

September 28, 2016

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO,
QUEBEC AND MANITOBA (THE "JURISDICTIONS") AND IN THE MATTER
OF THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN
MULTIPLE JURISDICTIONS AND IN THE MATTER OF THE ROYAL BANK
OF SCOTLAND PLC AND NATIONAL WESTMINSTER BANK PLC (THE
APPLICANTS)**

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions ("**Decision Maker**") has received an application from the Applicants for an order in Québec pursuant to section 86 of the *Derivatives Act* (Québec), RLRQ, c. I-14.01, in Ontario pursuant to Part 6 of OSC Rule 91-507 -- *Trade Repositories and Derivatives Data Reporting*, and in Manitoba pursuant to Part 6 of MSC Rule 91-507 -- *Trade Repositories and Derivatives Data Reporting*, requesting relief (the "**Exemptive Relief Sought**") from the following derivatives data reporting requirements, arising in relation to new and existing transactions under Chapter 3 of the Autorité des marchés financiers' *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting*, Part 3 of OSC Rule 91-507 -- *Trade Repositories and Derivatives Data Reporting* and Part 3 of the MSC Rule 91-507 -- *Trade Repositories and Derivatives Data Reporting* (the "**Local Reporting Provisions**"):

- (a) the requirement for a reporting counterparty to report, update, amend or supplement (collectively, "**Report**") the Legal Entity Identifier ("**LEI**") of a transaction counterparty where such reporting could result in the reporting counterparty breaching laws applicable in either the reporting counterparty's or the transaction counterparty's own jurisdiction that prohibit, restrict or limit the disclosure of information relating to the transaction or to a counterparty or that require the transaction counterparty's consent to such disclosure in circumstances where such consent has not been obtained, or where such consent is not sufficient to override such prohibition, restriction or limitation;
- (b) the requirement for a reporting counterparty to Report (i) Intra-Day Life-Cycle Event Data, and (ii) the "master agreement type" and "master agreement version" data fields, where the reporting counterparty has not established reporting systems and procedures that are sufficient to enable it to Report such information; and
- (c) the requirement for a reporting counterparty to Report certain information (as more fully described below) related to or dependent on a transaction counterparty, which information has not been provided to the reporting

counterparty by the transaction counterparty or has not otherwise been obtained by the reporting counterparty at the time of Reporting.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

1. the Ontario Securities Commission (the "OSC") is the Principal Regulator for the application; and
2. the decision is the decision of the Principal Regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 -- *Definitions* and MI 11-102 -- *Passport System* have the same meanings if used in this decision, unless otherwise defined.

For the purposes of this decision the following terms have the meanings defined below:

"Blocking Law" means any statute, law, enactment, rule, order, judgement, practice, guideline or decree that would restrict or limit a subject person's disclosure of information relating to a Subject Transaction or to the counterparty of a Subject Transaction.

"Consent Requirement" means any statute, law, enactment, rule, order, judgement, practice, guideline or decree that would require a counterparty to a Subject Transaction to consent to a subject person's disclosure of information relating to a Subject Transaction or counterparty.

"Expired Trade" means a FX Transaction which has either matured, terminated or been novated or assigned such that there are no outstanding obligations thereunder as of August 31, 2016.

"FX Transaction" means all foreign exchange transactions that are Subject Transactions.

"Go Live Date" means, in respect of FX Transactions other than foreign exchange options ("**FX Options**"), February 22, 2015 and, in respect of FX Options, April 19, 2015, in each case, representing the date on which the Applicant began using its revised trade reporting system to report such transactions under European regulations.

"Intra-Day Life-Cycle Event Data" means, in respect of a transaction where one or more life-cycle events in relation to the transaction occur on the same day, all life-cycle event data occurring on such day other than the data relating to the last life-cycle event on that day.

"Reportable Event" means, in respect of a FX Transaction, any event or amendment that represents a change in the Applicant's front office systems which triggers a trade report to be sent to the designated trade repository.

“**Subject Transaction**” means a transaction that is subject to Reporting in accordance with the applicable Local Reporting Provisions.

“**Trade Specific Requirement**” means a requirement arising under a Blocking Law or in connection with a Consent Requirement that would require that steps be taken to comply therewith in connection with and at the time of a Subject Transaction, on a transaction by transaction basis.

“**Quarterly Compliance Report**” means a report substantially in the form attached to this decision as “Exhibit A”.

Representations

The Applicants have made the following representations:

1. The Royal Bank of Scotland plc (“**RBS**”) is a wholly-owned subsidiary of The Royal Bank of Scotland Group plc (“**RBS Group**”) and National Westminster Bank plc (“**NatWest**”) is a wholly-owned subsidiary of RBS.
2. RBS Group is a large banking and financial services operation that is ultimately controlled by the government of the United Kingdom (“**UK**”) acting through HM Treasury, the UK government’s economic and finance ministry, and primarily conducting its operations through RBS and NatWest;
3. RBS is a full service foreign bank branch under the *Bank Act (Canada)* that carries on business in Canada under the name The Royal Bank of Scotland plc, Canada Branch (“**Canada Branch**”) and, as such, is listed in Schedule III of the *Bank Act (Canada)*;
4. the principal office of Canada Branch is located in Toronto, ON;
5. Canada Branch is currently engaged in the process of winding down and closing its full service foreign bank branch operations in Canada subject to the approval of the Office of the Superintendent of Financial Institutions;
6. NatWest is incorporated in England and Wales and its head office is located in London, England;
7. RBS conducts its global over-the counter (“**OTC**”) derivatives operations from its four core trading hubs located in London, Stamford, Singapore and Tokyo and does not engage in any OTC derivatives transactions through Canada Branch;
8. NatWest’s global markets business trades and sells OTC derivatives transactions primarily from the UK for its existing UK client base. A limited number of trades take place between NatWest and Canadian subsidiaries of entities that bank with NatWest. NatWest has no Canadian offices;
9. on October 29, 2014, the OSC and the Manitoba Securities Commission, and on October 30, 2014, the Autorité des marchés financiers, each published a press

release (collectively, the "**Press Releases**") to, among other things, provide guidance on the situation where a reporting counterparty may be required to Report a transaction counterparty's LEI despite the fact that such LEI has not been obtained by the transaction counterparty or provided by the transaction counterparty to a reporting counterparty;

10. to the extent that the Press Releases provide guidance in relation to compliance matters pertaining to a transaction counterparty's failure to obtain an LEI or to provide its LEI to the Applicants, the Applicants intend to reflect their understanding of such guidance in complying with the applicable Local Reporting Provisions;
11. the Applicants have established or procured internal technology, systems and procedures that the Applicants believe should enable them to give effect to the Local Reporting Provisions, with the exception of the ability to Report (a) Intra-Day Life-Cycle Event Data, and (b) data fields requiring completion of the master agreement type/master agreement version relating to a transaction;
12. in order to comply with the Local Reporting Provisions applicable to a transaction, the Applicants may need to: (a) if required by applicable law, obtain a consent from the counterparty to enable the reporting counterparty to disclose information relating to the transaction or counterparty, and (b) receive certain counterparty-specific information, including the counterparty's LEI (or its equivalent), or information sufficient to enable the Applicants to determine whether the counterparty is a local counterparty (collectively, in respect of a counterparty to a transaction, the "**Required Counterparty Feedback**");
13. the Applicants have engaged in diligent efforts to solicit Required Counterparty Feedback through direct client outreach and through industry efforts; however, despite these efforts, many of the Applicants' Canadian counterparties have not provided some or all of the Required Counterparty Feedback;
14. a failure to provide the Exemptive Relief Sought could result in inconsistent or disrupted reporting of derivatives data by the Applicants, or in the Applicants not entering into new derivatives transactions with affected transaction counterparties, all of which could potentially have negative implications for the Applicants, the Canadian financial system and the broader Canadian economy;
15. if the Exemptive Relief Sought is granted, the Applicants will continue to make diligent efforts to obtain the Required Counterparty Feedback; and
16. the Applicants are not in default of securities legislation in any jurisdiction.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers is that the Exemptive Relief Sought is granted and each Decision Maker orders that, in respect of each Subject Transaction:

1. Relief related to Blocking Laws -- Each Applicant is exempted from the Reporting of creation data under Reporting requirements contained in sections 26, 27(a), 28, 31, 32, 34 and 35 of the Local Reporting Provisions (collectively, the "**Reporting Provisions**") only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Identifier of non-reporting counterparty" in respect of a Subject Transaction, in the following circumstances:

- (A) the Applicant determines that its transaction counterparty or the Subject Transaction is subject to a Blocking Law; or
- (B) the Applicant has yet to determine, or having used reasonable efforts has been unable to determine, if its transaction counterparty or the Subject Transaction is subject to a Blocking Law,

provided that the Applicant:

- (i) either (x) reports an internal identifier code for its transaction counterparty or (y) if it is not feasible or not practical for the Applicant to Report an internal identifier code for the transaction counterparty in compliance with the applicable Blocking Law, reports that the LEI of the transaction counterparty is undisclosed;
- (ii) prepares and delivers to the OSC no later than 45 days after the end of each quarter, Quarterly Compliance Reports setting out (x) a list of all jurisdictions that it reasonably determines are subject to an applicable Blocking Law; and (y) a list of jurisdictions in respect of which the Applicant has yet to determine, or using reasonable efforts has been unable to determine, if an applicable Blocking Law exists;
- (iii) makes diligent efforts to determine whether Blocking Laws exist in the jurisdiction where its transaction counterparty is located; and
- (iv) makes diligent efforts, where required, to correct any Reporting it has made in relation to the Subject Transaction in reliance on the foregoing exemptions on a timely basis after any previously applicable Blocking Law no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty,

and provided further that the foregoing exemption will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the date on which the Applicant becomes aware that any previously applicable Blocking Law no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty.

2. Relief Related to Consent Requirements -- Each Applicant is exempted from the Reporting of creation data under the Reporting Provisions only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Identifier of non-reporting counterparty" in respect of a Subject Transaction, in the following circumstances:

- (A) the Applicant determines that its transaction counterparty or the Subject Transaction is subject to a Consent Requirement that has not been provided by the transaction counterparty to the Applicant; or
- (B) the Applicant has yet to determine, or having used reasonable efforts has been unable to determine, if its transaction counterparty or the Subject Transaction is subject to a Consent Requirement,

provided that the Applicant:

- (i) either (x) reports an internal identifier code for its transaction counterparty or (y) if the Applicant has all necessary processes in place to internally identify its transaction counterparty and it is not feasible or not practical for the Applicant to Report an internal identifier code for the transaction counterparty in compliance with the applicable Consent Requirement, reports that the LEI of the transaction counterparty is undisclosed;
- (ii) prepares and delivers to the OSC no later than 45 days after the end of each quarter, Quarterly Compliance Reports setting out (x) a list of all jurisdictions that it reasonably determines are jurisdictions in which an applicable Consent Requirement exists; and (y) a list of jurisdictions in respect of which the Applicant has yet to determine, or using reasonable efforts has been unable to determine, if an applicable Consent Requirement exists;
- (iii) makes diligent efforts to obtain any required consent from the transaction counterparty, other than any consent that would arise in connection with a Trade Specific Requirement; and
- (iv) makes diligent efforts, where required, to correct any Reporting it has made in relation to the Subject Transaction in reliance on the foregoing exemptions on a timely basis after all consents required to satisfy a Consent Requirement in relation to the Subject Transaction have been obtained by the Applicant,

and provided further that the foregoing exemption will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the later of (x) the date on which the transaction counterparty has provided the Applicant with all such required consents and (y) the date on which the Applicant becomes aware that any previously applicable Consent Requirement no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty.

3. Required Counterparty Feedback -- Each Applicant is exempted from the Reporting of creation data under the Reporting Provisions only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Jurisdiction of non-reporting counterparty" in respect of a Subject Transaction, in the following circumstances:

- (A) Counterparty Status as a Local Counterparty -- if the transaction counterparty has not provided the Applicant with Required Counterparty Feedback sufficient to enable the Applicant to determine if the transaction counterparty is a "local counterparty" under the Local Reporting Provisions of the Jurisdiction, provided that the Applicant reports the Subject Transaction to the jurisdiction in which the Applicant has its principal place of business and, if reasonably practicable, makes diligent efforts to use the information from its own systems to Report the Subject Transaction in the transaction counterparty's jurisdiction, in each case if and to the extent it is reportable by the Applicant in such jurisdiction; or
- (B) Existence of a Guaranteed Affiliate -- if the transaction counterparty has not provided the Applicant with Required Counterparty Feedback sufficient to enable the Applicant to determine if the transaction counterparty has an affiliate that is organized under the laws of the Jurisdiction or that has its head office or principal place of business in the Jurisdiction and that is responsible for the liabilities of the transaction counterparty (a "**Guaranteed Affiliate**"), provided that the Applicant otherwise reports the Subject Transaction if the transaction counterparty is otherwise a "local counterparty" under the Local Reporting Provisions,

provided that the Applicant:

- (i) prepares and delivers to the OSC no later than 45 days after the end of each quarter, Quarterly Compliance Reports setting out its efforts to obtain Required Counterparty Feedback; and
- (ii) makes diligent efforts, where required, to correct any Reporting it has made in relation to the Subject Transaction in reliance on the foregoing exemptions on a timely basis after Required Counterparty Feedback has been obtained,

and provided further that the foregoing exemptions will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the date on which previously unknown or unavailable Required Counterparty Feedback has been provided to the Applicant by the transaction counterparty.

4. Master Agreement Type/Master Agreement Version -- Each Applicant is exempted until July 29, 2016 from the Reporting of creation data under the Reporting Provisions but only to the extent that the Applicant is required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Master agreement type" and "Master agreement version" in respect of a FX Transaction,

provided that the Applicant makes diligent efforts to correct any Reporting it has made in relation to the FX Transaction in reliance on this exemption on a timely basis but no later than January 31, 2017, subject to the Relief Related to Corrective Reporting that is set out in paragraph 6 below.

5. Relief Related to Intra-day Life-Cycle Event Data – Each Applicant is exempted until July 29, 2016 from the Reporting of Intra-Day Life-Cycle Event Data under the Reporting Provisions in respect of a FX Transaction, provided that the Applicant makes diligent efforts to Report all such Intra-Day Life-Cycle Event Data not previously Reported in reliance on this exemption on a timely basis but no later than January 31, 2017, subject to the Relief Related to Corrective Reporting that is set out in paragraph 6 below.

6. Relief Related to Corrective Reporting – Each Applicant is exempted from the corrective Reporting of Intra-Day Life-Cycle Event Data and “Master agreement type” and “Master agreement version” data fields under the Reporting Provisions in respect of a FX Transaction that:

- (i) is an Expired Trade, but only in respect of Reportable Events occurring before the Go Live Date;
- (ii) is not an Expired Trade and has a trade date before the applicable Go Live Date, but only in respect of Reportable Events occurring before the Go Live Date.

7. Effectiveness of the Order -- The exemptions provided pursuant to paragraphs 1, 2 and 3 shall cease to be available 1 year after the date hereof.



Kevin Fine
Director, Derivatives Branch
Ontario Securities Commission

Exhibit A Form of Quarterly Compliance Report

(a) Definitions

Counterparty: A counterparty for the purposes of this compliance report is any counterparty to a derivative transaction that is principal (not agent) to the derivative (e.g. where a fund manager executes transactions on behalf of a number of underlying funds, each fund should be included in the compliance rate calculation).

All Counterparties: Counterparties to transactions reportable under *Regulation /Rule 91-507 -Trade Repositories and Derivatives Data Reporting* (91-507).

New Counterparties: Counterparties to transactions reportable under 91-507 that were entered into at any time during the relevant period but with whom the reporting counterparty had previously never entered into a reportable transaction.

Compliant Counterparties: Counterparties who have provided the Required Counterparty Feedback (as defined in the Exemptive Relief) to enable the reporting counterparty to meet its obligations under 91-507. This would include the counterparty's consent (if required by applicable law), the counterparty's LEI, the broker LEI (if applicable), and information to determine whether it is a local counterparty.

(b) Compliance Progress

Please see **Appendix A**.

(c) Consent Requirement & Blocking Law Jurisdictions

Please provide, at a minimum, the information below.

List of Consent Requirement (as defined in the Exemptive Relief) jurisdictions; please highlight jurisdictions added or removed since last report	•
List of Blocking Law (as defined in the Exemptive Relief) jurisdictions; please highlight jurisdictions added or removed since last report	•
List of Blocking Law or Consent Requirement jurisdictions not yet determined; please highlight jurisdictions added or removed since last report	•

(d) Efforts to Obtain Required Counterparty Feedback

Please provide information regarding your efforts to obtain the Required Counterparty Feedback.

Please provide information regarding efforts to obtain the Required Counterparty Feedback from New Counterparties and describe internal policies regarding acceptance of New Counterparties that are not Compliant Counterparties.

Please provide information regarding efforts to obtain Required Counterparty Feedback from existing non-compliant Counterparties.

Please provide information regarding efforts to correct any reporting made in relation to a transaction after Required Counterparty Feedback has been obtained; including the time required to backload and report the Required Counterparty Feedback once the previously unavailable information has been obtained.

(e) Any Additional Information

Please provide any additional information that would assist in explaining the rates of non-compliance. For example, compliance rates may be affected by the type of counterparty (e.g. sophistication, institutional vs. retail/commercial), geographic location of counterparty, or asset class (e.g. foreign exchange).

Please provide any other additional information you believe would assist in improving our understanding of the obstacles to full compliance.

Appendix A: Compliance Progress

	Canadian Counterparties				Foreign Counterparties			
	Q1 2017	Q2 2017	Q3 2016	Q4 2016	Q1 2017	Q2 2017	Q3 2016	Q4 2016
All Counterparties								
All Counterparties as at end of period		•	•	•		•	•	•
All Compliant Counterparties as at end of period		•	•	•		•	•	•
Compliance rate as at end of period		•	•	•		•	•	•
Blocking Laws & Consent Requirements								
Number of reportable transactions with identifiers masked as the result of Blocking Laws or Consent Requirements (as defined in the Exemptive Relief)						•	•	•