Draft Regulation 91-506 respecting Derivatives Determination

Draft Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting

Derivatives Act
(chapter I-14.01, s. 175, par. (2), (3), (7), (9), (12), (26), (27) and (29))

Notice is hereby given by the *Autorité des marchés financiers* (the "Authority") that, in accordance with section 175 of the *Derivatives Act* (chapter I-14.01) (the "QDA"), the following Regulations, the texts of which are published hereunder, may be made by the Authority and subsequently submitted to the Minister of Finance for approval, with or without amendment, after 90 days have elapsed since their publication in the Bulletin of the Authority:

- *Regulation 91-506 respecting Derivatives Determination* ("Regulation 91-506");

- *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* ("Regulation 91-507").

Collectively, the "Draft Regulations".

Draft of the following policy statements are also published hereunder:

- *Policy Statement to Regulation 91-506 respecting Derivatives Determination* (Policy Statement 91-506);

- *Policy Statement to Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* (Policy Statement 91-507).

Background

On December 6, 2012, the Canada Securities Administrators Derivatives Committee (the "Committee") published *CSA Staff Consultation Paper 91-301 Model Provincial Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting* (the "Draft Model Rules"). The Committee invited public comment on all aspects of the Draft Model Rules. Thirty-five comment letters were received. A chart summarizing the comments received and the Committee's responses to them is attached at Appendix A to this Notice. Copies of the comment letters are posted at **www.lautorite.qc.ca**.

The Committee has reviewed the comments received and made final determinations on revisions to the Draft Model Rules (the "Updated Model Rules"). It is the intention of the Committee that each province will develop harmonized province-specific rules based on the Updated Model Rules, with minor variations to accommodate differences in provincial securities or derivatives legislation.

The Draft Regulations represent Québec's province-specific regulations which are based on the Updated Model Rules.

Provinces which are not in a position to publish province-specific rules because legislative amendments must first be implemented will publish a Multilateral Staff Notice and the Updated Model Rules[i]. The comment period for this publication will align with the comment periods for the Draft Regulations and other province-specific rules.

The Committee will review all comment letters on the Updated Model Rules, the Draft Regulations and other province-specific rules and will make any determinations on changes to the Updated Model Rules at a Committee level. Upon reaching agreement on changes to the Updated Model Rules, each province will publish substantially similar final province-specific rules.

Regulation 91-506 and Policy Statement 91-506

The purpose of Regulation 91-506 is to define the types of derivatives that will be subject to reporting requirements under Regulation 91-507, and it will initially only apply for the purposes of Regulation 91-507. The excluded contracts or instruments are contracts or instruments that have not traditionally been considered to be over-the-counter derivatives.

The QDA governs both over-the-counter and exchange-traded derivatives. The treatment of certain contracts or instruments prescribed by the Updated Model Rule **–** *Derivatives Product Determination*, attached at Appendix B of this Notice, has already been implemented under the QDA. As such, the Authority does not propose the adoption of some sections of that Updated Model Rule in Regulation 91-506 because these sections are already covered by or excluded from the QDA or the *Securities Act* (chapter V-1.1) (the "QSA").

The following is a list of the provisions that will not be adopted and the corresponding QDA or QSA provisions:

Updated Model Rule - Derivatives Product Determination	**QDA or QSA**
Insurance or annuity contracts adequately regulated by a domestic regulatory regime – subparagraph 2(b)(i)	This subparagraph is already covered by paragraph 6(3) of the QDA.
Evidence of a deposit – paragraphs 2(e) and (f)	Deposits are securities under the QSA - see paragraph 1(3) and would most certainly be predominantly a security according to section 4 of the QDA.
Investment contracts – section 3	This section is already covered by paragraph 6(2) of the QDA.
Hybrid products – section 4	This section is already addressed by the hybrid test under section 4 of the QDA.
Listed issuer compensation products – section 5	This section is already covered by paragraph 6(4) of the QDA.

Regulation 91-507 and Policy Statement 91-507

The purpose of this Regulation is to improve transparency in the derivatives market and to ensure that recognized trade repositories operate in a manner that promotes the public interest. Derivatives data is essential for effective regulatory oversight of the derivatives market, including the ability to identify and address systemic risk and the risk of market abuse. Derivatives data reported to recognized trade repositories will also support policy-making by providing regulators with information on the nature and characteristics of the Canadian derivatives market.

Regulation 91-507 is divided into two areas (i) regulation and oversight of trade repositories, including the recognition process, data access and dissemination, and operational requirements, and (ii) derivatives data reporting requirements by counterparties to derivatives transactions.

(i) Regulation of trade repositories

To obtain and maintain recognition as a trade repository, a person or entity must apply to the Authority for recognition and must comply with the filing and recognized trade repository requirements set out in Regulation 91-507, as well as any condition determined by the Authority in its recognition order.

(ii) Reporting Requirement

All derivatives transactions involving a local counterparty are required to be reported to a recognized trade repository or to the Authority. Regulation 91-507 sets out the hierarchy for determining which counterparty will be required to report a transaction.

In terms of timing, reporting is required to be completed on a real-time basis. However, where it is not technologically possible to do so, the reporting counterparty must report as soon as possible but not later than the end of the next business day following the day that the transaction was entered into. Transactions that were entered into prior to the coming into force of Regulation 91-507 will be required to be reported provided unless they expire or terminate 365 days after Regulation 91-507 comes into force.

Three main types of data must be reported under Regulation 91-507 (i) creation data which includes operational data, product information, principle economic terms, counterparty information and underlier information (see Appendix A to Regulation 91-507 for more details), (ii) lifecycle data which includes any change to derivatives data previously reported, and (iii) valuation data which includes the current value of a transaction.

Please note that Policy Statement 91-507 does not provide guidance on Appendix A to Regulation 91-507. Guidance for Appendix A to Regulation 91-507 is included in the Description column of the reporting fields in the Appendix itself.

Request for comment

Comments regarding the above may be provided in hard copy or electronic form by **September 6, 2013**, to the following:

M^{e} Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^{e} étage
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Fax: (514) 864-6381
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The Authority will publish all responses received on its website (www.lautorite.qc.ca)

Further information

Further information is available from:

Derek West
Senior Director, Derivatives Oversight
Autorité des marchés financiers
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June 6, 2013

[i] The provincial authorities involved will be the Alberta Securities Commission, the British Columbia Securities Commission, the New Brunswick Securities Commission, the Nova Scotia Securities Commission and the Financial and Consumer Affairs Authority of Saskatchewan.

APPENDIX A

COMMENT SUMMARY AND CSA RESPONSES

1. The Scope Regulation

Section Reference	Issue/Comment	Response
General Comments	Two commenters urged the Committee to expressly provide that exchange-traded derivatives are excluded from the definition of "derivative".	Change made. See new para. 2(g) of the Scope Regulation which excludes a derivative traded on certain prescribed exchanges from the definition of "derivative". We note this change was necessary in Ontario because although commodity futures contracts and commodity futures options are excluded from the definition of "derivative" in the *Securities Act* (Ontario), other types of exchange-traded derivatives exist. Such exchange-traded derivatives will not be characterized as "derivatives" as a consequence of the application of para. 2(g) of the Scope Regulation.
	One commenter suggested that repurchase transactions or reverse repurchase transactions should be explicitly excluded from the definition of "derivative".	No change. We believe an explicit exclusion for repurchase transactions or reverse repurchase transactions is unnecessary and would cause confusion because these products are not typically considered to be derivatives in the marketplace.
Para. 2(a) – Gaming	Three commenters expressed concern that gaming contracts not regulated by gaming control legislation in Canada should be explicitly excluded from the definition of "derivative".	Change made. See new subpara. 2(a)(ii) of the Scope Regulation which provides that gaming contracts or instruments regulated by gaming control legislation of a foreign jurisdiction will be excluded from the definition of "derivative" if the contract was entered into outside Canada, is not in violation of Canadian law and would be regulated under Canadian gaming control legislation if it had been entered into in Canada.
Para. 2(b) – Insurance	Five commenters pointed out that in certain situations Canadian entities may enter into an insurance or annuity contract with a foreign insurer not licensed in Canada. For example, a Canadian entity may enter into an insurance contract with a foreign insurer to insure a risk outside of Canada. Commenters suggested that certain insurance contracts issued by foreign insurers should be explicitly excluded from the definition of "derivative".	Change made. See new subpara. 2(b)(ii) of the Scope Regulation which provides that insurance or annuity contracts entered into with an insurer licensed in a jurisdiction outside of Canada will be excluded from the definition of "derivative" if the insurance or annuity contract would be regulated as insurance under Canadian insurance legislation if it had been entered into in Canada.
	Two commenters requested additional clarification that reinsurance will not be treated as a derivative.	Change made. Additional clarification has been added to the Scope Policy Statement which provides that, to the extent that

Section Reference	Issue/Comment	Response
		reinsurance falls within the exemption in para. 2(b) of the Scope Regulation, it will be treated as an insurance or annuity contract under that paragraph.
Para. 2(c) – FX Spot Transactions	Three commenters suggested that the Scope Regulation should exclude from the definition of "derivative" all deliverable foreign exchange forward contracts provided that there is an intention to physically deliver.	No change. We believe that deliverable foreign exchange forward transactions that are not settled within the timelines prescribed in subpara. 2(c)(i) should be treated as derivatives under the Scope Regulation for the purposes of trade reporting. We note that the United States and Europe are similarly requiring the reporting of deliverable foreign exchange forward transactions. We intend to revisit the treatment of deliverable foreign exchange forward transactions for other derivatives regulatory requirements such as clearing and margin requirements.
	One commenter suggested that non-deliverable foreign exchange forward transactions be excluded from the definition of "derivative".	No change. Our view is that non-deliverable foreign exchange forward transactions should be treated as a "derivative".
	A number of commenters pointed out that in certain situations foreign exchange transactions are entered into in order to hedge foreign currency risk in connection with the purchase of equity securities. Typically, the settlement cycle for most non-US denominated securities is trade date plus three days. The commenters were concerned that the current two day settlement requirement under subpara. 2(c)(i) of the Scope Regulation would prevent these transactions from being excluded for the definition of "derivative".	Change made. See new clause 2(c)(i)(B) of the Scope Regulation which allows for settlement of deliverable foreign exchange forward transactions after two days provided such settlement coincides with the settlement of a related securities trade denominated in the underlying currency.
Para. 2(d) – Non-Financial Commodities	A number of commenters raised concerns with the term "physical commodity". Two commenters questioned whether intangible products (such as carbon offset credits, environmental attributes and biofuel components) will be treated as physical commodities.	Change made. See amendment to para. 2(d) of the Scope Regulation which removes the term "physical commodity" and replaces it with the phrase "commodity other than cash or currency". The corresponding guidance in the Scope Policy Statement also specifies that intangible commodities such as carbon credits and emission allowances will be considered to be non-financial commodities.
	A number of commenters raised concern regarding the requirement under subpara. 2(d)(ii) of the Scope Regulation that, in order to be excluded from the definition of "derivative", amongst other things, physical commodity contracts must not	Change made. See amended para. 2(d) and accompanying guidance in the Scope Policy Statement which permits cash settlement where physical settlement is rendered impossible or commercially unreasonable as a result of events not reasonably

Section Reference	Issue/Comment	Response
	allow for cash settlement in place of physical delivery. Commenters provided a number of examples of current transactions terms and market practices that permit some form of cash delivery in lieu of physical settlement, including: • A number of commenters pointed out that parties to physical commodity forward transactions commonly enter into book-out transactions. A book-out transaction is a subsequent, separately negotiated agreement whereby the purchaser under the original agreement sells some or all of the commodity back to the same counterparty or a third-party. The commenters raised concerns that these transactions may result in physical commodity transactions being improperly classified as "derivatives" as they would be considered to be cash settled under subpara. 2(d)(ii). • Two commenters expressed concern that netting arrangements may result in physical commodity transactions being improperly classified as "derivatives" as they would be considered to be cash settled under subpara. 2(d)(ii). The commenters pointed out these arrangements are standard industry practice and allow counterparties with offsetting delivery obligations to deliver just the net amount of commodity obligated to be transferred between the counterparties. • One commenter noted that standard industry contracts such as Gas Electronic Data Interchange Base Contract for Sale and Purchase of Natural Gas and North American Energy Standards Board Base Contract for the Purchase and Sale of Natural Gas contemplate cash settlement in place of physical delivery for reasons other than breach of contract, termination, or impossibility of delivery. • Four commenters pointed out that the Scope Regulation does not discuss contracts having an optional-pricing component, such as contracts which include floor or ceiling pricing provisions. These commenters were concerned that using optional-pricing may result in the contract being considered to be cash settled and treated as a "derivative". • One commenter requested clarification as to whether power	within the control of the parties. Additional guidance has also been provided in the Scope Policy Statement outlining our position on the intention requirement in subpara. 2(d)(i). We take the view that a netting provision will not, in and of itself, be evidence of an intention not to settle by delivering the relevant commodity.

Section Reference	Issue/Comment	Response
	purchase agreements will be treated as derivatives under the Scope Regulation. As power purchase agreements may include a take or pay option which in the event that the utility decides to not take full delivery of electricity there may be a requirement to compensate the producer for lost revenue due to reduced production.	
Para. 2(d) – Physically Settled Commodity Transactions	One commenter requested that transactions between provincially-owned utility companies and the Province owning such utility company should be excluded from the definition of "derivative".	No change. The Scope Regulation has not been amended to deal specifically with these types of transactions although exemptions may be considered on a case-by-case basis.

2. The TR Regulation

Section Reference	Issue/Comment	Response
General Comments	One commenter suggested that there should be an explicit recognition that trade repositories and other service providers may not "tie" or "bundle" mandatory services with the trade repository function. It was argued that bundling of a mandated service with other mandated or ancillary services will only serve to limit reporting party choice and potentially result in data fragmentation as data is sent to multiple repositories complicating the ability of regulators or the public to get a comprehensive view of the market or a single firm's exposures in any one place.	Change made. See new para. 13(2)(d) of the TR Regulation which provides that designated trade repositories will not require the use or purchase of another services for a person to utilize the trade reporting service.
	A number of commenters suggested that the TR Regulation should address the extent to which reporting derivatives data pursuant to foreign regulations would satisfy the reporting requirements under the TR Regulation. They argued that such "substituted compliance" should be allowed as long as the foreign jurisdiction has a reporting regime substantially similar to the reporting regime in the "home Province".	We agree that where a transaction has been reported to a designated trade repository pursuant to the regulations of an equivalent jurisdiction, an exemption from reporting under the TR Regulation will be considered where the foreign report contains all of the information otherwise required to be reported under the TR Regulation. Such situations will be considered on a case-by-case basis under the exemption power in s. 41 of the TR Regulation or any other applicable provision under securities or derivatives legislation.
	Two commenters suggested that a system of reciprocity or recognition be developed to allow for a Trade Repository that is	No change. This issue is outside of the scope of the TR Regulation.

Section Reference	Issue/Comment	Response
	designated in any province to be automatically deemed designated in all provinces – "passport system". It was suggested that a principal regulator model should be implemented, similar to that used to determine a principal regulator for registrants and for reporting issuers.	
S. 1 "Local Counterparty"	A number of commenters raised concerns that the definition of "local counterparty" is too broad and has extra-territorial implications. Particular concern was raised that paras. (c), (d), (e) and (f) may capture transactions where there is either no or insufficient connection to Canada.	Change made. See amended definition of "local counterparty" in subsection 1(1) of the TR Regulation. The amended definition includes parties to a transaction where (a) the party is a person, other than an individual, organized under the laws of Québec or that has its head office or principal place of business in Québec, (b) the party is registered as a dealer or subject to regulations providing that a person trading in derivatives must be registered in a category of registration prescribed by the regulations, or (c) the party is an affiliate of a person described in paragraph (a) or (b), and such person is responsible for the liabilities of that affiliated party.
S. 2 – Initial filing and designation	One commenter suggested that the requirement that the applicable local securities regulator have access to the trade repository's books and records should be limited to matters that directly fall within the regulatory ambit of the local regulator.	Change made. The requirement to provide access to the trade repository's books and records is intended to be limited to matters that directly fall within the regulatory ambit of the local regulator. See amendment to s. 5 of Exhibit A of Form F1 which removes the requirement that an applicant obtain a legal counsel opinion stating that the trade repository will be able to provide prompt access to "data that is required to be reported to the trade repository".
	One commenter suggested that to provide greater legal certainty there should be more precise wording in para. 2(3)(b) to require applicants located outside of a province to certify that it "has the power and authority", not just "is able", to provide access to the regulator of its books and records.	Change made. See amendment made to subsection 2(3) and the certificate in Form F1. The phrase "is able" is replaced by "has the power and authority".
S. 3 – Change in Information	One commenter argued that the requirement to provide 45 days' advance notice of a significant change to Form F1 information is too onerous and in practice will be difficult to comply with.	No change. We believe that 45 days prior notice of significant changes is necessary in order for the Authority to address any potential concerns that may arise with such changes.
S. 23 – Confirmation of Data and Information	Three commenters supported the position that where a transaction is cleared through a clearing agency or traded on an exchange such clearing agency or exchange should be required to confirm the accuracy of any data required to be submitted to a	Change made. See new subsection 23(2) of the TR Regulation which provides that a designated trade repository will only be required to confirm the accuracy of derivatives data with counterparties that are participants of the designated trade

Section Reference	Issue/Comment	Response
	trade repository. One commenter suggested that there be no confirmation requirement where derivatives data is reported by a clearing agency or exchange. Two commenters pointed out that placing an obligation on the trade repository to confirm data without placing a corresponding obligation on counterparties to provide such data would make it very difficult for a trade repository to fulfill its obligation. Two commenters took the position that requiring both counterparties to confirm the accuracy of derivatives data placed an unnecessary administrative and compliance burden on end-users.	repository. Since clearing agencies, exchanges and dealers that will report derivatives data to a designated trade repository will be required to be participants of such designated trade repository, they will be required to confirm derivatives data. The designated trade repository will only be obligated to confirm the accuracy of derivatives data with an end-user if the end-user is a participant of the trade repository.
S. 25 – Duty to Report	Three commenters took the position that requiring end-users or non-dealer counterparties to report derivatives data is overly burdensome. Commenters pointed to the fact that dealers will have systems in place for such reporting while end-users will bear substantial costs to develop such expertise and logistic capabilities.	No change. We agree that dealers are in a better position to report transactions than end-users. However, in situations where the dealer is foreign, the Authority may not have jurisdiction over such an entity. As such, the ultimate reporting obligation must fall on a local counterparty. Where a transaction is between two end-users it would be expected that at least one of the counterparties would have reporting capabilities.
S. 26 – Pre-existing Derivatives Data	A number of commenters raised concerns that the requirement to report derivatives data for pre-existing transactions will be problematic since not all information will be readily available to counterparties (for example, counterparties will not likely have in their possession certain creation data).	Change made. The fields required to be reported for pre-existing transactions have been reduced. See column entitled "Required for Pre-existing Transactions" in Appendix A.
	One commenter pointed out that certain pre-existing transactions involving local-counterparties will have already been reported in the United States. They argued that it would be inefficient and costly to re-report such transactions or to require that additional information be provided for transactions which have already been reported.	We agree that where a transaction has been reported to a designated trade repository pursuant to the regulations of an equivalent jurisdiction, an exemption from reporting under the TR Regulation should be considered when the foreign report contains all of the information otherwise required to be reported under the TR Regulation. Such situations will be considered on a case-by-case basis under the exemption power in s. 41 of the TR Regulation or any other applicable provision under securities or derivatives legislation.
S. 27 – Reporting Counterparty	A number of commenters supported the position that where a transaction is cleared through a clearing agency, such clearing agency should be required to report any data required to be submitted to a trade repository.	Change made. See new para. 27(1)(a) of the TR Regulation which provides that where a transaction is cleared, the clearing agency will be responsible for reporting derivatives data.

Section Reference	Issue/Comment	Response
	Four commenters requested that the term "derivatives dealer" be defined in the TR Regulation.	Change made. See new definition for "dealer" under subsection 1(1) which specifies that a "dealer" means a person engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives as a principal or agent.
S. 28 – Real-time Reporting	Three commenters suggested that it would be very difficult and costly for end-users to comply with a real-time reporting requirement. It was suggested that additional time be given for end-users reporting derivatives data.	No change. We note that the TR Regulation and the accompanying TR Policy Statement already provides for a delay where reporting in real time is not technologically practicable.
	One commenter noted that the TR Regulation does not contemplate circumstances where the trade repository ceases its operations or stops accepting data for a certain product. It was suggested that in such circumstances the TR Regulation should allow a reporting counterparty a reasonable period of time to transition to another trade repository without contravening the timing requirements under s. 28 of the TR Regulation provided that the reporting counterparty provides a copy of any notice it receives from the trade repository informing parties that it will be ceasing operations or stop accepting data for a certain product.	Change made. See amendment to subsection 28(3) of the TR Regulation.
S. 30 – Legal Entity Identifier	Two commenters suggested that if the Global Legal Entity Identifier System is unavailable when the TR Regulation comes into force other existing industry identifiers should be permitted to be used as a substitute pursuant to para. 30(3)(a) of the TR Regulation (for example, CFTC Interim Compliant Identifiers, Bank Identifier Codes, etc.)	Change made. See amendments to subsection 30(3) of the TR Regulation which allows for the use of substitute legal entity identifiers provided they comply with the standards established by the LEI Regulatory Oversight Committee for pre-LEI identifiers. Substitute legal entity identifiers which adhere to the requirements set by the LEI Regulatory Oversight Committee will in all likelihood convert to legal entity identifiers in their same form and will avoid the need for extensive mapping exercises.
S. 31 – Unique Transaction Identifier	Two commenters noted that unique transaction identifiers are commonly created by clearing agencies and exchanges. It was suggested that the TR Regulation be amended to take into account such market practices.	Change made. See amendments to subsection 31(2) of the TR Regulation which permits the use of unique transaction identifiers previously assigned by a clearing agency or an exchange.

Section Reference	Issue/Comment	Response
S. 34 – Life-cycle Data	Two commenters suggested that reporting counterparties be given the option of reporting life-cycle events through an end-of-day snapshot data report. Under this approach, lifecycle events that occur during the day would be aggregated to show the final position at the end of the day.	Change made. See amendments to s. 34 of the TR Regulation which permits the reporting of life-cycle data at the end of the business day that such life-cycle event occurred.
S. 35 – Valuation Data	Two commenters suggested that the TR Regulation should expressly provide that valuation data should be reported using the most current daily mark available. They noted that it is market standard that valuations of transactions are performed overnight and accordingly, the valuation data for a transaction will be first reported on the business day following the transaction date.	Change made. See amendment to para. 35(2)(a) of the TR Regulation which requires the reporting of valuation data daily using industry accepted valuation standards and relevant closing market data from the previous trading day.
	One commenter pointed out that para. 35(2)(a) requires valuation data reporting by "each local counterparty if that counterparty is a derivatives dealer". Where both parties are dealers, this paragraph would seem to unnecessarily obligate both of them to do the reporting, despite an arrangement between them that one would be the reporting counterparty. It was recommended that the wording be changed such that the reporting is done by the reporting counterparty where at least one of the counterparties is a dealer.	No change. Having two derivative dealers report valuation data is useful from a regulatory perspective as it allows for the relevant authority to have access to two valuation data points for the same transaction.
S. 36 – Record of Data Reported	A number of commenters requested that the 7 year retention period be lowered to 5 years in order to comply with international practice.	No change. The seven year retention period is common practice in Canada and is in line with timing requirements under the *Limitations Act 2002* (Ontario).
	Three commenters cautioned that it would be overly burdensome for local counterparties to retain all transaction records particularly where they are not acting as reporting counterparty.	Change made. See amendments to subsection 36(1) of the TR Regulation which only requires the reporting counterparty to keep records in relation to a transaction. The non-reporting counterparty has no obligation to retain any transaction records.
	Two commenters suggested that clarification is needed with respect to what is required to be retained – whether it is simply whatever records a local counterparty has relating to the transaction, or whether it is all the information that has been reported to the trade repository under the TR Regulation.	Change made. See amendment to subsection 36(1) of the TR Regulation which requires the reporting counterparty to keep records of a transaction.
S. 37 – Data available to Regulators	One commenter pointed out that a number of foreign jurisdictions place restrictions on the counterparty details that	No change. We note that this issue is currently being addressed at the international level. To the extent that a reporting

Section Reference	Issue/Comment	Response
	may be reported to a trade repository under local data protection and confidentiality laws. It was suggested that either (1) the reporting obligations be exempt where such conflicts exist or (2) reporting counterparties be permitted to mask confidential data in their reports where necessary.	counterparty encounters obstacles complying with the TR Regulation as a result of foreign confidentiality laws, exemptions may be available on a case-by-case basis under the exemption power in s. 41 of the TR Regulation or any other applicable provision under securities or derivatives legislation.
S. 38 – Data available to Counterparties	Two commenters pointed out that the consent provided under subsection 38(3) is limited to the release by the trade repository to counterparties to the transaction of the data relevant to that transaction only. The consent does not cover the initial disclosure by a counterparty to the transaction under its obligation to report derivatives data to a trade repository under s. 25, disclosure by the trade repository to regulators under s. 37 or disclosure to the public under s. 39.	Change made. See amendment to subsection 38(3) of the TR Regulation which deems consent of a counterparty for all data required under the Regulation.
	One commenter recommended that s. 38 expressly include the imposition of timely requirements of the trade repository to make data available to the transacting counterparties.	Change made. Subsection 38(1) of the TR Regulation has been amended to require timely access to derivatives data by counterparties.
S. 39 – Data available to the Public	Many commenters were concerned that the requirement under subsection 39(3) to publicly provide data regarding the principal economic terms of a transaction does not go far enough to ensure confidentiality and anonymity of the derivatives data.	Change made. The fields required to be publically disseminated have been reduced. See "Required for Public Dissemination" in Appendix A.
	Two commenters suggested that the TR Regulation specify that the trade repository must not publicly disseminate inter-affiliate transaction data.	Change made. See new subsection 39(6) which exempts transactions between affiliates from public reporting. We agree that reporting inter-affiliate transactions may skew pricing information and note that the United States also exempts public reporting of these types of transactions.
	Four commenters questioned how data regarding block trades would be made available to the public. They argued that the current time frame under subsection 39(3) is not enough time in certain circumstances for a party to hedge its position in the market.	No change. The TR Regulation has not been amended to deal specifically with these block trades. Exemptions may be considered on a case-by-case basis under the exemption power in s. 41 of the TR Regulation or any other applicable provision under securities or derivatives legislation.
S. 40 – Exemption	Three commenters pointed out that the term physical commodity transaction is not defined in the TR Regulation and that physical commodity contracts are excluded from the definition of "derivative" under the Scope Regulation. Further guidance was	Change made. See amendment to TR Policy Statement which clarifies that the provision applies to all un-exempted physical commodity transactions.

Section Reference	Issue/Comment	Response
	requested as to what types of physical commodity transactions this exemption applies to.	

3. List of Commenters

1. Alternative Investment Management Association
2. BC Hydro
3. BP Canada Energy Group ULC
4. Canadian Bankers Association
5. Canadian Electricity Association
6. Canadian Life and Health Insurance Association Inc.
7. Canadian Market Infrastructure Committee
8. Canadian Oil Sands Limited
9. Capital Power Corporation
10. Central 1 Credit Union
11. The Depository Trust & Clearing Corporation
12. Deutsche Bank AG, Canada Branch
13. Direct Energy Marketing Limited
14. Encana Corporation
15. Fidelity Investments Canada ULC
16. FIRMA Foreign Exchange Corp.
17. FortisBC Energy Inc.
18. Global Foreign Exchange Division
19. ICE Trade Vault, LLC
20. International Swaps and Derivatives Association, Inc.

21. Investment Industry Association of Canada
22. Just Energy Group Inc.
23. MarkitSERV LLC
24. Mouvement des caisses Desjardins
25. Natural Gas Exchange Inc.
26. Ontario Teachers' Pension Plan
27. Pension Investment Association of Canada
28. RBC Global Asset Management Inc.
29. SaskPower
30. Shell Energy North America (Canada) Inc./Shell Trading Canada
31. State Street Global Advisors, Ltd.
32. Stewart McKelvey
33. Stikeman Elliott LLP
34. Suncor Energy Inc.
35. TransAlta Energy Marketing Corp.

APPENDIX B

MODEL PROVINCIAL RULE
DERIVATIVES: PRODUCT DETERMINATION

Application

1. This Rule applies to Model Provincial Rule – *Trade Repositories and Derivatives Data Reporting*.

Excluded derivatives

2. A contract or instrument is prescribed not to be a derivative if it is

(a) regulated by,

(i) gaming control legislation of Canada or a jurisdiction of Canada, or

(ii) gaming control legislation of a foreign jurisdiction, if the contract or instrument

(A) is entered into outside of Canada,

(B) is not in violation of legislation of Canada or [applicable province], and

(C) would be regulated under gaming control legislation of Canada or [applicable province] if it had been entered into in [applicable province];

(b) an insurance or annuity contract entered into,

(i) with an insurer holding a licence under insurance legislation of Canada or a jurisdiction of Canada and regulated as insurance under that legislation, or

(ii) outside of Canada with an insurer holding a licence under insurance legislation of a foreign jurisdiction, if it would be regulated as insurance under insurance legislation of Canada or [applicable province] if it had been entered into in Canada;

(c) a contract or instrument for the purchase and sale of currency that,

(i) except where all or part delivery of the currency referenced in the contract or instrument is rendered impossible or commercially unreasonable by an intervening event or occurrence not reasonably within the control of the parties, their affiliates or their agents, requires settlement by the delivery of the currency referenced in the contract or instrument,

(A) within two business days, or

(B) after two business days provided that the contract or instrument was entered into contemporaneously with a related security trade and the contract or instrument requires settlement on or before the relevant security trade settlement deadline,

(ii) is intended by the counterparties, at the time of the execution of the transaction, to be settled by the delivery of the currency referenced in the contract within the time periods set out in subparagraph (i), and

(iii) does not allow for the contract or instrument to be rolled over;

(d) a contract or instrument for delivery of a commodity other than cash or currency that,

(i) is intended by the counterparties, at the time of execution of the transaction, to be settled by delivery of the commodity, and

(ii) does not allow for cash settlement in place of delivery except where all or part of the delivery is rendered impossible or commercially unreasonable by an intervening event or occurrence not reasonably within the control of the counterparties, their affiliates, or their agents;

(e) evidence of a deposit issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada), by an association to which the *Cooperative Credit Associations Act* (Canada) applies or by a company to which the *Trust and Loan Companies Act* (Canada) applies;

(f) evidence of a deposit issued by a credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* or a similar statute of Canada or a jurisdiction of Canada (other than Ontario) applies or by a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or a similar statute of a jurisdiction of Canada (other than Ontario); or

(g) traded on an exchange recognized by a securities regulatory authority, an exchange exempt from recognition by a securities regulatory authority or an exchange that is regulated in a foreign jurisdiction by a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding.

Investment contracts and over-the-counter options

3. A contract or instrument, other than a contract or instrument to which section 2 applies, that is a derivative, and that is otherwise a security solely by reason of being an investment contract under paragraph X of the definition of "security" in subsection X [Definitions] of the Act, or being an option described in paragraph X of that definition, that is not described in section 5, is prescribed not to be a security

Derivatives that are securities

4. A contract or instrument, other than a contract or instrument to which any of sections 2 and 3 apply, that is a security and would otherwise a derivative is prescribed not to be a derivative.

Derivatives prescribed to be securities

5. A contract or instrument that is a security and would otherwise be a derivative, other than a contract or instrument to which any of sections 2 to 4 apply, is prescribed not to be a derivative if such contract or instrument is used by an issuer or affiliate of an issuer solely to compensate an employee or service provider or as a financing instrument and whose underlying interest is a share or stock of that issuer or its affiliate.