



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 91-506CP TO
MANITOBA SECURITIES COMMISSION RULE 91-506
DERIVATIVES: PRODUCT DETERMINATION

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 91-506CP to MSC Rule 91-506 *Derivatives: Product Determination* (the **Scope CP**).

The TR Rule amendments will come into force on April 30, 2015. The Scope CP changes become effective on the coming into force of the TR Rule amendments.

2. Background

On November 14, 2013, the MSC published the TR Rule and *MSC Rule 91-506 Derivatives: Product Determination* (the **Scope Rule**). The TR Rule and Scope Rule became effective on December 31, 2013. Amendments to the TR Rule were published on April 17, 2014, June 26, 2014 and October 24, 2014. 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 further amended the TR Rule and made some changes to the Scope CP. Details of the amendments are discussed further below.

3. Substance and Purpose of the TR Rule amendments

The key objectives of the TR Rule amendments are to:

- alleviate the burden of reporting obligations under the TR Rule for certain market participants that comply with equivalent trade reporting laws of specified foreign jurisdictions; and
- delay the effective date of the public dissemination of transaction-level data requirement on designated trade repositories in order to permit study of the Canadian over-the-counter (**OTC**) derivatives market data and development of publication delay rules designed to maintain the anonymity of counterparties.

The Scope CP changes provide further clarification with respect to the interpretation of a provision of the Scope Rule to reflect certain classes of international market facilities.

Given their limited nature, the TR Rule amendments are not required to be published for comment under s.149.1(1) of the Act.

Given that the Scope CP changes merely provide clarification in respect of the interpretation of the Scope Rule to reflect certain international market facilities, the Scope CP changes do not require publication for comment.

4. Summary of the TR Rule amendments

(a) *Appendix B: inclusion of European derivatives trade reporting rules for s.26(5) deemed compliance*

The Commission has amended Appendix B to the TR Rule to include the European Union ("EU") derivatives trade reporting

rules listed in the amended Appendix. This amendment permits certain OTC derivatives market participants who are subject to the reporting obligation under the TR Rule to benefit from substituted compliance when they report pursuant to the EU derivatives trade reporting rules. Substituted compliance through EU trade reporting is available to market participants only in the limited circumstances in which all of the conditions set out in paragraphs (a) through (c) of subsection 26(5) of the TR Rule are satisfied.

The TR Rule contemplated prospective substituted compliance amendments when it was published on November 14, 2013. The inclusion of the EU derivatives trade reporting rules in Appendix B may alleviate the burden of certain TR Rule obligations on applicable market participants and does not impose any new obligations on market participants.

(b) Subsections 43(2) and 39(3): delay of public dissemination of transaction-level data

The Commission has amended the effective date for the public dissemination of transaction-level data requirement under subsection 39(3) of the TR Rule. The effective date of the requirement on designated trade repositories to publish transaction-level data has been changed from April 30, 2015 to July 29, 2016.

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

The Commission seeks to balance the benefits of post-trade transparency against the potential harm that may be caused to market participants' ability to hedge risk. Accordingly, the Commission believes that certain transactions or classes of products should be subject to publication delays so that market participants may avoid signalling the market. Further study will be required to determine the appropriate parameters for publication delays in the Canadian market. The factors to be considered in making this determination could include the type of asset underlying the derivative, the size of a transaction relative to other similar transactions or the size of the transaction relative to the overall volume for a particular class or instrument. Derivatives trade reporting in Manitoba commenced on October 31, 2014. Because OTC derivatives trade reporting is a new regime, market participants have experienced challenges to implementation which have affected the quality of data reported to designated trade repositories. Accordingly, in order to effectively analyze trade repository data, the Commission must first verify the reported data in order to perform fact-based analysis. As a result, the Commission is amending subsection 43(2) of the TR Rule to delay the application of the requirement for public dissemination of transaction-level reports under subsection 39(3) of the TR Rule from April 30, 2015 to July 29, 2016, in order to permit analysis of existing market data.

This amendment provides an implementation delay for public dissemination of transaction-level data by designated trade repositories and does not impose any new obligations on market participants.

(c) Scope CP: examples of derivatives trading facilities

Under paragraph 2(1)(g) of the Scope Rule, contracts traded on prescribed exchanges are deemed not to be "derivatives" for purposes of the reporting obligations under the TR Rule. However, subsection 2(2) of the Scope Rule provides that "derivatives trading facilities" are not exchanges for the purposes of the deeming provision. The Scope CP has been updated to provide examples of international market facilities that fall within the meaning of "derivatives trading facility".

This amendment to the Scope CP further clarifies the interpretation of the Scope Rule by providing additional examples of relevant international market facilities and does not impose any new obligations on market participants.

5. Annexes

Appended as part of this Notice are the following Annexes:

- Annex A, which sets out the TR Rule amendments;
- Annex B, in which the Scope CP changes are presented by way of blackline.

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ANNEX A

THE MANITOBA SECURITIES COMMISSION

MSC Rule No. 2015-1

(Section 149.1, *The Securities Act*)

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 43(2) is amended by replacing “April 30, 2015” with “July 29, 2016”.*

3. *Appendix B is amended by adding the following below United States of America:*

European Union

Regulation (EU) 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories.

Commission Delegated Regulation (EU) No 151/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data.

Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories.

4. This Instrument comes into force on April 30, 2015.

5. This Instrument may be cited as MSC Rule 2015-1.

ANNEX B

Amendments to Manitoba Securities Commission Companion Policy 91-506CP *Derivatives: Product Determination*

(g) Exchange-traded derivatives

Paragraph 2(1)(g) of the Rule prescribes a contract not to be a derivative if it is traded on certain prescribed exchanges. Exchange-traded derivatives provide a measure of transparency to regulators and to the public, and for this reason are not required to be reported. We note that where a transaction is cleared through a clearing agency, but not traded on an exchange, it will not be considered to be exchange-traded and will be required to be reported.

Subsection 2(2) of the Rule excludes derivatives trading facilities from the meaning of exchange as it is used in paragraph 2(1)(g). A derivatives trading facility means a person or company that constitutes, maintains, or provides a facility or market that brings together buyers and sellers of over-the-counter derivatives, brings together the orders of multiple buyers and multiple sellers, and uses methods under which the orders interact with each other and the buyers and sellers agree to the terms of trades. ~~includes any trading system, facility or platform in which multiple participants have the ability to execute or trade derivative instruments by accepting bids and offers made by multiple participants in the facility or system, and in which multiple third-party buying and selling interests in over the counter derivatives have the ability to interact in the system, facility or platform in a way that results in a contract.~~

For example, the following would not be considered an exchange for purposes of paragraph 2(1)(g): a “swap execution facility” as defined in the Commodity Exchange Act 7 U.S.C. §(1a)(50); a “security-based swap execution facility” as defined in the Securities Exchange Act of 1934 15 U.S.C. §78c(a)(77); and a “~~M~~multilateral trading facility” as defined in Directive 20014/3965/EC Article 4(1)(~~4522~~) of the European Parliament; and an “organized trading facility as defined in Directive 2014/65/EU Article 4(1)(23) of the European Parliament. Therefore derivatives traded on the foregoing facilities that would otherwise be considered derivatives for the purposes of this Rule are required to be reported.