



THE MANITOBA  
SECURITIES  
COMMISSION

**MANITOBA SECURITIES COMMISSION**  
**NOTICE OF AMENDMENTS TO**  
**MANITOBA SECURITIES COMMISSION RULE 91-507**  
***TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING***  
**AND**  
**COMPANION POLICY 91-507CP**  
***TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING***

**1. Introduction**

The Manitoba Securities Commission (the **MSC**, the **Commission** or **we**) has made amendments to the following instruments:

- MSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (the **TR Rule**), and
- MSC Companion Policy 91-507CP *Trade Repositories and Derivatives Data Reporting* (the **TR CP**)

The TR Rule amendments will come into force on July 2, 2014. The TR CP changes become effective on the coming into force of the TR Rule amendments.

**2. Background**

On November 14, the MSC published *MSC Rule 91-507 Trade Repositories and Derivatives Data Reporting* and *MSC Companion Policy 91-507CP Trade Repositories and Derivatives Data Reporting*. The TR Rule and TR CP became effective on December 31, 2013. Based on consultations with and feedback from various market participants, and in order to more effectively and efficiently promote the underlying policy aims, the Commission has amended the TR Rule and TR CP. Details of the amendments are discussed further below.

**3. Substance and Purpose of the Amendments**

The key objectives of the TR Rule amendments are to:

- delay the effective date of reporting obligations under the TR Rule as a consequence of the unavailability of the necessary market infrastructure; and
- lessen the burden of reporting obligations on local end-user counterparties under the TR Rule.

The TR CP changes simply correspond to the TR Rule amendments.

The Commission believes that each of the TR Rule amendments is not required to be published for comment on the basis that:

- it grants an exemption or removes a restriction and is not likely to have a substantial effect on the interests of market participants other than those who benefit from it, and/or
- it does not represent a material change to the Rule, in part because it represents a logical outgrowth of the consultation process and comments received on the proposed rules prior to the December 31, 2013 enactment of the TR Rule.

Given that the TR CP changes merely correspond to the TR Rule amendments, the TR CP changes would not be considered to represent a material substantive change and, consequently, do not need to be published for comment.

#### 4. Summary of the TR Rule Amendments

(a) *Subsections 25(2) and 31(4): repeal of the local counterparty fall-back*

The Commission has repealed subsections 25(2) and 31(4) to alleviate the transaction report monitoring burden on non-dealer local counterparties. These subsections established a fall-back mechanism requiring a Manitoba non-dealer counterparty to monitor the transaction reporting of a foreign dealer reporting counterparty. Through consultations with the public, the Commission has learned that a significant number of non-dealer local counterparties would have significant resource and technological difficulty developing systems to monitor their counterparties' reporting.

This amendment relieves a significant burden on local end-user counterparties, and is consistent with the original intention and aim of single-sided reporting pursuant to the TR Rule.

(b) *Section 43: delay of reporting obligations*

The Commission has amended the effective date of reporting obligations under the TR Rule for all reporting counterparties. The effective date of the reporting obligation for derivatives dealers and recognized or exempt clearing agencies has been changed from July 2, 2014 to October 31, 2014. The effective date of the reporting obligation for all other reporting counterparties has been changed from September 30, 2014 to June 30, 2015. The Commission has learned that, due to practical difficulties in establishing the necessary systems infrastructure, no trade repository accepting all OTC derivative asset classes, will be in a position to be designated within the required timeframe for the commencement of trade reporting obligations. As a result, the Commission is amending the TR Rule to delay the reporting obligation. This will provide additional time for trade repositories going through the designation or process, to accept market participants onto their systems and develop the reporting infrastructure necessary to comply with provincial trade reporting rules. Further, as a consequence of this amendment, a corresponding change was made to subsection 43(2) delaying the public dissemination of transaction-level reports from December 31, 2014 to April 30, 2015.

These amendments provide an implementation delay for trade reporting to allow for the necessary systems infrastructure to be put in place. The Commission stresses the importance for market participants, including trade repositories, to take all necessary steps to ensure full compliance with the TR Rule on the new reporting commencement dates.

(c) *Subsection 43(4): timing of clearing agency reporting*

The Commission has amended subsection 43(4) of the TR Rule to clarify that all transactions involving a recognized or exempt clearing agency will be required to be reported as of October 31, 2014. The intention of the TR Rule was that all transactions involving a recognized or exempt clearing agency or a derivatives dealer will be required to be reported beginning on the same date. However, the term "recognized or exempt clearing agency" was unintentionally omitted from subsection 43(4).

(d) *Section 34: pre-existing transactions*

As a consequence of the amendment and delay of the general reporting obligations in section 43 of the TR Rule, the Commission has also made corresponding changes to the timing of reporting obligations in respect of pre-existing transactions. Where the reporting counterparty to a transaction is a derivatives dealer or a recognized or exempt clearing agency, a pre-existing transaction is one which has outstanding contractual obligations as of October 31, 2014 and must be reported to a designated trade repository no later than April 30, 2015. Where the reporting counterparty to a transaction is neither a derivatives dealer nor a recognized or exempt clearing agency, a pre-existing transaction is one which has outstanding contractual obligations as of June 30, 2015 and must be reported to a designated trade repository no later than December 31, 2015. Pre-existing transactions will not be required to be reported if they expire or terminate prior to the applicable reporting deadline.

#### 6. Annexes

Appended as part of this Notice are the following Annexes:

- Annex A, which sets out the TR Rule amendments;
- Annex B, which is the blackline corresponding to Annex A; and
- Annex C, in which the TR CP changes are presented by way of blackline.

**April 17, 2014**

**Please refer your questions to:**

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## ANNEX A

### Amendments to Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*

1. *Manitoba Securities Commission Rule 91-507 Trade Repositories and Derivatives Data Reporting is amended by this Instrument.*
2. *Subsection 25(2) is revoked.*
3. *Subsection 31(4) is revoked.*
4. *Subsection 34(1) is replaced by the following:*

#### **Pre-existing transactions**

**34.(1)** Despite section 31 and subject to subsection 43(5), a reporting party (as determined under subsection 25(1)) to a transaction required to be reported under subsection 26(1) is required to report only the creation data indicated in the column in Appendix A entitled “Required for Pre-existing Transactions” on or before April 30, 2015 if

- (a) the reporting counterparty is a derivatives dealer or a recognized or exempt clearing agency,
- (b) the transaction was entered into before October 31, 2014, and
- (c) there were outstanding contractual obligations with respect to the transaction on October 31, 2014.

(1.1) Despite section 31 and subject to subsection 43(6), a reporting party (as determined under subsection 25(1)) to a transaction required to be reported under subsection 26(1) is required to report only the creation data indicated in the column in Appendix A entitled “Required for Pre-existing Transactions” on or before December 31, 2015 if

- (a) the reporting counterparty is neither a derivatives dealer nor a recognized or exempt clearing agency,
- (b) the transaction was entered into before June 30, 2015, and
- (c) there were outstanding contractual obligations with respect to the transaction on June 30, 2015.

5. *Subsections 34(2) and (3) are each amended by replacing “subsection (1)” with “subsection (1) or (1.1)”.*
6. *Section 43 is amended*
  - (a) *in subsection (2) by replacing “December 31, 2014” with “April 30, 2015”*

(b) *in subsection (3) by replacing “July 2” with “October 31”;*

(c) *in subsection (4)*

*(i) by adding “or a recognized or exempt clearing agency” after “derivatives dealer”, and*

*(ii) by replacing “September 30, 2014” with “June 30, 2015”; and*

(d) *by replacing subsection (5) with the following:*

(5) Despite subsection (3) and section 34, Part 3 does not apply to a transaction entered into before October 31, 2014 that expires or terminates on or before April 30, 2015 if the reporting counterparty to the transaction is a derivatives dealer or a recognized or exempt clearing agency.

(6) Despite subsection (3) and section 34, Part 3 does not apply to a transaction entered into before June 30, 2015 that expires or terminates on or before December 31, 2015 if the reporting counterparty to the transaction is neither a derivatives dealer nor a recognized or exempt clearing agency. .

7. This Instrument comes into force on July 2, 2014.

## ANNEX B

Note: This blackline is provided for convenience and does not include Appendices A and B of MSC Rule 91-507, which have not been amended.

**THE MANITOBA SECURITIES COMMISSION**  
**MSC Rule No. 2013-37**  
(Section 149.1, *The Securities Act*)

**MANITOBA SECURITIES COMMISSION RULE 91-507**  
**TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING**

PART 1 – DEFINITIONS AND INTERPRETATION

**Definitions**

**1(1)** In this Rule

"**asset class**" means the asset category underlying a derivative and includes interest rate, foreign exchange, credit, equity and commodity;

"**board of directors**" means, in the case of a designated trade repository that does not have a board of directors, a group of individuals that acts in a capacity similar to a board of directors;

"**creation data**" means the data in the fields listed in Appendix A;

"**derivatives dealer**" means a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives in Manitoba as principal or agent;

"**derivatives data**" means all data related to a transaction that is required to be reported pursuant to Part 3;

"**Global Legal Entity Identifier System**" means the system for unique identification of parties to financial transactions developed by the Legal Entity Identifier System Regulatory Oversight Committee;

"**Legal Entity Identifier System Regulatory Oversight Committee**" means the international working group established by the Finance Ministers and the Central Bank Governors of the Group of Twenty nations and the Financial Stability Board, under the Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier System dated November 5, 2012;

"**life-cycle event**" means an event that results in a change to derivatives data previously reported to a designated trade repository in respect of a transaction;

"**life-cycle event data**" means changes to creation data resulting from a life-cycle event;

"**local counterparty**" means a counterparty to a transaction if, at the time of the transaction, one or more of the following apply:

- (a) the counterparty is a person or company, other than an individual, organized under the laws of Manitoba or that has its head office or principal place of business in Manitoba;

(b) the counterparty is registered under Manitoba securities law as a derivatives dealer or in an alternative category as a consequence of trading in derivatives;

(c) the counterparty is an affiliate of a person or company described in paragraph (a), and such person or company is responsible for the liabilities of that affiliated party;

**"participant"** means a person or company that has entered into an agreement with a designated trade repository to access the services of the designated trade repository;

**"reporting counterparty"** means the counterparty to a transaction as determined under section 25 that is required to report derivatives data under section 26;

**"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 and includes the data in the applicable fields listed in Appendix A under the heading "Valuation Data".

**1(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"; "publicly accountable enterprise"; "U.S. AICPA GAAS"; "U.S. GAAP"; and "U.S. PCAOB GAAS".

**1(3)** In this Rule, "interim period" has the same meaning as in section 1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*.

## PART 2 – TRADE REPOSITORY DESIGNATION AND ONGOING REQUIREMENTS

### **Trade repository initial filing of information and designation**

**2(1)** An applicant for designation under section 31.6 of the Act must file a completed Form 91-507F1 – *Application For Designation and Trade Repository Information Statement*.

**2(2)** In addition to the requirement set out in subsection (1), an applicant for designation under section 31.6 of the Act whose head office or principal place of business is located outside of Manitoba must

(a) certify on Form 91-507F1 that it will provide the Commission with access to its books and records and will submit to onsite inspection and examination by the Commission,

(b) certify on Form 91-507F1 that it will provide the Commission with an opinion of legal counsel that

(i) the applicant has the power and authority to provide the Commission with access to its books and records, and

(ii) the applicant has the power and authority to submit to onsite inspection and examination by the Commission.

**2(3)** In addition to the requirements set out in subsections (1) and (2), an applicant for designation under section 31.6 of the Act whose head office or principal place of business is located in a foreign

jurisdiction must file a completed Form 91-507F2 – *Submission to Jurisdiction and Appointment of Agent for Service of Process*.

**2(4)** Within 7 days of becoming aware of an inaccuracy in or making a change to the information provided in Form 91-507F1, an applicant must file an amendment to Form 91-507F1 in the manner set out in that Form.

**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 91-507F1 unless it has filed an amendment to Form 91-507F1 in the manner set out in that Form at least 45 days before implementing the change.

**3(2)** A designated trade repository must file an amendment to the information provided in Exhibit I (Fees) of Form 91-507F1 in the manner set out in the Form at least 15 days before implementing a change to the information provided in the Exhibit.

**3(3)** For a change to a matter set out in Form 91-507F1 other than a change referred to in subsection (1) or (2), a designated trade repository must file an amendment to Form 91-507F1 in the manner set out in that 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, and

(b) the time the designated trade repository publicly discloses the change.

**Filing of initial audited financial statements**

**4(1)** An applicant must file audited financial statements for its most recently completed financial year with the Commission as part of its application for designation under section 31.6 of the Act.

**4(2)** The financial statements referred to in subsection (1) must

(a) be prepared in accordance with one of the following

(i) Canadian GAAP applicable to a publicly accountable enterprise,

(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) be audited in accordance with

(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.

**4(3)** The financial statements referred to in subsection (1) must be accompanied by an auditor's report that

(a) expresses an unmodified opinion if the financial statements are audited in accordance with Canadian GAAS or International Standards on Auditing,

(b) expresses an unqualified opinion if the financial statements are audited in accordance with U.S. AICPA GAAS or U.S. PCAOB GAAS,

(c) identifies all financial periods presented for which the auditor's report applies,

(d) identifies the auditing standards used to conduct the audit,

(e) identifies the accounting principles used to prepare the financial statements,

(f) is prepared in accordance with the same auditing standards used to conduct the audit, and

(g) is 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**

**5(1)** A designated trade repository must file annual audited financial statements that comply with the requirements in subsections 4(2) and 4(3) with the Commission no later than the 90th day after the end of its financial year.

**5(2)** A designated trade repository must file interim financial statements with the Commission no later than the 45th day after the end of each interim period.

**5(3)** The interim financial statements referred to in subsection (2) must

(a) be prepared in accordance with one of the following

(i) Canadian GAAP applicable to a publicly accountable enterprise,

(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, and

(b) identify in the notes to the financial statements the accounting principles used to prepare the financial statements.

**Ceasing to carry on business**

**6(1)** A designated trade repository that intends to cease carrying on business in Manitoba as a trade repository must make an application and file a report on Form 91-507F3 – *Cessation of Operations Report For Trade Repository* at least 180 days before the date on which it intends to cease carrying on that business.

**6(2)** A designated trade repository that involuntarily ceases to carry on business in Manitoba as a trade repository must file a report on Form 91-507F3 as soon as practicable after it ceases to carry on that business.

**Legal framework**

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

**7(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 a user, owner and regulator with respect to the use of the designated trade repository's 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 establish, implement and maintain written governance arrangements that

- (a) are well-defined, clear and transparent,
- (b) set out a clear organizational structure with consistent lines of responsibility,
- (c) provide for effective internal controls,
- (d) promote the safety and efficiency of the designated trade repository,
- (e) ensure effective oversight of the designated trade repository,
- (f) support the stability of the broader financial system and other relevant public interest considerations, and
- (g) properly balance the interests of relevant stakeholders.

**8(2)** A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures reasonably designed to identify and manage existing and potential conflicts of interest.

**8(3)** A designated trade repository must publicly disclose on its website

- (a) the governance arrangements established in accordance with subsection (1), and
- (b) the rules, policies and procedures established in accordance with subsection (2).

**Board of directors**

**9(1)** A designated trade repository must have a board of directors.

**9(2)** 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.

**9(3)** 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.

**9(4)** 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 establish, implement, maintain and enforce written rules, policies and procedures that

(a) specify the roles and responsibilities of management, and

(b) ensure that management has the experience, competencies, integrity and mix of skills necessary to discharge its roles and responsibilities.

**10(2)** A designated trade repository must notify the Commission 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)** The board of directors of a designated trade repository must appoint a chief compliance officer with the appropriate experience, competencies, integrity and mix of skills necessary to serve in that capacity.

**11(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 so directed by the board of directors, to the chief executive officer of the designated trade repository.

**11(3)** The chief compliance officer of a designated trade repository must

(a) establish, implement, maintain and enforce written rules, policies and procedures to identify and resolve conflicts of interest,

(b) establish, implement, maintain and enforce written rules, policies and procedures to ensure that the designated trade repository complies with securities legislation,

(c) monitor compliance with the rules, policies and procedures required under paragraphs (a) and (b) on an ongoing basis,

(d) report to the board of directors of the designated trade repository as soon as practicable upon becoming aware of a circumstance indicating that the designated trade repository, or an individual acting on its

behalf, is not in compliance with the securities laws of a jurisdiction in which it operates and one or more 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;
- (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,
- (e) report to the designated trade repository's board of directors as soon as practicable upon becoming aware of a conflict of interest that creates a risk of harm to a user or to the capital markets, and
- (f) 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.

**11(4)** Concurrently with submitting a report under paragraph (3)(d), (3)(e) or (3)(f), the chief compliance officer must file a copy of the report with the Commission.

**Fees**

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

- (a) fairly and equitably allocated among participants, and
- (b) publicly disclosed on its website 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 establish, implement, maintain and enforce written rules, policies and procedures that establish objective, risk-based criteria for participation that permit fair and open access to the services it provides.

**13(2)** A designated trade repository must publicly disclose on its website the rules, policies and procedures referred to in subsection (1).

**13(3)** 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 the designated trade repository;
- (b) permit unreasonable discrimination among the participants of the designated trade repository;
- (c) impose a burden on competition that is not reasonably necessary and appropriate;
- (d) require the use or purchase of another service for a person or company to utilize the trade reporting service offered by the designated trade repository.

**Acceptance of reporting**

**14** A designated trade repository must accept derivatives data from a participant for a transaction in a derivative of the asset class or classes set out in the designated trade repository's designation order.

**Communication policies, procedures and standards**

**15** 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 participants,
- (b) other trade repositories,
- (c) exchanges, clearing agencies, alternative trading systems, and other marketplaces, and
- (d) other service providers.

**Due process**

**16** For a decision made by a designated trade repository that directly adversely affects a participant or an applicant that applies to become a participant, the designated trade repository must ensure that

- (a) the participant 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, policies and procedures**

**17(1)** The rules, policies and procedures of a designated trade repository must

- (a) be clear and comprehensive and provide sufficient information to enable a participant to have an accurate understanding of its rights and obligations in accessing the services of the designated trade repository and the risks, fees, and other material costs they incur by using the services of 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 a completed transaction, and
- (c) not be inconsistent with securities legislation.

**17(2)** A designated trade repository must monitor compliance with its rules, policies and procedures on an ongoing basis.

**17(3)** A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures for sanctioning non-compliance with its rules, policies and procedures.

**17(4)** A designated trade repository must publicly disclose on its website

- (a) its rules, policies and procedures referred to in this section, and
- (b) its procedures for adopting new rules, policies and procedures or amending existing rules, policies and procedures.

**17(5)** A designated trade repository must file its proposed new or amended rules, policies and procedures for approval in accordance with the terms and conditions of its 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 to ensure that it records derivatives data accurately, completely and on a timely basis.

**18(2)** A designated trade repository must keep, in a safe location and in a durable form, records of derivatives data in relation to a transaction for the life of the transaction and for a further 7 years after the date on which the transaction expires or terminates.

**18(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 a 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 written 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.

**20(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 in order that it can continue operations and services as a going concern in order to achieve a recovery or an orderly wind down if those losses materialize.

**20(3)** For the purposes of subsection (2), a designated trade repository must hold, at a minimum, liquid net assets funded by equity equal to six months of current operating expenses.

**20(4)** 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.

**20(5)** A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures reasonably designed to facilitate its orderly wind-down based on the results of the assessment required by subsection (4).

**20(6)** A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures to ensure that it or a successor entity, insolvency administrator or other legal representative, will continue to comply with the requirements of subsection 6(2) and section 37 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.

**21(2)** The systems, controls and procedures established pursuant to subsection (1) must be approved by the board of directors of the designated trade repository.

**21(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 Commission of a material systems failure, malfunction, delay or other disruptive incident, or a breach of data security, integrity or confidentiality, and provide a post-incident report that includes a root-cause analysis as soon as practicable.

**21(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 a disruption,

(b) allow for the timely recovery of information, including derivatives data, in the event of a disruption, and

(c) provide for the exercise of authority in the event of an emergency.

**21(5)** A designated trade repository must test its business continuity plans, including disaster recovery plans, at least annually.

**21(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).

**21(7)** A designated trade repository must provide the report prepared in accordance with subsection (6) to

(a) its board of directors or audit committee promptly upon the completion of the report, and

(b) the Commission not later than the 30th day after providing the report to its board of directors or audit committee.

**21(8)** A designated trade repository must publicly disclose on its website all technology requirements regarding interfacing with or accessing the services provided by the designated trade repository,

(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and

(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

**21(9)** A designated trade repository must make available testing facilities for interfacing with or accessing the services provided by the designated trade repository,

(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and

(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

**21(10)** A designated trade repository must not begin operations in Manitoba unless it has complied with paragraphs (8)(a) and (9)(a).

**21(11)** Paragraphs (8)(b) and (9)(b) do not apply to a designated trade repository if

(a) the change to its technology requirements must be made immediately to address a failure, malfunction or material delay of its systems or equipment,

(b) the designated trade repository immediately notifies the Commission of its intention to make the change to its technology requirements, and

(c) the designated trade repository publicly discloses on its website the changed technology requirements as soon as practicable.

#### **Data security and confidentiality**

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

**22(2)** A designated trade repository must not release derivatives data for commercial or business purposes unless

(a) the derivatives data has otherwise been disclosed pursuant to section 39, or

(b) the counterparties to the transaction have provided the designated trade repository with their express written consent to use or release the derivatives data.

#### **Confirmation of data and information**

**23(1)** A designated trade repository must establish, implement, maintain and enforce written rules, 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 under this Rule, is accurate.

**23(2)** Despite subsection (1), a designated trade repository need only confirm the accuracy of the derivatives data it receives with those counterparties that are participants of the designated trade repository.

#### **Outsourcing**

**24** If a designated trade repository outsources a material service or system to a service provider, including to an associate or affiliate of the designated trade repository, the designated trade repository must



- (a) establish, implement, maintain and enforce written rules, policies and procedures for the selection of a service provider to which a material service or system may be outsourced and for the evaluation and approval of such an outsourcing arrangement,
- (b) identify any conflicts of interest between the designated trade repository and a service provider to which a material service or system is outsourced, and establish, implement, maintain and enforce written rules, policies and procedures to mitigate and manage those conflicts of interest,
- (c) enter into a written contract with the service provider that is appropriate for the materiality and nature of the outsourced activity and that provides for adequate termination procedures,
- (d) maintain access to the books and records of the service provider relating to the outsourced activity,
- (e) ensure that the Commission 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 arrangement,
- (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 arrangement,
- (g) take appropriate measures to determine that a service provider to which a material service or system is outsourced establishes, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan in accordance with the requirements under section 21,
- (h) take appropriate measures to ensure that the service provider protects the safety, privacy and confidentiality of derivatives data and of users' confidential information in accordance with the requirements under section 22, and
- (i) establish, implement, maintain and enforce written rules, policies and procedures to regularly review the performance of the service provider under the outsourcing arrangement.

### PART 3 – DATA REPORTING

#### **Reporting counterparty**

**25(1)** The reporting counterparty with respect to a transaction involving a local counterparty is

- (a) if the transaction is cleared through a recognized or exempt clearing agency, the recognized or exempt clearing agency,
- (b) if the transaction is not cleared through a recognized or exempt clearing agency and is between two derivatives dealers, each derivatives dealer,
- (c) if the transaction is not cleared through a recognized or exempt clearing agency and is between a derivatives dealer and a counterparty that is not a derivatives dealer, the derivatives dealer, and
- (d) in any other case, each local counterparty to the transaction.

~~**25(2)** A local counterparty to a transaction must act as the reporting counterparty to the transaction for the purposes of this Rule if~~

~~(a) the reporting counterparty to the transaction as determined under paragraph (1)(c) is not a local counterparty, and~~

~~(b) by the end of the second business day following the day on which derivatives data is required to be reported under this Part, the local counterparty has not received confirmation that the derivatives data for the transaction has been reported by the reporting counterparty.~~

**Duty to report**

**26(1)** A reporting counterparty to a transaction involving a local counterparty must report, or cause to be reported, the data required to be reported under this Part to a designated trade repository.

**26(2)** A reporting counterparty in respect of a transaction is responsible for ensuring that all reporting obligations in respect of that transaction have been fulfilled.

**26(3)** A reporting counterparty may delegate its reporting obligations under this Rule, but remains responsible for ensuring the timely and accurate reporting of derivatives data required by this Rule.

**26(4)** Despite subsection (1), if no designated trade repository accepts the data required to be reported by this Part, the reporting counterparty must electronically report the data required to be reported by this Part to the Commission.

**26(5)** A reporting counterparty satisfies the reporting obligation in respect of a transaction required to be reported under subsection (1) if

(a) the transaction is required to be reported solely because a counterparty to the transaction is a local counterparty pursuant to paragraph (b) or (c) of the definition of "local counterparty",

(b) the transaction is reported to a designated trade repository pursuant to

(i) the securities legislation of a province of Canada other than Manitoba, or

(ii) the laws of a foreign jurisdiction listed in Appendix B; and

(c) the reporting counterparty instructs the designated trade repository referred to in paragraph (b) to provide the Commission with access to the derivatives data that it is required to report pursuant to this Rule and otherwise uses its best efforts to provide the Commission with access to such derivatives data.

**26(6)** A reporting counterparty must ensure that all reported derivatives data relating to a transaction

(a) is reported to the same designated trade repository to which the initial report was made or, if the initial report was made to the Commission under subsection (4), to the Commission, and

(b) is accurate and contains no misrepresentation.

**26(7)** A reporting counterparty must report an error or omission in the derivatives data as soon as technologically practicable upon discovery of the error or omission, and in no event later than the end of the business day following the day of discovery of the error or omission.

**26(8)** A local counterparty, other than the reporting counterparty, must notify the reporting counterparty of an error or omission with respect to derivatives data relating to a transaction to which it is a counterparty as soon as technologically practicable upon discovery of the error or omission, and in no event later than the end of the business day following the day of discovery of the error or omission.

**26(9)** A recognized or exempt clearing agency must report derivatives data to the designated trade repository specified by a local counterparty and may not report derivatives data to another trade repository without the consent of the local counterparty where

(a) the reporting counterparty to a transaction is the recognized or exempt clearing agency, and

(b) the local counterparty to the transaction that is not a recognized or exempt clearing agency has specified a designated trade repository to which derivatives data in respect of that transaction is to be reported.

**Identifiers, general**

**27** A reporting counterparty must include the following in every report required by this Part:

- (a) the legal entity identifier of each counterparty to the transaction as set out in section 28;
- (b) the unique transaction identifier for the transaction as set out in section 29;
- (c) the unique product identifier for the transaction as set out in section 30.

**Legal entity identifiers**

**28(1)** A designated trade repository must identify each counterparty to a transaction that is required to be reported under this Rule in all recordkeeping and all reporting required under this Rule by means of a single legal entity identifier.

**28(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) a local counterparty must comply with all applicable requirements imposed by the Global Legal Entity Identifier System.

**28(3)** Despite subsection (2), if the Global Legal Entity Identifier System is unavailable to a counterparty to a transaction at the time when a report under this Rule is required to be made, all of the following rules apply

- (a) each counterparty to the transaction must obtain a substitute legal entity identifier which complies with the standards established March 8, 2013 by the Legal Entity Identifier Regulatory Oversight Committee for pre-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 legal entity identifier in all derivatives data reported pursuant to this Rule in respect of transactions to which it is a counterparty.

**Unique transaction identifiers**

**29(1)** A designated trade repository must identify each transaction that is required to be reported under this Rule in all recordkeeping and all reporting required under this Rule by means of a unique transaction identifier.

**29(2)** A designated trade repository must assign a unique transaction identifier to a transaction, using its own methodology or incorporating a unique transaction identifier previously assigned to the transaction.

**29(3)** A designated trade repository must not assign more than one unique transaction identifier to a transaction.

### **Unique product identifiers**

**30(1)** For the purposes of this section, a unique product identifier means a code that uniquely identifies a derivative and is assigned in accordance with international or industry standards.

**30(2)** A reporting counterparty must identify each transaction that is required to be reported under this Rule in all recordkeeping and all reporting required under this Rule by means of a unique product identifier.

**30(3)** A reporting counterparty must not assign more than one unique product identifier to a transaction.

**30(4)** If international or industry standards for a unique product identifier are unavailable for a particular derivative when a report is required to be made to a designated trade repository under this Rule, a reporting counterparty must assign a unique product identifier to the transaction using its own methodology.

### **Creation data**

**31(1)** Upon execution of a transaction that is required to be reported under this Rule, a reporting counterparty must report the creation data relating to that transaction to a designated trade repository.

**31(2)** A reporting counterparty in respect of a transaction must report creation data in real time.

**31(3)** If it is not technologically practicable to report creation data in real time, a reporting counterparty must report creation data as soon as technologically practicable and in no event later than the end of the business day following the day on which the data would otherwise be required to be reported.

~~**31(4)** Despite subsections (2) and (3), a local counterparty that is required to act as reporting counterparty to a transaction under subsection 25(2) must report the creation data relating to the transaction in no event later than the end of the third business day following the day on which the data would otherwise be required to be reported.~~

### **Life-cycle event data**

**32(1)** For a transaction that is required to be reported under this Rule, the reporting counterparty must report all life-cycle event data to a designated trade repository by the end of the business day on which the life-cycle event occurs.

**32(2)** If it is not technologically practicable to report life-cycle event data by the end of the business day on which the life-cycle event occurs, the reporting counterparty must report life-cycle event data no later than the end of the business day following the day on which the life-cycle event occurs.

### **Valuation data**

**33(1)** For a transaction that is required to be reported under this Rule, a reporting counterparty must report valuation data, based on industry accepted valuation standards, to a designated trade repository

(a) daily, based on relevant closing market data from the previous business day, if the reporting counterparty is a derivatives dealer or a recognized or exempt clearing agency, or

(b) quarterly, as of the last day of each calendar quarter, if the reporting counterparty is not a derivatives dealer or a recognized or exempt clearing agency.

**33(2)** Valuation data required to be reported pursuant to paragraph 1(b) must be reported to the designated trade repository no later than 30 days after the end of the calendar quarter.

### **Pre-existing transactions**

**34(1)** Despite section 31 and subject to subsection 43(5), ~~for a reporting party (as determined under subsection 25(1)) to a transaction required to be reported pursuant to subsection 26(1) that was entered into before July 2, 2014 and that had outstanding contractual obligations on that day~~

~~(a) a reporting counterparty to the transaction under subsection 26(1) – is required to report only that the creation data indicated in the column in Appendix A entitled "Required for Pre-existing Transactions" in Appendix A, on or before April 30, 2015 if and~~

~~(a) the reporting counterparty is a derivatives dealer or a recognized or exempt clearing agency~~

~~(b) the transaction was entered into before October 31, 2014, and~~

~~(b) the creation data required to be reported pursuant to paragraph (a) must be reported no later than December 31, 2014; (c) there were outstanding contractual obligations with respect to the transaction on October 31, 2014~~

(1.1) Despite section 31 and subject to subsection 43(6), a reporting party (as determined under subsection 25(1)) to a transaction required to be reported under subsection 26(1) is required to report only the creation data indicated in the column in Appendix A entitled "Required for Pre-Existing Transactions" on or before December 31, 2015 if

(a) the reporting counterparty is neither a derivatives dealer nor a recognized or exempt clearing agency

(b) the transaction was entered into before June 30, 2015, and

(c) there were outstanding contractual obligations with respect to the transaction on June 30, 2015.

**34(2)** Despite section 32, for a transaction to which subsection (1) or (1.1) applies, a reporting counterparty's obligation to report life-cycle event data under section 32 commences only after it has reported creation data in accordance with subsection (1) or (1.1).

**34(3)** Despite section 33, for a transaction to which subsection (1) or (1.1) applies, a reporting counterparty's obligation to report valuation data under section 33 commences only after it has reported creation data in accordance with subsection (1) or (1.1).

### **Timing requirements for reporting data to another designated trade repository**

**35** Despite the data reporting timing requirements in sections 31, 32, 33 and 34, where a designated trade repository ceases operations or stops accepting derivatives data for a certain asset class of derivatives, the reporting counterparty may fulfill its reporting obligations under this Rule by reporting the derivatives data to another designated trade repository, or the Commission if there is not an available designated trade repository, within a reasonable period of time.

### **Records of data reported**

**36(1)** A reporting counterparty must keep transaction records for the life of each transaction and for a further 7 years after the date on which the transaction expires or terminates.

**36(2)** A reporting counterparty must keep records referred to in subsection (1) 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 Commission direct, continuous and timely electronic access to such data in the designated trade repository's possession as is required by the Commission in order to carry out the Commission's mandate,

(b) accept and promptly fulfil any data requests from the Commission in order to carry out the Commission's mandate,

(c) create and make available to the Commission aggregate data derived from data in the designated trade repository's possession as required by the Commission in order to carry out the Commission's mandate, and

(d) disclose to the Commission the manner in which the derivatives data provided under paragraph (c) has been aggregated.

**37(2)** A designated trade repository must conform to internationally accepted regulatory access standards applicable to trade repositories.

**37(3)** A reporting counterparty must use its best efforts to provide the Commission with access to all derivatives data that it is required to report pursuant to this Rule, including instructing a trade repository to provide the Commission with access to such data.

### **Data available to counterparties**

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

**38(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.

**38(3)** Each counterparty to a transaction is deemed to have consented to the release of all derivatives data required to be reported or disclosed under this Rule.

**38(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 price, relating to the transactions reported to it pursuant to this Rule.

**39(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, contract type, maturity and whether the transaction is cleared.

**39(3)** A designated trade repository must make transaction level reports of the data indicated in the column entitled "Required for Public Dissemination" in Appendix A for each transaction reported pursuant to this Rule available to the public at no cost not later than

(a) the end of the day following the day on which it receives the data from the reporting counterparty to the transaction, if one of the counterparties to the transaction is a derivatives dealer, or

(b) the end of the second day following the day on which it receives the data from the reporting counterparty to the transaction in all other circumstances.

**39(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.

**39(5)** A designated trade repository must make the data required to be made available to the public under this section available in a usable form through a publicly accessible website or other publicly accessible technology or medium.

**39(6)** Despite subsections (1) to (5), a designated trade repository is not required to make public any derivatives data for transactions entered into between affiliated companies as defined under subsection 1(2) of the Act.

#### PART 5 – EXCLUSIONS

**40** Despite any other section of this Rule, a local counterparty is under no obligation to report derivatives data for a transaction if,

(a) the transaction relates to a derivative the asset class of which is a commodity other than cash or currency,

(b) the local counterparty is not a derivatives dealer, and

(c) the local counterparty 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.

**41** Despite any other section of this Rule, a counterparty is under no obligation to report derivatives data in relation to a transaction if it is entered into between

(a) Her Majesty in right of Manitoba, and

(b) a Manitoba crown corporation or crown agency that forms part of a consolidated entity with Her Majesty in right of Manitoba for accounting purposes.

#### PART 6 – EXEMPTIONS

**42** 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.

#### PART 7 – EFFECTIVE DATE



**Effective date**

**43(1)** Parts 1, 2, 4, and 6 come into force on December 31, 2013.

**43(2)** Despite subsection (1), subsection 39(3) does not apply until ~~December 31, 2014~~ April 30, 2015.

**43(3)** Parts 3 and 5 come into force ~~July 2, 2014~~ October 31, 2014.

**43(4)** Despite subsection (3), Part 3 does not apply so as to require a reporting counterparty that is not a derivatives dealer or a recognized or exempt clearing agency to make any reports under that Part until ~~September~~ June 30, 20145.

**43(5)** Despite the foregoing, subsection (3) and section 34, Part 3 does not apply to a transaction entered into before ~~July 2~~ October 31, 2014 that expires or terminates ~~not later than December 31, 2014~~ on or before April 30, 2015 if the reporting counterparty to the transaction is a derivatives dealer or a recognized or exempt clearing agency.

~~43(6):~~ Despite subsection (3) and section 34, Part 3 does not apply to a transaction entered into before June 30, 2015 that expires or terminates on or before December 31, 2015 if the reporting counterparty to the transaction is neither a derivatives dealer nor a recognized or exempt clearing agency.

**Citation**

**44** This Instrument may be cited as MSC Rule 2013-37.

## ANNEX C

Note: Changes to 91-507CP are presented by way of blackline and would be effective on the coming into force of the corresponding amendments to MSC Rule 91-507.

### **COMPANION POLICY 91-507CP TO MANITOBA SECURITIES COMMISSION RULE 91-507 TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING**

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## **PART 1 GENERAL COMMENTS**

### **Introduction**

This companion policy (the "Policy") sets out the views of the Commission ("our" or "we") on various matters relating to Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (the "Rule") and related securities legislation.

The numbering of Parts, sections and subsections from Part 2 on in this Policy generally corresponds to the numbering in the Rule. Any general guidance for a Part appears immediately after the Part's name. Any specific guidance on a section or subsection follows any general guidance. If there is no guidance for a Part, section or subsection, the numbering in this Policy will skip to the next provision that does have guidance.

Unless defined in the Rule or this Policy, terms used in the Rule and in this Policy have the meaning given to them in securities legislation, including, for greater certainty, in National Instrument 14-101 *Definitions* and MSC Rule 14-501 *Definitions*.

### **Definitions and interpretation**

1. (1) In this Policy,

"CPSS" means the Committee on Payment and Settlement Systems,

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

"Global LEI System" means the Global Legal Entity Identifier System,

"IOSCO" means the Technical Committee of the International Organization of Securities Commissions,

"LEI" means a legal entity identifier,

"LEI ROC" means the LEI Regulatory Oversight Committee,

"PFMI Report" means the April 2012 final report entitled *Principles for financial market infrastructures* published by CPSS and IOSCO, as amended from time to time,<sup>1</sup> and

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

(2) A "life-cycle event" is defined in the Rule as an event that results in a change to derivatives data previously reported to a designated trade repository. Where a life-cycle event occurs, the corresponding life-cycle event data must be reported under section 32 of the Rule by the end of the business day on which the life-cycle event occurs. When reporting a life-cycle event, there is no obligation to re-report

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<sup>1</sup> The PFMI Report is available on the Bank for International Settlements' website ([www.bis.org](http://www.bis.org)) and the IOSCO website ([www.iosco.org](http://www.iosco.org)).

derivatives data that has not changed – only new data and changes to previously reported data need to be reported. Examples of a life-cycle event would include

- a change to the termination date for the transaction,
- a change in the cash flows, payment frequency, currency, numbering convention, spread, benchmark, reference entity or rates originally reported,
- the availability of a legal entity identifier for a counterparty previously identified by name or by some other identifier,
- a corporate action affecting a security or securities on which the transaction is based (e.g., a merger, dividend, stock split, or bankruptcy),
- a change to the notional amount of a transaction including contractually agreed upon changes (e.g., amortization schedule),
- the exercise of a right or option that is an element of the expired transaction, and
- the satisfaction of a level, event, barrier or other condition contained in the original transaction.

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

(4) The term "transaction" is defined in the Rule and used instead of the term "trade", as defined in 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" includes material amendments and terminations.

A material amendment is not referred to in the definition of "transaction" but is required to be reported as a life-cycle event in connection with an existing transaction under section 32. A termination is not referred to in the definition of "transaction", as the expiry or termination of a transaction would be reported to a trade repository as a life-cycle event without the requirement for a new transaction record.

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

(5) The term "valuation data" is defined in the Rule as data that reflects the current value of a transaction. It is the Commission's view that valuation data can be calculated based upon the use of an industry-accepted methodology such as mark-to-market or mark-to-model, or another valuation method that is in accordance with accounting principles and will result in a reasonable valuation of a transaction.<sup>2</sup> The valuation methodology should be consistent over the entire life of a transaction.

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<sup>2</sup> For example, see International Financial Reporting Standard 13, *Fair Value Measurement*.

## **PART 2**

### **TRADE REPOSITORY DESIGNATION AND ONGOING REQUIREMENTS**

Part 2 contains rules for designation of a trade repository and ongoing requirements for a designated trade repository. 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 Commission. In order to comply with the reporting obligations contained in Part 3, counterparties must report to a designated trade repository. While there is no prohibition on an undesignated trade repository operating in Manitoba, a counterparty that reports a transaction to an undesignated trade repository would not be in compliance with its reporting obligations under this Rule with respect to that transaction.

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

#### **Trade repository initial filing of information and designation**

2. (1) In determining whether to designate an applicant as a trade repository under section 31.6 of the Act, it is anticipated that the Commission will consider a number of factors, including

- whether it is in the public interest to designate the applicant,
- the manner in which the trade repository proposes to comply with the Rule,
- whether the trade repository has meaningful representation on its governing body,
- whether the trade repository has sufficient financial and operational resources for the proper performance of its functions,
- whether the rules and procedures of the trade repository ensure that its business is conducted in an orderly manner that fosters both fair and efficient capital markets, and improves transparency in the derivatives market,
- whether the trade repository has policies and procedures to effectively identify and manage conflicts of interest arising from its operation or the services it provides,
- whether the requirements of the trade repository relating to access to its services are fair and reasonable,
- whether the trade repository's process for setting fees is fair, transparent and appropriate,

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

The Commission will examine whether the trade repository has been, or will be, in compliance with securities legislation. This includes compliance with the Rule and any terms and conditions attached to the Commission’s designation order in respect of a designated trade repository.

A trade repository that is applying for designation must demonstrate that it has established, implemented, maintained and enforced appropriate written rules, policies and procedures that are in accordance with standards applicable to trade repositories. We consider that these rules, policies and procedures include, but are not limited to, the principles and key considerations and explanatory notes applicable to trade repositories in the PFMI Report. These principles are set out in the following chart, along with the corresponding sections of the Rule the interpretation of which we consider ought to be consistent with the principles:

<b><i>Principle in the PFMI Report applicable to a trade repository</i></b>	<b><i>Relevant section(s) of the Rule</i></b>
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)

<b><i>Principle in the PFMI Report applicable to a trade repository</i></b>	<b><i>Relevant section(s) of the Rule</i></b>
Principle 15: General business risk	Section 20 – General business risk
Principle 17: Operational risk	Section 21 – System 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 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 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 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 Commission will apply the principles in its oversight activities of designated trade repositories. Therefore, in complying with the Rule, designated trade repositories will be expected to observe the principles.

The forms filed by an applicant or designated trade repository under the Rule will be kept confidential in accordance with the provisions of securities legislation. The Commission is of the view that the forms generally contain proprietary financial, commercial and technical information, and that the cost and potential risks to the filers of disclosure outweigh the benefit of the principle requiring that forms be made available for public inspection. However, the Commission would expect a designated trade repository to publicly disclose its responses to the CPSS-IOSCO consultative report entitled *Disclosure framework for financial market infrastructures*, which is a supplement to the PFMI Report.<sup>3</sup> In addition, much of the information that will be included in the forms that are filed will be required to be made publicly available by a designated trade repository pursuant to the Rule or the terms and conditions of the designation order imposed by the Commission.

While Form 91-507F1 – *Application for Designation and Trade Repository Information Statement* and any amendments to it will be kept generally confidential, if the Commission 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.

Notwithstanding the confidential nature of the forms, an applicant's application itself (excluding forms) will be published for comment for a minimum period of 30 days.

### **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 91-507F1 at least 45 days prior to implementing a significant change. The Commission considers a change to be significant when it could impact a designated trade repository, its users, participants, market participants, investors, or the capital markets (including derivatives markets and the markets for assets underlying a derivative). The Commission would consider a significant change to include, but not be limited to,

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

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<sup>3</sup> Publication available on the BIS website ([www.bis.org](http://www.bis.org)) and the IOSCO website ([www.iosco.org](http://www.iosco.org)).



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

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

The Commission will make best efforts to review amendments to Form 91-507F1 filed in accordance with subsections 3(1) and 3(2) before the proposed date of implementation of the change. However, where the changes are complex, raise regulatory concerns, or when additional information is required, the Commission's review may exceed these timeframes.

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

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

For the changes referred to in subsection 3(3), the Commission may review these filings to ascertain whether they have been categorized appropriately. If the Commission disagrees with the categorization, the designated trade repository will be notified in writing. Where the Commission determines that changes reported under subsection 3(3) are in fact significant changes under subsection 3(1), the designated trade repository will be required to file an amended Form 91-507F1 that will be subject to review by the Commission.

### **Ceasing to carry on business**

6. (1) In addition to filing a completed Form 91-507F3 – *Cessation of Operations Report for Trade Repository*, a designated trade repository that intends to cease carrying on business in Manitoba as a designated trade repository must make an application to voluntarily surrender its designation to the Commission pursuant to securities legislation. The Commission may accept the voluntary surrender subject to terms and conditions.<sup>4</sup>

### **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, whether within Canada or any foreign jurisdiction, where they have activities.

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<sup>4</sup> Section 31.12 of the Act provides that the Commission may impose terms and conditions on an application for voluntary surrender. The transfer of derivatives data/information can be addressed through the terms and conditions imposed by the Commission on such application.

## **Governance**

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

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

## **Board of directors**

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

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

Under paragraph 9(2)(b), the board of directors of a designated trade repository must include individuals who are independent of the designated trade repository. The Commission would view individuals who have no direct or indirect material relationship with the designated trade repository as independent. The Commission 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.** (3) References to harm to the capital markets in subsection 11(3) may be in relation to domestic or international capital markets.

## **Fees**

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

- the number and complexity of the transactions being reported,
- the amount of the fee or cost imposed relative to the cost of providing the services,

- the amount of fees or costs charged by other comparable trade repositories, where relevant, to report similar transactions in the market,
- with respect to market data fees and costs, the amount of market data fees charged relative to the market share of the designated trade repository, and
- whether the fees or costs represent a barrier to accessing the services of the designated trade repository for any category of 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 to 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, that influence the costs of using the designated trade repository. A designated trade repository is also expected to provide timely notice to participants and the public of any changes to services and fees.

### **Access to designated trade repository services**

**13.** (3) Under subsection 13(3), a designated trade repository is prohibited from unreasonably limiting access to its services, permitting unreasonable discrimination among its participants, imposing unreasonable burdens on competition or requiring the use or purchase of another service in order for a person or company to utilize its trade reporting service. For example, a designated trade repository should not engage in anti-competitive practices such as setting overly restrictive terms of use or engaging in anti-competitive price discrimination. A 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 that are entered into by a local counterparty. It is possible that a designated trade repository may accept derivatives data for only a subset of a class of derivatives if this is indicated in its designation order. For example, there may be designated trade repositories that accept derivatives data for only certain types of commodity derivatives such as energy derivatives.

### **Communication policies, procedures and standards**

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

## **Rules, policies and procedures**

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

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

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

(5) Subsection 17(5) requires a designated trade repository to file its rules and procedures with the Commission for approval, in accordance with the terms and conditions of the designation order. Upon designation, the Commission 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 91-507F1. In such cases, the designated trade repository will be required to file a revised Form 91-507F1 with the Commission. See section 3 of this Policy 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 securities legislation. The record-keeping requirements under section 18 are in addition to the requirements under securities legislation.

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

## **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 written risk-management framework (including policies, procedures, and systems) that enable it to identify, measure, monitor, and manage effectively the range

of risks that arise in, or are borne by, a 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 who are 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 FMIs, settlement banks, liquidity providers, or service providers) as a result of interdependencies, and develop appropriate risk-management tools to address these risks. These tools should include business continuity arrangements that allow for rapid recovery and resumption of critical operations and services in the event of operational disruptions and recovery or orderly wind-down plans should the trade repository become non-viable.

## **General business risk**

**20.** (1) Subsection 20(1) requires a designated trade repository to manage its general business risk effectively. 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.

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

(4) For the purposes of subsections 20(4) and (5), and in connection with developing a comprehensive risk-management framework under section 19, a 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(4) (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 subsections 20(2) and (3) 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 Commission of any material systems failure. The Commission 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 incident to, or inform, its senior management that is responsible for technology, or the incident would have an impact on participants. The Commission 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 Commission believes that these plans should allow the designated trade repository to provide continuous and undisrupted service, as back-up 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 resumes operations within 2 hours following the disruptive event. Under paragraph 21(4)(c), an emergency event could include any external sources of operational risk, such as the failure of critical service providers or utilities or events affecting a wide metropolitan area, such as natural disasters, terrorism, and pandemics. Business continuity planning should encompass all policies and procedures to ensure uninterrupted provision of key services regardless of the cause of potential disruption.

(5) Subsection 21(5) requires a designated trade repository to test its business continuity plans 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, including testing of back-up facilities for both the designated trade repository and its participants.

(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. The Commission is of the view that this obligation may also be satisfied by an independent assessment by an internal audit department that is compliant with the International Standards for the Professional Practice of Internal Auditing published by the Institute of Internal Audit. Before engaging a qualified party, the designated trade repository should notify the Commission.

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

(9) Subsection 21(9) requires designated trade repositories to make available testing facilities in advance of material changes to technology requirements to allow participants a reasonable period to test their modified systems and interfaces with the designated trade repository. In determining what a reasonable period is, the Commission of the view that the designated trade repository should consult with participants and that a reasonable period would allow all participants a reasonable opportunity to



develop, implement and test systems changes. We expect that the needs of all types of participants would be considered, including those of smaller and less sophisticated participants.

### **Data security and confidentiality**

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

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

### **Confirmation of data and information**

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

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

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

## **Outsourcing**

**24.** Section 24 sets out requirements applicable to a 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 bankruptcy, insolvency or the termination of business of the service provider. A designated trade repository is also required to monitor the ongoing performance of a service provider to which it outsources a key service, system or facility. The requirements under section 24 apply regardless of whether the outsourcing arrangements are with third-party service providers or affiliates of the 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.

### **Reporting counterparty**

**25.** Section 25 outlines how the counterparty required to report derivatives data and fulfil the ongoing reporting obligations under the Rule is determined. Reporting obligations on derivatives dealers apply irrespective of whether the derivatives dealer is a registrant.

(1) Subsection 25(1) outlines a hierarchy for determining which counterparty to a transaction will be required to report the transaction based on the counterparty to the transaction that is best suited to fulfill the reporting obligation. For example, for transactions that are cleared through a recognized or exempt clearing agency, the clearing agency is best positioned to report derivatives data and is therefore required to act as reporting counterparty

Although there may be situations in which the reporting obligation falls on both counterparties to a transaction, it is the Commission's view that in such cases the counterparties should select one counterparty to fulfill the reporting obligation to avoid duplicative reporting. For example, if a transaction required to be reported is between two dealers, each dealer has an obligation to report under paragraph 25(1)(b). Similarly, if a transaction is between two local counterparties that are not dealers, both local counterparties have an obligation to report under paragraph 25(1)(d). However, because a reporting counterparty may delegate its reporting obligations under subsection 26(3), the Commission expects that the practical outcome is that one counterparty will delegate its reporting obligation to the other (or a mutually agreed upon third party) and only one report will be filed in respect of the transaction. Therefore, although both counterparties to the transaction examples described above ultimately have the reporting obligation, they may institute contracts, systems and practices to agree to delegate the reporting function to one party. The intention of these provisions is to facilitate one

counterparty reporting through delegation while requiring both counterparties to have procedures or contractual arrangements in place to ensure that reporting occurs.

~~(2) Subsection 25(2) applies to situations where the reporting counterparty, as determined under paragraph 25(1)(c), is not a local counterparty. This provision is intended to cover situations where a non-local reporting counterparty does not report a transaction or otherwise fails to fulfil the reporting counterparty's reporting duties. In such case the local counterparty must act as the reporting counterparty and fulfil the reporting counterparty duties under the Rule. This provision differs from the situations in paragraphs 25(1)(b) and 25(1)(d) because the Commission is of the view that, where a transaction is between a derivatives dealer and an end-user, the derivatives dealer is best positioned to act as reporting counterparty.~~

~~The Commission expects that a local counterparty will determine that the non-local reporting counterparty has discharged its reporting obligations by reviewing a confirmation of the transaction report. Where the local counterparty has not received confirmation that its transaction has been reported in accordance with the requirements of this Rule within two business days after the date on which the transaction occurred, under subsection 25(2) it must act as reporting counterparty for the transaction. Where the local counterparty is a participant of the designated trade repository this confirmation would come from the designated trade repository in accordance with subsection 23(1). Where the local counterparty is not a participant it would be necessary for the local counterparty to ensure that it receives the confirmation from the reporting counterparty (or its delegate).~~

~~Subsection 31(4) modifies the timing requirement for the reporting of data where a local counterparty has assumed the role of reporting counterparty because of a failure to report by a non-local reporting counterparty. In such cases the local counterparty should report the transaction no later than the end of the third business day after the day on which the data should otherwise have been reported.~~

~~The Commission is of the view that, because a registered foreign derivatives dealer is a local counterparty under the rule, there will only be limited situations where this subsection 25(2) applies.~~

## **Duty to report**

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

(1) Subsection 26(1) requires that, subject to sections 40, 41, 42 and 43, derivatives data for each transaction to which one or more counterparties is a local counterparty be reported to a designated trade repository. The counterparty required to report the derivatives data is the reporting counterparty as determined under section 25.

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

(3) Subsection 26(3) permits the delegation of all reporting obligations of a reporting counterparty. This includes reporting of initial creation data, life-cycle event data and valuation data. For example, some or all of the reporting obligations may be delegated to a third-party service provider. However, the

reporting counterparty remains responsible for ensuring that the derivatives data is accurate and reported within the timeframes required under the Rule.

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

(5) Subsection 26(5) provides for limited substituted compliance with this Rule where a transaction has been reported to a designated trade repository pursuant to the law of a province of Canada other than Manitoba or of a foreign jurisdiction listed in Appendix B, provided that the additional conditions set out in paragraphs (a) and (c) are satisfied.

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

The purpose of this requirement is to ensure the Commission 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 Rule.

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

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

### **Legal entity identifiers**

**28.** (1) Subsection 28(1) requires that a designated trade repository identify all counterparties to a transaction by a legal entity identifier. It is envisioned that this identifier be a LEI under the Global LEI System. The Global LEI System is a G20 endorsed initiative<sup>5</sup> that will uniquely identify parties to

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<sup>5</sup> See [http://www.financialstabilityboard.org/list/fsb\\_publications/tid\\_156/index.htm](http://www.financialstabilityboard.org/list/fsb_publications/tid_156/index.htm) for more information.

transactions. It is currently being designed and implemented under the direction of the LEI ROC, a governance body endorsed by the G20.

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

(3) If the Global LEI System is not available at the time counterparties are required to report their LEI under the Rule, they must use a substitute legal entity identifier. The substitute legal entity identifier must be in accordance with the standards established by the LEI ROC for pre-LEI identifiers. At the time the Global LEI System is operational; counterparties must cease using their substitute LEI and commence reporting their LEI. The substitute LEI and LEI could be identical.

### **Unique transaction identifier**

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

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

### **Unique product identifier**

**30.** Section 30 requires that a reporting counterparty identify each transaction that is subject to the reporting obligation under the Rule by means of a unique product identifier. There is currently a system of product taxonomy that may be used for this purpose.<sup>6</sup> To the extent that a unique product identifier is not available for a particular transaction type, a reporting counterparty would be required to create one using an alternative methodology.

### **Creation data**

**31.** Subsection 31(2) requires that reporting of creation data be made in real time, which means that creation data should be reported as soon as technologically practicable after the execution of a transaction. In evaluating what will be considered to be "technological practicable", the Commission will take into account the prevalence of implementation and use of technology by comparable counterparties located in Canada and in foreign jurisdictions. The Commission may also conduct independent reviews to determine the state of reporting technology.

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<sup>6</sup> See <http://www2.isda.org/identifiers-and-otc-taxonomies/> for more information.

(3) Subsection 31(3) is intended to take into account the fact that not all counterparties will have the same technological capabilities. For example, counterparties that do not regularly engage in transactions would, at least in the near term, likely not be as well situated to achieve real-time reporting. Further, for certain post-transaction operations, such as trade compressions involving numerous transactions, real time reporting may not currently be practicable. In all cases, the outside limit for reporting is the end of the business day following execution of the transaction.

~~(4) Subsection 31(4) is intended to take into account the fact that a local counterparty who is required to fulfill the obligations of a reporting counterparty under subsection 25(2) will become aware of a non-local reporting counterparty's failure to report derivatives data only by the end of the second day following the execution of the transaction required to be reported. Accordingly, a local counterparty that must act as reporting counterparty under subsection 25(2) is required to report creation data no later than the end of the third business day following the day on which the data should otherwise have been reported.~~

### **Life-cycle event data**

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

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

### **Valuation data**

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

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

### **Pre-existing derivatives**

**34.** Section 34 ~~requires that pre-existing~~outlines reporting obligations in relation to transactions that were entered into ~~before July 2~~prior to the commencement of the reporting obligations. Where the reporting counterparty is a derivatives dealer or a recognized or exempt clearing agency, subsection 34(1) requires that pre-existing transactions that were entered into before October 31, 2014 and that will

not expire or terminate on or before ~~December 31, 2014 to be reported to a designated trade repository.~~ ~~Creation data in respect of pre-existing transactions that must be reported pursuant to section 34 must~~ April 30, 2015 to be reported to a designated trade repository no later than ~~December 31, 2014~~April 30, 2015. Similarly, where the reporting counterparty is neither a derivatives dealer nor a recognized or exempt clearing agency, subsection 34(1.1) requires that pre-existing transactions that were entered into before June 30, 2015 and that will not expire or terminate on or before December 31, 2015 to be reported to a designated trade repository no later than December 31, 2015. In addition, only the data indicated in the column entitled "Required for Pre-existing Transactions" in Appendix A will be required to be reported for pre-existing transactions.

Transactions that are entered into before ~~July 2~~October 31, 2014 and that expire or terminate on or before ~~December 31, 2014~~April 30, 2015 will not be subject to the reporting obligation if the reporting counterparty to the transaction is a derivatives dealer or a recognized or exempt clearing agency. Similarly, transactions for which the reporting counterparty is neither a derivatives dealer nor a recognized or exempt agency will not be subject to the reporting obligation if they are entered into before June 30, 2015 but will expire or terminate on or before December 31, 2015. These transactions are exempted from the reporting obligation in the Rule, to relieve some of the reporting burden for counterparties and because they would provide marginal utility to the Commission due to their imminent termination or expiry.

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

## **PART 4 DATA DISSEMINATION AND ACCESS TO DATA**

### **Data available to regulators**

**37.** (1) Subsection 37(1) requires designated trade repositories to, at no cost to the Commission: (a) provide to the Commission continuous and timely electronic access to derivatives data; (b) promptly fulfill data requests from the Commission; (c) provide aggregate derivatives data; and (d) disclose how data has been aggregated. Electronic access includes the ability of the Commission to access, download, or receive a direct real-time feed of derivatives data maintained by the designated trade repository.

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

Transactions that reference an underlying asset or class of assets with a nexus to Manitoba or Canada

can impact Manitoba's capital markets even if the counterparties to the transaction are not local counterparties. Therefore, the Commission has a regulatory interest in transactions involving such underlying interests even if such data is not submitted pursuant to the reporting obligations in the Rule, but is held by a designated trade repository.

(2) Subsection 37(2) requires a designated trade repository to conform to internationally accepted regulatory access standards applicable to trade repositories. Trade repository regulatory access standards have been developed by CPSS and IOSCO. It is expected that all designated trade repositories will comply with the access recommendations in CPSS-IOSCO's final report.<sup>7</sup>

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

### **Data available to counterparties**

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

### **Data available to public**

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

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

- currency of denomination (the currency in which the derivative is denominated);
- geographic location of the underlying reference entity (e.g., Canada for derivatives which reference the TSX60 index);
- asset class of reference entity (e.g., fixed income, credit, or equity);
- product type (e.g., options, forwards, or swaps);
- cleared or uncleared;
- maturity (broken down into maturity ranges, such as less than one year, 1-2 years, 2-3 years).

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<sup>7</sup> See report entitled "Authorities' Access to TR Data" available at <http://www.bis.org/publ/cpss110.htm>.



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

(4) Subsection 39(4) provides that a 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 EXCLUSIONS**

**40.** Section 40 provides that the reporting obligation for a physical commodity transaction entered into between two non-derivatives dealers does not apply in certain limited circumstances. This exclusion only applies if a local counterparty to a transaction has less than \$500,000 aggregate notional value under all outstanding derivatives transactions, including the additional notional value related to that transaction. In calculating this exposure, the notional value of all outstanding transactions, including transactions from all asset classes and with all counterparties, domestic and foreign, should be included. The notional value of a physical commodity transaction would be calculated by multiplying the quantity of the physical commodity by the price for that commodity. A counterparty that is above the \$500,000 threshold is required to act as reporting counterparty for a transaction involving a party that is exempt from the reporting obligation under section 40. In a situation where both counterparties to a transaction qualify for this exclusion, it would not be necessary to determine a reporting counterparty in accordance with section 25.

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

## **PART 7 EFFECTIVE DATE**

### **Effective date**

43. (2) The requirement under subsection 39(3) to make transaction level data reports available to the public does not apply until ~~December 31, 2014~~April 30, 2015.

(3) Where the counterparty is a derivatives dealer or recognized or exempted clearing agency, subsection 42(3) provides that no reporting is required until ~~July 2~~October 31, 2014.

(4) ~~For non-dealers~~Where neither of the counterparties is a derivatives dealer or a recognized or exempted clearing agency, subsection 42(4) provides that no reporting is required until ~~September~~June 30, 2014~~2015~~. This provision only applies where ~~both counterparties are non-dealers~~. Where the reporting counterparty is neither a derivatives dealer nor a clearing agency. For example, where the counterparties to a transaction are a dealer and a non-dealer, the derivatives dealer will be required to report according to the timing outlined in subsection 42(3).

(5) Subsection 43(5) provides that, if the reporting counterparty to the transaction is a derivatives dealer or a recognized or exempt clearing agency, no reporting is required for pre-existing transactions that terminate or expire ~~by December 31, 2014~~on or before April 30, 2015.

(6) Subsection 43(6) provides that, if the reporting counterparty to the transaction is neither a derivatives dealer nor a recognized or exempt clearing agency, no reporting is required for pre-existing transactions that terminate or expire on or before December 31, 2015.