

September 28, 2017

IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO,
QUÉBEC 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 (each a "Decision Maker") has received an application from the Applicants for an order in Ontario pursuant to Part 6 of Ontario Securities Commission ("OSC") Rule 91-507 -- *Trade Repositories and Derivatives Data Reporting*, in Québec pursuant to section 86 and section 111 of the *Derivatives Act* (Québec), CQLR, c. I-14.01, and in Manitoba pursuant to Part 6 of MSC Rule 91-507 -- *Trade Repositories and Derivatives Data Reporting*, varying a decision signed by the Director of the OSC dated September 28, 2016 (the "Existing Relief Decision") which provides relief from the following derivatives data reporting requirements in relation to new and existing transactions under Part 3 of OSC Rule 91-507 -- *Trade Repositories and Derivatives Data Reporting* (the "OSC Reporting Provisions"), Chapter 3 of the Autorité des marchés financiers' Regulation 91-507 -- *respecting Trade Repositories and Derivatives Data Reporting* (the "AMF Reporting Provisions"), and Part 3 of MSC Rule 91-507 -- *Trade Repositories and Derivatives Data Reporting* (together with the AMF Reporting Provisions and the OSC Reporting Provisions, 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.

The Existing Relief Decision with respect to the relief described under paragraphs (a) and (c) above ceases to be available after September 28, 2017 (the “**Sunset Provision**”).

The Applicants have requested that the Existing Relief Decision be varied (collectively, the “**Variation Relief Sought**”) so that the Sunset Provision in the Existing Relief Decision will be extended until September 28, 2018.

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

1. 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 provided in the Existing Relief Decision, which are restated 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.

“**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

This decision is based on certain of the facts represented by the Applicants set out in the Existing Relief Decision as restated below:

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. When the Existing Relief Decision was signed, RBS was a full service foreign bank branch under the Bank Act (Canada) that carried on Business under the name The Royal Bank of Scotland plc, Canada Branch and as such was listed in Schedule III of the Bank Act (Canada);
4. The Office of the Superintendent of Financial Institutions approved the closure of The Royal Bank of Scotland plc, Canada Branch by way of a letter dated May 16, 2017;
5. NatWest is incorporated in England and Wales and its head office is located in London, England;
6. RBS conducts its global over-the-counter (“**OTC**”) derivatives operations from its four core trading hubs located in London, Stamford, Singapore and Tokyo and enters into OTC derivatives with Canadian counterparties from those offices;
7. NatWest’s global markets business trades and sells OTC derivative 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;
8. 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;
9. 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;

10. 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;
11. 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**"); and
12. 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.

In addition to the restated facts, the Applicants make the following representations:

13. the Applicants have continued to engage in diligent efforts to solicit Required Counterparty Feedback through direct client outreach and through industry efforts; however, despite these efforts, the Applicants have not received Required Counterparty Feedback from all of their counterparties;
14. the Applicants have established a policy that they will not enter into an OTC derivative transaction with a counterparty without obtaining the counterparty's LEI;
15. a failure to provide the Variation 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 have negative implications for the Applicants, the Canadian financial system and the broader Canadian economy;
16. if the Variation Relief Sought is granted, the Applicants will continue to have the opportunity to make diligent efforts to obtain Required Counterparty Feedback while avoiding such negative implications in respect of existing and prospective derivatives transactions other than to the extent contemplated in the proviso set forth in paragraph 3(A) of this decision;
17. if the Variation Relief Sought is granted, the Applicants will continue to make diligent efforts to obtain the Required Counterparty Feedback from their counterparties;
18. the Applicant has complied with the requirements of the Existing Relief Decision;
and

19. 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 Principal Regulator is that the Variation Relief Sought is granted and it orders that, in respect of each Subject Transaction, paragraphs 1, 2 and 3 of the Existing Relief Decision be varied on the foregoing basis and restated as set forth below:

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, 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, having used 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, 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, having used 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:

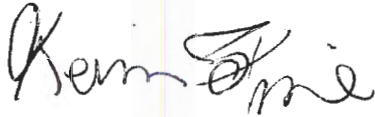
- (A) Counterparty Status as a Local Counterparty -- if the transaction counterparty has not provided the Applicant with Required Counterparty Feedback sufficient to enable the Applicant to determine if the transaction counterparty is a "local counterparty" under the Local Reporting Provisions of the 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, and provided further that the foregoing exemption detailed in this paragraph 3(A) shall not be available in respect of a Subject Transaction entered into by the Applicant on or after March 31, 2018 if the transaction counterparty is a person or company (a) that the Applicant determines (having made diligent efforts to use the information from its own systems) is organized under the laws of the Jurisdiction or has its head office or principal place of business in the Jurisdiction and (b) with whom the Applicant has no pre-existing contractual relationship relating to transacting in derivatives as of such date; 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. 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 2018	Q2 2018	Q3 2017	Q4 2017	Q1 2018	Q2 2018	Q3 2017	Q4 2017
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)						.	.	.