

## Draft Regulations

### Derivatives Act

(chapter I-14.01, s. 96, s. 175, subpars. (2), (3), (7), (9), (11), (12), and (29))

### **Regulation to amend Regulation 91-506 respecting Derivatives Determination and Regulation to amend Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting**

Notice is hereby given by the *Autorité des marchés financiers* (the "Authority") that, in accordance with section 175 of the *Derivatives Act* (CQLR, chapter I-14.01) (the "Act"), 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 30 days have elapsed since their publication in the Bulletin of the Authority:

- *Regulation to amend Regulation 91-506 respecting Derivatives Determination* ("Regulation to amend Regulation 91-506"); and
- *Regulation to amend Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* ("Regulation to amend Regulation 91-507").

The Authority is also publishing in accordance with section 96 of the Act, the following Policy Statements, the amended texts of which are published hereunder:

- *Policy Statement to Regulation 91-506 respecting derivatives determination* (blacklined version); and
- *Policy Statement to Regulation 91-507 trade repositories and derivatives data reporting* (blacklined version) ("Amended Policy Statement to Regulation 91-507").

## Background

On November 13, 2013, the Authority published *Regulation 91-506 respecting Derivatives Determination*, (CQLR, chapter I-14.01, r. 0.1) ("Regulation 91-506") and *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* (CQLR, chapter I-14.01, r. 1.1) ("Regulation 91-507"). Regulation 91-506 and Regulation 91-507 became effective on December 31, 2013. Regulation 91-507 was amended once, amendment which has been effective on October 31, 2014.

On February 12, 2015, the Authority published blanket exemption decision No. 2015-PDG-0022 in order to defer to July 29, 2016, the implementation of the requirement for a trade repository to publicly disclose information pertaining to each transaction reported under Regulation 91-507.

On June 1, 2015, the Authority published blanket exemption decision No. 2015-PDG-0089 in order to defer to a future date, under certain conditions, the implementation of the duty to report under subsection (1) of section 26 of Regulation 91-507, for a reporting counterparty that 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 (collectively, the "End Users") and that is a party to an intragroup transaction. This requirement was originally to come into effect on June 30, 2015.

The Canadian Securities Administrators (the "CSA") Derivatives Committee is continuing its work to establish a harmonized regulatory framework with respect to derivatives and ensure the effective implementation of regulation respecting trade repositories and derivatives data reporting. In this perspective, the Ontario Securities Commission and the Manitoba Securities Commission are proposing similar amendments to their existing regulations.

Details of the proposed amendments are discussed below.

### **Regulation to amend Regulation 91-506**

Regulation 91-506 currently specifies that Regulation 91-507 does not apply to certain contracts or instruments.

The key objectives of the proposed amendments to Regulation 91-506 are to:

- clarify the scope of Regulation 91-506 by adding an application section providing that Regulation 91-506 applies to Regulation 91-507, and
- transfer from Regulation 91-507 a provision to the effect that derivatives traded on an exchange are not subject to Regulation 91-507 whereas derivatives traded on a derivatives trading facility are subject Regulation 91-507.

The Authority is also proposing to amend the *Policy Statement to Regulation 91-506 respecting derivatives determination* to provide guidance corresponding to these proposed amendments.

### **Regulation to amend Regulation 91-507**

The key objectives of the proposed amendments to the Regulation 91-507 are to:

- clarify the intended application of certain provisions of Regulation 91-507 through non-material drafting revisions,
- broaden the concept of affiliated person to include trusts and partnerships,
- alleviate the burden of reporting obligations under Regulation 91-507 for End-User local counterparties engaging in derivatives transactions with their End-User local affiliates and for End-User local counterparties engaging in derivatives transactions with their foreign affiliates where reporting is done in compliance with equivalent trade reporting laws of specified foreign jurisdictions or under the securities legislation of a province of Canada other than Québec,
- introduce the requirement for local counterparties to obtain a legal entity identifier (“LEI”), if eligible, to promote data standardization, and
- set out the requirements for public dissemination of transaction-level data in order to promote increased transparency in the Canadian over-the-counter (“OTC”) derivatives market while aiming to preserve the anonymity of counterparties.

#### *Summary of the proposed amendments to Regulation 91-507*

##### *(a) Subsections 1(3) and 1(4): affiliated persons, description of control*

The Authority is proposing to delete subsection 1(5) and to amend subsections 1(3) and 1(4) to broaden the concept of affiliated person to include partnerships (and trusts as provided for in the Amended Policy Statement to Regulation 91-507).

##### *(b) Subsection 26(5): duty to report, exemption for reporting derivatives data for transactions with foreign affiliates*

The Authority is proposing to amend the requirement under subsection 26(5) of Regulation 91-507 to permit End-User local counterparties subject to the reporting obligation under Regulation 91-507, to benefit from substituted compliance in respect of reportable transactions entered into with their foreign

affiliated persons when the transactions are reported pursuant to the law of a foreign jurisdiction appearing on the list determined by the Authority (available on its website at: [www.lautorite.qc.ca](http://www.lautorite.qc.ca)). Substituted compliance is available to reporting counterparties only where all of the conditions set out in paragraphs (a) through (c) of subsection 26(5) of Regulation 91-507 are satisfied. This proposed amendment to subsection 26(5) of Regulation 91-507 alleviates the burden of double reporting for counterparties that already required to report their derivatives transactions under established and reliable reporting legislation elsewhere in the world.

*(c) Subsection 26(6): duty to report, locations to report data*

The Authority is proposing to amend the requirement under subsection 26(6) of Regulation 91-507 to provide that all derivatives data in respect of a transaction must be reported to the same recognized trade repository but not necessarily to the recognized trade repository where the initial report was sent. This amendment is intended to facilitate the porting of derivatives data from one recognized trade repository to another.

*(d) Section 28: Legal entity identifiers, person ineligible to receive a legal entity identifier*

The Authority is proposing to amend section 28 of Regulation 91-507 to provide for situations where a counterparty to a transaction is not eligible to receive a LEI as determined by the Global Legal Entity Identifier System. Under new subsection 28(4), the reporting counterparty is required to identify a counterparty not eligible to receive a LEI with an alternative identifier and new subsection 28(5) requires the recognized trade repository to identify the counterparty with the same alternative identifier. These new subsections provide for consistent identification of counterparties that are ineligible to receive a LEI.

*(e) Section 28.1: requirement to obtain a legal entity identifier*

The Authority is proposing a new requirement as section 28.1 of Regulation 91-507. The requirement obligates each eligible local counterparty to a transaction that is required to be reported under Regulation 91-507 to obtain a LEI in accordance with the standards set by the Global Legal Entity Identifier System. Prior to the addition of this requirement, reporting counterparties were responsible for ensuring that the counterparties to a transaction were identified using a LEI. This amendment ensures that all local counterparties to reportable transactions are under a direct obligation to acquire a LEI.

The identification of counterparties by LEI is an initiative endorsed by G20 nations and provides a globally recognized and standardized identification system of legal entities engaged in financial transactions. LEIs support authorities and market participants in identifying and managing financial risks and simplify reporting and accessing reported data across jurisdictions.

*(f) Subsection 39(3) & Appendix C: data available to public, public dissemination of transaction-level data*

The Authority is proposing to amend subsection 39(3) of Regulation 91-507 to modify the data and asset classes required to be reported as of July 29, 2016 under Regulation 91-507. The data required to be reported and the related asset classes are set out in the new Appendix C to Regulation 91-507.

The Authority appreciates the importance of maintaining the anonymity of OTC derivative transaction counterparties in the context of public dissemination of market data. The Authority notes that real-time dissemination of anonymized transaction-level data by recognized trade repositories could potentially allow the public to determine the identity of one or both of the counterparties to specific transactions through, for example, the size and/or underlying interest of a particular transaction. The indirect identification of counterparties to a transaction could make hedging the risks of a particular transaction more difficult and expensive as market participants adjust pricing in anticipation of the derivative counterparties' immediate hedging needs. This is a particularly relevant risk for those counterparties

engaged in transactions related to asset classes that are relatively illiquid in the context of the OTC derivatives market in Canada.

The Authority seeks to balance the benefits of post-trade transparency against the potential harm that may be caused to derivative counterparties' ability to hedge risk. Accordingly, it is the Authority's view that transaction details disseminated to the public under Regulation 91-507 should be subject to publication delays and additional anonymity precautions so that counterparties to a derivative transaction may avoid signalling the market.

To effectively protect counterparties and maintain fairness in the market, the Authority is proposing to amend subsection 39(3) of Regulation 91-507 to limit the application of the requirement for public dissemination of transaction-level reports to OTC derivatives related to certain asset classes and underlying benchmarks. In addition, the proposed amendment provides for additional anonymising measures such as the rounding and capping of notional amounts to further protect counterparty identity without reducing the value of the published information to the public. Capping levels for each asset class were determined by assessing the unique characteristics of each group including the relative size and frequency of trades within each group.

The Authority intends to amend Appendix C over a series of future phases after additional study of trade repository data and public consultation to determine what additional data and product types are appropriate for public dissemination and the timing for the release of such data to the public. We are particularly interested in the type of post-trade information that can be publicly disseminated for OTC derivative transactions with illiquid underlying assets or that appear infrequently in the Canadian OTC derivatives market.

*(g) Section 40.1: exclusion from requirement to report End-User inter-affiliate transactions*

The Authority is proposing a new exclusion as section 40.1 of Regulation 91-507. New section 40.1 excludes transactions between End-User local counterparties that are affiliated persons, from the requirement to report derivatives data to a recognized trade repository. Although inter-affiliate reporting provides valuable information to regulators regarding the redistribution of risk between counterparties to a derivative transaction, the Authority has determined that the value of this information is outweighed by the costs of reporting to End-Users. For example, in many cases End-Users would be forced to incur the cost of developing reporting systems and subscribing to trade repository services exclusively for the purpose of reporting inter-affiliate transactions. Given that the primary source of risk to a counterparty and its affiliates derives from their market facing transactions and provided that the Authority has access to all these market facing transactions, the Authority will be able to successfully fulfil its oversight mandate.

The exclusion provided for under section 40.1 can be used where a counterparty is a local counterparty in any jurisdiction of Canada. For example, this allows a counterparty in a local jurisdiction with an affiliate in a different jurisdiction of Canada with trade reporting rules in force to benefit from the inter-affiliate transaction exclusion while ensuring that one or more CSA members has access to any market facing transaction related to the inter-affiliate transaction. This exclusion is also available to affiliates located in foreign jurisdictions that qualify as local counterparties pursuant to paragraph (c) of the local counterparty definition.

This exclusion is not available for inter-affiliate transactions involving an affiliate that is not a local counterparty pursuant to the trade reporting rules of a jurisdiction of Canada because the Authority may not have access to the relevant market facing transaction and therefore may not have a comprehensive view of the exposure of the counterparty and its affiliates. For example, to consolidate risk management a counterparty (the first party) that enters into a transaction with an unrelated third party (e.g. a derivatives dealer) may enter into an identical back-to-back transaction with an affiliate (the second party) to transfer risk to that second party. Where both the first party and the second party are local counterparties, the Authority would have access to the market facing transaction. Conversely, if in a similar situation the affiliate entering into the market facing transaction was not a local counterparty the Authority would not

have access to the market facing transaction of the inter-affiliate transaction which transfers risk to the local counterparty.

It is the Authority's view that this new exclusion appropriately addresses the Authority's regulatory needs while reducing cost for End-Users. Once in force, this new exclusion will replace blanket exemption decision No. 2015-PDG-0089.

*(h) Appendix A: minimum data fields required to be reported to a recognized trade repository, modification of information required for public dissemination*

The Authority is proposing to amend Appendix A to Regulation 91-507 to remove the reporting requirements for transaction level data indicated in the column entitled "Required for Public Dissemination". The requirements for transactions reported pursuant to Regulation 91-507 are set out in the new Appendix C to Regulation 91-507. In addition, the Authority is proposing to make some clarifying amendments to the descriptions of the data fields in Appendix A.

*(i) Policy Statement: update of guidance corresponding to the proposed amendments to Regulation 91-507*

The Authority is proposing amendments to *Policy Statement to Regulation 91-507 trade repositories and derivatives data reporting* to provide guidance corresponding to the proposed amendments to Regulation 91-507.

### **Request for comment**

Comments regarding the above may be provided in hard copy or electronic form by **February 3, 2016** to the following:

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The Authority will publish all responses received on its website ([www.lautorite.qc.ca](http://www.lautorite.qc.ca)).

### **Further information**

Further information is available from:

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