities Administrators (“CSA”) on January 16, 2015³. We greatly appreciate the efforts of the Authorities to issue requirements for the public reporting of transaction level data that align with existing requirements in the U.S., where appropriate, while also providing additional protections that are appropriate to the Canadian derivatives market. Overall, we are supportive of the

¹ Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 850 member institutions from 68 countries. These members comprise a broad range of derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association’s web site: www.isda.org.

² The GFXD was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Its members comprise 24 global FX market participants, collectively representing more than 90% of the FX inter-dealer market. Both the GFXD and its members are committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with global regulators.

³http://www2.isda.org/attachment/NzIxNw==/ISDA_Canada_PublicDisseminationLetter_16Jan2015_FINAL.pdf

Proposed Amendments, but we have a few remaining concerns and suggestions for your consideration, as provided below.

I. Bilateral Compression

Section 2(b) of Appendix C of the Proposed Amendments exempts transactions resulting from multilateral portfolio compression exercises from the requirements for the public dissemination of transaction level data. We agree with this exclusion since the act of compression does not result in a new pricing event. For the same reason, we request that the exclusion be expanded to include transactions resulting from bilateral compression exercises. Such an approach would be in accordance with the definition of “publicly reportable swap transaction” in the Part 43 regulations of the Commodity Futures Trading Commission (“CFTC”) which exempts portfolio compression exercises from the real time public reporting requirements and would align with current market practice.

II. Prime Brokerage Transactions

Some parties (“PB Clients”) enter into derivatives transactions via agreements with a prime broker (“PB”) which allow them to seek competitive pricing from a number of executing dealers (“EDs”) while legally only entering into transactions with, having credit risk against, and executing transaction documentation (including Master Agreements and confirmations) with their PB. Under a basic prime brokerage arrangement there is a single execution event agreed between the ED and the PB Client which, upon acceptance by the PB under pre-agreed parameters, results in two off-setting trades – one between the PB and the ED and a mirror trade between the PB and the PB Client.

Since there is a single execution event, there should only be one public report of transaction level data. Public dissemination of both transactions to a PB intermediated execution would negatively impact transparency by duplicating, offsetting and inflating the amount of market activity without providing any additional pricing information. In accordance with current market practice for CFTC reporting, we request that the TR Rules only require the data for the ED-PB trade to be publicly disseminated, even though both the ED-PB and PB-PB Client mirror trades may be reported to the TR. The ED is best positioned to report the execution event timely and according to market practice should be the reporting counterparty for the ED-PB leg, while the PB should report the PB-PB Client leg. The CFTC acknowledged this approach in no-action relief they issued on the matter⁴. Although the relief has expired, there are currently discussions between market participants and CFTC staff to codify this approach to reporting PB intermediated transactions in future amendments to the CFTC’s reporting rules (Parts 43 and 45). In the meantime, this approach remains the market practice and should be aligned across jurisdictions to promote efficiency and consistency.

III. Bunched Orders vs. Allocations

It is common market practice for an asset manager or investment advisor (an “advisor”) to execute transactions on behalf of, and for the benefit of, funds which are the legal counterparties to derivatives

⁴<http://www.cftc.gov/idx/groups/public/@llettergeneral/documents/letter/12-53.pdf>

transactions. The advisor traditionally executes an amalgamated notional once on behalf of a number of funds (the “bunched order”) and then subsequently allocates that notional at varying levels to the funds (the “allocations”). In this scenario, the execution of the bunched order is the sole execution event and the associated price is based on the consolidated notional. Therefore, we request that for purposes of the transaction level public reporting requirements, only the bunched order should be required to be publicly reported with reporting eligibility based in part on the local counterparty status of the advisor.

If public reporting were done at an allocation level, transparency may be delayed since allocation occurs subsequent to execution of the bunched order and therefore may be sent to the trade repository (“TR”) only after allocation. Usually a bunched order is fully allocated on the trade date, but in certain cases (e.g. differences in locations of the advisor and the dealer counterparty) allocation may not be fully completed until after the trade date. More importantly, due to the fact that the price was executed at the level of the bunched order, dissemination of the price at an allocation level may appear off-market or be misleading. Additionally, reporting of both the bunched order and the allocations to the public would be duplicative and would inaccurately inflate the level of market activity.

The Associations understand that under 91-507 firms currently report only the allocations that result from a bunched order to a TR, based in part on the local counterparty status of the counterparty to each allocation. We believe the allocations should continue to be reported to the TR, but not publicly disseminated. Based on our suggestion above, reporting counterparties will need to build to report the data in Appendix C for bunched orders to the TR indicating that such data is subject to public reporting and the data for the associated allocations is not. The TR Rules seem to place the responsibility on the TR to determine which transactions are subject to transaction level reporting, but based on the reporting architecture for the U.S., a reporting counterparty would make such determination itself and the TR would publicly disseminate data in accordance with the relevant specification in the messaging.

Transaction level public reporting of data solely for the bunched order would match current market practice under the CFTC’s Part 43 regulations and be in accordance with *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information; Proposed Rule* as issued by the Securities and Exchange Commission on March 19, 2015. Based on our experience in other regions, we think there is a strong benefit to the clarity and consistency of compliance to be gained by providing clear requirements and guidance that aligns with current market practice and global requirements.

IV. Clearing Transactions

The Associations understand that as the actual execution event, an alpha transaction would be subject to public dissemination, but that per 2(c) of Appendix C of the Proposed Amendments the related cleared transactions (beta and gamma) would not be subject to public reporting. We concur with that approach, since there is a single pricing event for a set of clearing transactions.

Based on discussion with the Authorities, we understand that the T+1 dissemination timeframe in 7(a) of Appendix C for transactions where one of the counterparties is a recognized or exempt clearing agency does not apply to betas and gammas since they result from clearing novation. Rather, the Authorities anticipate this timeframe would apply to transactions entered into directly by a clearing agency on its own behalf (e.g. as a result of a clearing default). We suggest that the Authorities provide additional clarity in the TR CPs regarding these expectations in order to avoid any inconsistent interpretations.

In addition, we recommend that the Authorities explicitly clarify in the TR CPs that a cleared transaction that has no alpha trade (e.g. “firm” or “forced” trades which result from the clearing agencies pricing process), are not considered to be “a transaction resulting from novation by a recognized or exempt clearing agency” and therefore are not subject to the exclusion in section 2(c) of Appendix C. We suggest the TR CP make it clear that as a result these cleared transactions are subject to the transaction level reporting requirements and that the clearing agency would be responsible to report them in accordance with the reporting counterparty hierarchy. Based on our discussion with some clearing agencies that are currently completing the Part 43 reporting requirements for such transactions, we believe that clearing agencies can accommodate such reporting provided the regulatory obligation is clear.

V. Public Dissemination lag inconsistencies

Section 7 of Appendix C provides that a TR must disseminate the information contained in Table 1 based on timeframes initiated by the TR’s *receipt* of such data from the reporting counterparty rather than when the transaction or pricing event was executed. This approach has the unintended effect of disadvantaging parties that report earlier and dis-incentivizing prompt reporting. For instance, if a dealer reports on the trade date (“T”), the TR would publicly disseminate the data at the end of the day following the trade date (T+1); whereas the transaction data that is reported by a dealer on T+1 would be publicly reported by the TR at the end of T+2. This would result in a commercial disadvantage for the dealer which reports on T since its counterparties will not wish their trades to be publicly disseminated any earlier than mandated.

We believe the most efficient way to resolve this issue is to change the requirement in 7(a) of Appendix C to require the TR to disseminate the information in Table 1 of Appendix C at the end of the second day following the day on which the transaction was executed (based on the reported execution timestamp) and 7(c) to the end of the third day following the day on which the transaction was executed. In the event a transaction was reported after the TR’s deadline for public dissemination, the transaction data would be subject to public reporting on the same day of receipt. We believe that TRs can more easily support this approach since public dissemination rules for the CFTC are based on the execution timestamp, but they will need notification in advance of the finalization of the Proposed Amendments (and ideally as soon as possible) so they can build their dissemination logic based on execution timestamp rather than time of receipt.

VI. Counterparty Identification

We appreciate the addition of section 28.1 which provides clarity with respect to the obligation of each local counterparty to a reportable transaction to obtain a Legal Entity Identifier (“LEI”). Our members recognize the value of LEIs for regulatory reporting and will continue to engage with their counterparties to obtain their LEI for purposes of reporting under the TR Rules, and could use this provision as evidence of the regulatory mandate.

With respect to the amendment to the descriptions in Appendix A of the TR Rules for the identifier of the reporting counterparty and the non-reporting counterparty, we agree there may be limited cases besides individuals where a counterparty is not eligible to obtain a distinct LEI. We wish to point out that

although certain individuals acting in a business capacity are eligible to obtain an LEI⁵, there are data protection and privacy obstacles that may prohibit the availability or use of such LEIs and therefore our members request that the Authorities allow for continued use of alternative identifiers for the identification of individuals in reporting under the TR Rule.

VII. Inter-affiliate exemption

Although we appreciate that the Authorities have included an exemption for the reporting of transactions between certain affiliated entities as specified in 41.1 of the Proposed Amendments, we believe the exemption is too narrow. Much of the derivatives activity between affiliates is transacted between a local counterparty and an affiliated entity that is not a local counterparty. Section 26(5) of the Proposed Amendments provides for the potential to satisfy the reporting requirements via substituted compliance. But as previously advised by ISDA in comment letters to the Authorities⁶, the terms of such provisions are unworkable to the extent that no meaningful efficiency or benefit can be realized by reporting counterparties through the application of substituted compliance.

Specifically, the requirement in 26(5)(b) for a reporting counterparty to instruct a TR to provide the transactional data to the provincial regulator(s) still obligates a party to report the relevant provincial jurisdiction(s) to a recognized TR on a trade-by-trade basis. In addition, because the TR must be recognized or designated by the provincial regulator, reporting counterparties that utilize a TR for reporting in a jurisdiction listed in Appendix B to 91-507 that is not recognized would not be eligible for deemed compliance.⁷ Some accommodation should be made for TRs that are affiliate entities of a recognized TR and a streamlined recognition process should be allowed for TRs that only wish to obtain recognition for purposes of facilitating deemed compliance for their participants.

In order to more efficiently address both of these conditions, we encourage Canadian regulators to enter into a Memorandum of Understanding (“MOU”) with regulators in other jurisdictions to obtain *direct* access to relevant derivatives data reported subject to another regime’s requirements. An MOU between the CSA and a regime specified in the TR Rule should negate the requirement in §26(5)(b) that the relevant TR be recognized by the provincial Authority and eliminate the requirement in §26(5)(c) for a reporting counterparty to instruct a TR to provide access to the data.

Until these hurdles are addressed, it may be easier or necessary for counterparties that are affiliated entities to fully report their transactions to multiple jurisdictions. The operational complexity of meeting the conditions in §26(5) have the practical effect of negating any benefit or efficiency that should result from the application of substituted compliance.

⁵http://www.leiroc.org/publications/gls/lou_20150930-1.pdf

⁶http://www2.isda.org/attachment/NzM0MA==/ISDA_MultilateralTRInstrumentsLetter_24Mar2015_FINAL.pdf at pg. 3

⁷Notably, the TRs authorized for reporting in Europe are not currently recognized in Canada.

VIII. Additional AMF Amendments

With respect to the AMF's proposed addition of new "Application 1.1" to 91-506, we question whether the scope of 91-506 should be limited to its Regulation 91-507. Rather than having product determination made on a regulation-by-regulation basis, we believe that the definition of what is regulated as a derivative should be contained a single piece of regulation (i.e. 91-506) for consistent application across the AMF's derivatives regulations.

We agree with the AMF's stated intention to broaden the concept of affiliated person to include trusts and partnerships, however, as provided in our comments to the Proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*⁸ ("Proposed MLI") we are concerned about the implications of the inconsistency between the definition of affiliates between the trade reporting regulations of the Authorities. The proposed amendment to section 1.(3) of AMF's 91-507 mirrors the definition in the Proposed MLI, except that it excludes "(d) if the second party is a trust and a trustee of the trust is the first party" which seems to contradict the AMF's intention to cover trusts. Assuming the version in the Proposed MLI will be finalized as proposed, this creates yet another variation on the affiliate definition between TR Rules that is disharmonized and subject to potentially different interpretations. We feel strongly that whether a party qualifies as an affiliate that is a local counterparty or whether such party may be subject to an inter-affiliate exemption should be consistent across any trade reporting requirements in Canada. We recommend that the CSA consider adopting a singular, broad definition of affiliated entity across the TR Rules.

Under the TR Rules, a transaction between affiliated entities is not subject to either the aggregate or the transaction level public reporting requirements. Due to the differences in the way affiliates are defined, it is possible that the transactions of a pair of counterparties may be subject to public reporting under one rule and not another. Since in order to help protect party anonymity, each TR is anticipated to produce a single, separate report in Canada to meet each of the aggregated public reporting and transaction level public reporting requirements, then the transactions to a pair of counterparties can only either be included or excluded. Unless the definition of affiliates is harmonized, the Authorities will need to agree and publish the public reporting requirement for transactions between counterparties that do not qualify for the inter-affiliate exemption under both rules.

IX. Timeline to compliance

TRs and reporting counterparties are concerned about the anticipated timeline to finalization of the Proposed Amendments. In order to be ready for a July 29, 2016 compliance date, TRs had anticipated needing 6 months from rule finalization for their build, internal testing and user testing. Market participants, including reporting counterparties and market infrastructure providers, also need several months from the availability of final specifications from their TR to develop the new functionality, performing internal testing and participate in TR user and testing. Even though TRs and reporting counterparties expect to leverage existing CFTC reporting architectures to a certain extent, separate messages and associated logic will need to be developed to comply with the transaction level public reporting requirements in Canada, and TRs will need new functionality to process and make such reports available to the public. In addition, the industry will need a substantive testing period to ensure that there

⁸See footnote 5, pg. 4,5

are no unforeseen issues with compliance and to ensure transaction data is accurately and appropriately made available to the public.

The specifications for changes on the part of TRs, reporting counterparties and market infrastructure providers that offer reporting services cannot be finalized until rule requirements are final. With publication of the final version of the Proposed Amendments anticipated for late March at the earliest, four months would not be sufficient time to plan, build and test. Building based on the Proposed Amendments risks that changes may need to be made after the final rules are known that could not be accommodated in time for the compliance date.

A representative breakdown of the timeframe for planning, development and testing is as follows:

- TR development: 3 months
- TR internal testing (including regression testing): 2 months
- TR expedited customer testing: 1 month

Since the TRs support trade reporting regulations globally, their development is planned well in advance to accommodate the various and overlapping regulatory deadlines and the necessary development and testing windows. When one of these deadlines changes, TRs need to reassess their book of work and adjust their development and testing schedules in a way that does not disrupt their ability to deliver on other commitments. Rescheduling development of TR functionality is not necessarily based on a linear delay (i.e., a delay in one month of rule finalization translates to a one month delay in the availability of the associated functionality). Rather TRs need to ascertain where in their existing list of global development commitments they can refit the work; thus potentially requiring a later date for delivery of the functionality.

In order to address these concerns, we encourage the Authorities to publish the final version of the Proposed Amendments as soon as feasible. But we believe it is also imperative that the Authorities communicate to the industry, including TRs and reporting counterparties, the specifics of any substantive changes to the Proposed Amendments (e.g. basing the timeframe for reporting on the execution timestamp instead of time to receipt or bunched order reporting) as soon as agreed by the Authorities. Advance notice doesn't completely mitigate the associated risk of proceeding with planning and implementation in advance of rule finalization, but it would greatly improve the chances that the industry can meet the compliance date. If industry specifications for transaction level public reporting cannot be finalized until after a rule publication in March or April, then we believe the July 29, 2016 compliance date may not be achievable and would need to be amended to accommodate for a sufficient implementation period.

X. Conclusion

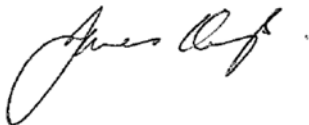
The Associations and our members thank the Authorities for their consideration of the comments regarding the Proposed Amendments provided herein. We welcome any questions you may have with respect to our recommendations and are happy to provide any additional feedback or information as may be helpful to your consideration.

Please contact us if you have any questions or require further input.

Sincerely,



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