

CSA STAFF CONSULTATION PAPER 91-301

**MODEL PROVINCIAL RULES – DERIVATIVES: PRODUCT DETERMINATION
AND
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING****1. Introduction**

We, the Canadian Securities Administrators OTC Derivatives Committee (the “Committee”) are publishing for a 60 day-comment period:

- Model Provincial Rule – *Derivatives: Product Determination* (the “Scope Rule”),
- Model Explanatory Guidance to Model Provincial Rule – *Derivatives: Product Determination* (the “Scope EG”),
- Model Provincial Rule – *Trade Repositories and Derivatives Data Reporting* (the “TR Rule”), and
- Model Explanatory Guidance to Model Provincial Rule – *Trade Repositories and Derivatives Data Reporting* (the “TR EG”).

Collectively the Scope Rule, the Scope EG, the TR Rule and the TR EG will be referred to as the “Model Rules”.

We are issuing this notice to provide interim guidance and solicit comments on the Model Rules, which currently have been drafted based on existing provisions of Ontario securities law. Once we have considered comments received on the Model Rules and made appropriate changes, each jurisdiction will publish its own rules, explanatory guidances and appendices, with necessary local modifications.¹

2. Background

In order to implement the G-20 commitments² that relate to the regulation of the trading of derivatives in Canada, the Committee has been working on recommendations both independently and in collaboration with the Canadian OTC Derivatives Working Group.³ Since November 2010, the Committee has published a series of derivatives consultation papers outlining policy recommendations for the regulation of derivatives in Canada.⁴ In formulating these recommendations, the Committee has sought to strike a balance between proposing regulation that does not unduly burden participants in the derivatives market, while at the same time addressing the need to introduce effective regulatory oversight of derivatives and derivatives market activities.

The regulatory framework will be implemented through provincial rules that are intended to impose specific regulatory requirements tailored to address the unique characteristics of derivatives products, how they are marketed and traded, the sophistication of the counterparties, existing regulation in other areas (such as the regulation of financial institution), and the risks they present to the derivatives and financial markets. To the greatest extent appropriate, the derivatives rules will be harmonized with international standards and be consistent across Canada.

3. Rule-making process

The next stage in the Committee’s rule-making process is the publication for comment of a number of “model” rules covering a variety of areas of regulation that together will create a regime for the regulation of derivatives markets. The “model” rules will reflect the public commentary on the consultation papers and are the Committee’s recommendations for specific proposals to regulate the derivatives market in Canada. Due to variations in provincial securities legislation, the final provincial rules will contain differences. However, it is the intention of the Committee that the substance of the rules will be the same across jurisdictions, and market participants and derivative products will receive the same treatment across Canada.

¹ In some cases, jurisdictions with substantively similar securities legislation may consider developing and publishing multi-lateral instruments.

² The G-20 commitments include requirements that all standardized over-the-counter derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. Moreover, over-the-counter derivative contracts should be reported to trade repositories. Also, non-centrally cleared contracts should be subject to higher capital requirements.

³ The Canadian OTC Derivatives Working Group consists of the Bank of Canada, the federal Department of Finance, the Office of the Superintendent of Financial Institutions, the Alberta Securities Commission, the Autorité des marchés financiers, the British Columbia Securities Commission and the Ontario Securities Commission.

⁴ 91-401 *Over-the-Counter Derivatives Regulation in Canada*, 91-402 *Derivatives: Trade Repositories*, 91-403 *Derivatives: Surveillance and Enforcement*, 91-404 *Segregation and Portability in OTC Derivatives Clearing*, 91-405 *Derivatives: End User Exemption*, and 91-406 *Derivatives: OTC Central Counterparty Clearing*.

The Model Rules have been drafted based on the *Securities Act* (Ontario) and should be considered in the context of that legislation. Subsequent model rules will be based on other provincial statutes and in each case the accompanying notice will identify the legislation upon which the rules are based.

Each of the “model” rules (including the Model Rules being published with this notice) will be published for a consultation period of 60 days after which the Committee will evaluate comments received and recommend appropriate amendments to the proposed rule. Once this process is completed, each province will publish province-specific rules for comment in accordance with the legislative requirements of the province. In a number of provinces legislative amendments will need to be implemented before province-specific rules can be published for consultation. Because of this, publication dates of province-specific rules may vary. Once each province’s comment period has been completed, final rules will be implemented by that province.

4. Substance and purpose of the Scope Rule

The Scope Rule provides a foundation for the regulation of derivatives that is both responsive and flexible. The broad definition of “derivative” in existing and proposed provincial securities legislation is intended to include the types of instruments traditionally referred to as derivatives (for example, swaps and forwards) as well as other novel instruments.⁵ Legislation in many Canadian jurisdictions contemplates that an instrument that meets the general definition of derivative may be treated as a derivative, a security, or be excluded in whole or in part from regulation.

The definitions of “derivative” and “security” in securities legislation are, or will be, expansive and, in some cases, overlapping. The Scope Rule is intended to resolve conflicts that arise when a contract or instrument meets both the definition of “derivative” and “security”. By making clear which contracts or instruments are to be regulated as derivatives, securities or are outside the scope of securities or derivatives legislation, the Scope Rule provides the flexibility to appropriately tailor regulation to a broad range of existing and emerging products.

The Scope Rule will initially only apply for the purposes of the TR Rule. The Committee expects that the Scope Rule, subject to necessary amendments, will also be made applicable to existing provisions of securities legislation, and to future derivatives rules that will be brought into force, including but not limited to rules relating to over-the-counter central counterparty clearing, end-user exemptions, trading platforms, capital and collateral, and registration. However, there may be variations in the Scope Rule for these new rules. In particular, certain contracts or instruments that are prescribed to be securities or derivatives for the purposes of the TR Rule may be treated differently in other new rules.

Until the Scope Rule has been extended to other derivatives rule-making areas any legislation, rules, notice or other policies applicable to derivatives will continue to apply. For example, OSC Staff Notice 91-702 – *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario* would continue to apply to these types of instruments until any new rules replacing the treatment as described in the notice have been implemented.

5. Substance and purpose of the TR Rule

The TR Rule describes proposed requirements for the operation and ongoing regulation of designated or recognized trade repositories and the reporting of derivative transaction data by market participants. The purpose of the TR Rule is to improve transparency in the derivatives market to regulators and the public, and ensure that designated trade repositories operate in a manner that promotes the public interest. Trade repository data is essential for regulatory oversight of the derivatives market. This oversight will allow regulators to address a variety of risks including monitoring of systemic risk and the risk of market abuse. Derivatives data reported to designated trade repositories will also assist policy-making by providing regulators with information on the nature and characteristics of the Canadian derivatives market.

The TR Rule can generally be divided into two rule-making areas (i) those relating to the regulation of trade repositories (including rules with respect to the designation/recognition process, requirements and restrictions relating to data dissemination and ongoing operational requirements), and (ii) those relating to reporting requirements of derivatives market participants. As explained above, the Scope Rule outlines the contracts or instruments that are required to be reported to designated or recognized trade repositories.

Please note that the TR EG does not provide guidance on Appendix A. Guidance for Appendix A is included in the interpretive column of the reporting fields in the appendix.

6. Foreign-based trade repositories and market participants

In order for any trade repository, local or foreign, to be an acceptable venue for local market participants to comply with the reporting obligations contained in Part 3 of the TR Rule, the trade repository must be designated or recognized in the applicable provincial jurisdiction. However, the Committee recommends that exemptions under section 40 of the TR Rule to certain requirements of the TR Rule be made available to a foreign-based trade repositories if the trade repository is subject to an equivalent regulatory and oversight regime in its home jurisdiction. We recognize that some foreign-based trade repositories are already subject to equivalent regulation in their home jurisdiction and believe that the imposition of a duplicate regime is inefficient.

⁵ Some jurisdictions are developing amendments to securities legislation to adopt a definition of “derivative”. The provisions of the Scope Rule are dependent on the approval in each jurisdiction of definitions of “derivative” that are substantively similar to those jurisdictions that have already adopted a definition.

The Committee has attempted to harmonize reporting requirements under the TR Rule with international practice. It is the Committee's view that the reporting of derivative transaction data by market participants that are located in a foreign-jurisdiction but whose derivatives activities trigger reporting requirements under the TR Rule is appropriate and is not an unnecessary burden. To the extent that minor differences exist between a foreign regime's reporting requirements and those in the TR Rule, it would be possible to apply for an exemption on the grounds of equivalency.

7. Local aspects of the model rules

In this section of the notice, we have included information specific to the securities legislation of certain CSA jurisdictions that relates to the Model Rules.

- **Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan**

These provinces are in the process of considering amendments to their securities acts. In these provinces the implementation of final rules based on the Model Rules will be dependent on the legislative amendments developed in each jurisdiction. Specific information relating to the application of final rules based on these Model Rules will be provided when province-specific rules are published for comment.

- **Manitoba**

The Model Rules apply only to derivatives that are traded over-the-counter, because commodity futures contracts and commodity futures options as defined in subsection 1(1) of the *Commodity Futures Act* (Manitoba) are excluded from the definition of "derivative" in the *Securities Act* (Manitoba).

- **Ontario**

The Model Rules apply only to derivatives that are traded over-the-counter, because commodity futures contracts and commodity futures options as defined in subsection 1(1) of the *Commodity Futures Act* (Ontario) are excluded from the definition of "derivative" in the *Securities Act* (Ontario). It is proposed that the Model Rules will be made by the Ontario Securities Commission under the rule-making authority set out in the *Securities Act* (Ontario). For greater certainty, the Model Rules will not be made under, or governed by, the provisions of the *Commodity Futures Act* (Ontario).

- **Quebec**

In Quebec, the *Derivatives Act* (Québec) governs both over-the-counter and exchange-traded derivatives. The treatment of certain contracts or instruments prescribed by the Scope Rule has already been implemented under that legislation. As such, the Autorité des marchés financiers ("AMF") does not intend to propose the adoption of certain sections of the Scope Rule because these sections are already covered by or excluded from the *Derivatives Act* (Québec).

The following is a list of Scope Rule provisions that will not be adopted and the corresponding *Derivatives Act* (Québec) or the *Securities Act* (Québec) provisions:

| Scope Rule | <i>Derivatives Act</i> ("QDA") or <i>Securities Act</i> ("QSA") |
|------------|--|
| 2(b) | This section is already covered by paragraph 6(3) of the QDA. |
| 2(e)(f) | Deposits are securities under the QSA - see paragraph 1(3) and would most certainly be predominantly a security according to section 4 of the QDA. |
| 3 | This section is already covered by paragraph 6(2) of the QDA. |
| 4 | This section is already addressed by the hybrid test under section 4 of the QDA. |
| 5 | This section is already covered by paragraph 6(4) of the QDA. |

The AMF will rely on its rulemaking powers to designate as a derivative or exclude from the application of the QDA an instrument or contract, respectively at paragraphs 176(1) and 175(7) of the QDA, to adopt the remaining sections.

8. Comments

We request your comments on the Model Rules and Appendix A. The Committee also seeks specific feedback on subsection 40(2) of the TR Rule that provides an exemption for reporting requirements for derivatives transactions in the physical commodity market involving market participants with small derivatives exposures. The text of the proposed exemption is as follows:

Despite anything in this Rule, there is no obligation under this Rule for a local counterparty to report derivatives data in relation to a physical commodity transaction if the local counterparty is not a dealer or adviser and has less than \$500

000 aggregate notional value, without netting, under all its outstanding transactions, at the time of the transaction including the additional notional value related to that transaction.

The purpose of this exemption is to reduce regulatory burdens for small market participants whose physical commodity transactions may include contractual terms that would make them subject to transaction reporting requirements. The Committee seeks guidance as to whether this exemption and the proposed \$500 000 threshold are appropriate.

You may provide written comments in hard copy or electronic form. The comment period expires February 4, 2013.

The Committee will publish all responses received on the websites of the Autorité des marchés financiers (www.lautorite.qc.ca) and the Ontario Securities Commission (www.osc.gov.on.ca).

Please address your comments to each of the following:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission

Please send your comments only to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8
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Questions

Please refer your questions to any of:

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December 6, 2012

**MODEL PROVINCIAL RULE
DERIVATIVES: PRODUCT DETERMINATION**

Application

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

Excluded derivatives

2. A contract or instrument is prescribed under the definition of “derivative” in subsection X [Definitions] of the Act not to be a derivative if it is

- (a) regulated by gaming control legislation of Canada or a province,
- (b) an insurance or annuity contract issued by an insurer holding a license under insurance legislation of Canada or a province,
- (c) a spot market contract or instrument for the purchase and sale of currency,
 - (i) that requires the counterparties to make or take physical delivery of the currency within two business days and does not allow for the contract or instrument to be rolled over,
 - (ii) that does not allow for cash settlement in place of physical delivery of the foreign currency, and
 - (iii) that is intended by the counterparties to be physically settled,
- (d) a contract or instrument for immediate or deferred delivery of a physical commodity other than cash or a currency
 - (i) that requires the counterparties to make or take physical delivery,
 - (ii) that does not allow for cash settlement in place of physical delivery, and
 - (iii) that is intended by the counterparties to be physically settled,
- (e) a contract or instrument that is a derivative under subsection X [Definitions] of the Act and is evidence of a deposit issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada), by an association to which the *Cooperative Credit Associations Act* (Canada) applies or by a company to which the *Trust and Loan Companies Act* (Canada) applies, or
- (f) a contract or instrument that is a derivative under subsection X [Definitions] of the Act and is evidence of a deposit issued by a credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* or a similar statute of a province (other than Ontario) or territory of Canada applies or by a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or a similar statute of a province (other than Ontario) or territory of Canada.

Investment contracts and over-the-counter options

3. All contracts or instruments (other than any contract or instrument to which section 2 applies) that are derivatives, and that are otherwise securities solely by reason of being an investment contract under paragraph X of the definition “security” in subsection X [Definitions] of the Act or being an option described in paragraph X of that definition that is not described in section 5, are prescribed not to be securities.

Derivatives that are securities

4. All contracts or instruments (other than any contract or instrument to which any of sections 2 and 3 apply) that are securities and otherwise derivatives are prescribed not to be derivatives.

Derivatives prescribed to be securities

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

**MODEL EXPLANATORY GUIDANCE
TO
MODEL PROVINCIAL RULE – DERIVATIVES: PRODUCT DETERMINATION**

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1. General comments

(1) This Model Explanatory Guidance sets out the views of the Canadian Securities Administrators OTC Derivatives Committee (the “Committee” or “we”) on various matters relating to Model Provincial Rule – *Derivatives: Product Determination* (the “Scope Rule”).

(2) Except for section 1, the numbering and headings of the sections in this Model Explanatory Guidance generally correspond to the numbering and headings in the Scope Rule. Any general guidance for a section appears immediately after the section heading. Any specific guidance on a section follows any general guidance.

(3) The Scope Rule only applies to Model Provincial Rule – *Trade Repositories and Derivatives Data Reporting* (the “TR Rule”). The Committee expects that elements of the Scope Rule, subject to necessary amendments, will also be made applicable to certain provisions of securities legislation, and to additional derivatives rules that will be brought into force, including but not limited to rules relating to over-the-counter central counterparty clearing, end-user exemptions, trading platforms, capital and collateral, and registration. However, there may be variations in the application of the Scope Rule for these other rules. In particular, certain contracts or instruments that are prescribed to be securities or derivatives for the purposes of the TR Rule may be treated differently in other rules.

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

2. Excluded derivatives

Subsections 2(a) and (b) of the Scope Rule prescribe a contract or instrument not to be a derivative if it is regulated by federal or provincial gaming control legislation, or is an insurance or annuity contract issued by an insurer licensed under federal or provincial insurance legislation. While these instruments may meet the technical definition of “derivative”, they are generally not recognized as being financial derivatives and typically do not pose the same potential risks to the financial system as certain other derivatives products. In addition, the Committee does not believe that the derivatives regulation regime that it expects to implement will be appropriate for these types of contracts and instruments. Further, the federal and provincial legislation regulating these contracts and instruments often have consumer protection as an objective and are therefore aligned with the objective of the Act to provide protection to market participants from unfair, improper or fraudulent practices. It should be noted that the Committee’s view is that credit derivatives are not insurance or annuity contracts.

Subsection 2(c) of the Scope Rule prescribes a short-term contract or instrument for the purchase and sale of currency not to be a derivative if it meets the requirements specified in paragraphs 2(c)(i), (ii) and (iii). Examples of these include a consumer currency exchange or a contract for immediate or near-immediate delivery of currency to support a commercial import or export transaction. Therefore, for transaction reporting purposes, forward foreign exchange contracts would need to be reported but spot foreign exchange contracts that meet the applicable requirements would not.

Paragraph 2(c)(ii) requires that the contract or instrument not allow for cash settlement in place of physical delivery of the foreign currency. This means that the specific foreign currency contracted for would have to be delivered and not an equivalent amount in a different currency. We consider physical delivery to refer to actual physical delivery of the specific foreign currency contracted for rather than a simple notation in a client account statement that is denominated in a foreign currency and may then be converted back into domestic currency at a later date.

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

The presence of provisions in the contract or instrument setting out the effect of breach or frustration of the contract or instrument, force majeure or similar events occurring outside of the control of the parties that render physical delivery of the agreed upon currency impossible do not make an otherwise firm obligation for physical delivery merely an option for physical delivery. We note that standard form contracts used in derivatives markets may include provisions that permit cash settlement in place of physical delivery in the context of termination rights, should a counterparty default on its obligation to physically deliver. To the extent that such standardized provisions relate exclusively to termination rights resulting from a breach of contract, we would not interpret them as allowing for cash settlement in place of physical delivery. This exclusion will not apply to contracts where the termination rights are used as a cash settlement option.

We note that the intention requirement in paragraph 2(c)(iii) of the Scope Rule is not limited to the point in time at which the contract is entered into, but applies for the duration of the contract. If a contract is intended to be physically settled at the time it is entered but this intention changes, the contract would become subject to all applicable derivatives rules. The intention requirement is designed to address situations where contractual provisions that do not permit cash settlement are not observed. The exclusion would therefore not be available if, for example, the counterparties set out an obligation for physical settlement of the contract or instrument but actually intend to rely on breach or frustration provisions in the contract or instrument in order to achieve an economic outcome akin to cash settlement. Additionally, in situations where a market participant settles contracts in cash on a repeated basis, we take the position that irrespective of contractual requirements for physical settlement, this may be evidence of a party's intention not to physically settle.

Subsection 2(d) of the Scope Rule prescribes a contract or instrument for delivery of a physical commodity not to be a derivative if it meets the requirements specified in paragraphs 2(d)(i), (ii) and (iii). In order to be a physical contract or instrument, its terms must provide for immediate or deferred delivery of a physical commodity. The phrase "immediate or deferred delivery" is intended to convey that the exclusion is available for contracts or instruments that meet the criteria in subparagraphs 2(d)(i) to (iii) regardless of whether they are entered into for spot delivery or forward settlement. Physical commodities include, but are not limited to, agricultural products, forest products, products of the sea, minerals, metals, hydrocarbon fuel, precious stone or other gem, electricity, energy and fuel products (including gas, oil, and any by-products), and water. For the purposes of the Scope Rule, we are of the view that physical commodities do not include financial commodities such as currencies, interest rates, securities and indexes, so as to limit the exemption to commercial transactions in physical goods.

We take the position that the obligation for physical delivery in paragraph 2(d)(i) of the Scope Rule means a firm obligation of a party to the contract or instrument and not merely an option to make or take physical delivery. A contract or instrument that has an option relating to some aspect of the physical delivery such as the volume of physical commodity to be delivered or the location of delivery would not, as a result of such an option, be a derivative.

We take the view that the presence of provisions in the contract or instrument setting out obligations in the case of breach or frustration of the contract or instrument, force majeure, or similar events occurring outside of the control of the parties that render physical delivery impossible do not make an otherwise firm obligation for physical delivery merely an option for physical delivery. In addition, an option to vary delivery obligations (e.g., volume) based on factors beyond the control of the parties will not on its own make a contract ineligible for the reporting exclusion in subsection 2(d) of the Scope Rule. We note that standard form contracts used in derivatives markets may include provisions that permit cash settlement in place of physical delivery in the context of termination rights, should a counterparty default on its obligation to deliver. To the extent that such standardized provisions relate exclusively to termination rights arising as a result of the breach of the terms of the contract or instrument, we would not interpret them as allowing for cash settlement in place of physical delivery. This exclusion will not apply to contracts where the termination rights are used as a cash settlement option.

Paragraph 2(d)(iii) of the Scope Rule requires that counterparties intend to physically settle the contract or instrument. The exclusion would therefore not be available if, for example, the counterparties set out an obligation for physical settlement of the contract or instrument but actually intend to rely on breach or frustration provisions in the contract or instrument in order to achieve an economic outcome akin to cash settlement. In addition, the exclusion would not be available if the counterparties intend to enter into collateral agreements which, together with the original contract or instrument, achieve an economic outcome that is, or is akin to, cash settlement of the original contract or instrument.

Paragraph 2(f) of the Scope Rule refers to "similar statutes from a province or territory of Canada". As explained, the Scope Rule is based on the *Securities Act* (Ontario) therefore the provincial acts explicitly mentioned in the provision are from Ontario. The intention is that all province-specific statutes will receive the same treatment in every province or territory. For example, if a credit union to which the Ontario *Credit Unions and Caisses Populaires Act, 1994* applies issues an evidence of deposit to a market participant located in a different province, that province would apply the treatment under their legislation equivalent to paragraph 2(f) of the Scope Rule.

Apart from the contracts and instruments expressly prescribed not to be derivatives in section 2 of the Scope Rule, there are other contracts or instruments which we would not be considered to be "derivatives" for the purposes of the Act. A feature common to these contracts and instruments is that they are entered into for consumer, business or non-profit purposes that do not involve investment, speculation or hedging. Typically, they provide for the transfer of ownership of a good or the provision of a service. In most cases they are not traded on a market.

These contracts or instruments include, but are not limited to:

- a consumer or commercial contract or instrument to acquire, or lease real or personal property, to provide personal services, to sell or assign rights, equipment, receivables or inventory, or to obtain a loan or mortgage, including a loan or mortgage with a variable rate of interest, interest rate cap, interest rate lock or embedded interest rate option;
- a consumer contract or instrument to purchase products or services at a fixed, capped or collared price;
- an employment contract or retirement benefit arrangement;
- a guarantee;
- a performance bond;
- a commercial sale, servicing, or distribution arrangement;
- a contract or instrument for the purpose of effecting a business purchase and sale or combination transaction;
- a contract or instrument representing a lending arrangement in connection with building an inventory of assets in anticipation of a securitization of such assets; and
- a commercial contract or instrument containing mechanisms indexing the purchase price or payment terms for inflation such as via reference to an interest rate or consumer price index.

3. Investment contracts and over-the-counter options

Section 3 of the Scope Rule prescribes a contract or instrument (to which section 2 of the Scope Rule does not apply), that is a derivative and a security solely by reason of being an investment contract², not to be a security. Some types of contracts traded over-the-counter, such as foreign exchange contracts and contracts for difference meet the definition of “derivative” (because their market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest) but also meet the definition of “security” (because they are investment contracts). This provision prescribes that such instruments will be treated as derivatives and therefore be required to be reported to a designated trade repository.

Similarly, options are covered by both the definition of “derivative” and the definition of “security”³. Section 3 of the Scope Rule prescribes options that are only securities by virtue of provision (d) of the definition of “security” (and not described in section 5 of the Scope Rule), not to be securities. Therefore, derivatives treatment will apply to these instruments which will be required to be reported to a designated trade repository. It should be noted that this treatment will only apply to options traded over-the-counter. Exchange-traded options will not be required to be reported to a designated trade repository. In Ontario, these types of options are commodity futures options and therefore regulated under the *Commodity Futures Act* and excluded from definition of “derivative”. This reporting exclusion will also be implemented in other jurisdictions although the form of the exclusion may differ.⁴

4. Derivatives that are securities

Section 4 of the Scope Rule prescribes a contract or instrument (to which sections 2 and 3 of the Scope Rule do not apply) that is a security and a derivative, not to be a derivative. Derivatives that are securities and are contemplated by this provision include structured notes, asset-backed securities, exchange-traded notes, capital trust units, exchangeable securities, income trust units, securities of investment funds and warrants. This provision ensures that such instruments will continue to be subject to applicable prospectus disclosure and continuous disclosure requirements as well as applicable registration requirements for dealers and advisers. The Committee anticipates that it will review the categorization of instruments as securities and derivatives once the comprehensive derivatives regime has been implemented.

5. Derivatives prescribed to be securities

Section 5 of the Scope Rule prescribes a security-based derivative that is used by an issuer or its affiliate to compensate an officer, director, employee or service provider, or as a financing instrument, not to be a derivative. Examples of the compensation instruments contemplated by section 5 include stock options, phantom stock units, restricted share units, deferred share units, restricted share awards, performance share units, stock appreciation rights and compensation instruments provided to service providers such as broker options. Securities treatment would also apply to the above described instruments when used as financing instruments, for example, rights, warrants and special warrants, or subscription rights/receipts or convertible instruments issued to raise capital for any purpose. It is the Committee's view that an instrument would only be considered a financing instrument if it is used for capital raising purposes. An equity swap, for example, would generally not be considered a

² See paragraph (n) of the definition of security in the *Securities Act* (Ontario).

³ See paragraph (d) of the definition of security in the *Securities Act* (Ontario).

⁴ Please see Section 7 – *Local Aspect of Model Rules* of the accompanying *CSA Notice and Request for Comments* for further details.

financing instrument. The classes of derivatives referred to in section 5 can have similar or the same economic effect as a securities issuance and are therefore subject to requirements generally applicable to securities. As they are prescribed not to be derivatives they are not subject to the transaction reporting requirements under the TR Rule.

**MODEL PROVINCIAL RULE
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING**

**PART 1
DEFINITIONS AND INTERPRETATION**

Definitions

1. (1) In this Rule

“asset class” means the broad asset category underlying a derivative including, but not limited to, interest rate, foreign exchange, credit, equity and commodity,

“counterparty information” means the information used to identify a counterparty to a transaction, including information regarding attributes of counterparties that include, at a minimum, the data in the applicable fields listed in Appendix A under the heading “Counterparty Information”,

“creation data” means operational data, principal economic terms, counterparty information and event data,

“derivatives data” means all data related to a transaction that is required to be reported pursuant to Part 3,

“event data” means the information that records the occurrence of an event and, at a minimum, includes the data in the applicable fields listed in Appendix A under the heading “Event Data”,

“interim period” has the same meaning as in section 1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*,

“life-cycle data” means changes to creation data resulting from any life-cycle event,

“life-cycle event” means any event that results in a change to derivatives data previously reported to the designated¹ trade repository in respect of a transaction,

“local counterparty” means a party to a transaction if, at the time of the transaction, any of the following applies

- (a) the party is an individual who is a resident of [Province x],
- (b) the party is a person or company, other than an individual, organized under the laws of [Province x] or that has its head office or principal place of business in [Province x],
- (c) the party is a reporting issuer under the securities legislation of [Province x],
- (d) the party is a registrant under the securities legislation of [Province x],
- (e) the party negotiates, executes, settles, writes or clears any part of the transaction in [Province x],
- (f) the party is a subsidiary of a person or company, or group of persons and companies, described in any of paragraphs (a) to (d),

“operational data” means the data related to how a transaction is executed, confirmed, cleared and settled and, at a minimum, includes the data in the applicable fields listed in Appendix A under the heading “Operational Data”,

“principal economic terms” means the material terms of a transaction and, at a minimum, includes the data in the applicable fields listed in Appendix A under the heading “Principal Economic Terms”,

“reporting counterparty” means the counterparty that is required to report derivatives data to a designated trade repository as determined by subsections 27(1) and (2),

“transaction” means entering into, assigning, selling or otherwise acquiring or disposing of a derivative or the novation of a derivative,

“user” means, in respect of a designated trade repository, a counterparty (or delegate of a counterparty) to a transaction reported to that designated trade repository pursuant to this Rule, and

“valuation data” means data that reflects the current value of the transaction.

¹ Note that the term “designated” would be replaced with “recognized” in certain jurisdictions.

(2) In this Rule, each of the following terms has the same meaning as in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*: “accounting principles”; “auditing standards”; “U.S. AICPA GAAS”; “U.S. GAAP”; and “U.S. PCAOB GAAS”.

PART 2 TRADE REPOSITORY DESIGNATION AND ONGOING REQUIREMENTS

Trade repository initial filing of information and designation

2. (1) An applicant for designation under section [x]² of the Act must file a completed Form F1 – *Application For Designation and Trade Repository Information Statement*.

(2) The applicant must include in its Form F1 information sufficient to demonstrate that

- (a) it is in the public interest to designate the applicant under section [x] of the Act,
- (b) the applicant is or will be in compliance with securities legislation, and
- (c) the applicant has established, implemented, maintained and enforced appropriate written rules, policies and procedures that are in accordance with standards applicable to trade repositories.

(3) An applicant that is located outside of [Province x] that is applying for designation under section [x] of the Act must

- (a) certify on Form F1 that it will provide the [applicable local securities regulator] with access to its books and records and will submit to onsite inspection and examination by the [applicable local securities regulator],
- (b) certify on Form F1 that it will provide the [applicable local securities regulator] with an opinion of legal counsel that,
 - (i) the applicant is able to provide the [applicable local securities regulator] with access to the applicant's books and records, and
 - (ii) the applicant is able to submit to onsite inspection and examination by the [applicable local securities regulator], and
- (c) file a completed Form F2 – *Submission to Jurisdiction and Appointment of Agent for Service of Process* if it is located outside of Canada.

(4) For the purposes of subsection (3), an applicant is located outside of [Province x] if the applicant does not have its head office or principal place of business anywhere in [Province x].

(5) An applicant for designation under section [x] of the Act must inform the [applicable local securities regulator] in writing immediately of any change to the information provided in Form F1 or if any of the information becomes inaccurate for any reason, and the applicant must file an amendment to the information provided in Form F1 in the manner set out in the Form no later than 7 days after the change occurs or after becoming aware of any inaccuracy.

Change in information

3. (1) Subject to subsection (2), a designated trade repository must not implement a significant change to a matter set out in Form F1 unless it has filed an amendment to the information provided in Form F1 in the manner set out in the Form at least 45 days before implementing the change.

(2) A designated trade repository must file an amendment to the information provided in Exhibit J (Fees) of Form F1 at least 15 days before implementing a change to the information provided in the Exhibit.

(3) For any change to a matter set out in Form F1 other than a change referred to in subsection (1) or (2), a designated trade repository must file an amendment to the information provided in the Form by the earlier of

- (a) the close of business of the designated trade repository on the 10th day after the end of the month in which the change was made, or
- (b) if applicable, the time the designated trade repository discloses the change publicly.

² Section x will be the designation or recognition provision in the applicable provincial securities legislation.

Ceasing to carry on business

4. (1) A designated trade repository that intends to cease carrying on business in [Province x] as a trade repository must make an application and file a report in Form F3 – *Cessation of Operations Report For Trade Repository* at least 180 days before the date on which it intends to cease carrying on that business.

(2) A designated trade repository that involuntarily ceases to carry on business in [Province x] as a trade repository must file a report in Form F3 as soon as practicable after it ceases to carry on that business.

Filing of initial audited financial statements

5. (1) A person or company must file, as part of its application for designation as a designated trade repository, together with Form F1, audited financial statements for its most recently completed financial year that

- (a) are prepared in accordance with one of the following
 - (i) Canadian GAAP applicable to publicly accountable enterprises,
 - (ii) IFRS, or
 - (iii) U.S. GAAP, if the person or company is incorporated or organized under the laws of the United States of America,
- (b) identify in the notes to the financial statements the accounting principles used to prepare the financial statements,
- (c) disclose the presentation currency, and
- (d) are accompanied by an auditor's report and are audited in accordance with one of the following
 - (i) Canadian GAAS,
 - (ii) International Standards on Auditing, or
 - (iii) U.S. AICPA GAAS or U.S. PCAOB GAAS if the person or company is incorporated or organized under the laws of the United States of America.

(2) The auditor's report must

- (a) if paragraph (1)(d)(i) or (ii) applies, express an unmodified opinion,
- (b) if paragraph (1)(d)(iii) applies, express an unqualified opinion,
- (c) identify all financial periods presented for which the auditor's report applies,
- (d) identify the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements,
- (e) be prepared in accordance with the same auditing standards used to conduct the audit, and
- (f) be prepared and signed by a person or company that is authorized to sign an auditor's report under the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.

Filing of annual audited and interim financial statements

6. (1) A designated trade repository must file annual audited financial statements no later than the 90th day after the end of its financial year that comply with the requirements outlined in section 5.

(2) A designated trade repository must file interim financial statements no later than the 45th day after the end of each interim period that are:

- (a) prepared in accordance with accounting principles referred to in any one of the paragraphs 5(1)(a)(i) to (iii), and
- (b) identify in the notes to the interim financial statements the accounting principles used to prepare the interim financial statements.

Legal framework

7. (1) A designated trade repository must establish, implement, maintain and enforce rules, policies and procedures reasonably designed to ensure a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.

(2) Without limiting the generality of subsection (1), a designated trade repository must 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

- (a) such rules, policies and procedures and the contractual arrangements are supported by the laws applicable to those rules, policies, procedures and contractual arrangements,
- (b) the rights and obligations of users, owners and regulators with respect to the use of its information are clear and transparent,
- (c) the contractual arrangements that it enters into and supporting documentation clearly state service levels, rights of access, protection of confidential information, intellectual property rights and operational reliability, and
- (d) the status of records of contracts in its repository and whether those records of contracts are the legal contracts of record are clearly established.

Governance

8. (1) A designated trade repository must have governance arrangements that

- (a) are clear and transparent,
- (b) promote the safety and efficiency of the designated trade repository,
- (c) ensure effective oversight of the designated trade repository,
- (d) support the stability of the broader financial system and other relevant public interest considerations, and
- (e) properly balance the interests of relevant stakeholders.

(2) A designated trade repository must establish, implement, maintain and enforce written governance arrangements that are well-defined and that include a clear organizational structure with consistent lines of responsibility and effective internal controls.

(3) A designated trade repository must establish, implement, maintain and enforce written policies and procedures reasonably designed to identify and manage existing and potential conflicts of interest.

(4) A designated trade repository must make the governance arrangements referred to in subsections (2) and (3) available to the public.

Board of directors

9. (1) The board of directors of a designated trade repository must include

- (a) individuals who have an appropriate level of skill and experience to effectively and efficiently oversee the management of its operations in accordance with all relevant laws, and
- (b) appropriate representation by individuals who are independent of the designated trade repository.

(2) The board of directors of a designated trade repository must, in consultation with the chief compliance officer of the designated trade repository, resolve conflicts of interest identified by the chief compliance officer.

(3) The board of directors of a designated trade repository must meet with the chief compliance officer of the designated trade repository on a regular basis.

Management

10. (1) A designated trade repository must specify, in writing, the roles and responsibilities of management and must establish, implement, maintain and enforce written policies and procedures to ensure that management has the experience, competencies, integrity and mix of skills necessary to discharge such roles and responsibilities.

(2) A designated trade repository must notify the [applicable local securities regulator] no later than the 5th business day after appointing or replacing its chief compliance officer, chief executive officer or chief risk officer.

Chief compliance officer

11. (1) A designated trade repository must have a chief compliance officer and its board of directors must appoint an individual who has the appropriate experience, competencies, integrity and mix of skills necessary to serve in that capacity.

(2) The chief compliance officer of a designated trade repository must report directly to the board of directors of the designated trade repository or, if determined by the board of directors, to the chief executive officer of the designated trade repository.

(3) The chief compliance officer of a designated trade repository must

- (a) establish, implement, maintain and enforce written policies and procedures to identify and resolve conflicts of interest and to ensure that the designated trade repository complies with securities legislation and must monitor compliance with these policies and procedures on an ongoing basis,
- (b) report to the designated trade repository's board of directors as soon as practicable if he or she becomes aware of any circumstances indicating that the designated trade repository, or any individual acting on its behalf, is not in compliance with the securities or derivatives laws of any jurisdiction in which it operates and any of the following apply
 - (i) the non-compliance creates a risk of harm to a user,
 - (ii) the non-compliance creates a risk of harm to the capital markets,
 - (iii) the non-compliance is part of a pattern of non-compliance, or
 - (iv) the non-compliance may have an impact on the ability of the designated trade repository to carry on business as a trade repository in compliance with securities legislation,
- (c) report to the designated trade repository's board of directors as soon as practicable if he or she becomes aware of a conflict of interest that creates a risk of harm to a user or to the capital markets, and
- (d) prepare and certify an annual report assessing compliance by the designated trade repository, and individuals acting on its behalf, with securities legislation and submit the report to the board of directors.

(4) Concurrently with submitting a report under paragraphs (3)(b), (c) or (d), the chief compliance officer must file a copy of the report.

Fees

12. All fees and other material costs imposed by a designated trade repository on its users must be

- (a) fairly and equitably allocated among users, and
- (b) publicly disclosed for each service it offers with respect to the collection and maintenance of derivatives data.

Access to designated trade repository services

13. (1) A designated trade repository must have objective, risk-based, and publicly disclosed criteria for participation that permit fair and open access.

(2) Without limiting the generality of subsection (1), a designated trade repository must not do any of the following

- (a) unreasonably prohibit, condition or limit access by a person or company to the services offered by it,
- (b) permit unreasonable discrimination among its users, or
- (c) impose any burden on competition that is not reasonably necessary and appropriate.

Acceptance of reporting

14. A designated trade repository must accept derivatives data for reporting purposes from its users for all derivatives of the asset class or classes set out in its designation order.

Communication policies, procedures and standards

15. (1) A designated trade repository must use or accommodate relevant internationally accepted communication procedures and standards in order to facilitate the efficient exchange of data between its systems and those of

- (a) its users,
- (b) other trade repositories,
- (c) exchanges, clearing agencies and alternative trading systems, and
- (d) other service providers.

Due process

16. For any decision made by a designated trade repository that affects a user or an applicant that applies to become a user, the designated trade repository must ensure that

- (a) the user or applicant is given an opportunity to be heard or make representations, and
- (b) it keeps records of, gives reasons for, and provides for reviews of its decisions, including, for each applicant, the reasons for granting, denying or limiting access.

Rules

17. (1) The rules and procedures of a designated trade repository must

- (a) be clear, comprehensive and provide sufficient information to enable users to have an accurate understanding of the rights and obligations of users in accessing the services of the designated trade repository and the risks, fees, and other material costs they incur by using the designated trade repository,
- (b) be reasonably designed to govern all aspects of the services offered by the designated trade repository with respect to the collection and maintenance of derivatives data and other information on completed transactions, and
- (c) not be inconsistent with securities legislation.

(2) A designated trade repository's rules and procedures, and the processes for adopting new rules and procedures or amending existing rules and procedures, must be transparent to users and the general public.

(3) A designated trade repository must monitor compliance with its rules and procedures on an ongoing basis.

(4) A designated trade repository must have clearly defined and publicly disclosed processes for sanctioning non-compliance with its rules and procedures.

(5) A designated trade repository must file all of its proposed new or amended rules and procedures for approval in accordance with the terms and conditions of the [applicable local securities regulator]'s designation order, unless the order explicitly exempts the designated trade repository from this requirement.

Records of data reported

18. (1) A designated trade repository must design its recordkeeping procedures so that derivatives data is recorded accurately, completely and on a timely basis.

(2) A designated trade repository must keep, in a safe location and in a durable form, records of derivatives data in relation to a derivative for the life of the derivative and for a further 7 years after the date on which the derivative expires or terminates.

(3) Throughout the period described in subsection (2), a designated trade repository must create and maintain at least one copy of each record of derivatives data required to be kept under subsection (2), in a safe location and in durable form, separate from the location of the original record.

Comprehensive risk-management framework

19. A designated trade repository must establish, implement and maintain a sound risk-management framework for comprehensively managing risks including business, legal, and operational risks.

General business risk

20. (1) A designated trade repository must establish, implement and maintain appropriate systems, controls and procedures to identify, monitor, and manage its general business risk.

(2) Without limiting the generality of subsection (1), a designated trade repository must hold sufficient insurance coverage and liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialize.

(3) A designated trade repository must 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 an orderly wind-down.

(4) A designated trade repository must establish, implement, maintain and enforce written policies and procedures reasonably designed to facilitate its orderly wind-down based on the results of the assessment required by subsection (3).

(5) A designated trade repository must establish, implement, maintain and enforce written policies and procedures to ensure that it or any successor entity, insolvency administrator or other legal representative, will continue to comply with the requirements of section 37 and subsection 4(2) in the event of the bankruptcy or insolvency of the designated trade repository or the wind-down of the designated trade repository's operations.

System and other operational risk requirements

21. (1) A designated trade repository must establish, implement, maintain and enforce appropriate systems, controls and procedures to identify and minimize the impact of all plausible sources of operational risk, both internal and external, including risks to data integrity, data security, business continuity and capacity and performance management.

(2) The systems, controls and procedures established pursuant to subsection (1) must be approved by the board of directors of the designated trade repository.

(3) Without limiting the generality of subsection (1), a designated trade repository must

- (a) develop and maintain
 - (i) an adequate system of internal controls over its systems, and
 - (ii) adequate information technology general controls, including without limitation, controls relating to information systems operations, information security and integrity, change management, problem management, network support and system software support,
- (b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually
 - (i) make reasonable current and future capacity estimates, and
 - (ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner, and
- (c) promptly notify the [applicable local securities regulator] of any material systems failure, malfunction, delay or other disruptive incident, or any breach of data security, integrity or confidentiality, and provide a post-incident report that includes a root-cause analysis as soon as practicable.

(4) Without limiting the generality of subsection (1), a designated trade repository must establish, implement, maintain and enforce business continuity plans, including disaster recovery plans reasonably designed to

- (a) achieve prompt recovery of its operations following any disruptions,
- (b) allow for the timely recovery of information, including derivatives data, in the event of a disruption, and
- (c) cover the exercise of authority in the event of any emergency.

(5) A designated trade repository must test its business continuity plans, including disaster recovery plans, at least annually.

(6) For each of its systems for collecting and maintaining reports of derivatives data, a designated trade repository must annually engage a qualified party to conduct an independent review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraphs (3)(a) and (b) and subsections (4) and (5).

- (7) A designated trade repository must provide the report resulting from the review conducted under subsection (6) to
- (a) its board of directors or audit committee promptly upon the report's completion, and
 - (b) the [applicable local securities regulator] not later than the 30th day after providing the report to its board of directors or audit committee.
- (8) A designated trade repository must make publicly available, in their final form, all technology requirements regarding interfacing with or accessing the designated trade repository,
- (a) if operations have not begun, for at least 3 months immediately before operations begin, and
 - (b) if operations have begun, for at least 3 months before implementing a material change to its technology requirements.
- (9) After complying with subsection (8), a designated trade repository must make available testing facilities for interfacing with or accessing the designated trade repository,
- (a) if operations have not begun, for at least 2 months immediately before operations begin, and
 - (b) if operations have begun, for at least 2 months before implementing a material change to its technology requirements.
- (10) A designated trade repository must not begin operations in [Province x] until it has complied with paragraphs (8)(a) and (9)(a).
- (11) Paragraphs (8)(b) and (9)(b) do not apply to a designated trade repository if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment and
- (a) the designated trade repository immediately notifies the [applicable local securities regulator] of its intention to make the change, and
 - (b) the designated trade repository publishes the changed technology requirements as soon as practicable.

Data security and confidentiality

22. (1) To ensure the safety and confidentiality of derivatives data, a designated trade repository must establish, implement, maintain and enforce written policies and procedures reasonably designed to protect the privacy and confidentiality of the derivatives data.

(2) A designated trade repository may not release any derivatives data that has not otherwise been disclosed pursuant to section 39 for commercial or business purposes, unless the counterparties to the transaction have expressly granted to the designated trade repository their written consent to use the derivatives data.

Confirmation of data and information

23. A designated trade repository must establish, implement, maintain and enforce written policies and procedures to confirm with each counterparty to a transaction, or agent acting on behalf of such counterparty, that the derivatives data that the designated trade repository receives from a reporting counterparty or from a party to whom a reporting counterparty has delegated its reporting obligation as required by this Rule is correct.

Outsourcing

24. (1) If a designated trade repository outsources any of its key services or systems to a service provider, including an associate or affiliate of the designated trade repository, it must

- (a) establish, implement, maintain and enforce written policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of those outsourcing arrangements,
- (b) identify any conflicts of interest between the designated trade repository and the service provider to which key services and systems are outsourced, and establish, implement, maintain and enforce written policies and procedures to mitigate and manage those conflicts of interest,
- (c) enter into a contract with the service provider that is appropriate for the materiality and nature of the outsourced activities and that provides for adequate termination procedures,
- (d) maintain access to the books and records of the service provider relating to the outsourced activities,

- (e) ensure that the [applicable local securities regulator] has the same access to all data, information and systems maintained by the service provider on behalf of the designated trade repository that it would have absent the outsourcing arrangements,
- (f) ensure that all persons conducting audits or independent reviews of the designated trade repository under this Rule have appropriate access to all data, information and systems maintained by the service provider on behalf of the designated trade repository that such persons would have absent the outsourcing arrangements,
- (g) take appropriate measures to determine that a service provider to which key services or systems are outsourced establishes, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan in accordance with section 21,
- (h) take appropriate measures to ensure that the service provider protects the designated trade repository users' confidential information in accordance with section 22, and
- (i) establish, implement, maintain and enforce written policies and procedures to regularly review the performance of the service provider under the outsourcing arrangements.

PART 3 DATA REPORTING

Duty to Report

25. (1) Subject to subsection (2), section 26 and Part 5, a local counterparty must, in accordance with this Part, report, or cause to be reported, to a designated trade repository, derivatives data for each transaction to which it is a counterparty.

(2) If no designated trade repository accepts derivatives data in respect of a derivative or of a derivative of a particular asset class, the local counterparty must, in accordance with this Part, electronically report, or cause to be reported, such derivatives data to the [applicable local securities regulator] in Form [X].

(3) Each reporting counterparty that is required by this Part to report derivatives data to a designated trade repository must report each error or omission in the derivatives data as soon as technologically possible after discovery of the error or omission.

(4) If a local counterparty, other than the reporting counterparty, discovers any error or omission with respect to any derivatives data reported in accordance with subsections (1) and (2), the local counterparty must promptly notify the reporting counterparty of that error or omission.

(5) For the purpose of complying with this Part, the reporting counterparty must ensure that all reported derivatives data relating to a particular transaction

- (a) is reported to the same designated trade repository or [applicable local securities regulator] to which the initial report was made, and
- (b) is accurate and contains no misrepresentations.

Pre-existing derivatives

26. (1) Notwithstanding subsection 25(1) and subject to subsection 41(4), a local counterparty to a transaction entered into before the day this Part comes into force that had outstanding contractual obligations on that day must report, or cause to be reported, the derivatives data in relation to that transaction to a designated trade repository in accordance with this Part not later than 365 days after this Part comes into force.

(2) Derivatives data required to be reported pursuant to subsection (1) must include the same creation data as a transaction entered into after the coming into force of this Rule and must reflect the current terms of the transaction.

Reporting counterparty

27. (1) The counterparty required to report derivatives data for a transaction is determined as follows

- (a) if the transaction is between a derivatives dealer and a counterparty that is not a derivatives dealer, the derivatives dealer is the reporting counterparty,
- (b) in any other case, both counterparties are reporting counterparties unless they agree in writing between themselves that one of them is to be the reporting counterparty.

(2) Notwithstanding any other provision in this Rule, if the reporting counterparty as determined under subsection (1) is not a local counterparty and that counterparty does not comply with the reporting requirements of this Rule, the local counterparty must act as the reporting counterparty.

(3) The reporting counterparty in respect of a transaction is responsible for ensuring that all reporting requirements in respect of that transaction have been fulfilled.

(4) The reporting counterparty may delegate its reporting obligation, but remains responsible for ensuring the timely and accurate reporting of derivatives data required by this Rule.

Real-time reporting

28. (1) The reporting counterparty for a transaction, subject to the reporting requirements of this Rule, must make a report required by this Part in real time unless it is not technologically practicable to do so.

(2) If it is not technologically practicable to report in real time, the reporting counterparty must make the report as soon as technologically practicable and in no event later than the end of the next business day following the day of the entering into of the transaction, change or event that is to be reported.

Identifiers, general

29. (1) The reporting counterparty for a transaction must include in every report required by this Part in respect of the transaction

- (a) the legal entity identifier of each counterparty to the transaction as set out in section 30,
- (b) the unique transaction identifier for the transaction as set out in section 31, and
- (c) the unique product identifier for the transaction as set out in section 32.

Legal entity identifiers

30. (1) Each counterparty to a transaction that is subject to the reporting requirements of this Rule must be identified in all recordkeeping and all reporting required pursuant to this Rule by means of a single legal entity identifier.

(2) Each of the following rules apply to legal entity identifiers

- (a) a legal entity identifier must be a unique identification code assigned to a counterparty in accordance with the standards set by the Global Legal Entity Identifier System, and
- (b) each local counterparty must comply with all applicable requirements imposed by the Global Legal Entity Identifier System.

(3) Despite subsection (2), if the Global Legal Entity Identifier System is unavailable to a counterparty at the time when a reporting obligation pursuant to this Rule arises, all of the following rules apply

- (a) a designated trade repository must assign to that counterparty a substitute legal entity identifier using its own methodology which complies with applicable international standards relating to legal entity identifiers,
- (b) a local counterparty must use the substitute legal entity identifier until a legal entity identifier is assigned to the counterparty in accordance with the standards set by the Global Legal Entity Identifier System as required under paragraph (2)(a), and
- (c) after the holder of a substitute legal entity identifier is assigned a legal entity identifier in accordance with the standards set by the Global Legal Entity Identifier System as required under paragraph (2)(a), the local counterparty must ensure that it is identified only by the assigned identifier in all derivatives data reported pursuant to this Rule in respect of transactions to which it is a counterparty.

Unique transaction identifiers

31. (1) Each transaction subject to the reporting requirements of this Rule must be identified in all recordkeeping and all reporting required pursuant to this Rule by means of a unique transaction identifier.

(2) Each of the following rules apply to unique transaction identifiers

- (a) a designated trade repository must assign a unique transaction identifier to the transaction using its own methodology, and
- (b) a transaction must not have more than one unique transaction identifier.

Unique product identifiers

32. (1) Each transaction subject to the reporting requirements of this Rule must be identified in all recordkeeping and all reporting required pursuant to this Rule by means of a unique product identifier.

(2) Each of the following rules apply to unique product identifiers

- (a) a unique product identifier must be a unique identification code that is based on the taxonomy of the derivative and assigned in accordance with international or industry standards, and
- (b) each derivative must not have more than one unique product identifier.

(3) Despite subsection (1), if international or industry standards for unique product identifiers are unavailable when a reporting obligation pursuant to this Rule arises then a unique product identifier is not required to be utilized until such standards are available.

Creation data

33. Upon execution of a transaction that is subject to the reporting requirements of this Rule, the reporting counterparty must report the creation data relating to that transaction to a designated trade repository.

Life-cycle data

34. For each transaction that is subject to the reporting requirements of this Rule, the reporting counterparty must report life-cycle data to a designated trade repository upon the occurrence of a life-cycle event.

Valuation data

35. (1) For a transaction that is cleared, valuation data must be reported to the designated trade repository at the end of each business day by the reporting counterparty.

(2) Valuation data for a transaction that is not cleared must be reported to the designated trade repository

- (a) at the end of each business day by each local counterparty if that counterparty is a derivatives dealer, and
- (b) at the end of each calendar quarter for all reporting counterparties that are not derivatives dealers.

(3) For the purposes of paragraph (2)(b), and despite section 28, the report must set out the valuation data as of the last day of each calendar quarter and must be reported to the designated trade repository not later than 30 days after the end of the calendar quarter.

Records of data reported

36. (1) Local counterparties to a transaction must keep records of the derivatives data in relation to the derivative for the life of the derivative and for a further 7 years after the date on which the derivative expires or terminates.

(2) Records to which these requirements apply must be kept in a safe location and in a durable form.

PART 4 DATA DISSEMINATION AND ACCESS TO DATA

Data available to regulators

37. (1) A designated trade repository must, at no cost

- (a) provide to the [applicable local securities regulator] direct, continuous and timely electronic access to such data in the designated trade repository's possession as is required by the [applicable local securities regulator] in order to carry out the [applicable local securities regulator]'s mandate, and
- (b) accept and promptly fulfil any ad hoc data requests from the [applicable local securities regulator] in order to carry out the [applicable local securities regulator]'s mandate.

(2) A designated trade repository must, at no cost and as required by the [applicable local securities regulator] in order to carry out the [applicable local securities regulator]'s mandate, create and make available to the [applicable local securities regulator] aggregate data derived from data in the designated trade repository's possession.

(3) A designated trade repository must conform to internationally accepted regulatory access standards applicable to trade repositories.

Data available to counterparties

38. (1) A designated trade repository must provide counterparties to a transaction with access to all derivatives data relevant to that transaction which is submitted to the designated trade repository.

(2) A designated trade repository must have appropriate verification and authorization procedures in place to deal with access pursuant to subsection (1) by non-reporting counterparties or a party acting on behalf of a non-reporting counterparty.

(3) Each counterparty to a transaction is deemed to have consented to the release of derivatives data for the purposes of subsection (1).

(4) Subsection (3) applies despite any agreement to the contrary between the counterparties to a transaction.

Data available to public

39. (1) A designated trade repository must, on a periodic basis, create and make available to the public, at no cost, aggregate data on open positions, volume, number and prices, relating to the transactions reported to it pursuant to this Rule.

(2) The periodic aggregate data made available to the public pursuant to subsection (1) must be complemented at a minimum by breakdowns, where applicable, by currency of denomination, geographic location of reference entity or asset, asset class, product type, whether the transaction is cleared, maturity and geographic location and type of counterparty.

(3) A designated trade repository must make transaction level reports of the principal economic terms of each transaction reported pursuant to this Rule available to the public at no cost not later than

- (a) one day after receiving those terms from the reporting counterparty to the transaction, if one of the counterparties to the transaction is a derivatives dealer, and
- (b) two days after receiving those terms from the reporting counterparty to the transaction in all other circumstances.

(4) In disclosing transaction level reports required by subsection (3), a designated trade repository must not disclose the identity of either counterparty to the transaction.

(5) A designated trade repository must make the data required to be made available to the public under this section available through a publicly accessible website or other publically accessible technology or medium.

PART 5 EXEMPTIONS

Exemptions

40. (1) A Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite anything in this Rule, there is no obligation under this Rule for a local counterparty to report derivatives data in relation to a physical commodity transaction if the local counterparty is not a dealer or adviser and has less than \$500 000 aggregate notional value, without netting, under all its outstanding transactions, at the time of the transaction including the additional notional value related to that transaction.

PART 6 EFFECTIVE DATE

Effective date

41. (1) Parts 1, 2, 4, 5 and 6 come into force on the 15th day after this Rule is approved by the Minister.

(2) Part 3 comes into force 6 months after the day on which Parts 1, 2, 4, 5 and 6 come into force.

(3) Despite subsection (2), Part 3 does not apply so as to require a reporting counterparty that is not a derivatives dealer to make any reports under that Part until 9 months after the day on which Parts 1, 2, 4, 5 and 6 come into force.

(4) Despite the foregoing, Part 3 does not apply to a transaction entered into before the day Part 3 comes into force that expires or terminates not later than 365 days after that day.

**APPENDIX A OF MODEL PROVINCIAL RULE –
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING**

MINIMUM DATA FIELDS REQUIRED TO BE REPORTED TO A DESIGNATED TRADE REPOSITORY

Instructions:

The reporting counterparty is required to provide a response for each of the fields. Where a field does not apply to the transaction, the reporting counterparty may respond that the field is non-applicable (N/A).

| Data field | Description |
|---|---|
| 1. Operational data | |
| Transaction identifier | The unique transaction identifier as provided by the designated trade repository or, if no unique transaction identifier is available, the internal identifier as identified by the two counterparties or by the electronic trading venue of execution. |
| Master agreement type | The type of master agreement that was executed. |
| Master agreement date | Date of the master agreement. (e.g. 2002, 2006) |
| Calculation agent | Name of the calculation agent or, if applicable, its Legal Entity Identifier (LEI) or client code. |
| Settlement agent for the reporting counterparty | Yes/No. If yes, name of the settlement agent or, if applicable, its LEI or client code. |
| Settlement agent for the non-reporting counterparty | Yes/No. If yes, name of the settlement agent or, if applicable, its LEI or client code. |
| Cleared | Yes/No. An indicator of whether the transaction has been cleared by a clearing agency. |
| Clearing obligation | Indicate if clearing is mandatory or voluntary. |
| Clearing agency | Name of the clearing agency where the transaction was cleared. |
| Clearing member | Name of the clearing member or, if applicable, its LEI or client code. |
| Clearing exemption | Yes/No. Indicates whether one or more of the counterparties to the transaction are exempted from a mandatory clearing requirement. |
| Mutual confirmation | Yes/No. Indicates whether the details contained here have been confirmed by both counterparties. |
| Broker | Yes/No. If yes, name of the broker or, if applicable, its LEI or client code. |

| Data field | Description |
|---|--|
| Electronically traded | Yes/No. Indicates whether the transaction has traded on an electronic trading venue. |
| Electronic trading venue name | Name of the electronic trading venue where the transaction was executed. |
| Intragroup | Yes/No. Indicates whether the transaction is between two related, affiliated or associated entities. |
| Custodian | Name of the custodian or, if applicable, its LEI or client code, if collateral is held by a third party custodian. |
| Initial margin requirement | Yes/No. Indicates the initial margin required by the counterparties. |
| Initial margin amount | Amount and currency of the initial margin. |
| Counterparty posting initial margin | Indicate which counterparty, or whether both counterparties, are posting initial margin. |
| Variation margin | Whether variation margin is required to be collected under the terms of the transaction. |
| Counterparty posting variation margin | Indicate which counterparty, or whether both counterparties, are posting variation margin. |
| Calculating variation margin | Yes/No. Indicate whether the variation margin is calculated on a portfolio basis. |
| 2. Counterparty information | |
| Identifier of reporting counterparty | Name of the reporting counterparty or, if applicable, its LEI or client code. |
| Identifier of non-reporting counterparty | Name of the non-reporting counterparty or, if applicable, its LEI or client code. |
| Identifier of agent reporting the trade | Name of the agent reporting the transaction on behalf of the reporting counterparty or, if applicable, its LEI or client code. |
| Registration category and registering authority of reporting counterparty | Authority with which the reporting counterparty is registered and its registration category. |
| Registration category and registering authority of non-reporting counterparty | Authority with which the non-reporting counterparty is registered and its registration category. |
| Registration category and registering authority of the reporting agent | Authority with which the reporting agent is registered and its registration category. |

| Data field | Description |
|--|--|
| Branch/desk identifier | Country of the counterparties or their brokers. |
| 3. Principal economic terms | |
| Unique product identifier | Unique product identification code based on the taxonomy of the product. |
| Contract type | The name of the contract type. (e.g. swap, swaption, forwards, options, basis swap, index swap, basket swap, other) |
| Underlying Identifier | International Securities Identifying Number (ISIN)/Basket (B)/Index (I). |
| Asset Class | Major asset classes of the product. (e.g. interest rate, credit, commodity, foreign exchange, equity, etc.) |
| Reference asset | The specific underlying asset. (e.g. class A shares of company X. For non-Canadian underlying assets, provide the country. For Canadian underlying assets provide if provincial or federal.) |
| Effective date or start date | The date the transaction becomes effective or starts. |
| Maturity, termination or end date | The day the transaction expires. |
| Payment dates | The dates the transaction requires payments to be made. |
| Delivery type | Deliverable or non-deliverable. |
| Counterparty receiving up-front payment | Name of the counterparty or, if applicable, its LEI or client code. |
| Price multiplier | The number of units of the underlying reference entity represented by 1 unit of the contract. |
| A. Swaps and Forwards | |
| Notional amount/total notional quantity – reporting counterparty | Total notional amount or total quantity in the unit of measure of an underlying commodity. |
| Notional amount/total notional quantity – non-reporting counterparty | Total notional amount or total quantity in the unit of measure of an underlying commodity. |
| Fixed rate payer | Name of the reporting or non-reporting counterparty that pays the fixed rate or, if applicable, its LEI or client code. |

| Data field | Description |
|---|---|
| Floating rate payer | Name of the reporting or non-reporting counterparty that pays the floating rate or, if applicable, its LEI or client code. |
| Notional currency – reporting counterparty | Notional currency payable by reporting counterparty. (International Organization for Standardization (ISO) code) |
| Notional currency – non-reporting counterparty | Notional currency payable by non-reporting counterparty. (ISO code) |
| Reporting counterparty floating index name | The floating index/rate name used to calculate the reporting counterparty's payment amount. |
| Non-reporting counterparty floating index name | The floating index/rate name used to calculate the non-reporting counterparty's payment amount. |
| Fixed rate or floating rate index reference level – reporting counterparty | The rate or reference level used to determine the payment amount of the reporting counterparty for each leg of the transaction. |
| Fixed rate or floating rate index reference level – non-reporting counterparty | The rate or reference level used to determine the payment amount of the non-reporting counterparty for each leg of the transaction. |
| Fixed rate day count fraction | Factor used to calculate the fixed payer payments. (e.g. 30/360, actual/360) |
| Fixed leg payment frequency | Frequency of payments for the fixed rate leg of the transaction. (e.g. quarterly, semi, annual) |
| Floating rate payment frequency | Frequency of payments for the floating rate leg of the transaction. (e.g. quarterly, semi-annual, annual) |
| Floating rate reset frequency | How often the floating leg of the transaction is reset. (e.g. quarterly, semi-annual, annual) |
| Up-front payment | Amount of any up-front payment. |
| Currency or currencies of up-front payment | The currency in which payment is made by one counterparty to another. (ISO code) |
| Settlement currency | The currency in which payment is made by one counterparty to another. (ISO code) |
| Other material economic term(s) matched by the counterparties in verifying the swap | E.g. early termination option clause. |
| B. Options | |
| Option exercise period | List of dates or period of time within which the option may be exercised. |

| Data field | Description |
|---|--|
| Option premium | Fixed premium paid by the buyer to the seller. |
| Option premium currency | The currency used to compute the option premium. |
| Strike price (cap/floor rate) | The strike price of the option. |
| Value for options | The value of the option. |
| Option style | Indication of whether the option can be exercised on a fixed date or anytime during the life of the contract. (e.g. American, European, Bermudan, Asian) |
| Option type | Put/Call. |
| Other material economic term(s) matched by the counterparties in verifying the option | E.g. early termination option clause. |
| C. Additional asset information | |
| i) Currency Derivatives | |
| Foreign exchange swap forward leg | Information needed by trade repository to match with spot leg of the transaction. |
| Foreign exchange swap spot leg | Information needed by trade repository to match with forward leg of the transaction. |
| Exchange rate | Rate of exchange of the currencies for the transaction in the contract. |
| ii) Commodity Derivatives | |
| Unit of measure | Unit to measure the quantity of each side of the transaction. (e.g. barrels, bushels, etc.) |
| Grade | Grade of product being delivered. |
| Delivery point | For power, the delivery location. |
| Transmission days | For power, the delivery days of the week. |

| Data field | Description |
|---|--|
| Transmission duration | For power, the hours of day transmission starts and ends. |
| Load type | Load profile for the delivery of power. |
| 4. Event Data | |
| Action | Describes the type of action required. (e.g. new, modify, cancel, compression, etc.) |
| Submission of transaction entry timestamp | The time and date when the transaction was sent to the trading venue to be executed. |
| Execution timestamp | The time and date the transaction was executed on a trading venue. |
| Confirmation timestamp | The time and date the transaction was confirmed by both counterparties (mainly for non-electronically traded). |
| Submission timestamp for clearing | The time and date when the transaction was submitted to a clearing agency. |
| Clearing timestamp | The time and date the transaction was cleared. |
| Reporting date | The time and date the transaction was submitted to the trade repository. |
| Reset dates | The date and time when the transaction will reset. |
| 5. Valuation Data | |
| Value of contract | Mark-to-market valuation of the contract, or mark-to-model valuation. |
| Valuation date | Date of the latest mark-to-market or mark-to-model valuation. |
| Valuation type | Indicate whether valuation was based on mark-to-market or mark-to-model. |

10. Canadian counsel (if applicable)

Firm name:

Contact name:

Telephone number:

Facsimile:

E-mail address:

EXHIBITS

File all Exhibits with the Filing. For each Exhibit, include the name of the trade repository, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished instead of such Exhibit.

Except as provided below, if the filer files an amendment to the information provided in its Filing and the information relates to an Exhibit filed with the Filing or a subsequent amendment, the filer must, in order to comply with section 3 of Model Provincial Rule Trade Repositories and Derivatives Data Reporting (the "TR Rule"), provide a description of the change, the expected date of the implementation of the change, and file a complete and updated Exhibit. The filer must provide a clean and blacklined version showing changes from the previous filing.

If the filer has otherwise filed the information required by the previous paragraph pursuant to section 17 of the TR Rule, it is not required to file the information again as an amendment to an Exhibit. However, if supplementary material relating to a filed rule is contained in an Exhibit, an amendment to the Exhibit must also be filed.

Exhibit A – Corporate Governance

1. Legal status:

- Corporation
- Partnership
- Other (specify):

2. Indicate the following:

1. Date (DD/MM/YYYY) of formation.
2. Place of formation.
3. Statute under which trade repository was organized.
4. Regulatory status in other jurisdictions.

3. Provide a copy of the constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents, and all subsequent amendments.

4. Provide the policies and procedures to address potential conflicts of interest arising from the operation of the trade repository or the services it provides, including those related to the commercial interest of the trade repository, the interests of its owners and its operators, the responsibilities and sound functioning of the trade repository, and those between the operations of the trade repository and its regulatory responsibilities.

5. An applicant that is located outside of [Province x] that is applying for designation as a trade repository under section 2(3) of the Act must provide the following:

1. An opinion of legal counsel that, as a matter of law the applicant is able to provide the [applicable local securities regulator] with prompt access to the applicant's books and records (including data that is required to be reported to the trade repository) and is able to submit to onsite inspection and examination by the [applicable local securities regulator].
2. A completed Form F2, Submission to Jurisdiction and Appointment of Agent for Service.

Exhibit B – Ownership

A list of the registered or beneficial holders of securities of, partnership interests in, or other ownership interests in, the trade repository. For each of the persons listed in the Exhibit, please provide the following:

1. Name.
2. Principal business or occupation and title.
3. Ownership interest.
4. Nature of the ownership interest, including a description of the type of security, partnership interest or other ownership interest.

In the case of a trade repository that is publicly traded, if the trade repository is a corporation, please only provide a list of each shareholder that directly owns five percent or more of a class of a security with voting rights.

Exhibit C – Organization

1. A list of partners, officers, governors, and members of the board of directors and any standing committees of the board, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, indicating the following for each:
 1. Name.
 2. Principal business or occupation and title.
 3. Dates of commencement and expiry of present term of office or position.
 4. Type of business in which each is primarily engaged and current employer.
 5. Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.
 6. Whether the person is considered to be an independent director.
2. A list of the committees of the board, including their mandates.
3. The name of the trade repository's Chief Compliance Officer.

Exhibit D – Affiliates

1. For each affiliated entity of the trade repository provide the name, head office address and describe the principal business of the affiliate.
2. For each affiliated entity of the trade repository
 - (i) to which the trade repository has outsourced any of its key services or systems described in Exhibit E – Operations of the Trade Repository, including business recordkeeping, recordkeeping of trade data, trade data reporting, trade data comparison, data feed, or
 - (ii) with which the trade repository has any other material business relationship, including loans, cross-guarantees, etc.,

provide the following information:

1. Name and address of the affiliate.
2. The name and title of the directors and officers, or persons performing similar functions, of the affiliate.
3. A description of the nature and extent of the contractual and other agreements with the trade repository, and the roles and responsibilities of the affiliate under the arrangement.
4. A copy of each material contract relating to any outsourced functions or other material relationship.
5. Copies of constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents.

6. For the latest financial year of any affiliated entity that has any outstanding loans or cross-guarantee arrangements with the trade repository, financial statements, which may be unaudited, prepared in accordance with:
 - a. Canadian GAAP applicable to publicly accountable enterprises;
 - b. IFRS; or
 - c. U.S. GAAP where the affiliated entity is incorporated or organized under the laws of the U.S.

Exhibit E – Operations of the Trade Repository

Describe in detail the manner of operation of the trade repository and its associated functions. This should include, but not be limited to, a description of the following:

1. The structure of the trade repository.
2. Means of access by the trade repository's users and, if applicable, their clients to the trade repository's facilities and services.
3. The hours of operation.
4. A description of the facilities and services offered by the trade repository including, but not limited to, collection and maintenance of derivatives data.
5. A list of the types of derivatives instruments for which data recordkeeping is offered, including, but not limited to, a description of the features and characteristics of the instruments.
6. Procedures regarding the entry, display and reporting of derivatives data.
7. Description of recordkeeping procedures that ensure derivatives data is recorded accurately, completely and on a timely basis.
8. The safeguards and procedures to protect derivatives data of the trade repository's users, including required policies and procedures reasonably designed to protect the privacy and confidentiality of the data.
9. Training provided to users and a copy of any materials provided with respect to systems and rules and other requirements of the trade repository.
10. Steps taken to ensure that the trade repository's users have knowledge of and comply with the requirements of the trade repository.
11. A description of the trade repository's risk management framework for comprehensively managing risks including business, legal, and operational risks.

The filer must provide all policies, procedures and manuals related to the operation of the trade repository.

Exhibit F – Outsourcing

Where the trade repository has outsourced the operation of key services or systems described in Exhibit E – Operations of the Trade Repository to an arms-length third party, including any function associated with the collection and maintenance of derivatives data, provide the following information:

1. Name and address of person or company (including any affiliates of the trade repository) to which the function has been outsourced.
2. A description of the nature and extent of the contractual or other agreement with the trade repository and the roles and responsibilities of the arms-length party under the arrangement.
3. A copy of each material contract relating to any outsourced function.

Exhibit G – Systems and Contingency Planning

For each of the systems for collecting and maintaining reports of derivatives data, describe:

1. Current and future capacity estimates.
2. Procedures for reviewing system capacity.

3. Procedures for reviewing system security.
4. Procedures to conduct stress tests.
5. A description of the filer's business continuity and disaster recovery plans, including any relevant documentation.
6. Procedures to test business continuity and disaster recovery plans.
7. The list of data to be reported by all types of users.
8. A description of the data format or formats that will be available to the [applicable local securities regulator] and other persons receiving trade reporting data.

Exhibit H – Access to Services

1. A complete set of all forms, agreements or other materials pertaining to access to the services of the trade repository described in Exhibit E.4.
2. Describe the types of trade repository users.
3. Describe the trade repository's criteria for access to the services of the trade repository.
4. Describe any differences in access to the services offered by the trade repository to different groups or types of users.
5. Describe conditions under which the trade repository's users may be subject to suspension or termination with regard to access to the services of the trade repository.
6. Describe any procedures that will be involved in the suspension or termination of a user.
7. Describe the trade repository's arrangements for permitting clients of users to have access to the trade repository. Provide a copy of any agreements or documentation relating to these arrangements.

Exhibit I – Trade Repository Users

Provide an alphabetical list of all the trade repository's users who are counterparties to a transaction whose derivatives data is required to be reported pursuant to the TR Rule, including the following information:

1. Name.
2. Date of becoming a user.
3. Describe the type of derivatives reported whose counterparty is the user.
4. The class of participation or other access.
5. Provide a list of all local counterparty who were denied or limited access to the trade repository, indicating for each:
 - (i) whether they were denied or limited access;
 - (ii) the date the repository took such action;
 - (iii) the effective date of such action; and
 - (iv) the nature and reason for any denial or limitation of access.

Exhibit J – Fees

A description of the fee model and all fees charged by the trade repository, or by a party to which services have been directly or indirectly outsourced, including, but not limited to, fees relating to access and the collection and maintenance of derivatives data, how such fees are set, and any fee rebates or discounts and how the rebates and discounts are set.

CERTIFICATE OF TRADE REPOSITORY

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____, 20____

(Name of trade repository)

(Name of director, officer or partner – please type or print)

(Signature of director, officer or partner)

(Official capacity – please type or print)

**IF APPLICABLE, ADDITIONAL CERTIFICATE
OF TRADE REPOSITORY THAT IS LOCATED OUTSIDE OF ONTARIO**

The undersigned certifies that

- (a) it will provide the [applicable local securities regulator] with access to its books and records and will submit to onsite inspection and examination by the [applicable local securities regulator] ;
- (b) as a matter of law, it is able to
 - i. provide the [applicable local securities regulator] with access to its books and records, and
 - ii. submit to onsite inspection and examination by the [applicable local securities regulator].

DATED at _____ this _____ day of _____, 20____

(Name of trade repository)

(Name of director, officer or partner – please type or print)

(Signature of director, officer or partner)

(Official capacity – please type or print)

FORM F2
TO MODEL PROVINCIAL RULE – TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

**TRADE REPOSITORY SUBMISSION TO
JURISDICTION AND APPOINTMENT OF
AGENT FOR SERVICE OF PROCESS**

1. Name of trade repository (the "Trade Repository"):

2. Jurisdiction of incorporation, or equivalent, of Trade Repository:

3. Address of principal place of business of Trade Repository:

4. Name of the agent for service of process for the Trade Repository (the "Agent"):

5. Address of Agent for service of process in Ontario:

6. The Trade Repository designates and appoints the Agent as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of the Trade Repository in Ontario. The Trade Repository hereby irrevocably waives any right to challenge service upon its Agent as not binding upon the Trade Repository.
7. The Trade Repository agrees to unconditionally and irrevocably attorn to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) any proceeding in any province or territory arising out of, related to, concerning or in any other manner connected with the regulation and oversight of the activities of the Trade Repository in Ontario.
8. The Trade Repository shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before the Trade Repository ceases to be designated or exempted by the Commission, to be in effect for six years from the date it ceases to be designated or exempted unless otherwise amended in accordance with section 9.
9. Until six years after it has ceased to be a designated or exempted by the Commission from the recognition requirement under subsection 21.2.2(1) of the Act, the Trade Repository shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before any change in the name or above address of the Agent.
10. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of Ontario.

Dated: _____

Signature of the Trade Repository

Print name and title of signing
officer of the Trade Repository

AGENT

CONSENT TO ACT AS AGENT FOR SERVICE

I, (Name of Agent in full; if Corporation, full Corporate Name) of (Business address), hereby accept the appointment as agent for service of process of [insert name of Trade Repository] and hereby consent to act as agent for service pursuant to the terms of the appointment executed by [insert name of Trade Repository] on [insert date].

Dated: _____

Signature of Agent

Print name of person signing and, if
Agent is not an individual, the title
of the person

FORM F3
TO MODEL PROVINCIAL RULE – TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

CESSATION OF OPERATIONS REPORT FOR TRADE REPOSITORY

1. Identification:
 - A. Full name of the designated trade repository:
 - B. Name(s) under which business is conducted, if different from item 1A:
2. Date designated trade repository proposes to cease carrying on business as a trade repository:
3. If cessation of business was involuntary, date trade repository has ceased to carry on business as a trade repository.

Exhibits

File all Exhibits with the Cessation of Operations Report. For each exhibit, include the name of the trade repository, the date of filing of the exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished instead of such Exhibit.

Exhibit A

The reasons for the designated trade repository ceasing to carry on business as a trade repository.

Exhibit B

A list of all derivatives instruments for which data recordkeeping is offered during the last 30 days prior to ceasing business as a trade repository.

Exhibit C

A list of all users who are counterparties to a transaction whose derivatives data is required to be reported pursuant to Model Provincial Rule – Trade Repositories and Derivatives Data Reporting and for whom the trade repository provided services during the last 30 days prior to ceasing business as a trade repository.

CERTIFICATE OF TRADE REPOSITORY

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____ 20 _____

(Name of trade repository)

(Name of director, officer or partner – please type or print)

(Signature of director, officer or partner)

(Official capacity – please type or print)

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

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**PART 1
GENERAL COMMENTS**

Introduction

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

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

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

Definitions and interpretation

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

(2) In this Model Explanatory Guidance

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

“FMI” means a financial market infrastructure,

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

“PFMI Report” means the April 2012 final report entitled *Principles for financial market infrastructures* published by CPSS and IOSCO, as amended from time to time,² and

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

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

- a change to the termination date for the transaction,
- a change in the cash flows, payment frequency, currency, numbering convention, spread, benchmark, reference entity or rates originally reported,

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

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

- the availability of a legal entity identifier for a counterparty previously identified by name or by some other identifier,
- a corporate action affecting a security or securities on which the transaction is based (e.g. a merger, dividend, stock split, or bankruptcy),
- the exercise of a right or option that is an element of the expired transaction, or
- the satisfaction of a level, event, barrier or other condition contained in the original transaction.

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

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

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

(5) The term “valuation data” is defined as data that reflects the current value of a transaction, meaning the price that would be received to sell an asset, or paid to transfer a liability in an orderly transaction between market participants, at the current date. It is the Committee’s view that valuation data can be calculated based upon the use of an industry accepted methodology such as mark-to-market or mark-to-model, or another valuation method that is in accordance with accounting principles that will result in a reasonable valuation of a transaction. The valuation methodology should be consistent over the entire life of a transaction.

PART 2 TRADE REPOSITORY DESIGNATION AND ONGOING REQUIREMENTS

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

Trade repository initial filing of information and designation

2. (1) The legal entity that applies to be a designated trade repository will typically be the entity that operates the facility that collects and maintains records of completed transactions by other persons or companies. In some cases, the applicant may own and operate more than one trade repository facility. In such cases, the trade repository may file separate forms in respect of each trade repository facility, or it may choose to file one form to cover all of the different trade repository facilities. If the latter alternative is chosen, the trade repository must clearly identify the facility to which the information or changes apply.

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

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

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

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

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

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

Under paragraph 2(2)(c), a trade repository that is applying for designation as a trade repository must demonstrate that it has established, implemented, maintained and enforced appropriate written rules, policies and procedures that are in accordance with standards applicable to trade repositories including, but not limited to, the principles and key considerations and explanatory notes applicable to trade repositories in the PFMI Report. These principles are set out in the following chart, along with the relevant sections of the TR Rule that are to be interpreted and applied in accordance with each principle:

| <i>Principle in the PFMI Report applicable to a trade repository</i> | <i>Relevant section(s) of the TR Rule</i> |
|---|---|
| Principle 1: Legal Basis | Section 7 – Legal Framework Section 17 – Rules (in part) |
| Principle 2: Governance | Section 8 – Governance Section 9 – Board of Directors Section 10 – Management |
| Principle 3: Framework for the comprehensive management of risks | Section 19 – Comprehensive Risk Management Framework Section 20 – General Business Risk (in part) |
| Principle 15: General business risk | Section 20 – General Business Risk |
| Principle 17: Operational risk | Section 21 – Systems and Other Operational Risk Requirements Section 22 – Data Security and Confidentiality Section 24 – Outsourcing |
| Principle 18: Access and participation requirements | Section 13 – Access to Designated Trade Repository Services Section 16 – Due Process (in part) Section 17 – Rules (in part) |
| Principle 19: Tiered participation arrangements | No equivalent provisions in the TR Rule; however, the trade repository may be expected to observe or broadly observe the principle, where applicable. |
| Principle 20: FMI links | No equivalent provisions in the TR Rule; however, the trade repository may be expected to observe or broadly observe the principle, where applicable. |
| Principle 21: Efficiency and effectiveness | No equivalent provisions in the TR Rule; however, the trade repository may be expected to observe or broadly observe the principle, where applicable. |
| Principle 22: Communication procedures and standards | Section 15 – Communication Policies, Procedures and Standards |
| Principle 23: Disclosure of rules, key procedures, and market data | Section 17 – Rules (in part) |
| Principle 24: Disclosure of market data by trade repositories | Sections in Part 4 – Data Dissemination and Access to Data |

It is anticipated that the [applicable local securities regulator] will apply the principles in its oversight activities of designated trade repositories. Therefore, in complying with the TR Rule, designated trade repositories will be expected to observe the principles.

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

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

Change in information

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

- (a) a change in the structure of the designated trade repository, including procedures governing how derivatives data is collected and maintained, that have or may have a direct impact on users in [Province x],
- (b) a change to services provided by the designated trade repository, including the hours of operation, that have or may have a direct impact on users in [Province x],
- (c) a change to means of access to the designated trade repository's facility and its services, including changes to data formats or protocols, that have or may have a direct impact on users in [Province x],
- (d) a change to the types of derivative asset classes or categories of derivatives that may be reported to the designated trade repository,
- (e) a change to the systems and technology used by the designated trade repository that collect, maintain and disseminate derivatives data, including matters affecting capacity,
- (f) a change to the governance of the designated trade repository, including changes to the structure of its board of directors or board committees, and their related mandates,
- (g) a change in control of the designated trade repository,
- (h) a change in affiliates that provide key services or systems to or on behalf of the designated trade repository,
- (i) a change to outsourcing arrangements for key services or systems of the designated trade repository,
- (j) a change to fees and the fee model of the designated trade repository,
- (k) a change in the designated trade repository's policies and procedure relating to risk-management, including policies and procedures relating to business continuity and data security, that have or may have an impact on the designated trade repository's provision of services to its users, and
- (l) a change in the location of the designated trade repository's head office or primary place of business or the location where the main data servers and contingency sites are housed.

(2) The Committee generally considers a change in a designated trade repository's fees or fee structure to be a significant change. However, the Committee recognizes that designated trade repositories may frequently change their fees or fee structure and may need to implement fee changes within tight timeframes. To facilitate this process, subsection 3(2) provides that a designated trade repository may provide information describing the change in fees or fee structure in a shorter timeframe (at least 15 days before the expected implementation date of the change in fees or fee structure). See section 12 of this Model Explanatory Guidance for an explanation of fee requirements applicable to designated trade repositories.

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

The [applicable local securities regulator] will make best efforts to review amendments to Form F1 required under subsections 3(1) and 3(2) before the proposed date of implementation of the change. However, where the changes are complex, raise regulatory concerns, or when additional information is required, the period for review may exceed these timeframes.

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

- (a) would not have an impact on the designated trade repository's structure or users, or more broadly on market participants, investors or the capital markets; or
- (b) are administrative changes such as
 - (i) changes in the routine processes, policies, practices, or administration of the designated trade repository that would not impact users,
 - (ii) changes due to standardization of terminology,
 - (iii) corrections of spelling or typographical errors,
 - (iv) changes to the types of users in [Province x] of the designated trade repository,
 - (iv) necessary changes to conform to applicable regulatory or other legal requirements of [Province x] or Canada, and
 - (v) minor system or technology changes that would not significantly impact the system or its capacity.

For the changes referred to in subsection 3(3), the [applicable local securities regulator] may review these filings to ascertain whether they have been categorized appropriately. If the [applicable local securities regulator] disagrees with the categorization, the designated trade repository will be notified in writing. Where the [applicable local securities regulator] determines that changes reported under subsection 3(3) are in fact significant under subsection 3(1), the designated trade repository will be required to file an amended Form F1 that will be subject to review by the [applicable local securities regulator].

Ceasing to carry on business

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

Legal framework

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

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

Governance

8. Designated trade repositories are required to have in place governance arrangements that meet the policy objectives set out in subsection 8(1). Subsections 8(2) and 8(3) explain the types of written governance arrangements and policies and procedures that are required from a designated trade repository.

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

Board of directors

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

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

(1) Paragraph 9(1)(a) requires individuals who comprise the board of directors of a designated trade repository to have an appropriate level of skill and experience to effectively and efficiently oversee the management of its operations. This would include individuals with experience and skills in business recovery, contingency planning, financial market systems and data management.

Under paragraph 9(1)(b), the board of directors of a designated trade repository must include individuals who are independent of the designated trade repository. The Committee would view individuals who have no direct or indirect material relationship with the designated trade repository as independent. The Committee would expect that independent directors of a designated trade repository would represent the public interest by ensuring that regulatory and public transparency objectives are fulfilled and that the interests of participants who are not derivatives dealers are considered.

Chief compliance officer

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

Fees

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

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

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

Access to designated trade repository services

13. (2) Under subsection 13(2) a designated trade repository is prohibited from unreasonably limiting access to its services, permitting unreasonable discrimination among its users or imposing unreasonable burdens on competition. For example, a designated trade repository should not engage in anti-competitive practices such as product or service tying, setting overly restrictive terms of use or anti-competitive price discrimination. A designated trade repository should not develop closed, proprietary interfaces that result in vendor lock-in or barriers to entry with respect to competing service providers that rely on the data maintained by the designated trade repository.

Acceptance of reporting

14. Section 14 requires that a designated trade repository accept derivatives data for all derivatives of the asset class or classes set out in its designation order. For example, if the designation order of a designated trade repository includes interest rate derivatives, the designated trade repository is required to accept transaction data for all types of interest rate derivatives entered into by counterparties located in [Province x]. It is possible that a designated trade repository may accept only a subset of a class of derivatives if this is indicated in its designation order. For example, there may be designated trade repositories which accept only certain types of commodity derivatives such as energy derivatives.

Communication policies, procedures and standards

15. Section 15 sets out the required standard of communication to be used by a designated trade repository with other specified entities. The reference in paragraph 15(1)(d) to "other service providers" could include market participants who offer technological or transaction processing services.

Rules

17. Subsections 17(1) and (2) require that the publicly disclosed written rules and procedures of a designated trade repository must be clear and comprehensive and include explanatory material written in plain language so that participants can fully understand the system's design and operations, their rights and obligations, and the risks of participating in the system. Moreover, a designated trade repository should disclose to its users and the public basic operational information and responses to CPSS-IOSCO *Disclosure framework for financial market infrastructures*.

(3) Subsection 17(3) requires that designated trade repositories monitor compliance with its rules and procedures. The methodology of monitoring the compliance should be fully documented.

(4) Subsection 17(4) requires a designated trade repository to have clearly defined and publicly disclosed processes for dealing with non-compliance with its rules and procedures. This subsection does not preclude enforcement action by any other person or company, including the [applicable local securities regulator] or other regulatory body.

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

Records of data reported

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

(2) Subsection 18(2) requires that records be maintained for 7 years after the expiration or termination of a transaction. The requirement to maintain records for 7 years after the expiration or termination of a transaction rather than from the date the transaction was entered into reflects the fact that transactions create ongoing obligations and therefore information is subject to change throughout the life of a transaction.

Comprehensive risk-management framework

19. Requirements for a comprehensive risk-management framework of a designated trade repository are set out in section 19.

Features of framework

A designated trade repository should have a sound risk-management framework (including policies, procedures, and systems) that enable it to identify, measure, monitor, and manage effectively the range of risks that arise in or are borne by designated trade repository. A designated trade repository's framework should include the identification and management of risks that could materially affect its ability to perform or to provide services as expected such as interdependencies.

Establishing a framework

A designated trade repository should have comprehensive internal processes to help its board of directors and senior management monitor and assess the adequacy and effectiveness of its risk-management policies, procedures, systems, and controls. These processes should be fully documented and readily available to the designated trade repository's personnel responsible for implementing them.

Maintaining a framework

A designated trade repository should regularly review the material risks it bears from, and poses to, other entities (such as other FMI, settlement banks, liquidity providers, or service providers) as a result of interdependencies and develop appropriate risk-management tools to address these risks. These tools should include business continuity arrangements that allow for rapid recovery and resumption of critical operations and services in the event of operational disruptions and recovery or orderly wind-down plans should the trade repository become non-viable.

General business risk

20. (1) Subsection 20(1) requires a designated trade repository to manage its general business risk appropriately. General business risk includes any potential impairment of the designated trade repository's financial position (as a business concern) as a consequence of a decline in its revenues or an increase in its expenses, such that expenses exceed revenues and result in a loss that must be charged against capital or an inadequacy of resources necessary to carry on business as a designated trade repository.

(2) For the purposes of subsection 20(2), the amount of liquid net assets funded by equity that a designated trade repository should hold is to be determined by its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services, if such action is taken. At a minimum, however, the Committee is of the view that a designated trade repository must hold liquid net assets funded by equity equal to at least six months of current operating expenses.

(3) For the purposes of subsections 20(3) and (4), and in connection with developing a comprehensive risk-management framework under section 19, a designated trade repository should identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern, and assess the effectiveness of a full range of options for recovery or orderly wind-down. These scenarios should take into account the various independent and related risks to which the designated trade repository is exposed.

Based on the required assessment of scenarios under subsection 20(3) (and taking into account any constraints potentially imposed by legislation), the designated trade repository should prepare appropriate written plans for its recovery or orderly wind-down. The plan should contain, among other elements, a substantive summary of the key recovery or orderly wind-down strategies, the identification of the designated trade repository's critical operations and services, and a description of the measures needed to implement the key strategies. The designated trade repository should maintain the plan on an ongoing basis to achieve recovery and orderly wind-down and should hold sufficient liquid net assets funded by equity to implement this plan (see also subsection 20(2) above). A designated trade repository should also take into consideration the operational, technological, and legal requirements for participants to establish and move to an alternative arrangement in the event of an orderly wind-down.

Systems and other operational risk requirements

21. (1) Subsection 21(1) sets out a general principle concerning the management of operational risk. In interpreting subsection 21(1), the following key considerations should be applied:

- a designated trade repository should establish a robust operational risk-management framework with appropriate systems, policies, procedures, and controls to identify, monitor, and manage operational risks;
- a designated trade repository should review, audit, and test systems, operational policies, procedures, and controls, periodically and after any significant changes; and
- a designated trade repository should have clearly defined operational-reliability objectives and policies in place that are designed to achieve those objectives.

(2) The board of directors of a designated trade repository should clearly define the roles and responsibilities for addressing operational risk and approve the designated trade repository's operational risk-management framework.

(3) Paragraph 21(3)(a) requires a designated trade repository to develop and maintain an adequate system of internal control over its systems as well as adequate general information-technology controls. The latter controls are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, and security. Recommended Canadian guides as to what constitutes adequate information technology controls include '*Information Technology Control Guidelines*' from the Canadian Institute of Chartered Accountants and '*COBIT*' from the IT Governance Institute. A designated trade repository should ensure that its information-technology controls address the integrity of the data that it maintains, by protecting all derivatives data submitted from corruption, loss, improper disclosure, unauthorized access and other processing risks.

Paragraph 21(3)(b) requires a designated trade repository to thoroughly assess future needs and make systems capacity and performance estimates in a method consistent with prudent business practice at least once a year. The paragraph also imposes an annual requirement for designated trade repositories to conduct periodic capacity stress tests. Continual changes in technology, risk management requirements and competitive pressures will often result in these activities or tests being carried out more frequently.

Paragraph 21(3)(c) requires a designated trade repository to notify the [applicable local securities regulator] of any material systems failure. The Committee would consider a failure, malfunction, delay or other disruptive incident to be "material" if the designated trade repository would in the normal course of its operations escalate the matter to or inform its senior management responsible for technology or it would have an impact on users. The Committee also expects that, as part of this notification, the designated trade repository will provide updates on the status of the failure, the resumption of service and the results of its internal review of the failure.

(4) Subsection 21(4) requires that a designated trade repository establish, implement, maintain and enforce business continuity plans, including disaster recovery plans. The Committee believes that these plans are intended to provide continuous and undisrupted service as backup systems ideally should commence processing immediately. Where a disruption is unavoidable, a designated trade repository is expected to provide prompt recovery of operations, meaning that it resume operations within 2 hours following the disruptive event. Under paragraph 21(4)(c), an emergency event could include any external sources of operational risk such as the failure of critical service providers or utilities or events affecting a wide metropolitan area such as

natural disasters, terrorism, and pandemics. Business continuity planning should encompass all policies and procedures to ensure uninterrupted provision of key services regardless of the cause of potential disruption.

(5) Subsection 21(5) requires a designated trade repository to test its business continuity plans periodically, and at least once a year. The expectation is that the designated trade repository would engage relevant industry participants, as necessary, in tests of its business continuity plans.

(6) Subsection 21(6) requires a designated trade repository to engage a qualified party to conduct an annual independent assessment of the internal controls referred to in paragraphs 21(3)(a) and (b) and subsections 21(4) and (5). A qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment, such as external auditors or third party information system consultants. Before engaging a qualified party, the designated trade repository should notify the [applicable local securities regulator].

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

(9) Subsections 21(9) and (10) require a designated trade repository to provide testing facilities for interfacing with or accessing the trade repository for at least 2 months immediately prior to operations once the technology requirements have been made publicly available. Should the trade repository make its specifications publicly available for longer than 3 months, it may make the testing available during that period or thereafter as long as it is at least 2 months prior to operations. If the designated trade repository, once it has begun operations, proposes material changes to its technology systems, it is required to make testing facilities publicly available for at least 2 months before implementing the material systems change.

(11) Subsection 21(11) provides that if a designated trade repository must make a change to its technology requirements regarding interfacing with or accessing the designated trade repository to immediately address a failure, malfunction or material delay of its systems or equipment it does not have to comply with paragraphs 21(8)(b) and 21(9)(b) if it immediately notifies the [applicable local securities regulator] of the change and the amended technology requirements are made publicly available as soon as practicable, either while the changes are being made or immediately thereafter.

Data security and confidentiality

22. (1) Subsection 22(1) provides that a designated trade repository must put in place policies and procedures to ensure the safety and confidentiality of derivatives data to be reported to it under the TR Rule. The policies must include limitations on access to confidential trade repository data and standards to safeguard against persons and companies affiliated with the designated trade repository using trade repository data for their personal benefit or the benefit of others.

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

Confirmation of data and information

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

Outsourcing

24. (1) Section 24 sets out requirements applicable to a designated trade repository that outsources any of its key services or systems to a service provider. Generally, a designated trade repository must establish policies and procedures to evaluate and approve these outsourcing arrangements. Such policies and procedures include assessing the suitability of potential service providers and the ability of the designated trade repository to continue to comply with securities legislation in the event of the bankruptcy, insolvency or termination of business of the service provider. A designated trade repository is also required to monitor the ongoing performance of the service provider to which it outsources key services, systems or facilities. The requirements under section 24 apply regardless of whether the outsourcing arrangements are with third-party service providers, or affiliates of the designated trade repository. A designated trade repository that outsources its services or systems remains responsible for those services or systems and for compliance with securities legislation.

PART 3 DATA REPORTING

Part 3 deals with reporting obligations for transactions and includes a description of the counterparties that will be subject to the duty to report, requirements as to the timing of reports and a description of the data that is required to be reported.

Duty to report

25. Section 25 outlines the reporting duties and contents of derivatives data.

(2) With reference to the subsection 25(2), prior to the reporting rules in Part 3 coming into force, the [applicable local securities regulator] will provide public guidance on how reports for derivatives that are not accepted for reporting by any designated trade repository should be electronically submitted to the [applicable local securities regulator].

(3) The Committee interprets the requirement in subsection 25(3) to report errors or omissions in derivatives data “as soon as technologically possible” after it is discovered to mean on discovery and in any case no later than the end of the business day on which the error or omission is discovered.

(4) Under subsection 25(4) where a local counterparty, that is not a reporting counterparty, discovers an error or omission in respect of derivatives data reported to a designated trade repository, it has an obligation to report the error or omission to the reporting counterparty. Once the error or omission is reported to the reporting counterparty, the reporting counterparty then has an obligation to report the error or omission to the designated trade repository in accordance with subsection 25(3). The Committee interprets the requirement in subsection 25(4) to notify the reporting counterparty of errors or omissions in derivatives data “promptly” after it is discovered to mean on discovery and in any case no later than the end of the business day on which the error or omission is discovered.

(5) Paragraph 25(5)(a) requires that all derivatives data reported for a given transaction must be reported to the same designated trade repository or [applicable local securities regulator] to which the initial report is submitted. The purpose of this requirement is to ensure the [applicable local securities regulator] has access to all reported derivatives data for a particular transaction from the same entity. It is not intended to restrict counterparties’ ability to report to multiple trade repositories. Where the entity to which the transaction was originally reported is no longer a designated trade repository, all data relevant to that transaction should be reported to another designated trade repository as otherwise required by the TR Rule.

Pre-existing derivatives

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

Reporting counterparty

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

(1) Under paragraph 27(1)(b), if the counterparties are unable to come to an agreement on who should report the transaction, then both counterparties must act as reporting counterparty. However, it is the Committee’s view that one counterparty to every transaction should accept the reporting obligations to avoid duplicative reporting.

(2) Subsection 27(2) applies to situations where the reporting counterparty, as determined under subsection 27(1), is not a local counterparty. In situations where a non-local reporting counterparty does not report a transaction or otherwise fails in its reporting duties, the local counterparty must act as the reporting counterparty. The Committee is of the view that non-local counterparties that are derivatives dealers should assume the reporting obligations for non-dealer counterparties. However, to the extent that non-local counterparties are not subject to reporting obligations under the TR Rules, it is necessary to apply the ultimate reporting obligation on the local counterparty.

(3) Under subsection 27(3) the reporting counterparty for a transaction must ensure that all reporting obligations, including future requirements such as valuation reporting and the reporting of life-cycle events, are fulfilled.

(4) Subsection 27(4) permits the delegation of all reporting obligations of a reporting counterparty. This includes reporting of initial creation data, life-cycle data and valuation data. For example, for cleared transactions, some or all of the reporting obligations may be delegated to the clearing agency. However, the local counterparty remains responsible for ensuring that reporting of derivatives data is done accurately and within the required timeframes under the TR Rule.

Real-time reporting

28. (1) Subsection 28(1) requires that reporting be done in real time which means that derivatives data should be reported as soon as technologically practicable after the execution of a transaction. In evaluating what will be considered to be “technological practicable”, the [applicable local securities regulator] will take into account the prevalence of implementation and use of technology by comparable market participants located in Canada and foreign jurisdictions. The [applicable local securities regulator] may also conduct independent reviews to determine the state of reporting technology.

(2) Subsection 28(2) is intended to take into account the fact that not all market participants will have the same technological capabilities. For example, market participants that do not regularly engage in transactions would, at least in the near term, likely not be as well situated to achieve real time reporting. There is an outside limit of the end of the business day following the execution of the transaction to be reported in all cases.

Legal entity identifiers

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

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

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

Unique transaction identifier

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

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

Unique product identifier

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

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

Valuation data

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

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

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

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

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

PART 4 DATA DISSEMINATION AND ACCESS TO DATA

Data available to regulators

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

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

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

(3) Subsection 37(3) requires designated trade repositories to conform to internationally accepted regulatory access standards applicable to trade repositories. Trade repository regulatory access standards are currently being developed by CPSS and IOSCO in a report entitled "*Authorities' access to TR data*". It is expected that all designated trade repositories will comply with the access recommendations in the final report.

Data available to counterparties

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

Data available to public

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

(2) Subsection 39(2) requires that the aggregated data disclosed under subsection 39(1), be broken down into various categories. The following are examples of the aggregated data required under subsection 39(2):

- currency of denomination (the currency in which the derivative is denominated),
- geographic location of the underlying reference entity (e.g., the United States for derivatives which reference the S&P 500 index),
- asset class of reference entity (e.g., fixed income, credit or equity),
- product type (e.g. options, forwards or swaps),
- cleared or uncleared,
- maturity ranges (broken down into maturity ranges such as less than one year, 1-2 years, 2-3 years), and
- geographic location and type of counterparty (e.g., the United States, end user).

(3) Under subsection 39(3), the timing for public reporting of the principal economic terms of a transaction where at least one counterparty is a derivatives dealer is within one day. For transactions where neither counterparty is a derivatives dealer, the principal economic terms must be reported within 2 days of receipt of the derivatives data by the designated trade repository. The purpose of the public reporting delays is to ensure that market participants have adequate time to enter into any offsetting transaction necessary to hedge their positions. These time delays apply to all transactions, regardless of transaction size.

(4) Subsection 39(4) provides that a designated trade repository must not disclose the identity of either counterparty to the transaction. This means that published data must be anonymized and the names or legal entity identifiers of counterparties must not be published. This provision is not intended to create a requirement for a designated trade repository to determine whether anonymized published data could reveal the identity of a counterparty based on the terms of the transaction.

PART 5 EXEMPTIONS

Exemptions

40. (2) Subsection 40(2) provides a reporting exemption for physical commodity transaction in certain limited circumstances. This exemption only applies if a local counterparty to a transaction has less than \$500 000 aggregate notional value under all outstanding derivatives contracts including the additional notional value related to that transaction. In calculating this exposure, the notional value of all outstanding transactions including transactions from all asset classes and with all counterparties, domestic and foreign, should be included. The notional value of a physical commodity transaction would be calculated by multiplying the quantity of the physical commodity by the price for that commodity. Any counterparty that is above the \$500 000 threshold would be required to act as reporting counterparty for a transaction involving a party exempt from the requirement to report pursuant to 40(2).

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

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

PART 6 EFFECTIVE DATE

Effective date

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

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

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

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