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POLICY STATEMENT TO REGULATION 91-507 RESPECTING TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

GENERAL COMMENTS

This Policy Statement sets out the views of the Autorité des marchés financiers (the “Authority” or “we”) on various matters relating to Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting (chapter I-14-01, r. 1.1) (the “Regulation”) and related securities and derivatives legislation.

The numbering of Parts, sections and subsections in this Policy Statement generally corresponds to the numbering in the Regulation. Any general guidance for a Part appears immediately after the Part’s name. Any specific guidance on a section or subsection follows any general guidance. If there is no guidance for a Part, section or subsection, the numbering in this Policy Statement will skip to the next provision that does have guidance.

Unless defined in the Regulation or this Policy Statement, terms used in the Regulation and in this Policy Statement have the meaning given to them in the Derivatives Act (chapter I-14.01) (the “Act”), Regulation 14-101 respecting Definitions (chapter V-1.1, r.3) and Regulation 14-501Q respecting Definitions (chapter V-1.1, r.4).

In this Policy Statement,

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

“FMI” means a financial market infrastructure, as described in the PFMI Report,

“Global LEI System” means the Global Legal Entity Identifier System,

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

“LEI” means a legal entity identifier,

“LEI ROC” means the LEI Regulatory Oversight Committee,

“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,¹ and

¹ The PFMI Report is available on the Bank for International Settlements’ website (www.bis.org) and the IOSCO website (www.iosco.org).

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

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

PART 1 DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1. (1) A “life-cycle event” is defined in the Regulation as an event that results in a change to derivatives data previously reported to a recognized trade repository. Where a life-cycle event occurs, the corresponding life-cycle event data must be reported under section 32 of the Regulation by the end of the business day on which the life-cycle event occurs. When reporting a life-cycle event, there is no obligation to re-report derivatives data that has not changed – only new data and changes to previously reported data need to be reported. 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,
- 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),
- a change to the notional amount of a transaction including contractually agreed upon changes (e.g., amortization schedule),
- the exercise of a right or option that is an element of the expired transaction, and
- the satisfaction of a level, event, barrier or other condition contained in the original transaction.

Paragraph (c) of the definition of “local counterparty” captures affiliates of parties mentioned in paragraph (a) of the “local counterparty” definition, provided that such party guarantees the liabilities of the affiliate. It is our view that the guarantee must be for all or substantially all of the affiliate’s liabilities.

The term “transaction” is defined in the Regulation in order to reflect the types of activities that require a unique transaction report, as opposed to the modification of an existing transaction report.

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

A material amendment is not referred to in the definition of “transaction” but is required to be reported as a life-cycle event in connection with an existing transaction under section 32. 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 as a life-cycle event without the requirement for a new transaction record.

In addition, the definition of “transaction” includes a novation to a clearing house. Each transaction resulting from a novation of a bi-lateral transaction to a clearing house is required to be reported as a separate, new transaction with reporting links to the original transaction.

The term “valuation data” is defined in the Regulation as data that reflects the current value of a transaction. It is the Authority’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 and will result in a reasonable valuation of a transaction.² The valuation methodology should be consistent over the entire life of a transaction.

Application

1.1. The term “derivative” is defined in section 3 of the Act to include both “standardized” and “over-the-counter” derivatives. Standardized derivatives are derivatives traded on a published market, as provided by section 3 of the Act. Thus, a published market is defined to include an exchange, an alternative trading system or any other derivatives market that constitutes or maintains a system for bringing together buyers and sellers of standardized derivatives. As such, section 1.1 of the Regulation limits the application of the Regulation to derivatives that are not traded on an exchange; however an exception is made for derivatives trading facilities.

Section 1.1 of the Regulation provides that the Regulation applies to derivatives that are traded on a derivatives trading facility. A derivatives trading facility includes any trading system, facility or platform in which multiple participants have the ability to execute or trade derivative instruments by accepting bids and offers made by multiple participants in the facility or system, and in which multiple third-party buying and selling interests in over-the-counter derivatives have the ability to interact in the system, facility or platform in a way that results in a contract.

For example, derivatives traded on these facilities would otherwise be considered derivatives required to be reported under the Regulation: “swap execution facility” as defined in the Commodity Exchange Act 7 U.S.C. (1a) (50); a “security-based swap execution facility” as defined in the Securities Exchange Act of 1934 15 U.S.C. 78c(a)(77); and a “Multilateral trading facility” as defined in Directive 2004\39\EC Article 4(1)(15) of the European Parliament.

² For example, see International Financial Reporting Standard 13, *Fair Value Measurement*.

**PART 2
TRADE REPOSITORY RECOGNITION AND ONGOING REQUIREMENTS**

Part 2 contains rules for recognition of a trade repository and ongoing requirements for a recognized trade repository. These rules are in addition to the requirements applicable to trade repositories under the Act.³ To obtain and maintain a recognition 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 recognition order made by the Authority. In order to comply with the reporting obligations contained in Part 3, counterparties must report to a recognized trade repository.

The legal entity that applies to be a recognized trade repository will typically be the entity that operates the facility and collects and maintains records of completed transactions reported to the trade repository by other persons. In some cases, the applicant may 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 submitted under this Part apply.

Trade repository initial filing of information and recognition

2. (1) In determining whether to recognize an applicant as a trade repository under sections 12 and 15 of the Act, it is anticipated that the Authority will consider a number of factors, including

- whether it is in the public interest to recognize the applicant,
- the manner in which the trade repository proposes to comply with the Regulation,
- whether the trade repository has meaningful representation on its governing body,
- whether the trade repository has sufficient financial and operational resources for the proper performance of its functions,
- whether the rules and procedures of the trade repository ensure that its business is conducted in an orderly manner that fosters both fair and efficient capital markets, and improves transparency in the derivatives market,
- 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 For example, see sections 26 to 31.

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

- whether the requirements of the trade repository relating to access to its services are fair and reasonable,
- whether the trade repository's process for setting fees is fair, transparent and appropriate,
- whether the trade repository's fees are inequitably allocated among the participants, have the effect of creating barriers to access or place an undue burden on any participant or class of participants,
- the manner and process for the Authority and other applicable regulatory agencies to receive or access derivatives data, including the timing, type of reports, and any confidentiality restrictions,
- whether the trade repository has robust and comprehensive policies, procedures, processes and systems to ensure the security and confidentiality of derivatives data, and
- whether the trade repository has entered into a memorandum of understanding with its local securities or derivatives regulator.

The Authority will examine whether the trade repository has been, or will be, in compliance with securities legislation. This includes compliance with the Regulation and any terms and conditions attached to the Authority's recognition order in respect of a recognized trade repository.

A trade repository that is applying for recognition 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. We consider that these rules, policies and procedures include, but are 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 corresponding sections of the Regulation the interpretation of which we consider ought to be consistent with the principles:

Principle in the PFMI Report applicable to a trade repository	Relevant section(s) of the Regulation
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

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

<i>Principle in the PFMI Report applicable to a trade repository</i>	<i>Relevant section(s) of the Regulation</i>
<i>Principle 3: Framework for the comprehensive management of risks</i>	<i>Section 19 – Comprehensive risk management framework Section 20 – General business risk (in part)</i>
<i>Principle 15: General business risk</i>	<i>Section 20 – General business risk</i>
<i>Principle 17: Operational risk</i>	<i>Section 21 – System and other operational risk requirements Section 22 – Data security and confidentiality Section 24 – Outsourcing</i>
<i>Principle 18: Access and participation requirements</i>	<i>Section 13 – Access to recognized trade repository services Section 16 – Due process (in part) Section 17 – Rules (in part)</i>
<i>Principle 19: Tiered participation arrangements</i>	<i>No equivalent provisions in the Regulation; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.</i>
<i>Principle 20: FMI links</i>	<i>No equivalent provisions in the Regulation; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.</i>
<i>Principle 21: Efficiency and effectiveness</i>	<i>No equivalent provisions in the Regulation; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.</i>
<i>Principle 22: Communication procedures and standards</i>	<i>Section 15 – Communication policies, procedures and standards</i>
<i>Principle 23: Disclosure of rules, key procedures, and market data</i>	<i>Section 17 – Rules (in part)</i>
<i>Principle 24: Disclosure of market data by trade repositories</i>	<i>Sections in Part 4 – Data Dissemination and Access to Data</i>

It is anticipated that the Authority will apply the principles in its oversight activities of recognized trade repositories. Therefore, in complying with the Regulation, recognized trade repositories will be expected to observe the principles.

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

The forms filed by an applicant or recognized trade repository under the Regulation will be kept confidential in accordance with the provisions of the applicable legislation. The Authority 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 outweigh the benefit of the principle requiring that forms be made available for public inspection. However, the Authority would expect a recognized trade repository to publicly disclose its responses to the CPSS-IOSCO consultative report entitled *Disclosure framework for financial market infrastructures*, which is a supplement to the PFMI Report.⁴ In addition, much of the information that will be included in the forms that are filed will be required to be made publicly available by a recognized trade repository pursuant to the Regulation or the terms and conditions of the recognition order imposed by the Authority.

While Form 91-507F1 and any amendments to it will be kept generally confidential, if the Authority considers that it is in the public interest to do so, it may require the applicant or recognized trade repository to publicly disclose a summary of the information contained in such form, or amendments to it.

Notwithstanding the confidential nature of the forms, an applicant's application itself (excluding forms) may be published for comment pursuant to section 14 of the Act.

Change in information

3. (1) Under subsection 3(1), a recognized trade repository is required to file an amendment to the information provided in Form 91-507F1 at least 45 days prior to implementing a significant change. The Authority considers a change to be significant when it could impact a recognized trade repository, its users, participants, market participants, investors, or the capital markets (including derivatives markets and the markets for assets underlying a derivative). The Authority would consider a significant change to include, but not be limited to,

- a change in the structure of the recognized trade repository, including procedures governing how derivatives data is collected and maintained (included in any back-up sites), that has or may have a direct impact on users in Québec,
- a change to the services provided by the recognized trade repository, or a change that affects the services provided, including the hours of operation, that has or may have a direct impact on users in Québec,
- a change to means of access to the recognized trade repository's facility and its services, including changes to data formats or protocols, that has or may have a direct impact on users in Québec,

⁴ Publication available on the BIS website (www.bis.org) and the IOSCO website (www.iosco.org).

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

- a change to the types of derivative asset classes or categories of derivatives that may be reported to the recognized trade repository,
- a change to the systems and technology used by the recognized trade repository that collect, maintain and disseminate derivatives data, including matters affecting capacity,
- a change to the governance of the recognized trade repository, including changes to the structure of its board of directors or board committees and their related mandates,
- a change in control of the recognized trade repository,
- a change in affiliates that provide key services or systems to, or on behalf of, the recognized trade repository,
- a change to outsourcing arrangements for key services or systems of the recognized trade repository,
- a change to fees or the fee structure of the recognized trade repository,
- a change in the recognized trade repository's policies and procedures relating to risk-management, including relating to business continuity and data security, that has or may have an impact on the recognized trade repository's provision of services to its participants,
- the commencement of a new type of business activity, either directly or indirectly through an affiliate, and
- a change in the location of the recognized trade repository's head office or primary place of business or the location where the main data servers or contingency sites are housed.

(2) The Authority generally considers a change in a recognized trade repository's fees or fee structure to be a significant change. However, the Authority acknowledges that recognized trade repositories may frequently change their fees or fee structure and may need to implement fee changes within timeframes that are shorter than the 45-day notice period contemplated in subsection (1). To facilitate this process, subsection 3(2) provides that a recognized trade repository may provide information that describes the change to fees or fee structure in a shorter timeframe (at least 15 days before the expected implementation date of the change to fees or fee structure). See section 12 of this Policy Statement for guidance with respect to fee requirements applicable to recognized trade repositories.

The Authority will make best efforts to review amendments to Form 91-507F1 filed in accordance with subsections 3(1) and 3(2) before the proposed date of

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

implementation of the change. However, where the changes are complex, raise regulatory concerns, or when additional information is required, the Authority's review may exceed these timeframes.

(3) Subsection 3(3) sets out the filing requirements for changes to information provided in a filed Form 91-507F1 other than those described in subsections 3(1) or (2). Such changes to information are not considered significant and include changes that:

- would not have an impact on the recognized trade repository's structure or participants, or more broadly on market participants, investors or the capital markets; or
- are administrative changes, such as
 - changes in the routine processes, policies, practices, or administration of the recognized trade repository that would not impact participants,
 - changes due to standardization of terminology,
 - corrections of spelling or typographical errors,
 - changes to the types of recognized trade repository participants in Québec,
 - necessary changes to conform to applicable regulatory or other legal requirements of Québec or Canada, and
 - 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 Authority may review these filings to ascertain whether they have been categorized appropriately. If the Authority disagrees with the categorization, the recognized trade repository will be notified in writing. Where the Authority determines that changes reported under subsection 3(3) are in fact significant changes under subsection 3(1), the recognized trade repository will be required to file an amended Form 91-507F1 that will be subject to review by the Authority.

Ceasing to carry on business

(1) In addition to filing a completed Form 91-507F3, a recognized trade repository that intends to cease carrying on business in Québec as a recognized trade repository must make an application to voluntarily surrender its recognition to the

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

Authority pursuant to section 53 of the Act. The Authority may authorize the voluntary surrender on the conditions it determines.⁵

Legal framework

7. (1) Recognized trade repositories are required to have rules, policies, and procedures in place that provide a legal basis for their activities in all relevant jurisdictions, whether within Canada or any foreign jurisdiction, where they have activities.

Governance

8. Recognized trade repositories are required to have in place governance arrangements that meet the minimum requirements and policy objectives set out in subsections 8(1) and 8(2).

(3) Under subsection 8(3), a recognized trade repository is required to make the written governance arrangements required under subsections 8(1) and (2) available to the public on its website. The Authority expects that this information will be posted on the trade repository's publicly accessible website and that interested parties will be able to locate the information through a web search or through clearly identified links on the recognized trade repository's website.

Board of directors

9. The board of directors of a recognized trade repository is subject to various requirements, such as requirements pertaining to board composition and conflicts of interest. To the extent that a recognized trade repository is not organized as a corporation, the requirements relating to the board of directors may be fulfilled by a body that performs functions that are equivalent to the functions of a board of directors.

(2) Paragraph 9(2)(a) requires individuals who comprise the board of directors of a recognized 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 areas such as business recovery, contingency planning, financial market systems and data management.

Under paragraph 9(2)(b), the board of directors of a recognized trade repository must include individuals who are independent of the recognized trade repository. The Authority would view individuals who have no direct or indirect material relationship with the recognized trade repository as independent. The Authority would expect that independent directors of a recognized 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 dealers are considered.

⁵ The transfer of derivatives data/information can be addressed through the conditions imposed by the Authority on such application.

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

Chief compliance officer

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

Fees

12. A recognized trade repository is responsible for ensuring that the fees it sets are in compliance with section 12. In assessing whether a recognized trade repository's fees and costs are fairly and equitably allocated among participants as required under paragraph 12(a), the Authority will consider a number of factors, including

- the number and complexity of the transactions being reported,
- the amount of the fee or cost imposed relative to the cost of providing the services,
- the amount of fees or costs charged by other comparable trade repositories, where relevant, to report similar transactions in the market,
- with respect to market data fees and costs, the amount of market data fees charged relative to the market share of the recognized trade repository, and
- whether the fees or costs represent a barrier to accessing the services of the recognized trade repository for any category of participant.

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

Access to recognized trade repository services

13. (3) Under subsection 13(3), a recognized trade repository is prohibited from unreasonably limiting access to its services, permitting unreasonable discrimination among its participants, imposing unreasonable burdens on competition or requiring the use or purchase of another service in order for a person to utilize its trade reporting service. For example, a recognized trade repository should not engage in anti-competitive practices such as setting overly restrictive terms of use or engaging in anti-competitive price discrimination. A recognized trade repository should not develop closed, proprietary interfaces that result in vendor lock-in or barriers to entry with

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

respect to competing service providers that rely on the data maintained by the recognized trade repository.

Acceptance of reporting

14. Section 14 requires that a recognized trade repository accept derivatives data for all derivatives of the asset class or classes set out in its recognition order. For example, if the recognition order of a recognized trade repository includes interest rate derivatives, the recognized trade repository is required to accept transaction data for all types of interest rate derivatives that are entered into by a local counterparty. It is possible that a recognized trade repository may accept derivatives data for only a subset of a class of derivatives if this is indicated in its recognition order. For example, there may be recognized trade repositories that accept derivatives data for only certain types of commodity derivatives such as energy derivatives.

Communication policies, procedures and standards

15. Section 15 sets out the communication standard required to be used by a recognized trade repository in communications with other specified entities. The reference in paragraph 15(d) to “other service providers” could include persons or companies who offer technological or transaction processing or post-transaction services.

Rules, policies and procedures

17. Section 17 requires that the publicly disclosed written rules and procedures of a recognized trade repository 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 recognized trade repository should disclose to its participants and to the public, basic operational information and responses to the CPSS-IOSCO Disclosure framework for financial market infrastructures.

(2) Subsection 17(2) requires that a recognized trade repository monitor compliance with its rules and procedures. The methodology of monitoring such compliance should be fully documented.

(3) Subsection 17(3) requires a recognized trade repository to implement processes for dealing with non-compliance with its rules and procedures. This subsection does not preclude enforcement action by any other person, including the Authority or other regulatory body.

Records of data reported

18. (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

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

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 on-going obligations and 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 recognized trade repository are set out in section 19.

Features of framework

A recognized trade repository should have a written 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, a recognized trade repository. A recognized 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 recognized 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 recognized trade repository's personnel who are responsible for implementing them.

Maintaining a framework

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

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

(2) For the purposes of subsection 20(2), the amount of liquid net assets funded by equity that a recognized 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.

(3) Subsection (3) requires a recognized trade repository, for the purposes of subsection (2), to hold liquid net assets funded by equity equal to no less than six months of current operating expenses.

(4) For the purposes of subsections 20(4) and (5), and in connection with developing a comprehensive risk-management framework under section 19, a recognized 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 recognized trade repository is exposed.

Based on the required assessment of scenarios under subsection 20(4) (and taking into account any constraints potentially imposed by legislation), the recognized 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 recognized trade repository's critical operations and services, and a description of the measures needed to implement the key strategies. The recognized 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 subsections 20(2) and (3) above). A recognized 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.

IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

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 recognized 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 recognized trade repository should review, audit, and test systems, operational policies, procedures, and controls, periodically and after any significant changes; and
- a recognized 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 recognized trade repository should clearly define the roles and responsibilities for addressing operational risk and approve the recognized trade repository's operational risk-management framework.

(3) Paragraph 21(3)(a) requires a recognized 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 recognized 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 recognized 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 recognized 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 recognized trade repository to notify the Authority of any material systems failure. The Authority would consider a failure, malfunction, delay or other disruptive incident to be "material" if the recognized trade repository would in the normal course of its operations escalate the incident to, or inform, its senior

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

management that is responsible for technology, or the incident would have an impact on participants. The Authority also expects that, as part of this notification, the recognized 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 recognized trade repository establish, implement, maintain and enforce business continuity plans, including disaster recovery plans. The Authority believes that these plans should allow the recognized trade repository to provide continuous and undisrupted service, as back-up systems ideally should commence processing immediately. Where a disruption is unavoidable, a recognized trade repository is expected to provide prompt recovery of operations, meaning that it resumes 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 recognized trade repository to test its business continuity plans at least once a year. The expectation is that the recognized trade repository would engage relevant industry participants, as necessary, in tests of its business continuity plans, including testing of back-up facilities for both the recognized trade repository and its participants.

(6) Subsection 21(6) requires a recognized 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 a group of persons 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. The Authority is of the view that this obligation may also be satisfied by an independent assessment by an internal audit department that is compliant with the International Standards for the Professional Practice of Internal Auditing published by the Institute of Internal Audit. Before engaging a qualified party, the recognized trade repository should notify the Authority.

(8) Subsection 21(8) requires recognized trade repositories to make public all material changes to technology requirements to allow participants a reasonable period to make system modifications and test their modified systems. In determining what a reasonable period is, the Authority is of the view that the recognized trade repository should consult with participants and that a reasonable period would allow all participants a reasonable opportunity to develop, implement and test systems changes. We expect that the needs of all types of participants would be considered, including those of smaller and less sophisticated participants.

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

(9) Subsection 21(9) requires recognized trade repositories to make available testing facilities in advance of material changes to technology requirements to allow participants a reasonable period to test their modified systems and interfaces with the recognized trade repository. In determining what a reasonable period is, the Authority of the view that the recognized trade repository should consult with participants and that a reasonable period would allow all participants a reasonable opportunity to develop, implement and test systems changes. We expect that the needs of all types of participants would be considered, including those of smaller and less sophisticated participants.

Data security and confidentiality

22. (1) Subsection 22(1) provides that a recognized trade repository must establish policies and procedures to ensure the safety, privacy and confidentiality of derivatives data to be reported to it under the Regulation. The policies must include limitations on access to confidential trade repository data and safeguards to protect against persons affiliated with the recognized trade repository from using trade repository data for their personal benefit or the benefit of others.

(2) Subsection 22(2) prohibits a recognized trade repository from releasing reported derivatives data, for a commercial or business purpose, that is not required to be publicly disclosed under section 39 without the express written consent of the counterparties to the transaction or transactions to which the derivatives data relates. The purpose of this provision is to ensure that users of the recognized trade repository have some measure of control over their derivatives data.

Confirmation of data and information

23. Subsection 23(1) requires a recognized trade repository to have and follow written policies and procedures for confirming the accuracy of the derivatives data received from a reporting counterparty. A recognized trade repository must confirm the accuracy of the derivatives data with each counterparty to a reported transaction provided that the non-reporting counterparty is a participant of the trade repository. Where the non-reporting counterparty is not a participant of the trade repository, there is no obligation to confirm with such non-reporting counterparty.

The purpose of the confirmation requirement in subsection 23(1) is to ensure that the reported information is agreed to by both counterparties. However, in cases where a non-reporting counterparty is not a participant of the relevant recognized trade repository, the recognized trade repository would not be in a position to confirm the accuracy of the derivatives data with such counterparty. As such, under subsection 23(2) a recognized trade repository will not be obligated to confirm the accuracy of the derivatives data with a counterparty that is not a participant of the recognized trade repository. Additionally, similar to the reporting obligations in section 26, confirmation under subsection 23(1) can be delegated under section 26(3) to a third-party representative.

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

A trade repository may satisfy its obligation under section 23 to confirm the derivatives data reported for a transaction by notice to each counterparty to the transaction that is a participant of the recognized trade repository, or its delegated third-party representative where applicable, that a report has been made naming the participant as a counterparty to a transaction, accompanied by a means of accessing a report of the derivatives data submitted. The policies and procedures of the recognized trade repository may provide that if the recognized trade repository does not receive a response from a counterparty within 48 hours, the counterparty is deemed to confirm the derivatives data as reported.

Outsourcing

24. Section 24 sets out requirements applicable to a recognized trade repository that outsources any of its key services or systems to a service provider. Generally, a recognized 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 recognized trade repository to continue to comply with securities legislation in the event of bankruptcy, insolvency or the termination of business of the service provider. A recognized trade repository is also required to monitor the ongoing performance of a service provider to which it outsources a key service, system or facility. The requirements under section 24 apply regardless of whether the outsourcing arrangements are with third-party service providers or affiliates of the recognized trade repository. A recognized 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.

Reporting counterparty

25. Section 25 outlines how the counterparty required to report derivatives data and fulfil the ongoing reporting obligations under the Regulation is determined. Reporting obligations on persons subject to the registration requirement as a dealer under the Act apply to a person who engages or purports to engage in the business of derivatives trading, irrespective of whether the person is a registrant or is exempt from the registration requirement as a dealer under the Act. Where such person is also a Canadian financial institution, its status as a dealer prevails for the purposes of Section 25.

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

Section 25 outlines a hierarchy for determining which counterparty to a transaction will be required to report the transaction based on the counterparty to the transaction that is best suited to fulfill the reporting obligation. For example, for transactions cleared through a reporting clearing house, the clearing house is best positioned to report derivatives data and is therefore required to act as reporting counterparty.

(3) Subsection 25(3) allows counterparties to agree amongst themselves which of them must act as the reporting counterparty if neither subsection 25(1) nor 25(2) applies. For example, the counterparties may use the ISDA methodology publicly available at www.isda.org that has been developed for Canada in order to facilitate one-sided transaction reporting and provide a consistent method for determining the party required to act as reporting counterparty.

Duty to report

26. Section 26 outlines the duty to report derivatives data.

(1) Subsection 26(1) requires that, subject to sections 40, 41 and 42, derivatives data for each transaction to which one or more counterparties is a local counterparty be reported to a recognized trade repository. The counterparty required to report the derivatives data is the reporting counterparty as determined under section 25.

(2) Under subsection 26(2), the reporting counterparty for a transaction must ensure that all reporting obligations are fulfilled. This includes ongoing requirements such as the reporting of life-cycle event data and valuation data.

(3) Subsection 26(3) permits the delegation of all reporting obligations of a reporting counterparty. This includes reporting of initial creation data, life-cycle event data and valuation data. For example, some or all of the reporting obligations may be delegated to a third-party service provider. However, the reporting counterparty remains responsible for ensuring that the derivatives data is accurate and reported within the timeframes required under the Regulation.

(4) With respect to subsection 26(4), prior to the reporting rules in Part 3 coming into force, the Authority will provide public guidance on how reports for transactions that are not accepted for reporting by any recognized trade repository should be electronically submitted to the Authority.

(5) Subsection 26(5) provides for limited substituted compliance with this Regulation where a transaction has been reported to a recognized trade repository pursuant to the law of a province of Canada other than Québec or of a foreign jurisdiction appearing on a list determined by the Authority, provided that the additional conditions set out in paragraphs (a) and (c) are satisfied. The Authority will decide and publish on its web site the list of the laws and regulations of the jurisdictions outside of Québec that are equivalent for the purposes of the deemed compliance provision in subsection 26(5).

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

(6) Paragraph 26(6)(a) requires that all derivatives data reported for a given transaction be reported to the same recognized trade repository to which the initial report is submitted or, with respect to transactions reported under section 26(4), to the Authority. For a bi-lateral transaction that is assumed by a clearing house (novation), the recognized trade repository to which all derivatives data for the assumed transactions must be reported is the recognized trade repository to which the original bi-lateral transaction was reported.

The purpose of this requirement is to ensure the Authority 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 recognized trade repository, all data relevant to that transaction should be reported to another recognized trade repository as otherwise required by the Regulation.

(7) The Authority interprets the requirement in subsection 26(7) to report errors or omissions in derivatives data "as soon as technologically practicable" after it is discovered, to mean upon discovery and in any case no later than the end of the business day on which the error or omission is discovered.

(8) Under subsection 26(8), where a local counterparty that is not a reporting counterparty discovers an error or omission in respect of derivatives data that is reported to a recognized trade repository, such local counterparty 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 under subsection 26(7) to report the error or omission to the recognized trade repository or to the Authority in accordance with subsection 26(6). The Authority interprets the requirement in subsection 26(8) to notify the reporting counterparty of errors or omissions in derivatives data to mean upon discovery and in any case no later than the end of the business day on which the error or omission is discovered.

Legal entity identifiers

28. (1) Subsection 28(1) requires that a recognized trade repository identify all counterparties to a transaction by a legal entity identifier. It is envisioned that this identifier be a LEI under the Global LEI System. The Global LEI System is a G20 endorsed initiative⁶ that will uniquely identify parties to transactions. It is currently being designed and implemented under the direction of the LEI ROC, a governance body endorsed by the G20.

(2) The "Global Legal Entity Identifier System" referred to in subsection 28(2) means the G20 endorsed system that will serve as a public-good utility responsible for overseeing the issuance of legal entity identifiers globally to counterparties who enter into transactions.

⁶ See http://www.financialstabilityboard.org/list/fsb_publications/tid_156/index.htm for more information.

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

(3) If the Global LEI System is not available at the time counterparties are required to report their LEI under the Regulation, they must use a substitute legal entity identifier. The substitute legal entity identifier must be in accordance with the standards established by the LEI ROC 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. The substitute LEI and LEI could be identical.

Unique transaction identifier

29. A unique transaction identifier will be assigned by the recognized trade repository to each transaction which has been submitted to it. The recognized trade repository may utilize its own methodology or incorporate a previously assigned identifier that has been assigned by, for example, a clearing house, trading platform, or third-party service provider. However, the recognized trade repository must ensure that no other transaction shares the same identifier.

A transaction in this context means a transaction from the perspective of all counterparties to the transaction. For example, both counterparties to a single swap transaction would identify the transaction by the same single identifier. For a bi-lateral transaction that is novated to a clearing house, the reporting of the novated transactions should reference the unique transaction identifier of the original bi-lateral transaction.

Unique product identifier

30. Section 30 requires that a reporting counterparty identify each transaction that is subject to the reporting obligation under the Regulation by means of a unique product identifier. There is currently a system of product taxonomy that may be used for this purpose.⁷ To the extent that a unique product identifier is not available for a particular transaction type, a reporting counterparty would be required to create one using an alternative methodology.

Creation data

31. Subsection 31(2) requires that reporting of creation data be made in real time, which means that creation 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 Authority will take into account the prevalence of implementation and use of technology by comparable counterparties located in Canada and in foreign jurisdictions. The Authority may also conduct independent reviews to determine the state of reporting technology.

(3) Subsection 31(3) is intended to take into account the fact that not all counterparties will have the same technological capabilities. For example, counterparties that do not regularly engage in transactions would, at least in the near

⁷ See <http://www2.isda.org/identifiers-and-otc-taxonomies/> for more information.

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

term, likely not be as well situated to achieve real-time reporting. Further, for certain post-transaction operations, such as trade compressions involving numerous transactions, real time reporting may not currently be practicable. In all cases, the outside limit for reporting is the end of the business day following execution of the transaction.

(4) (paragraph repealed).

Life-cycle event data

32. *The Authority notes that, in accordance with subsection 26(6), all reported derivatives data relating to a particular transaction must be reported to the same recognized trade repository to which the initial report was made, or to the Authority for transactions for which derivatives data was reported to the Authority in accordance with subsection 26(4).*

(1) Life-cycle event data is not required to be reported in real time but rather at the end of the business day on which the life-cycle event occurs. The end of business day report may include multiple life-cycle events that occurred on that day.

Valuation data

33. *Valuation data with respect to a transaction that is subject to the reporting obligations under the Regulation is required to be reported by the reporting counterparty. For both cleared and uncleared transactions, counterparties may, as described in subsection 26(3), delegate the reporting of valuation data to a third party, but such counterparties remain ultimately responsible for ensuring the timely and accurate reporting of this data. The Authority notes that, in accordance with subsection 26(6), all reported derivatives data relating to a particular transaction must be reported to the same recognized trade repository to which the initial report was made, or to the Authority for transactions for which the initial report was made to the Authority in accordance with subsection 26(4).*

(1) Subsection 33(1) provides for differing frequency of valuation data reporting based on the type of entity that is the reporting counterparty.

Pre-existing derivatives

34. *Section 34 outlines reporting obligations in relation to transactions that were entered into prior to the commencement of the reporting obligations. Where the reporting counterparty is a reporting clearing house, a person subject to the registration requirement as a dealer under the Act or a Canadian financial institution, subsection 34(1) requires that pre-existing transactions that were entered into before October 31, 2014 and that will not expire or terminate on or before April 30, 2015 to be reported to a recognized trade repository no later than April 30, 2015. Similarly, where a reporting counterparty is neither a reporting clearing house, nor a person subject to the*

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

registration requirement as a dealer under the Act, nor a Canadian financial institution, subsection 34(1.1) requires that pre-existing transactions that were entered into before June 30, 2015 and that will not expire or terminate on or before December 31, 2015 to be reported to a recognized trade repository no later than December 31, 2015. In addition, only the data indicated in the column entitled “Required for Pre-existing Transactions” in Appendix A will be required to be reported for pre-existing transactions.

Transactions that are entered into before October 31, 2014 and that expire or terminate on or before April 30, 2015 will not be subject to the reporting obligation if the reporting counterparty to the transaction is a reporting clearing house, a person subject to the registration requirement as a dealer under the Act or a Canadian financial institution. Similarly, transactions for which the reporting counterparty is neither a reporting clearing house, nor a person subject to the registration requirement as a dealer under the Act, nor a Canadian financial institution, will not be subject to the reporting obligation if they are entered into before June 30, 2015 but will expire or terminate on or before December 31, 2015. These transactions are exempted from the reporting obligation in the Regulation, to relieve some of the reporting burden for counterparties and because they would provide marginal utility to the Authority due to their imminent termination or expiry.

The derivatives data required to be reported for pre-existing transactions under section 34 is substantively the same as the requirement under CFTC Rule 17 CFR Part 46 – Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps. Therefore, to the extent that a reporting counterparty has reported pre-existing transaction derivatives data required by the CFTC rule, this would meet the derivatives data reporting requirements under section 34. This interpretation applies only to pre-existing transactions.

PART 4 DATA DISSEMINATION AND ACCESS TO DATA

Data available to regulators

37. (1) Subsection 37(1) requires recognized trade repositories to, at no cost to the Authority, (a) provide to the Authority continuous and timely electronic access to derivatives data; and (b) provide aggregate derivatives data. Electronic access includes the ability of the Authority to access, download, or receive a direct real-time feed of derivatives data maintained by the recognized trade repository.

The derivatives data covered by this subsection are data necessary to carry out the Authority’s mandate to protect against unfair, improper or fraudulent practices, to foster fair and efficient capital markets, to promote confidence in the capital markets, and to address systemic risk. This includes derivatives data with respect to any transaction or transactions that may impact Québec’s capital markets.

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

Transactions that reference an underlying asset or class of assets with a nexus to Québec or Canada can impact Québec's capital markets even if the counterparties to the transaction are not local counterparties. Therefore, the Authority has a regulatory interest in transactions involving such underlying interests even if such data is not submitted pursuant to the reporting obligations in the Regulation, but is held by a recognized trade repository.

(2) Subsection 37(2) requires a recognized trade repository 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.⁸ It is expected that all recognized trade repositories will comply with the access recommendations in CPSS-IOSCO's final report.

(3) The Authority interprets the requirement for a reporting counterparty to use best efforts to provide the Authority with access to derivatives data to mean, at a minimum, instructing the recognized trade repository to release derivative data to the Authority.

Data available to counterparties

38. *Section 38 is intended to ensure that each counterparty, and any person acting on behalf of a counterparty, has access to all derivatives data relating to its transaction(s) in a timely manner. The Authority is of the view that where a counterparty has provided consent to a trade repository to grant access to data to a third-party service provider, the trade repository shall grant such access on the terms consented to.*

Data available to public

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

(2) Subsection 39(2) requires that the aggregate data that is disclosed under subsection 39(1), be broken down into various categories of information. The following are examples of the aggregate 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., Canada for derivatives which reference the TSX60 index);*

⁸ See report entitled "Authorities' Access to TR Data" available at <http://www.bis.org/publ/cpss110.htm>.

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

- asset class of reference entity (e.g., fixed income, credit, or equity);
- product type (e.g., options, forwards, or swaps);
- cleared or uncleared;
- maturity (broken down into maturity ranges, such as less than one year, 1-2 years, 2-3 years).

(3) Subsection 39(3) requires a recognized trade repository to publicly report the data indicated in the column entitled "Required for public dissemination" in Appendix A of the Regulation. For transactions where at least one counterparty is a dealer, paragraph 39(3)(a) requires that such data be publicly disseminated by the end of the day following the day on which the recognized trade repository receives the data. For transactions where neither counterparty is a dealer, paragraph 39(3)(b) requires that such data be publicly disseminated by the end of the second day following the day on which the recognized trade repository receives the data. The purpose of the public reporting delays is to ensure that counterparties have adequate time to enter into any offsetting transaction that may be necessary to hedge their positions. These time delays apply to all transactions, regardless of transaction size.

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

PART 5 EXCLUSIONS

De minimis

40. Section 40 provides that the reporting obligation for a physical commodity transaction entered into between two non-dealers does not apply in certain limited circumstances. This exclusion only applies if a local counterparty to a transaction has less than \$500,000 aggregate notional value under all outstanding derivatives transactions, 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. A counterparty that is above the \$500,000 threshold is required to act as reporting counterparty for a transaction involving a party that is exempt from the reporting obligation under section 40. In a situation where both counterparties to a

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

transaction qualify for this exclusion, it would not be necessary to determine a reporting counterparty in accordance with section 25.

This relief applies to physical commodity transactions that are not excluded derivatives for the purpose of the reporting obligation in paragraph 2(d) of Regulation 91-506 respecting Derivatives: Determination (chapter I-14.01, r. 0.1). An example of a physical commodity transaction that is required to be reported (and therefore could benefit from this relief) is a physical commodity contract that allows for cash settlement in place of delivery.

Non-application

41. The non-application of the duty to report relates only to the government and the other public entities referred to in section 41, and the duty to report of any other counterparty entering into a derivatives transaction with one of those entities remains. In other words, only those derivatives transactions entered into by two entities referred to in section 41 will not be reported. Any other derivatives transactions involving a counterparty other than those referred to in section 41 must be reported. The list of entities in section 41 has been adapted for Québec and is different than the list of entities in other jurisdictions.

PART 6 TRANSITIONAL AND FINAL PROVISIONS

Transitional and final provisions

42. (2) The requirement under subsection 39(3) to make transaction level data reports available to the public does not apply until April 30, 2015.

(3) If the reporting counterparty is neither a reporting clearing house, nor a person subject to the registration requirement as a dealer under the Act, nor a Canadian financial institution, subsection 42(3) provides that no reporting is required until June 30, 2015. For example, where the counterparties to a transaction are a person subject to the registration requirement as a dealer under the Act and a person that is not subject to such requirement, the person subject to the registration requirement will be required to report according to the timing outlined in subsection 42(1).

(4) Subsection 42(4) provides that, if the reporting counterparty to the transaction is a reporting clearing house, a person subject to the registration requirement as a dealer under the Act or a Canadian financial institution, no reporting is required for pre-existing transactions that terminate or expire on or before April 30, 2015.

(5) Subsection 42(5) provides that, if the reporting counterparty to the transaction is neither a reporting clearing house, nor a person subject to the registration requirement as a dealer under the Act, nor a Canadian financial institution, no reporting is required for pre-existing transactions that terminate or expire on or before December 31, 2015.

POLICY STATEMENT IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016

Decision 2013-PDG-0194, 2013-11-13
Bulletin de l'Autorité: 2013-12-19, Vol. 10 n° 50

Amendments

Decision 2014-PDG-0123, 2014-10-15
Bulletin de l'Autorité: 2014-10-30, Vol. 11, n° 43

IN FORCE FROM OCTOBER 31, 2014 TO JULY 28, 2016