

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

GENERAL COMMENTS

Introduction

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****CPMI**” means the Committee on **Payment****Payments** and **Settlement****Systems**,**Market Infrastructures**;¹

“derivatives party”² means, in relation to a person subject to the registration requirement as a dealer under the Act to either of the following:

(a) a person for which the person subject to the registration requirement as a dealer under the Act acts or proposes to act as an agent in relation to a transaction;

(b) a person that is, or is proposed to be, a party to a derivative if the person subject to the registration requirement as a dealer under the Act is the counterparty;

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

¹ Prior to September 1, 2014, CPMI was known as the Committee on Payment and Settlement Systems.

² The term “derivatives party” is similar to the concept of a “client” in *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registration Obligations* (chapter V-1.1, r. 10). We have used the term “derivatives party” instead of “client” to reflect the circumstance where a person subject to the registration requirement as a dealer under the Act may not regard its counterparty as its “client.”

“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~~[Legal Entity Identifier](#) Regulatory Oversight Committee,

“original transaction” means the original bilateral transaction between two counterparties that has been, or is intended to be, accepted for clearing by a reporting clearing house,

“PFMI Report” means the April 2012 final report entitled *Principles for financial market infrastructures* published by ~~CPSS~~[CPMI](#) and IOSCO, as amended from time to time,⁴³~~and~~

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

“uncleared transaction” means a transaction that is not a cleared transaction, and includes both (i) an original transaction and (ii) a transaction that is not intended to be cleared (for example, under the terms of an ISDA Master Agreement),

“UPI” means a unique product identifier, and

“UTI” means unique transaction identifier.

PART 1 DEFINITIONS AND INTERPRETATION

Section 1 - Definitions and interpretation

The definitions of “collateral and margin data”, “creation data” and “valuation data” refer to data elements listed in Appendix A to the Regulation. The AMF Derivatives Data Technical Manual, attached as Appendix A to this Policy, provides additional guidance relating to the data elements listed in Appendix A of the Regulation that will clarify the technical aspects of data that should be included.

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

⁴³ The PFMI Report is available on the Bank for International Settlements’ website (www.bis.org) and the IOSCO website (www.iosco.org).

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~~LEI 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 (b) of the

The definition of “local counterparty” ~~captures counterparties that are registered as a dealer under the Act or in an alternative category as a consequence of trading in derivatives. It is our view that this paragraph intends to capture both registered dealers and qualified persons under the Act.~~

~~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~~includes a number of factors that are different from the addresses under a counterparty’s LEI. As a result, the Authority does not view using the address information in a counterparty’s LEI as an acceptable substitute for determining whether the counterparty is a local counterparty in Québec.

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.

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.

In addition, the definition of “transaction” includes a novation to a reporting clearing house. Each transaction resulting from a novation of a bilateral transaction to a reporting 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.~~

Person subject to the registration requirement as a dealer under the Act - Factors in determining a business purpose

Obligations, under the Regulation, imposed on a person 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.

In determining whether a person is engaged or purported to engage in the business of derivatives trading, a number of factors should be considered. Several factors that we consider relevant are described below. This is not a complete list and other factors may also be considered.

• *Acting as a market maker* – Market making is generally understood as the practice of routinely standing ready to transact derivatives by

○ *responding to requests for quotes on derivatives, or*

○ *making quotes available to other persons that seek to transact derivatives, whether to hedge a risk or to speculate on changes in the market value of the derivative.*

Market makers are typically compensated for providing liquidity through spreads, fees or other compensation, including fees or compensation paid by an exchange or a trading facility that do not relate to the change in the market value of the derivative transacted. A person that contacts another person about a transaction to accommodate its own risk management needs or to speculate on the market value of a derivative will not, typically, be considered to be acting as a market maker.

A person will be considered to be “routinely standing ready” to transact derivatives if it is responding to requests for quotes or it is making quotes available with some frequency, even if it is not on a continuous basis. Persons that respond to requests or make quotes available occasionally are not “routinely standing ready”.

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

A person would also typically be considered to be a market maker when it holds itself out as undertaking the activities of a market maker.

Engaging in bilateral discussions relating to the terms of a transaction will not, on its own, constitute market making activity.

• *Directly or indirectly carrying on the activity with repetition, regularity or continuity* – Frequent or regular transactions are a common indicator that a person may be engaged in trading for a business purpose. The activity does not have to be its sole or even primary endeavour for it to be in the business. We consider regularly trading in any way that produces, or is intended to produce, profits to be for a business purpose.

• *Facilitating or intermediating transactions* – The person provides services relating to the facilitation of trading or intermediation of transactions between third-party counterparties to derivatives contracts.

• *Transacting with the intention of being compensated* – The person receives, or expects to receive, any form of compensation for carrying on transaction activity. This would include any compensation that is transaction or value-based including compensation from spreads or built-in fees. It does not matter if the person actually receives compensation or what form the compensation takes. However, a person would not be considered to be a person subject to the registration requirement as a dealer under the Act solely by reason that it realizes a profit from changes in the market price for the derivative (or its underlying reference asset), regardless of whether the derivative is intended for the purpose of hedging or speculating.

• *Directly or indirectly soliciting in relation to transactions* – The person directly solicits transactions. Solicitation includes contacting someone by any means, including communication that offers (i) transactions, (ii) participation in transactions or (iii) services relating to transactions. This would include providing quotes to a derivatives party or a potential derivatives party that are not provided in response to a request. This also includes advertising on the internet with the intention of encouraging transacting in derivatives by local persons. A person might not be considered to be soliciting solely because it contacts a potential derivatives party, or a potential derivatives party contacts them to enquire about a transaction, unless it is the person's intention or expectation to be compensated as a result of the contact. For example, a person that wishes to hedge a specific risk is not necessarily soliciting for the purpose of the Regulation if it contacts multiple potential derivatives parties to enquire about potential transactions to hedge the risk.

• *Engaging in activities similar to a dealer* – The person carries out any activities related to transactions involving derivatives that would reasonably appear, to a third party, to be similar to the activities discussed above. This would not include the operator of an exchange or a clearing house.

• *Providing derivatives clearing services* – The person provides services to allow third parties, including a derivatives party, to clear derivatives through a clearing house. These services are actions in furtherance of a transaction conducted by a person that would typically play the role of an intermediary in the derivatives market.

In determining whether or not it is, for the purposes of the Regulation, a person subject to the registration requirement as a dealer under the Act, a person should consider its activities holistically. We do not consider that all of the factors discussed above necessarily carry the same weight or that any one factor will be determinative.

Factors in determining a business purpose – general

Generally, we would consider a person that engages or purports to engage in the activities discussed above in an organized and repetitive manner to be a person subject to the registration requirement as a dealer under the Act. Ad hoc or isolated instances of the activities discussed above may not necessarily result in a person being subject to registration requirement as a dealer under the Act. Similarly, organized and repetitive proprietary trading, in and of itself, absent other factors described above, may not result in a person being considered to be a person subject to the registration requirement as a dealer under the Act for the purposes of the Regulation.

A person does not need to have a physical location, staff or other presence in Québec to be a person subject to the registration requirement as a dealer under the Act; the person must conduct the activities described above in Québec. This would include a person located in a foreign jurisdiction that conducts dealing activities with a derivatives party located in Québec. This would also include a person that is located in Québec and that conducts dealing activities in a foreign jurisdiction.

In other words, where dealing activities are provided to a derivatives party in Québec or where dealing activities are otherwise conducted within Québec, regardless of the location of the derivatives party, we would generally consider a person to be subject to the registration requirement as a dealer under the Act.

In particular, a person may be subject to the registration requirement as a dealer under the Act for the purposes of the Regulation regardless of whether it meets the definition of a “local counterparty”. For example, if a Québec local counterparty that is a derivatives party transacts with a foreign person that is subject to the registration requirement as a dealer under the Act but is not a local counterparty, the transaction is required to be reported under the Regulation because it involves a local counterparty, and the foreign person subject to the registration requirement as a dealer under the Act has the reporting obligation under paragraph 25(2)(a), unless it is an original transaction executed anonymously on a derivatives trading facility.

Similarly, if a Québec local counterparty that is subject to the registration requirement as a dealer under the Act transacts with a foreign person that is also a person subject to the registration requirement as a dealer under the Act but is not a local counterparty, the transaction is required to be reported under the Regulation because it involves a local counterparty, and the foreign person that is also a person subject to the registration requirement as a dealer under the Act may have a reporting obligation as determined according to paragraphs 25(3) or (4), unless it is an original transaction executed anonymously on a derivatives trading facility.

PART 2 TRADE REPOSITORY RECOGNITION AND ONGOING REQUIREMENTS

Introduction

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 ⁴To 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~~ a reporting counterparty 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.

Section 2 - 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,
- 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,

³ ~~For example, see sections 26 to 31.~~

- 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.

As part of this examination, 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, as required by the Regulation. 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~~The applicable principles, which have been incorporated into the Regulation and the interpretation of which we consider to be consistent with the PFMI Report, 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:~~

<i>Principle in the PFMI Report applicable to a trade repository</i>	<i>Relevant section(s) of the Regulation</i>
Principle 1: Legal Basis	Section 7 – Legal framework Section 17 – Rules, <u>policies and procedures</u> (in part)
Principle 2: Governance	Section 8 – Governance Section 9 – Board of directors Section 10 – Management
Principle 3: Framework for the comprehensive management of risks	Section 19 – Comprehensive risk management framework

<i>Principle in the PFMI Report applicable to a trade repository</i>	<i>Relevant section(s) of the Regulation</i>
	Section 20 – General business risk (in part)
Principle 15: General business risk	Section 20 – General business risk
Principle 17: Operational risk	Section 21 – System and other operational risk requirements <u>risks</u> Section 22 – Data security and confidentiality Section 24 – Outsourcing
Principle 18: Access and participation requirements	Section 13 – Access to recognized trade repository services Section 16 – Due process (in part) Section 17 – Rules, <u>policies and procedures</u> (in part)
Principle 19: Tiered participation arrangements	<u>Section 7 – Legal Framework</u> No equivalent provisions in the Regulation; however, the trade repository may be expected to observe or broadly observe the principle, where applicable. <u>Section 24.1 – Links and Tiered Participation Arrangements</u>
Principle 20: FMI links	<u>Section 7 – Legal Framework</u> No equivalent provisions in the Regulation; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.

<i>Principle in the PFMI Report applicable to a trade repository</i>	<i>Relevant section(s) of the Regulation</i>
	Section 24.1 – Links and Tiered Participation Arrangements
Principle 21: Efficiency and effectiveness	<p>Section 8 - Governance</p> <p>No equivalent provisions in the Regulation; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.</p> <p>Section 12 – Fees</p> <p>Section 14.1 – Operational efficiency and effectiveness</p>
Principle 22: Communication procedures and standards	Section 15 – Communication policies, procedures and standards
Principle 23: Disclosure of rules, key procedures, and market data	Section 17 – Rules, policies and procedures (in part)
Principle 24: Disclosure of market data by trade repositories	Sections in Part 4 – Data Dissemination and Access to Data

It is anticipated that the 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.

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/CPMI-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~~the 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.

Section 3 – Change in information

Significant changes

~~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,
- 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,

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

- a change in control of the recognized trade repository,
- a change in ~~affiliates~~entities 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 [below in relation to](#) 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)~~(2) before the proposed date of implementation of the change. However, where the changes are complex, raise regulatory concerns, or when additional information is required, the Authority's review may exceed these timeframes.

Changes that are not significant

~~(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.

Section 6 – Ceasing to carry on business

~~6. (1)~~ In addition to filing a completed Form 91-507F3 – *Cessation of Operations Report for Trade Repository referred to in subsection 6(1)*, 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 Authority pursuant to section 53 of the Act. The Authority may authorize the voluntary surrender on the conditions it determines.⁵

Section 7 – Legal framework

~~7. (1) Recognized~~ Under subsection 7(1), we would generally expect 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 where they have activities, whether within Canada or any foreign jurisdiction, ~~where they have activities.~~

Subsection 7(2) requires recognized trade repositories to establish, implement, maintain and enforce written rules, policies and procedures that are not contrary to the public interest and that are reasonably designed to ensure that all contractual arrangements and links are supported by the laws of all relevant jurisdictions.

Under paragraph 7(2)(a.2), recognized trade repositories will need to collect basic information that will enable them to assess and mitigate material risks that could arise from indirect

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

participant arrangements. For example, it is necessary to identify an indirect participant's transaction volumes or values that are large relative to that of a smaller participant through which they access their services in order to mitigate the material risks arising from such an arrangement.

The information collected should enable the recognized trade repository, at a minimum, to identify (a) the proportion of activity that participants conduct on behalf of indirect participants, (b) participants that act on behalf of a material number of indirect participants, (c) indirect participants with significant volumes or values of transactions in the system, and (d) indirect participants whose transaction volumes or values are large relative to those of the participants through which they access the recognized trade repository.

Section 8 - 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(1), the board of directors must establish a well-defined, clear and transparent risk management framework. The governance arrangements established by the board of directors of a recognized trade repository should ensure that the risk management and internal control functions have sufficient authority, independence, resources and access to the board.

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.

Section 9 - 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.

Under subsections 9(3) and (5), it is expected that in its governance arrangements, the recognized trade repository will clarify the roles and responsibilities of its board of directors, including procedures for its functioning. We expect such procedures to, among other things, identify, address, and manage board member conflicts of interest. The board of directors should also review its overall performance and the performance of its individual board members regularly.

Section 11 - 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.

Section 12 - 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. A recognized trade repository should regularly review its fee and cost structures, including any indirect charges to customers, to ensure efficiency and effectiveness of service.

Section 13 - Access to recognized trade repository services

The criteria for participation established by a recognized trade repository under subsection 13(1) should not limit access to its services except in limited circumstances where the recognized trade repository has a reasonable belief that such access would result in risks to the trade repository.

its technology systems or to the accuracy or integrity of the data it provides to the Authority or the public. In addition, such criteria could restrict access to a person that has failed to pay the recognized trade repository's fees or other material costs, in whole or in part, that have been set in accordance with section 12 of the Regulation.

~~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 respect to competing service providers that rely on the data maintained by the recognized trade repository. As an example, a recognized trade repository that is an affiliated entity of a clearing house must not impose barriers that would make it difficult for a competing clearing house to report derivatives data to the recognized trade repository.

Section 14 - Acceptance of reporting

~~14. Section 14~~ Subsection 14(1) 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.

The requirement in subsection 14(2) to accept corrections to errors or omissions in derivatives data applies after the expiration or termination of a transaction, subject to the record retention period under section 18. We view the term "participant" under subsection 14(2) to be limited to counterparties to the transaction and their agents or service providers.

Subsection 14(2) includes a requirement to record a correction as soon as technologically practicable after acceptance. In evaluating what will be considered to be "technologically practicable", the Authority will take into account the prevalence, implementation and use of technology by comparable trade repositories. The Authority may also conduct independent reviews to determine the state of technology.

Recognized trade repositories must accept derivatives data that conforms to the data elements in Appendix A to the Regulation. In addition, we expect a recognized trade repository to accept derivatives data that complies with the technical specifications set out in the AMF Derivatives Data Technical Manual, which is included as Appendix A to this Policy.

Section 14.1 – Operational efficiency and effectiveness

Section 14.1 requires that a recognized trade repository design its services to meet the needs of its participants and the markets it serves while being provided in a secure, efficient and effective manner. This would include, but is not limited to, the design of its operating structure (including connections with trading venues or service providers), the scope of products that are reportable and the use of technology and procedures.

A recognized trade repository should have mechanisms in place to review on a regular basis its service levels, pricing structure, costs and operational reliability.

A recognized trade repository should have policies and procedures that define measurable and achievable goals and objectives in reference to its business operations, risk management priorities, and business objectives so that it is able to meet its obligations in a timely manner, while producing data that is accurate and operating securely, efficiently and effectively.

Section 15 - Communication policies, procedures and standards

~~15.-~~ Section 15 sets out the communication ~~standard~~standards 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.

Section 17 - 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~~CPMI-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.

Section 18 - 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 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. A correction to data after expiration or termination of the transaction, as required under section 14, does not alter the record retention period.

As part of the record-keeping requirements under section 18, we expect a recognized trade repository will maintain records relating to errors or omissions in derivatives data, including corrections to derivatives data that has previously been disseminated under Part 4. In addition, we expect a recognized trade repository will maintain records relating to derivatives data that does not satisfy the derivatives data validation procedures of the recognized trade repository, including, but not limited to, validation errors, messages and timestamps.

Section 19 - 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.

Section 20 - 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.

~~(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)~~20(3) requires a recognized trade repository, for the purposes of subsection (2), to hold, at a minimum, 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 an appropriate written ~~plans~~plan 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~~ see above 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.

Subsection 20(7) requires a recognized trade repository, for the purposes of subsection 20(3), to maintain a viable plan for raising additional equity should its equity fall close to or below the amount needed to fund the appropriate level of liquid net assets. This plan should be approved by the board of directors and updated regularly.

Section 21 - Systems and other operational ~~risk requirements~~risks

~~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)~~ Under subsection 21(2)—~~The,~~ 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~~ COBIT⁶ from ISACA may provide guidance 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 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. Further, the recognized trade repository should have comprehensive and well-documented procedures in place to record, analyze, and resolve all systems failures, malfunctions, delays and security incidents. In this regard, the recognized trade repository should undertake a “post-mortem” review to identify the causes and any required improvement to the normal operations or business continuity arrangements. Such reviews should, where relevant, include an analysis of the effects on the trade repository’s participants. The results of such internal reviews are required to be communicated to the Authority as soon as practicable.

~~(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

⁶ Control Objectives for Information and related Technology.

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 and audit 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~~audit 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.

~~(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.

Section 22 - 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~~entities 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~~

Section 22.1 – Transactions executed anonymously on a derivatives trading facility

The purpose of section 22.1 is to ensure that the identities of counterparties to a transaction executed anonymously on a derivatives trading facility are not disclosed to users of the recognized trade repository post-execution. Only a transaction in respect of which a counterparty does not know the identity of its counterparty prior to or at the time of execution of the transaction is protected under section 22.1. For greater certainty, section 22.1 does not apply to data provided or made available to the Authority under the Regulation or pursuant to a recognized trade repository’s recognition order.

The term “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. The following are examples of derivatives trading facilities: a “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), a “multilateral trading facility” as defined in Directive 2014/65/EU Article 4(1)(22) of the European Parliament, and an “organized trading facility” as defined in Directive 2014/65/EU Article 4(1)(23) of the European Parliament.

Section 22.2 – Validation of data

~~In accordance with 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~~22.2(1) and any other validation conditions set out in its recognition order, a recognized trade repository, the must validate that the derivatives data that it receives from a reporting counterparty satisfies the derivatives data elements listed in Appendix A to the Regulation. In addition, we expect a recognized trade repository would not be in a position to confirm the accuracy of to validate that the derivatives data with such counterparty. As such, under subsection 23(2) it receives satisfies the technical specifications set out in the AMF Derivatives Data Technical Manual, which is included as Appendix A to this Policy.

~~Subsection 22.2(2) requires a recognized trade repository will not be obligated to confirm, as soon as technologically practicable after receiving derivatives data, to notify a reporting counterparty whether or not the accuracy of derivatives data satisfies the derivatives data validation procedures. In evaluating what will be considered to be “technologically practicable”, the Authority will take into account the prevalence, implementation and use of technology by comparable trade repositories. The Authority may also conduct independent reviews to determine the state of technology.~~

Section 23 – Verification of data with accuracy

~~Under paragraph 26.1(1)(b), a reporting counterparty that is not a participant of the person subject to the registration requirement as a dealer under the Act, a reporting clearing house or a Canadian financial institutions must verify the accuracy of the derivatives data that it is reporting at least every 30 days. Section 23 requires a recognized trade repository. Additionally, similar to the to maintain and adhere to written policies and procedures that are designed to enable such a reporting counterparty to meet its obligations in section 26, confirmation under subsection 23(1) can be delegated under section 26(3) to a third-party representative~~paragraph 26.1(1)(b).

A recognized trade repository may satisfy its obligation under section 23 ~~to confirm by providing the derivatives data reported for a transaction by notice to each counterparty to the transaction that is a participant of the recognized trade repository~~reporting counterparty, 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 reportedfor open transactions involving the reporting counterparty that is maintained by the recognized trade repository as of the time of the reporting counterparty’s access to the derivatives data. Access provided to a third-party representative is in addition to, and not instead of, the access provided to a relevant counterparty.

Section 24 - 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.

Section 24.1 – Links and Tiered Participation Arrangements

Links

A recognized trade repository should carefully assess the risks, including the additional operational risks, related to its links to ensure the scalability and reliability of information technology and related resources. For example, a recognized trade repository may be part of a network linking various entities (such as clearing houses, dealers, custodians, and service providers) and could transmit risk or cause processing delays to such linked entities in the event of an operational disruption. Therefore, links should be designed such that each linked entity is able to observe the risk management and other principles in the PFMI Report.

Tiered participation arrangements

A recognized trade repository, when applicable, is expected to adequately oversee and mitigate the material risks associated with tiered participation arrangements. The rules, policies and procedures of the recognized trade repository should be designed to effectively identify indirect participants, the risks they create and the impact that processing the indirect participant's derivatives data has on the recognized trade repository and on the services it offers. The recognized trade repository is expected to regularly review all risks associated with these arrangements in order to take appropriate action to address and mitigate any of these risks.

When applicable, the recognized trade repository should be able to identify and monitor the material dependencies that exist between the participants and the indirect participants in order to mitigate the material risks arising from these reporting arrangements. This includes identifying those indirect participants whose transaction volumes or values are large relative to the capacity of the participants through which they access their services. For this purpose, a recognized trade repository will need to have readily available information regarding the significant indirect participants that may be affected by problems at a particular participant.

PART 3 DATA REPORTING

Introduction

Part 3 ~~deals with~~addresses 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~~that involve a local counterparty, including the determination of which counterparty is required to report derivatives data, when derivatives data is required to be reported, different types of derivatives data that ~~is~~are required to be reported, and other requirements regarding verification of data accuracy and reporting of errors and omissions.

Section 25 - Reporting counterparty

~~25.~~—

Section 25 outlines ~~how the~~a hierarchy for determining which counterparty to a transaction ~~is~~ required to report derivatives data ~~and fulfill~~based on the counterparty to the transaction that is best suited to fulfill the reporting obligation.

The hierarchy does not apply to original transactions that are executed anonymously on a derivatives trading facility and are intended to be cleared. Under section 36.1, the derivatives

trading facility has the ~~ongoing reporting~~ obligations of a reporting counterparty in respect of these original transactions. However, the hierarchy applies to all other transactions involving a local counterparty that are executed on a derivatives trading facility and to all transactions involving a local counterparty that are not executed on a derivatives trading facility.

Please see above under ~~the Regulation is determined. Reporting obligations on persons~~ Part 1 for guidance on the expression “a person subject to the registration requirement as a dealer under the Act ~~apply to~~” and the factors in determining whether a person ~~who engages is engaged~~ or ~~purports~~ purported to engage in the business of derivatives trading, ~~irrespective of whether the person is a registrant or is exempt from.~~

The reporting obligation with respect to a transaction involving a local counterparty applies to a person subject to the registration requirement as a dealer under the Act as set out in the hierarchy regardless of whether the person is a local counterparty. Where such person is also a Canadian financial institution, its status as a dealer prevails for the purposes of ~~Section~~ section 25.

Cleared transactions

Under subsection 25(1), derivatives data relating to a cleared transaction is required to be reported by the reporting clearing house. The ~~reporting clearing house is required to report each cleared transaction resulting from a novation of the original transaction to the clearing house as a separate, new transaction with reporting links to the original transaction, and is also required to report the termination of the original transaction under subsection 32(3). For clarity, the reporting clearing house is not the reporting counterparty for an original transaction.~~

~~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 reporting clearing house is best positioned to report derivatives data and is therefore required to act as reporting counterparty.~~

(3)

The following chart illustrates reporting responsibilities in respect of transactions in relation to clearing:

<u>Transaction</u>	<u>Reporting counterparty</u>
<u>Original transaction between Party A and Party B (sometimes referred to as the “alpha” transaction)</u>	<p><u>If executed anonymously on a derivatives trading facility and is intended to be cleared, the derivatives trading facility has the obligations of a reporting counterparty under section 36.1.</u></p> <p><u>If not executed anonymously on a derivatives trading facility, the reporting counterparty is</u></p>

	<u>determined under section 25. For example, if Party A were a person subject to the registration requirement as a dealer under the Act and Party B were not, Party A would be the reporting counterparty.</u>
<u>Cleared transaction between Party A and the reporting clearing house (sometimes referred to as the “beta” transaction)</u>	<u>Reporting clearing house</u>
<u>Cleared transaction between Party B and the reporting clearing house (sometimes referred to as the “gamma” transaction)</u>	<u>Reporting clearing house</u>
<u>Termination of the original transaction between Party A and Party B</u>	<u>Reporting clearing house</u>

Agreement between counterparties

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~~It may take the form of a multilateral agreement, for example, the ~~counterparties may use the ISDA methodology~~ISDA 2015 Multilateral Non-Dealer Canadian Reporting Party Agreement 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.

In order for the counterparties to rely on subsection 25(3), the agreement must meet the conditions in that paragraph. Namely, the agreement must be in written form, have been entered into at or before the time the transaction occurs, and identify the reporting counterparty with respect to the derivative. The format of the written agreement is flexible. For example, an email between the counterparties is sufficient.

Under subsection 25(4), if none of subsections 25(1) to (3) apply to a transaction involving a local counterparty, each local counterparty to the transaction has the reporting obligation under the Regulation.

Under subsection 25(5), a local counterparty to a transaction where the reporting counterparty is determined through a written agreement must keep a record of the written agreement for 7 years, in a safe location and durable form, following expiration or termination of the transaction. A local counterparty has the obligation to retain this record even if it is not the reporting counterparty under the agreement.

Subsection 25(6) provides that a local counterparty that agrees to be the reporting counterparty for a transaction under subsection 25(3) must fulfill all reporting obligations as the

reporting counterparty in relation to that transaction even if that local counterparty would otherwise be excluded from the trade reporting obligation under section 40.

Section 26 - Duty to report

~~26-~~ Section 26 outlines the duty to report derivatives data. For certainty, the duty to report derivatives data does not apply for transactions in derivatives specified in *Regulation 91-506 respecting Derivatives Determination* (chapter I-14.01, r. 0.1).

~~(1)~~ Subsection 26(1) requires that, subject to ~~sections 40, 41 and 42~~certain limited exclusions under the Regulation, derivatives data for each transaction to which one or more counterparties is a local counterparty be reported to a recognized trade repository in accordance with the Regulation. 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, collateral and margin data, position level 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, and collateral and margin data. For example, some or all of the reporting obligations may be delegated to either of the counterparties or to a third-party service provider. ~~However, the~~

A reporting delegation agreement does not alter the reporting counterparty obligation as determined under section 25. A reporting counterparty under the Regulation 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 in this situation, market participants should contact the Authority in advance to make arrangements to report the data~~ electronically ~~submitted to the Authority~~.

~~(5)~~ Subsection 26(5) provides for limited substituted compliance with ~~this~~the Regulation where a transaction has been reported to a recognized trade repository pursuant to the ~~law~~securities legislation of a province or territory of Canada other than Québec or the laws 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). The transaction data reported to a recognized trade repository under paragraph (b) may be provided to the Authority under paragraph (c) in the same form as required to be reported pursuant to the applicable foreign jurisdiction's requirements for reporting transaction data.

Under subsection 26(6), the reporting counterparty to a derivative has not fulfilled its reporting obligations under the Regulation unless and until all derivatives data that it has reported satisfies the validation procedures of the recognized trade repository, which may include timing, methods of reporting, and data standards in respect of the elements listed in Appendix A to the Regulation and the technical specifications set out in the AMF Derivatives Data Technical Manual (which is included as Appendix A to this Policy). A reporting counterparty will be notified by the trade repository pursuant to subsection 22.2(2) whether or not the reported derivatives data satisfies its validation procedures.

~~(6)~~ The purpose of subsection ~~26(6)~~26(7) is to ensure the Authority has access to all derivatives data for a particular transaction (from the initial submission to the recognized trade repository through all life-cycle events to termination or ~~maturity~~expiration) from one recognized trade repository. It is not intended to restrict counterparties' ability to report to multiple trade repositories or from choosing to report derivatives data to a new recognized trade repository. Should a reporting counterparty begin reporting its data to a new recognized trade repository, all derivatives data relevant to open transactions need to be transferred to the new recognized trade repository. Where the entity to which the transaction was originally reported is no longer a recognized trade repository, all derivatives data relevant to that transaction should be reported to another recognized trade repository as otherwise required by the Regulation.

~~For a bilateral~~Under subsection 26(9), for a cleared transaction~~that is assumed by a reporting clearing house (novation), the recognized trade repository to which the reporting clearing house must report~~ all derivatives data~~for the assumed transactions must be reported~~ is the recognized trade repository holding the derivatives data reported in respect of the original ~~bilateral~~transaction, unless the reporting clearing house obtains the consent of the local counterparties to the original transaction.

~~(7) — The Authority interprets the requirement in~~

Section 26.1 – Verification of data accuracy and reporting of errors and omissions

Under paragraph 26.1(1)(a), the reporting counterparty in respect of a transaction is responsible for ensuring that reported derivatives data is accurate and contains no misrepresentation. To facilitate this, subsection 38(1) requires recognized trade repositories to provide counterparties with timely access to data. For greater certainty, paragraph 26.1(1)(a) applies both to open transactions and transactions that have expired or terminated (unless the record-keeping requirements under section 36 have expired at the time that the error or omission is discovered).

In addition to the requirement in paragraph 26.1(1)(a), a reporting counterparty that is a person subject to the registration requirement as a dealer under the Act, a reporting clearing house or a Canadian financial institution must also, under paragraph 26.1(1)(b), verify that reported derivatives data is accurate and contains no misrepresentation at least every 30 days. This involves following the policies and procedures of the recognized trade repository (established under section 23) to compare all derivatives data for each transaction for which it is the reporting counterparty with all derivatives data contained in the reporting counterparty's internal books and records to

ensure that there are no errors or omissions. Paragraph 26.1(1)(b) does not apply to transactions that have expired or terminated.

Under subsection ~~26(7) to~~26.1(2), a reporting counterparty must report ~~errors~~an error or ~~omissions~~omission in derivatives data “to the recognized trade repository as soon as technologically practicable” ~~after it is discovered, to mean~~ upon discovery of the error or omission and in any case no later than the end of the business day following the day on which the error or omission is discovered. In evaluating what will be considered to be “technologically practicable”, the Authority will take into account the prevalence, implementation and use of technology by comparable counterparties located in Canada and in comparable foreign jurisdictions. The Authority may also conduct independent reviews to determine the state of technology. This requirement applies both to open and expired or terminated transactions, subject to the record retention period under section 36.

~~(8)~~—Under subsection ~~26(8)~~26.1(3), 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.~~— as soon as technologically practicable upon discovery of the error or omission and in any case no later than the end of the business day following the day on which the error or omission is discovered.~~ In evaluating what will be considered to be “technologically practicable”, the Authority will take into account the prevalence, implementation and use of technology by comparable counterparties located in Canada and in comparable foreign jurisdictions. The Authority may also conduct independent reviews to determine the state of technology. Once the error or omission is reported to the reporting counterparty, the reporting counterparty then has an obligation under subsection ~~26(7)~~26.1(2) to report the error or omission to the recognized trade repository ~~and, if applicable, or~~ to the Authority ~~in accordance with subsection 26(6).~~ The Authority interprets the requirement in,

Under subsection ~~26(8) to~~26.1(4), a reporting counterparty must notify the Authority of a significant error or omission that has occurred as soon as practicable upon discovery of the error or omission. We consider a significant error or omission to include, but not limited to, an error or omission impacting a substantial number of transactions. A significant error or omission may also arise where a transaction itself is significant in the context of the reporting counterparty ~~of errors or omissions in~~’s other derivatives ~~data to mean upon discovery and in any case no later than the end of the business day following the day on which the error or omission is discovered.~~ transactions, such as a transaction where a counterparty is in default or where there has been another event giving rise to a right of termination of the transaction. The reporting counterparty should describe the general nature of the error or omission, the reason the error or omission is significant, the number of transactions impacted, the date and duration of error, the steps taken to remedy the error or omission, and any planned remediation steps. This requirement applies both to open and expired or terminated transactions, subject to the record retention period under section 36.

Section 28 - 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~~

~~an~~ LEI under the Global LEI System. The Global LEI System is a G20 endorsed initiative⁶ that ~~will~~ uniquely ~~identify~~identifies 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) ~~and section 28.1~~ means the G20 endorsed system that ~~will serve~~serves as a public-good utility responsible for overseeing the issuance of ~~legal entity identifiers~~LEIs globally to counterparties who enter into transactions. LEIs can only be obtained from a Local Operating Unit (LOU) endorsed by the LEI ROC.⁷

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~~LEI. The substitute ~~legal entity identifier~~LEI 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.

~~(4)~~ Some counterparties to a reportable transaction may not be eligible to receive an LEI. In such cases, the reporting counterparty must use an alternate identifier to identify each counterparty that is ineligible for an LEI when reporting derivatives data to a recognized trade repository. An individual is not required to obtain an LEI and the reporting counterparty must use an alternate identifier to identify each counterparty that is an individual when reporting derivatives data to a recognized trade repository.

28.1 The alternate identifier must be unique for each such counterparty, and the same alternate identifier must be used in respect of all transactions involving that counterparty.

Section 28.1 ~~requires that each local,~~ – Maintenance and renewal of legal entity identifiers

Under section 28.1, a counterparty, other than an individual ~~and those not eligible to receive an LEI~~, that is a reporting counterparty (regardless of whether it is a local counterparty) or a non-reporting counterparty that is a local counterparty, and that is party to a transaction that is required to be reported to a recognized trade repository, must obtain, maintain and renew an LEI, ~~regardless of whether the local counterparty is the reporting counterparty.~~

Maintenance of an LEI means ensuring that the reference data associated with the LEI assigned to the ~~local~~ counterparty is updated with all relevant and accurate information in a timely manner.

Renewal of an LEI means providing the associated local operating unit with acknowledgement that the reference data associated with the LEI assigned to the ~~local~~ counterparty is accurate.

Section 29 - Unique transaction identifier

⁶ See http://www.financialstabilityboard.org/policy_area/lei/ for more information.

⁷ The list of LEI ROC-endorsed LOUs and their contact information is available at <https://www.gleif.org/>.

~~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~~

Introduction

Subsection 29(1) is intended to ensure that a transaction is identified by means of only one UTI. Subsection 29(1) outlines a hierarchy for determining which person has the obligation to assign a UTI for a transaction that is required to be reported. Further to the February 2017 publication of *Technical Guidance on the Harmonisation of the Unique Transaction Identifier* by the CPMI-IOSCO working group for the harmonization of key over-the-counter derivatives data elements, section 29 intends to achieve a globally common UTI generator outcome, while generally aligning with the reporting counterparty determination under subsections 25(1) to (4).

If more than one counterparty is the reporting counterparty for a transaction. — For example, both reporting counterparties to a single swap transaction would identify the transaction by using the same single identifier. For a bilateral transaction that is novated to a UTI. A reporting clearing house, the reporting of the novated transactions should reference the unique UTI of the original transaction identifier in its reports of the original bilateral transaction cleared transactions.

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

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

~~31.~~

Please see above under Part 1 for guidance on the expression “a person subject to the registration requirement as a dealer under the Act” and the factors in determining whether a person is engaged or purports to engage in the business of derivatives trading. Please see above under section 22.1 for the Authority’s views on the term “derivatives trading facility”.

Cleared transactions

Under paragraph 29(1)(a), where transactions are cleared through a reporting clearing house, the reporting clearing house must generate the UTI. For clarity, the clearing house does not generate the UTI in respect of an original transaction that is intended to be cleared, to which it is not a counterparty.

Transactions executed on a derivatives trading facility

Under paragraph 29(1)(b), where an uncleared transaction is executed on a derivatives trading facility that has assigned a UTI to the transaction, that derivatives trading facility must generate the UTI under the Regulation. The reporting counterparty must not assign another UTI to a transaction that is executed on a derivatives trading facility where that derivatives trading facility has already assigned a UTI to the transaction. This is intended to ensure that a derivative is identified by means of only one UTI.

Earlier UTI generator

If paragraphs 29(1)(a) and (b) do not apply, and where an uncleared transaction is required to be reported in a jurisdiction other than Québec with an earlier reporting deadline, under paragraph 29(1)(c) the person required to assign the UTI under the laws of that other jurisdiction must generate the UTI under the Regulation. This reflects the intention that a transaction should be assigned the same UTI for the purposes of trade reporting under the laws of all jurisdictions.

Recognized trade repository

Under paragraph 29(1)(h), the recognized trade repository must generate the UTI. This should only arise for an uncleared transaction where the reporting counterparty is neither a person subject to the registration requirement as a dealer under the Act nor a Canadian financial institution.

Timeframe

Subsection ~~31(2)~~29(2) requires ~~that reporting of creation data be made in real time, which means that creation data should be reported~~the UTI to be assigned as soon as technologically practicable after ~~the~~ execution of ~~a transaction. the transaction and in no event later than the time that the transaction is required to be reported to a recognized trade repository under the Regulation.~~ In evaluating what will be considered to be “~~technological~~technologically practicable”, the Authority will take into account the prevalence ~~of,~~ implementation and use of technology by comparable ~~counterparties~~persons located in Canada and in comparable foreign jurisdictions. The Authority may also conduct independent reviews to determine the state of ~~reporting~~technology.

~~(3) — Subsection 31(3) is intended to~~

Section 30 - Unique product identifier

Section 30 requires that a reporting counterparty identify each derivative that is subject to the reporting obligation under the Regulation by means of a single UPI. The UPI must be obtained from the Derivatives Services Bureau.

Section 31 - Creation data

Section 31 requires that reporting of creation data be made in real time. If it is not technologically practicable to report creation data in real time, it must be reported as soon as technologically practicable. In all cases, the outside limit for reporting is the end of the business day following execution of the transaction. In evaluating what will be considered to be “technologically practicable”, the Authority will take into account the ~~fact that not all~~prevalence, ~~implementation and use of technology by comparable~~ counterparties ~~will have the same technological capabilities. For example, counterparties that do not regularly engage in transactions would, at least in the near term, likely not be as well situated to achieve real-time reporting. Further, for certain post-transaction operations, such as trade compressions involving numerous transactions, real-time reporting may not currently be~~practicable located in Canada and in comparable foreign jurisdictions. The Authority may also ~~conduct independent reviews to determine the state of technology.~~ 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.~~

Section 32 - Lifecycle event data

Lifecycle event data is not required to be reported in real time but rather at the end of the business day on which the lifecycle event occurs. The end of business day report may include multiple lifecycle events that occurred on that day. If it is not technologically practicable to report lifecycle event data by the end of the business day on which the lifecycle event occurs, it must be reported by the end of the business day following the day on which the lifecycle event occurs. In evaluating what will be considered to be “technologically practicable”, the Authority will take into account the prevalence, implementation and use of technology by comparable counterparties located in Canada and in comparable foreign jurisdictions. The Authority may also conduct independent reviews to determine the state of technology.

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, and 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~~ A reporting clearing house is not required to report the termination of the original transaction in respect of a cleared transaction under subsection 32(3). The termination report must be made to the same recognized trade repository to which the original transaction was reported in real time but rather at by 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. original transaction is terminated.

~~Valuation~~ Section 32.1 – Position level data

~~33.~~

As an alternative to reporting lifecycle events, a reporting counterparty may, at its option, report aggregated position level data. This option is only available in respect of transactions that meet the criteria under paragraphs 32.1(a) and (b). We view the term “fungible” in paragraph 32.1(b) to refer to transactions involving identical contract specifications that are replaceable with one another or can be easily bought or sold to offset a prior transaction having identical contract specifications. Contracts that exhibit these features are commonly referred to as contracts for difference. If a person is the reporting counterparty in respect of some transactions that meet these criteria and others that do not, it may only report position level data in respect of the transactions that meet these criteria, and must report lifecycle events under section 32 in respect of transactions that do not. If a reporting counterparty chooses not to report position level data, it must instead report lifecycle events under section 32.

Section 33 - Valuation data and collateral and margin data

Under subsection 33(1), a reporting counterparty must report valuation data and collateral and margin 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 each business day until the transaction is terminated or expires.~~ The Authority notes that, in accordance with subsection ~~26(6)~~26(7), all reported derivatives data relating to a particular transaction must be reported to the same recognized trade repository, ~~and to the Authority for transactions for which derivatives data was reported 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 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~~

Section 36 – Records of data reported

A reporting counterparty must keep transaction records for 7 years after the expiration or termination of a transaction. The requirement to maintain records for 7 years after the expiration or termination of a transaction, rather than from the date the transaction was entered into, reflects the fact that transactions create on-going obligations and information is subject to change throughout the life of a transaction.

As part of the record-keeping requirements under section 36, we expect a reporting counterparty will maintain records of each verification it performs to confirm the accuracy of reported derivatives data as well as records relating to any error or omissions discovered in reported derivatives data or any corrections to such data.

Section 36.1 – Derivatives trading facility or platform for trading derivatives

~~Under section 36.1, where a 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 involving a local counterparty is executed anonymously on a derivatives trading facility and is intended to be cleared, the derivatives trading facility has the obligations of a 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 under the provisions enumerated in paragraph 36.1(a), and references 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 counterparty” under the provisions enumerated in paragraph 36.1(b) are deemed to refer to the derivatives trading facility.~~

~~Section 36.1 only applies to the original transaction. If a derivatives trading facility reports an original transaction under section 36.1, the reporting clearing house is required to report the Authority due to their imminent termination or expiry.~~

~~————The derivatives data required to be reported for pre-existing of the original transaction under subsection 32(3) and report the cleared transactions under section 34 is substantively paragraph 25(1)(a). Section 36.1 applies only where it is not possible for a counterparty to establish the same as identity of 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 other counterparty has reported pre-existing prior to execution of a transaction derivatives data required by the CFTC rule, this would meet.~~

~~Please see above under section 22.1 for the Authority’s views on the term “derivatives data reporting requirements under section 34. This interpretation applies only to pre-existing transactions trading facility”.~~

PART 4 DATA DISSEMINATION AND ACCESS TO DATA

Section 37 - 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~~contribute to the stability of the financial system and the reduction of systemic risk. This includes derivatives data with respect to any transaction or transactions that may impact Québec's capital markets.

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.

Electronic access under paragraph 37(1)(a) 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.

Paragraph 37(1)(d) requires recognized trade repositories to provide to the Authority any corrections to data as soon as technologically practicable after recording the correction. In evaluating what will be considered to be "technologically practicable", the Authority will take into account the prevalence, implementation and use of technology by comparable trade repositories. The Authority may also conduct independent reviews to determine the state of technology

~~(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~~CPMI and IOSCO.⁸ It is expected that all recognized trade repositories will comply with the access recommendations in ~~CPSS~~CPMI-IOSCO's final report.

~~(3)~~ The Authority interprets the requirement under subsection 37(3) 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~~derivatives data to the Authority.

Section 38 - Data available to counterparties

~~38.~~ ~~Section 38 is~~ Subsections 38(1) and (2) are 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 and that recognized trade repositories have appropriate authorization procedures in place to enable such access. 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~~should grant such access on the terms consented to.

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

We note that reporting counterparties require access to derivatives data relating to their transactions in order to fulfill their obligation under subsection 26(1) to ensure the accuracy of reported data.

We expect that data made available by a recognized trade repository to counterparties and any person acting on their behalf will not include the identity or LEI of the other counterparty in respect of transactions executed anonymously on a derivatives trading facility and cleared through a reporting clearing house, as required under section 22.1.

Section 39 - Data available to public

~~39.~~ ~~(1)~~ Subsection 39(1) requires a recognized trade repository to make available to the public, ~~free of charge~~ at no cost, 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.

A recognized trade repository is required to make corrections, where applicable, to data that has been made available to the public as soon as technologically practicable after recording a correction, and in no event later than the time when aggregate data is next made available to the public. In evaluating what will be considered to be "technologically practicable" under paragraphs 39(1)(b) and 39(3)(b), the Authority will take into account the prevalence, implementation and use of technology by comparable trade repositories. The Authority may also conduct independent reviews to determine the state of technology.

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

Subsection 39(3) requires a recognized trade repository to make available to the public at no cost transaction level reports that meet the requirements under Appendix C to the Regulation. Such transaction level reports are expected to be available on the recognized trade repository's website. A recognized trade repository is required to make corrections, where applicable, to reports that have been made available to the public as soon as technologically practicable after recording a correction. In evaluating what will be considered to be "technologically practicable", the Authority will take into account the prevalence, implementation and use of technology by comparable trade repositories. The Authority may also conduct independent reviews to determine the state of technology.

~~(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** LEIs 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 - Commodity transactions

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 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** exclusion) is a physical commodity contract that allows for cash settlement in place of delivery.

We take the position that commodities include goods such as agricultural products, forest products, products of the sea, minerals, metals, hydrocarbon fuel, precious stones or other gems, electricity, oil and natural gas (and by-products, and associated refined products, thereof), and water. We also consider certain intangible commodities, such as carbon credits and emission allowances, to be commodities. In contrast, this exclusion will not apply to financial commodities such as currencies, interest rates, securities, indexes, as well as crypto assets that could be considered to be financial commodities.

In calculating the month-end notional outstanding for any month, the notional amount of all outstanding transactions required to be reported under the Regulation and relating to a commodity other than cash or currency, with all counterparties other than affiliated entities, whether domestic or foreign, should be included.

A local counterparty that qualifies for this exclusion is required to report a transaction involving an asset class other than a commodity or involving cash or currency, if it is the reporting counterparty for the transaction under section 25.

As provided under subsection 25(6), a local counterparty that agrees to be the reporting counterparty for a transaction under subsection 25(3) must fulfill all reporting obligations as the reporting counterparty in relation to that transaction even if that local counterparty would otherwise be excluded from the trade reporting obligation under section 40.

This exclusion is not relevant to an original transaction that is executed anonymously on a derivatives trading facility. In this situation, even if both local counterparties to the transaction would otherwise qualify for this exclusion, the derivatives trading facility must report the original transaction under section 36.1.

In a transaction between two local counterparties, where the reporting counterparty is determined under subsection 25(4), and where section 36.1 does not apply, each local counterparty should determine whether it qualifies for this exclusion. If only one local counterparty to the transaction qualifies for the exclusion, the other local counterparty must still report the transaction. If each local counterparty qualifies for the exclusion, the transaction is not required to be reported under the Regulation.

In a transaction between a local counterparty that qualifies for this exclusion and a non-local counterparty, where the reporting counterparty is determined under subsection 25(4) and where section 36.1 does not apply, the transaction is not required to be reported under the Regulation.

Section 41 - 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 January 16, 2017.⁹~~

~~(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.~~

⁹ Despite section 42(2) of the Regulation, decision No. 2015-PDG-0022 deferred to July 29, 2016, the implementation of the requirement under subsection 39(3) to make transaction level data reports available to the public. The decision No. 2015-PDG-0022 can be found at: http://www.lautorite.qc.ca/files/pdf/bulletin/2015/vol12no6/vol12no6_6-10.pdf.

Section 41.1 – Individuals

Section 41.1 provides an exclusion from the reporting requirement for individuals. While an individual may be a local counterparty, an individual (or an estate of a deceased individual) is not required to report transactions under the Regulation.

APPENDIX GA
MINIMUM DATA FIELDS REQUIRED TO BE REPORTED TO A RECOGNIZED
TRADE REPOSITORY

Appendix A to the Regulation should be read in conjunction with the AMF Derivatives Data Technical Manual, in Appendix A to this Policy, which provides the formats and allowable values for the derivatives data specifications required to be reported by a reporting counterparty under Part 3 of the Regulation.

APPENDIX C
RECOGNIZED TRADE REPOSITORY REQUIREMENTS FOR THE PUBLIC
DISSEMINATION OF DERIVATIVES DATA

Instructions

(1) The instructions provided at item 1 of Appendix C describe the types of transactions that must be publicly disseminated by the recognized trade repository.

Public dissemination is not required for life-cycle events that do not contain new price information compared to the derivatives data initially reported for the transaction.

Table 1

Table 1 lists the transaction related information that must be publicly disseminated. Table 1 is a subset of the information that the recognized trade repository is required to submit to the regulator and does not include all the fields required to be reported to a recognized trade repository pursuant to Appendix A. For example, valuation data fields are not required to be publicly disseminated.

Table 2

Only those transactions with the asset class and underlying asset identifiers fields listed in Table 2 are subject to the public dissemination requirement under section 39 of the Regulation.

For further clarification, the identifiers listed under the underlying asset identifier for the interest rate asset class in Table 2 refer to the following:

“CAD-BA-CDOR” means all tenors of the Canadian Dollar Offered Rate (CDOR). CDOR is a financial benchmark for bankers’ acceptances with a term to ~~maturity~~expiration of one year or less currently calculated and administered by Thomson Reuters.

“USD-LIBOR-BBA” means all tenors of the U.S. Dollar Intercontinental Exchange London Interbank Offered Rate (ICE LIBOR). ICE LIBOR is a benchmark currently administered by ICE Benchmark Administration and provides an indication of the average rate at which a contributor bank can obtain unsecured funding in the London interbank market for a given period, in a given currency.

“EUR-EURIBOR-Reuters” means all tenors of the Euro Interbank Offered Rate (Euribor). Euribor is a reference rate published by the European Banking Authority based on the average interest rates at which selected European prime banks borrow funds from one another.

“GBP-LIBOR-BBA” means all tenors of the GBP Pound Sterling Intercontinental Exchange London Interbank Offered Rate (ICE LIBOR). ICE LIBOR is a benchmark currently administered by ICE Benchmark Administration providing an indication of the average rate at which a contributor bank can obtain unsecured funding in the London interbank market for a given period, in a given currency.

For further clarification, the identifiers listed under the underlying asset identifier for the credit and equity asset classes in Table 2 refer to the following:

“All indexes” means any statistical measure of a group of assets that is administered by an organization that is not affiliated with the counterparties and whose value and calculation methodologies are publicly available. Examples of indexes that would satisfy this meaning are underlying assets that would be included in ISDA’s Unique Product Identifier Taxonomy⁴⁰⁹ under the categories of (i) index and index tranche for credit products and (ii) the single index category for equity products.

Exemptions

(2) Item 2 of Appendix C specifies certain types of transactions that are exempt from the public dissemination requirement of Section 39 of the Regulation. An example of a transaction exempt under item 2(a) is cross currency swaps. The types of transactions exempt under item 2(b) result from portfolio compression activity which occurs whenever a transaction is amended or entered into in order to reduce the gross notional exposure of an outstanding transaction or group of transactions without impacting the net exposure. Under item 2(c), transactions resulting from novation on the part of a reporting clearing house when facilitating the clearing of a transaction between counterparties are excluded from public dissemination. As a result, with respect to transactions involving a reporting clearing house, the public dissemination requirements under paragraph 7 apply only to transactions entered into by the reporting clearing house on its own behalf.

Rounding

(3) The rounding thresholds are to be applied to the notional amount of a transaction in the currency of the transaction. For example, a transaction denominated in US dollars would be rounded and disseminated in US dollars and not the CAD equivalent.

Capping

(4) For transactions denominated in a non-CAD currency, item 4 of Appendix C requires the recognized trade repository to compare the rounded notional amount of the transaction in a non-CAD currency to the capped rounded notional amount in CAD that corresponds to the asset class and tenor of that transaction. Therefore, the recognized trade repository must convert the non-CAD currency into CAD in order to determine whether it would be above the capping threshold. The recognized trade repository must utilise a transparent and consistent methodology for converting to and from CAD for the purposes of comparing and publishing the capped notional amount.

⁴⁰⁹ ISDA’s Unique Product Identifier Taxonomy can be found at <http://www2.isda.org/functional-areas/technology-infrastructure/data-and-reporting/identifiers/>

For example, in order to compare the rounded notional amount of a transaction denominated in GBP to the thresholds in Table 4, the recognized trade repository must convert this amount to a CAD equivalent amount. If the CAD equivalent notional amount of the GBP denominated transaction is above the capping threshold, the recognized trade repository must disseminate the capped rounded notional amount converted back to the currency of the transaction using a consistent and transparent process.

(6) Item 6 of Appendix C requires the recognized trade repository to adjust the option premium field in a consistent and proportionate manner if the transaction's rounded notional amount is greater than the capped rounded notional amount. The option premium field adjustment should be proportionate to the size of the capped rounded notional amount compared to the rounded notional amount.

Timing

(7) Item 7 of Appendix C sets out when the recognized trade repository must publicly disseminate the required information from Table 1. The purpose of the public reporting delay is to ensure that counterparties have adequate time to enter into any offsetting transaction that may be necessary to hedge their positions. The time delay applies to all transactions, regardless of transaction size.

APPENDIX A TO POLICY STATEMENT
AMF DERIVATIVES DATA TECHNICAL MANUAL

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