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February 3, 2016

BY E-MAIL

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 regarding proposed amendments to Regulation/Rule 91-507 *Trade Repositories and Derivatives Data Reporting*

Dear Sirs/Mesdames:

TMX Group Limited ("TMX Group") appreciates the opportunity to comment on Regulation/Rule 91-507 *Trade Repositories and Derivatives Data Reporting* from the OSC, AMF and MSC ("R 91-507"). TMX Group would like to take this opportunity to comment on a few additional non-material drafting revisions which would provide helpful clarity. Our comments are consistent with those we made recently with respect to the comparable provisions in the proposed Cooperative Capital Markets Act Regulations. We would also reiterate the need for a national instrument on this matter.

Block Trades

Regulation/Rule 91-506 *Derivatives: Product Determination* from the OSC, AMF and MSC ("R 91-506"), which applies to R 91-507, states that a contract or instrument is not a derivative if it is "traded on an exchange". In Quebec, R 91-507 states that the regulation applies to derivatives that are not traded on an exchange. To ensure a clear understanding that is consistent with international practice with respect to the application of R 91-507, we would propose ensuring that R 91-506 makes it clear that block trades entered on an exchange are considered to be traded on an exchange. We understand that the provision may currently be interpreted as such, but it would provide greater certainty to the market if that interpretation were clear from the plain language of the regulation.

We understand that the purpose of excluding exchange traded derivatives from the definition of derivative (the "Exchange Exclusion") is that if a derivative is traded on a recognized exchange, the requirement for timely market data is already met, thus making the requirement to report such trades redundant. From a policy perspective, the carve-out should also include any OTC derivatives transactions that meet or exceed specified volumes, are entered onto the exchange, and are subject to the rules of a recognized exchange ("Block Transactions"). Block Transactions are subject to the rules of the applicable recognized exchange, including market surveillance and oversight, and are disclosed to Canadian regulators in the same manner as exchange-traded transactions.



The amendment we propose would not only clarify the interpretation of the Exchange Exclusion and better reflect the policy considerations underlying this section, but it would also harmonize with the approach implemented by other foreign commodities regulators. By way of example, pursuant to the Commodity Exchange Act in the United States, Block Transactions are considered to be exchange transactions so long as they are subject to the rules of a board of trade and ultimately consummated through and recorded by the exchange.¹ This would also be consistent with the approach taken in Multilateral Instrument 91-101 *Product Determination* which, in section 2(1)(g) of the Companion Policy, states that “the participating jurisdictions interpret a contract ‘traded on an exchange’ to include a contract that is made pursuant to the rules of an exchange and reported to the exchange after execution.”

As Block Transactions are considered exchange transactions in other key Canadian and foreign jurisdictions, we propose that the Exchange Exclusion be amended to be more similar to the language quoted above to provide comfort that this treatment of Block Transactions may continue across Canadian markets. This will minimize the potential for confusion, particularly in the context of markets that operate on a national, North American or global basis.

Alternative Trading Systems

The Companion Policy to R 91-506 makes clear that derivatives trading facilities (“DTFs”), swap execution facilities, multilateral trading facilities and organized trading facilities are not considered exchanges for the purposes of the Exchange Exclusion. Clearly, only those derivatives traded on entities regulated as exchanges, not alternative venues, are intended to be captured by this section. For further clarity, given that a number of specific types of alternative venues are explicitly excluded, ATSS should also be explicitly excluded from this provision as they are regulated in a manner more similar to the excluded alternative venues than exchanges.

Novated and Assigned Transactions

Pursuant to R 91-506, “transaction” includes assigning or novating a derivative. In limited circumstances, products that are exchange traded and cleared are assigned and novated by a counterparty, such as in connection with, or as a result of, a merger, business acquisition, asset purchase or similar non-recurring transactions between two or more entities. In the context of a business acquisition, the novation occurs off exchange to the acquirer of the business. Pursuant to the definition of transaction, this would require reporting. This may be an issue for both the clearing agency and the other counterparty as neither party may be set up to report because the nature of their trading activities do not normally warrant reporting.

¹ Pursuant to the Commodity Exchange Act (“CEA”), s. 6(a):

it shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions) unless—

- (1) such transaction is conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity;
- (2) such contract is executed or consummated by or through a contract market; and
- (3) such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery”



The Companion Policy to R 91-507 notes that “[e]xchange-traded derivatives provide a measure of transparency to regulators and to the public, and for this reason these transactions are not required to be reported.” As all characteristics with respect to which the exchange provides transparency of a transaction of the type described above would remain the same, the same logic that applies to omitting exchange-traded transactions from reporting requirements should apply to omitting assignment and novation transactions of the type described above from reporting.

In the case of an assignment or novation of trades, the only change to the position is the holder of the position. It is unclear from a policy perspective why it would be necessary to report such a trade particularly when occurring in the context of an asset purchase of a business. In addition, the details regarding the assignment of positions are captured by the exchange in its records. Should the exchange be required to report the assignment or novation, it would be unrelated to any previous report, as the original report was not on record with the trade depository. In this case, the benefit to the report of an assignment or novation is vague.

We ask that clarity be provided in either R 91-507 or its Companion Policy to permit these assignment and novation transactions to take place without requiring reporting. The changes needed to address this issue may be similar to those needed to address the Block Trade issue discussed above as in both cases while certain actions occur off-exchange, ultimately the transactions are subject to the rules of the exchange and recorded as exchange transactions.

National Instrument

There are now four local or multilateral trade repositories and derivatives data reporting rules in force and an additional one proposed pursuant to the Cooperative Capital Markets Regulatory System. It is already challenging for market participants to comply with the multitude of international reporting regulations and other derivatives regulations. We are concerned that requiring participants to comply with another multitude of regulations even within Canada may deter entities from doing business in Canada because of the added complexity. We believe that relatively harmonized rules across provinces still create barriers to doing business because there is still a need to be familiar with four sets of regulations to ensure compliance. We strongly recommend that regulators harmonize the local rules into one national instrument in order to address these concerns.

TMX Group appreciates the opportunity to provide comments with respect to the derivatives data reporting rules and we hope that you will consider addressing our concerns as part of this comment process. We would be happy to discuss these issues at greater length at your convenience. Please contact Jennifer Oosterbaan, Legal Counsel at Jennifer.oosterbaan@tmx.com if you have any questions regarding our comments.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Deanna Dobrowsky', with a stylized, flowing script.

Deanna Dobrowsky
Vice President, Regulatory