

**MODEL EXPLANATORY GUIDANCE
TO
MODEL PROVINCIAL RULE – TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING**

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**PART 1
GENERAL COMMENTS**

Introduction

1. (1) This Model Explanatory Guidance sets out the views of the Canadian Securities Administrators OTC Derivatives Committee (the “Committee” or “we”) on various matters relating to Model Provincial Rule – *Trade Repositories and Derivatives Data Reporting* (the “TR Rule”) and related securities legislation.

(2) Except for Part 1, the numbering of Parts, sections and subsections in this Model Explanatory Guidance generally correspond to the numbering in the TR Rule. Any general guidance for a Part appears immediately after the Part’s name. Any specific guidance on a section or subsection in the TR Rule follows any general guidance. If there is no guidance for a Part, section or subsection, the numbering in this Model Explanatory Guidance will skip to the next provision that does have guidance.

(3) Unless otherwise stated, any reference to a Part, section, subsection, paragraph or definition in this Model Explanatory Guidance is a reference to the corresponding Part, section, subsection, paragraph or definition in the TR Rule.

Definitions and interpretation

2. (1) Unless defined in the TR Rule, terms used in the TR Rule and in this Model Explanatory Guidance have the meaning given to them in Ontario securities legislation, including National Instrument 14-101 *Definitions* and OSC Rule 14-501 *Definitions*.¹

(2) In this Model Explanatory Guidance

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

“FMI” means a financial market infrastructure,

“IOSCO” means the Technical Committee of the International Organization of Securities Commissions,

“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,² and

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

(3) A “life-cycle event” is defined as any event that results in a change to derivatives data previously reported to a designated trade repository. Where a life-cycle event occurs, the change must be reported as life-cycle data. Life-cycle data will not include creation data that has not changed as a result of a life-cycle event. Examples of a life-cycle event would include

- 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,

¹ As explained in the accompanying Notice, the TR Rule has been drafted based on the *Securities Act* (Ontario). Certain conforming amendments will be necessary in other jurisdictions.

² The PFMI Report is available on the Bank for International Settlements’ website (www.bis.org) and the IOSCO website (www.iosco.org).

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

(4) The term “transaction” is defined and used instead the term “trade”, as defined in the *Securities Act* (Ontario) (the “Act”), in order to reflect the types of activities that require a unique transaction report, as opposed to the modification of an existing transaction report. The primary difference between the two definitions is that unlike the term “transaction”, the term “trade”, as defined in the Act, includes material amendments and terminations.

A material amendment is not referred to in the definition of “transaction” but would be required to be reported as a life-cycle event of an existing transaction pursuant to section 34, and not a new transaction. 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 without the requirement for a new transaction record.

In addition, unlike the definition of “trade”, the definition of “transaction” includes a novation to a clearing agency as such action is are required to be reported as separate, new transactions with reporting links to the original transactions.

(5) The term “valuation data” is defined as data that reflects the current value of a transaction, meaning the price that would be received to sell an asset, or paid to transfer a liability in an orderly transaction between market participants, at the current date. It is the Committee’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 that will result in a reasonable valuation of a transaction. The valuation methodology should be consistent over the entire life of a transaction.

PART 2 TRADE REPOSITORY DESIGNATION AND ONGOING REQUIREMENTS

Part 2 contains rules for trade repository designation and ongoing requirements for designated trade repositories.³ To obtain and maintain a designation 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 designation order made by the [applicable local securities regulator]. In order to comply with the reporting obligations contained in Part 3, market participants must report to a designated trade repository. While there is no prohibition on an undesignated trade repository operating in [Province x], a market participant using it would not be in compliance with reporting obligations.

Trade repository initial filing of information and designation

2. (1) The legal entity that applies to be a designated trade repository will typically be the entity that operates the facility that collects and maintains records of completed transactions by other persons or companies. In some cases, the applicant may own and 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.

(2) Under paragraph 2(2)(a) in determining whether to designate an applicant a trade repository under section [x]⁴ of the Act, it is anticipated that the [applicable local securities regulator] will consider a number of factors, including

- (i) the manner in which the trade repository proposes to comply with the TR Rule,
- (ii) whether the trade repository has meaningful representation on its governing body,
- (iii) whether the trade repository has sufficient financial and operational resources for the proper performance of its functions,
- (iv) whether the rules and procedures of the trade repository ensure that its business is conducted in an orderly manner that fosters fair and efficient capital markets and facilitates the [applicable local securities regulator]’s objectives of improving transparency in the derivatives market,
- (v) 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,

³ Certain Canadian jurisdictions “recognize” trade repositories instead of “designating” them. However, the Committee intends that consistent requirements will be applied in all jurisdictions regardless of whether a trade repository is designated or recognized.

⁴ Section [x] would be the designation or recognition provision in the securities legislation of a province.

- (vi) whether the requirements of the trade repository relating to access to its services are fair and reasonable,
- (vii) whether the trade repository's process for setting fees is fair, transparent and appropriate,
- (viii) whether the trade repository's fees are equitably allocated among the users, have the effect of creating barriers to access or place an undue burden on any user or class of users,
- (ix) the manner and process for the [applicable local securities regulator] and other applicable regulatory agencies to receive or access derivatives data, including the timing, type of reports, and any confidentiality restrictions, and
- (x) whether the trade repository has robust and comprehensive policies, procedures, processes and systems to ensure the security and confidentiality of derivatives data.

Under paragraph 2(2)(b) the [applicable local securities regulator] will examine whether the trade repository has been, or will be, in compliance with securities legislation. This includes compliance with the TR Rule and any terms and conditions attached to the [applicable local securities regulator]'s designation order in respect of a designated trade repository.

Under paragraph 2(2)(c), a trade repository that is applying for designation as a trade repository must demonstrate that it has established, implemented, maintained and enforced appropriate written rules, policies and procedures that are in accordance with standards applicable to trade repositories including, but 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 relevant sections of the TR Rule that are to be interpreted and applied in accordance with each principle:

<i>Principle in the PFMI Report applicable to a trade repository</i>	<i>Relevant section(s) of the TR Rule</i>
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 Designated Trade Repository Services Section 16 – Due Process (in part) Section 17 – Rules (in part)
Principle 19: Tiered participation arrangements	No equivalent provisions in the TR Rule; 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 TR Rule; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.
Principle 21: Efficiency and effectiveness	No equivalent provisions in the TR Rule; 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 [applicable local securities regulator] will apply the principles in its oversight activities of designated trade repositories. Therefore, in complying with the TR Rule, designated trade repositories will be expected to observe the principles.

The forms filed by an applicant or designated trade repository under the TR Rule will be kept confidential in accordance with the provisions of the Act. The Committee 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 therefore outweigh the benefit of the principle requiring that forms be available for public inspection. However, the Committee would expect a designated trade repository to publicly disclose its responses to CPSS-IOSCO consultative report entitled *Disclosure framework for financial market infrastructures*.⁵ In addition, much of the information that will be included in the forms filed will be required to be publicized by a designated trade repository pursuant to the TR Rule or the terms and conditions of the designation order imposed by the [applicable local securities regulator].

While Form F1 – *Applicant for Designation and Trade Repository Information Statement* and any amendments to it will be kept generally confidential, if the [applicable local securities regulator] considers that it is in the public interest to do so, it may require the applicant or designated trade repository to publicly disclose a summary of the information contained in such form, or amendments to it.

Change in information

3. (1) Under subsection 3(1) a designated trade repository is required to file an amendment to the information provided in Form F1 at least 45 days prior to implementing a significant change. The Committee considers a change to be significant when it could impact a designated trade repository, its users, market participants, investors, or the capital markets (including derivatives markets and the markets for assets underlying a derivative). The Committee would consider a significant change to include, but not be limited to

- (a) a change in the structure of the designated trade repository, including procedures governing how derivatives data is collected and maintained, that have or may have a direct impact on users in [Province x],
- (b) a change to services provided by the designated trade repository, including the hours of operation, that have or may have a direct impact on users in [Province x],
- (c) a change to means of access to the designated 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 [Province x],
- (d) a change to the types of derivative asset classes or categories of derivatives that may be reported to the designated trade repository,
- (e) a change to the systems and technology used by the designated trade repository that collect, maintain and disseminate derivatives data, including matters affecting capacity,
- (f) a change to the governance of the designated 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 designated trade repository,
- (h) a change in affiliates that provide key services or systems to or on behalf of the designated trade repository,
- (i) a change to outsourcing arrangements for key services or systems of the designated trade repository,
- (j) a change to fees and the fee model of the designated trade repository,
- (k) a change in the designated 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 designated trade repository's provision of services to its users, and
- (l) a change in the location of the designated 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 Committee generally considers a change in a designated trade repository's fees or fee structure to be a significant change. However, the Committee recognizes that designated 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 designated trade repository may provide information describing 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 Model Explanatory Guidance for an explanation of fee requirements applicable to designated trade repositories.

⁵ Publication available on the BIS website (www.bis.org) and the IOSCO website (www.iosco.org).

The [applicable local securities regulator] will make best efforts to review amendments to Form F1 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 F1 are not considered significant and include changes that:

- (a) would not have an impact on the designated trade repository's structure or users, 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 designated trade repository that would not impact users,
 - (ii) changes due to standardization of terminology,
 - (iii) corrections of spelling or typographical errors,
 - (iv) changes to the types of users in [Province x] of the designated trade repository,
 - (iv) necessary changes to conform to applicable regulatory or other legal requirements of [Province x] or Canada, and
 - (v) 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 [applicable local securities regulator] may review these filings to ascertain whether they have been categorized appropriately. If the [applicable local securities regulator] disagrees with the categorization, the designated trade repository will be notified in writing. Where the [applicable local securities regulator] determines that changes reported under subsection 3(3) are in fact significant under subsection 3(1), the designated trade repository will be required to file an amended Form F1 that will be subject to review by the [applicable local securities regulator].

Ceasing to carry on business

4. (1) In addition to filing Form F3 – *Cessation of Operations Report for Trade Repository*, a designated trade repository that intends to cease carrying on business in [Province x] as a designated trade repository must make an application to voluntarily surrender its designation to the [applicable local securities regulator] pursuant to section [x]⁶ of the Act. The [applicable local securities regulator] may accept the voluntary surrender subject to terms and conditions.

Legal framework

7. (1) Designated trade repositories are required to have rules, policies, and procedures in place that provide a legal basis for their activities in all relevant jurisdictions. This would include other Canadian and foreign jurisdictions.

(2) Paragraph 7(2)(d) requires a designated trade repository to establish whether records of contracts in its repository are the legal contracts of record. In order to do this, the designated trade repository must disclose whether a transaction record is a legal contract of record or a representation of terms in the legal contract of record.

Governance

8. Designated 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 designated trade repository.

(4) Under subsection 8(4), a designated trade repository is required to make the written governance arrangements required under subsections 8(2) and (3) available to the public. A designated trade repository may fulfil this requirement by posting this information on a publicly accessible website, provided that interested parties are able to locate the information through a web search or through clearly identified links on the designated trade repository's website.

Board of directors

9. The board of directors of a designated trade repository is subject to a various requirements pertaining to board composition, conflicts of interest.

⁶ In Ontario, section 21.4 of the *Securities Act* (Ontario) provides that the Commission may impose terms and conditions on an application for voluntary surrender. The transfer of trade data/information can be addressed through the terms and conditions imposed by the Commission on such application.

(1) Paragraph 9(1)(a) requires individuals who comprise the board of directors of a designated 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 business recovery, contingency planning, financial market systems and data management.

Under paragraph 9(1)(b), the board of directors of a designated trade repository must include individuals who are independent of the designated trade repository. The Committee would view individuals who have no direct or indirect material relationship with the designated trade repository as independent. The Committee would expect that independent directors of a designated 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 derivatives dealers are considered.

Chief compliance officer

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

Fees

12. Designated trade repositories are responsible for ensuring that the fees they set are in compliance with section 12. In assessing whether a designated trade repository's fees and costs are fair and equitably allocated as required under paragraph 12(a), the [applicable local securities regulator] will consider a number of factors, including

- (a) the number of and complexity of the transactions being reported,
- (b) the amount of the fee or cost imposed relative to the cost of services provided,
- (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 designated trade repository, and
- (e) whether the fees or costs represent a barrier to accessing the services of the designated trade repository for any category of market participant.

A designated trade repository should provide clear descriptions of priced services for comparability purposes. Other than fees for individual services, a designated trade repository should also disclose other fees and costs related to connecting or accessing the trade repository. For example, a designated trade repository should disclose information on the system design, as well as technology and communication procedures, which influence the costs of using the designated trade repository. A designated trade repository is also expected to provide timely notice to users and the public of any changes to services and fees.

Access to designated trade repository services

13. (2) Under subsection 13(2) a designated trade repository is prohibited from unreasonably limiting access to its services, permitting unreasonable discrimination among its users or imposing unreasonable burdens on competition. For example, a designated trade repository should not engage in anti-competitive practices such as product or service tying, setting overly restrictive terms of use or anti-competitive price discrimination. A designated 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 designated trade repository.

Acceptance of reporting

14. Section 14 requires that a designated trade repository accept derivatives data for all derivatives of the asset class or classes set out in its designation order. For example, if the designation order of a designated trade repository includes interest rate derivatives, the designated trade repository is required to accept transaction data for all types of interest rate derivatives entered into by counterparties located in [Province x]. It is possible that a designated trade repository may accept only a subset of a class of derivatives if this is indicated in its designation order. For example, there may be designated trade repositories which 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 designated trade repository with other specified entities. The reference in paragraph 15(1)(d) to "other service providers" could include market participants 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 designated 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 designated trade repository should disclose to its users and the public basic operational information and responses to CPSS-IOSCO *Disclosure framework for financial market infrastructures*.

(3) Subsection 17(3) requires that designated 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 designated 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 or company, including the [applicable local securities regulator] or other regulatory body.

(5) Subsection 17(5) requires a designated trade repository to file its rules and procedures with the [applicable local securities regulator] for approval in accordance with the terms and conditions of the designation order. Upon designation, the [applicable local securities regulator] may develop and implement a protocol with the designated trade repository that will set out the procedures to be followed with respect to the review and approval of rules and procedures and any amendments thereto. Generally, such a rule protocol will be appended to and form part of the designation order. Depending on the nature of the changes to the designated trade repository's rules and procedures, such changes may also impact the information contained in Form F1. In such case, the designated trade repository will be required to file a revised Form F1 with the [applicable local securities regulator]. See section 3 of this Model Explanatory Guidance for a discussion of the filing requirements.

Records of data reported

18. A designated trade repository is a market participant under securities legislation and therefore subject to the record-keeping requirements under Act. The record-keeping requirements under section 18 are in addition to the requirements under the Act.

(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 therefore 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 designated trade repository are set out in section 19.

Features of framework

A designated 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 designated trade repository. A designated 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 designated 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 designated trade repository's personnel responsible for implementing them.

Maintaining a framework

A designated trade repository should regularly review the material risks it bears from, and poses to, other entities (such as other FMI, 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 designated trade repository to manage its general business risk appropriately. General business risk includes any potential impairment of the designated 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 designated trade repository.

(2) For the purposes of subsection 20(2), the amount of liquid net assets funded by equity that a designated 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 Committee is of the view that a designated 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 designated 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 designated 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 designated 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 designated trade repository's critical operations and services, and a description of the measures needed to implement the key strategies. The designated 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 designated 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 designated 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 designated trade repository should review, audit, and test systems, operational policies, procedures, and controls, periodically and after any significant changes; and
- a designated 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 designated trade repository should clearly define the roles and responsibilities for addressing operational risk and approve the designated trade repository's operational risk-management framework.

(3) Paragraph 21(3)(a) requires a designated 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 designated 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 designated 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 designated 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 designated trade repository to notify the [applicable local securities regulator] of any material systems failure. The Committee would consider a failure, malfunction, delay or other disruptive incident to be "material" if the designated trade repository would in the normal course of its operations escalate the matter to or inform its senior management responsible for technology or it would have an impact on users. The Committee also expects that, as part of this notification, the designated 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 designated trade repository establish, implement, maintain and enforce business continuity plans, including disaster recovery plans. The Committee believes that these plans are intended to provide continuous and undisrupted service as backup systems ideally should commence processing immediately. Where a disruption is unavoidable, a designated trade repository is expected to provide prompt recovery of operations, meaning that it resume 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 designated trade repository to test its business continuity plans periodically, and at least once a year. The expectation is that the designated trade repository would engage relevant industry participants, as necessary, in tests of its business continuity plans.

(6) Subsection 21(6) requires a designated 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 company or a group of persons or companies 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 designated trade repository should notify the [applicable local securities regulator].

(8) Subsection 21(8) requires a designated trade repository to make its technology requirements regarding interfacing with or accessing the designated trade repository publicly available in their final form for at least 3 months. If there are material changes to these requirements after they are made publicly available and before operations begin, the revised requirements should be made publicly available for a new 3 month period prior to operations. An operating designated trade repository should make its technology specifications publicly available for at least 3 months before implementing a material change to its technology requirements.

(9) Subsections 21(9) and (10) require a designated 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 designated 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 designated trade repository must make a change to its technology requirements regarding interfacing with or accessing the designated 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 [applicable local securities regulator] 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 designated trade repository must put in place policies and procedures to ensure the safety and confidentiality of derivatives data to be reported to it under the TR Rule. The policies must include limitations on access to confidential trade repository data and standards to safeguard against persons and companies affiliated with the designated trade repository using trade repository data for their personal benefit or the benefit of others.

(2) Subsection 22(2) prohibits a designated 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 users of the designated trade repository have some measure of control over their derivatives data.

Confirmation of data and information

23. Section 23 requires a designated trade repository to confirm derivatives data with each counterparty to a reported transaction. Pursuant to section 25, only one counterparty is required to report a transaction. The purpose of the confirmation requirement in section 23 is to ensure that the reported information is agreed to by both counterparties. Similar to the reporting obligations in section 25, confirmation under section 23 can be delegated to a third-party representative.

Outsourcing

24. (1) Section 24 sets out requirements applicable to a designated trade repository that outsources any of its key services or systems to a service provider. Generally, a designated 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 designated trade repository to continue to comply with securities legislation in the event of the bankruptcy, insolvency or termination of business of the service provider. A designated 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 designated trade repository. A designated 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 reference to the subsection 25(2), prior to the reporting rules in Part 3 coming into force, the [applicable local securities regulator] will provide public guidance on how reports for derivatives that are not accepted for reporting by any designated trade repository should be electronically submitted to the [applicable local securities regulator].

(3) The Committee 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 reported to a designated trade repository, it 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 designated trade repository in accordance with subsection 25(3). The Committee 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 same designated trade repository or [applicable local securities regulator] to which the initial report is submitted. The purpose of this requirement is to ensure the [applicable local securities regulator] 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 designated trade repository, all data relevant to that transaction should be reported to another designated trade repository as otherwise required by the TR Rule.

Pre-existing derivatives

26. (1) Subsection 26(1) requires that pre-existing transactions, that have not expired or been terminated before the reporting obligations set out in the TR Rule come into effect, be reported to a designated trade repository. Transactions which terminate or expire prior to the reporting obligations coming into force will not be required to be reported. Further, pursuant to subsection 41(4), transactions that expire or terminate within 365 days of Part 3 coming into force, will not be required to be reported. These transactions are exempted from the reporting obligations to relieve some of the reporting burden for market participants and because they would provide marginal utility to the [applicable local securities regulator] due to their imminent termination or expiry.

Reporting counterparty

27. The terms “derivative” and “dealer” are both defined in the Act and the term “derivatives dealer” takes its meaning from the combination of these definitions. Reporting obligations on derivatives dealers apply irrespective of whether the derivatives dealer is a registrant.

(1) Under paragraph 27(1)(b), if the counterparties are unable to come to an agreement on who should report the transaction, then both counterparties must act as reporting counterparty. However, it is the Committee’s view that one counterparty to every transaction should accept the reporting obligations 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 in its reporting duties, the local counterparty must act as the reporting counterparty. The Committee is of the view that non-local counterparties that are derivatives dealers should assume the reporting obligations for non-dealer counterparties. However, to the extent that non-local counterparties are not subject to reporting obligations under the TR Rules, it is necessary to apply 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, including future requirements such as valuation reporting and the reporting of life-cycle events, are fulfilled.

(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, for cleared transactions, some or all of the reporting obligations may be delegated to the clearing agency. However, the local counterparty remains responsible for ensuring that reporting of derivatives data is done accurately and within the required timeframes under the TR Rule.

Real-time reporting

28. (1) Subsection 28(1) requires that reporting be done 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 “technologically practicable”, the [applicable local securities regulator] will take into account the prevalence of implementation and use of technology by comparable market participants located in Canada and foreign jurisdictions. The [applicable local securities regulator] 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 market participants will have the same technological capabilities. For example, market participants 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. There is an outside limit of the end of the business day following the execution of the transaction to be reported in all cases.

Legal entity identifiers

30. Section 30 requires that all counterparties to transactions be identified by a legal entity identifier. It is envisioned that this identifier be a Legal Entity Identifier (LEI) from the Global LEI System. The Global LEI System is a G20 endorsed initiative⁷ which will uniquely identify parties to transactions. It is currently being designed and implemented under the direction of the Financial Stability Board (FSB) with the proposed launch date of March 2013.

(2) The “Global Legal Entity Identifier System” referred to in subsection 30(2) means the G20 endorsed system which will serve as a public-good utility responsible for overseeing the issuance of legal entity identifiers globally to counterparties who enter into transactions.

(3) While it is anticipated that the Global LEI System will be operational in March 2013, if it is not available at the time counterparties are required to report their legal entity identifier under the TR Rule, they must use a substitute legal entity identifier. The substitute legal entity identifier must be in accordance with the standards established by the FSB 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. It is conceivable that the two identifiers could be identical.

Unique transaction identifier

31. (1) The unique transaction identifier will be supplied by the designated trade repositories to which the transaction has been submitted. The designated trade repository must ensure that no other transaction shares a similar identifier. There is currently no internationally accepted system of unique transaction identifiers available. The Committee anticipates that if such a system is developed, then unique transaction identifiers will be assigned in accordance with that system.

(2) A transaction in this context means a transaction from the perspective of all its counterparties. For example, both counterparties to a single swap transaction would identify the transaction by the same single identifier.

Unique product identifier

32. Section 32 requires that each transaction that is subject to the reporting obligation under the TR Rule be assigned a unique product identifier. There is currently no system of unique product identifiers available but work is ongoing by industry participants to develop a system of product taxonomy which could be used for this purpose.⁸

Until a standard for uniquely identifying products is available and acceptable to the Committee, no unique product identifier is required to be reported.

Valuation data

35. (1) Subsection 35(1) requires that valuation data for a transaction that is cleared must be reported at the end of each business day. A transaction is considered to be “cleared” where it has been novated to a central counterparty.

The reporting counterparty, as described in subsection 27(4), may delegate the reporting of valuation data to a third party, but ultimately remains responsible for ensuring the timely and accurate reporting of this data. It is contemplated that the reporting counterparty may delegate the reporting of valuation data for cleared transactions to the central counterparty with which the transaction has been cleared.

(2) For transactions which are not cleared, valuation must be reported quarterly under paragraph 35(2)(b). In all cases, as per subsection 27(4) reporting of valuation data may be delegated to a third party. This is the case even if the reporting counterparty has assumed all other reporting obligations.

⁷ See http://www.financialstabilityboard.org/list/fsb_publications/tid_156/index.htm for more information.

⁸ See <http://www2.isda.org/identifiers-and-otc-taxonomies/> for more information.

PART 4 DATA DISSEMINATION AND ACCESS TO DATA

Data available to regulators

37. (1) Subsections 37(1) and (2) require designated trade repositories to (at no cost to the [applicable local securities regulator]): (i) provide to the [applicable local securities regulator] continuous and timely electronic access to derivatives data; (ii) promptly fulfill ad hoc data requests from the [applicable local securities regulator]; and (iii) provide aggregate derivatives data. Electronic access includes the ability of the [applicable local securities regulator] to access, download, or receive a direct real-time feed of derivatives data maintained by the designated trade repository.

The derivatives data covered by these subsections is data necessary to carry out the [applicable local securities regulator's] mandate to protect derivative market participants from unfair, improper or fraudulent practice, to foster confidence in and fair and efficient capital markets, and to address systemic risk. This includes derivatives data with respect to any transaction or transactions that may impact the provincial market.

Transactions that reference an underlying asset or class of assets with a nexus to [Province x] or Canada can impact the provincial market even if the counterparties to the transaction are not local counterparties. Therefore, the [applicable local securities regulator] has a regulatory interest in transactions involving such underlying interests even if such data is not submitted pursuant to the reporting provisions in the TR Rule but is held by a designated trade repository.

(3) Subsection 37(3) requires designated trade repositories 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 in a report entitled "*Authorities' access to TR data*". It is expected that all designated trade repositories will comply with the access recommendations in the final report.

Data available to counterparties

38. Section 38 is intended to ensure that each counterparty, and persons acting on behalf of counterparties, have access to all data relating to their transaction for the entire duration of their transactions.

Data available to public

39. (1) Subsection 39(1) requires designated trade repositories to make available to the public free of charge certain aggregate data for all transactions reported to it under the TR Rule (including open positions, volume, number of transactions and price). It is expected that a designated trade repository will provide aggregate derivatives data by notional amounts outstanding and level of activity. Such data is anticipated to be available on the designated trade repository's website.

(2) Subsection 39(2) requires that the aggregated data disclosed under subsection 39(1), be broken down into various categories. The following are examples of the aggregated 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., the United States for derivatives which reference the S&P 500 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) Under subsection 39(3), the timing for public reporting of the principal economic terms of a transaction where at least one counterparty is a derivatives dealer is within one day. For transactions where neither counterparty is a derivatives dealer, the principal economic terms must be reported within 2 days of receipt of the derivatives data by the designated trade repository. The purpose of the public reporting delays is to ensure that market participants have adequate time to enter into any offsetting transaction necessary to hedge their positions. These time delays apply to all transactions, regardless of transaction size.

(4) Subsection 39(4) provides that a designated 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 designated trade repository to determine whether anonymized published data could reveal the identity of a counterparty based on the terms of the transaction.

PART 5 EXEMPTIONS

Exemptions

40. (2) Subsection 40(2) provides a reporting exemption for physical commodity transaction in certain limited circumstances. This exemption only applies if a local counterparty to a transaction has less than \$500 000 aggregate notional value under all outstanding derivatives contracts 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. Any counterparty that is above the \$500 000 threshold would be required to act as reporting counterparty for a transaction involving a party exempt from the requirement to report pursuant to 40(2).

This exemption applies to physical commodity transactions that are not excluded from reporting requirements pursuant to subsection 2(d) of Model Rule – *Derivatives: Product Determination*. An example of a physical commodity transaction that would be required to be reported (and therefore could benefit from this exemption) would be a physical commodity contract that allowed for cash settlement in the place of physical delivery.

Although a party that qualifies for exemption under subsection 40(2) is not required to report derivatives data to a designated trade repository, other provisions of the TR Rule may apply to such a party. For example, the obligation under subsection 36(1) for each counterparty to a transaction to keep, and make available to the [applicable local securities regulator] when requested any derivatives data will continue to apply notwithstanding the exemption under subsection 40(2).

PART 6 EFFECTIVE DATE

Effective date

41. (1) Pursuant to subsection 41(1) the provisions of the TR Rule applicable to designated trade repositories come into force 15 days after the TR Rule is approved by the Minister.

(2) Reporting obligations for derivatives dealers come into force 6 months after the provisions applicable to derivatives dealers.

(3) For non-derivatives dealers, subsection 41(3) provides that no reporting is required until 9 months after the provisions of the TR Rule applicable to designated trade repositories come into force.

(4) For pre-existing transactions that terminate or expire within 365 days of the reporting obligation coming into force, subsection 41(3) provides that no reporting is required.