

Multilateral CSA Staff Notice 91-302

Updated Model Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting

June 6, 2013

Introduction

Staff from the Canadian Securities Administrators (CSA) in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan (Staff or we) are publishing this Notice to invite comment on updated model rules: *Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting* (the Updated Model Rules). The Updated Model Rules are attached to this Notice as Appendix “A”.

Background

On December 6, 2012, the CSA OTC Derivatives Committee (the Committee) published CSA Staff Consultation Paper 91-301 *Model Provincial Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting* (the Draft Model Rules). The Committee invited public comment on all aspects of the Draft Model Rules. Thirty-five comment letters were received. A chart summarizing the comments and the Committee’s responses to them and a list of those who submitted comments are attached as Appendix “B” to this Notice. Copies of the comment letters are posted on both the Ontario Securities Commission and the Autorité des marchés financiers websites.¹

The Committee has reviewed the comments received and made final determinations on revisions to the Draft Model Rules. The Updated Model Rules that we are publishing include these revisions. Manitoba, Ontario and Quebec have each developed a province-specific rule based on the Updated Model Rules and are publishing them for comment in accordance with local requirements. At the same time, we are publishing the Updated Model Rules to ensure that our market participants have the same opportunity to comment as market participants in those jurisdictions. We are not publishing province-specific rules at this point because we must first implement necessary legislative amendments. The Committee will review all comment letters and decide on changes to the Updated Model Rules at a Committee level. After the Committee agrees on changes, we intend to publish a multilateral instrument that will be based on the amended version of the Updated Model Rules. The multilateral instrument will be published once the necessary legislative amendments have been implemented. It is Staff’s intention that the multilateral instrument be, in substance, harmonized with the rules implemented in Manitoba, Ontario and Quebec.

¹ The Ontario Securities Commission’s website is located at www.osc.gov.on.ca. The Autorité des marchés financiers’ website is located at <http://www.lautorite.qc.ca>.

Request for Comment

We welcome your comments about the Updated Model Rules in writing on or before September 6, 2013. Deliver your comments and refer your questions to:

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APPENDIX A

To CSA Staff Notice 91-302 - *Updated Model Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data*

MODEL PROVINCIAL RULE *DERIVATIVES: PRODUCT DETERMINATION*

Application

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

Excluded derivatives

2. A contract or instrument is prescribed not to be a derivative if it is
 - (a) regulated by,
 - (i) gaming control legislation of Canada or a jurisdiction of Canada, or
 - (ii) gaming control legislation of a foreign jurisdiction, if the contract or instrument
 - (A) is entered into outside of Canada,
 - (B) is not in violation of legislation of Canada or [applicable province], and
 - (C) would be regulated under gaming control legislation of Canada or [applicable province] if it had been entered into in [applicable province];
 - (b) an insurance or annuity contract entered into,
 - (i) with an insurer holding a licence under insurance legislation of Canada or a jurisdiction of Canada and regulated as insurance under that legislation, or
 - (ii) outside of Canada with an insurer holding a licence under insurance legislation of a foreign jurisdiction, if it would be regulated as insurance under insurance legislation of Canada or [applicable province] if it had been entered into in Canada;
 - (c) a contract or instrument for the purchase and sale of currency that,
 - (i) except where all or part of the delivery of the currency referenced in the contract or instrument is rendered impossible or commercially unreasonable by an intervening event or occurrence not reasonably within the control of the parties, their affiliates or their agents, requires settlement by the delivery of the currency referenced in the contract or instrument,
 - (A) within two business days, or
 - (B) after two business days provided that the contract or instrument was entered into contemporaneously with a related security trade and the contract or instrument requires settlement on or before the relevant security trade settlement deadline,
 - (ii) is intended by the counterparties, at the time of the execution of the transaction, to be settled by the delivery of the currency referenced in the contract within the time periods set out in subparagraph (i), and
 - (iii) does not allow for the contract or instrument to be rolled over;
 - (d) a contract or instrument for delivery of a commodity other than cash or currency that,
 - (i) is intended by the counterparties, at the time of execution of the transaction, to be settled by delivery of the commodity, and
 - (ii) does not allow for cash settlement in place of delivery except where all or part of the delivery is rendered impossible or commercially unreasonable by an intervening event or occurrence not reasonably within the control of the counterparties, their affiliates, or their agents;

- (e) evidence of a deposit issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada), by an association to which the *Cooperative Credit Associations Act* (Canada) applies or by a company to which the *Trust and Loan Companies Act* (Canada) applies;
- (f) evidence of a deposit issued by a credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* or a similar statute of Canada or a jurisdiction of Canada (other than Ontario) applies or by a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or a similar statute of a jurisdiction of Canada (other than Ontario); or
- (g) traded on an exchange recognized by a securities regulatory authority, an exchange exempt from recognition by a securities regulatory authority or an exchange that is regulated in a foreign jurisdiction by a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding.

Investment contracts and over-the-counter options

3. A contract or instrument, other than a contract or instrument to which section 2 applies, that is a derivative, and that is otherwise a security solely by reason of being an investment contract under paragraph X of the definition of "security" in subsection X [Definitions] of the Act, or being an option described in paragraph X of that definition, that is not described in section 5, is prescribed not to be a security

Derivatives that are securities

4. A contract or instrument, other than a contract or instrument to which any of sections 2 and 3 apply, that is a security and would otherwise be a derivative is prescribed not to be a derivative.

Derivatives prescribed to be securities

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

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

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1. General comments

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

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

(3) The Model Scope Rule applies only to the Model Provincial Rule - *Trade Repositories and Derivatives Data Reporting*.

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

(5) In this Model Explanatory Guidance to the term “contract” is interpreted to mean “contract or instrument”.

2. Excluded derivatives

(a) Gaming contracts

Paragraph 2(a) of the Model Scope Rule prescribes certain domestic and foreign gaming contracts not to be “derivatives”. While a gaming contract may come within the definition of “derivative”, it is generally not recognized as being a financial derivative and typically does not pose the same potential risk to the financial system as other derivatives products. In addition, the Committee does not believe that the derivatives regulatory regime that it expects members of the Canadian Securities Administrators (the “CSA”) to implement will be appropriate for this type of contract. Further, gaming control legislation of Canada (or a jurisdiction of Canada), or equivalent gaming control legislation of a foreign jurisdiction, generally has consumer protection as an objective and is therefore aligned with the objective in securities legislation: to provide protection to market participants from unfair, improper or fraudulent practices.

With respect to subparagraph 2(a)(ii), a contract that is regulated by gaming control legislation of a foreign jurisdiction would only qualify for this exclusion if: (1) its execution does not violate legislation of Canada or [applicable province], and (2) it would be considered a gaming contract under domestic legislation. If a contract would be treated as a derivative if entered into in Canada, but would be considered a gaming contract in a foreign jurisdiction, the contract does not qualify for this exclusion, irrespective of its characterization in the foreign jurisdiction.

(b) Insurance and annuity contracts

Paragraph 2(b) of the Model Scope Rule prescribes qualifying insurance or annuity contracts not to be “derivatives”. A reinsurance contract would be considered to be an insurance or annuity contract.

While an insurance contract may come within the definition of “derivative”, it is generally not recognized as a financial derivative and typically does not pose the same potential risk to the financial system as other derivatives products. The Committee does not believe that the derivatives regulatory regime that it expects CSA members to implement will be appropriate for this type of contract. Further, a comprehensive regime is already in place that regulates the insurance industry in Canada and the insurance legislation of Canada (or a jurisdiction of Canada), or equivalent insurance legislation of a foreign jurisdiction, has consumer protection as an objective and is therefore aligned with the objective of securities legislation: to provide protection to market participants from unfair, improper or fraudulent practices. Our view is that certain derivatives that have characteristics similar to insurance contracts, including credit derivatives and climate-based derivatives, will be treated as derivatives and not insurance or annuity contracts.

Subparagraph 2(b)(i) requires an insurance or annuity contract to be entered into with a domestically licenced insurer and that the contract be regulated as an insurance or annuity contract under Canadian insurance legislation. Therefore, for example, an interest rate derivative entered into by a licenced insurance company would not be an excluded derivative.

With respect to subparagraph 2(b)(ii), an insurance or annuity contract that is made outside of Canada would only qualify for this exclusion if it would be regulated under insurance legislation of Canada or [applicable province] if made in Canada. Where a contract would otherwise be treated as a derivative if entered into in Canada, but is considered an insurance contract in a foreign jurisdiction, the contract does not qualify for this exclusion, irrespective of its characterization in the foreign jurisdiction. Subparagraph 2(b)(ii) is included to address the situation where a local counterparty purchases insurance for an interest that is located outside of Canada and the insurer is not required to be licenced in Canada.

(c) Currency exchange contracts

¹ The reference to OSC Rule 14-501 *Definitions* is only relevant in Ontario. Other jurisdictions may have a similar local rule.

Paragraph 2(c) of the Model Scope Rule prescribes a short-term contract for the purchase and sale of a currency not to be a “derivative” if it is settled within the time limits set out in subparagraph 2(c)(i). This provision is intended to apply exclusively to contracts that facilitate the conversion of one currency into another currency specified in the contract. These currency exchange services are often provided by financial institutions or other businesses that exchange one currency for another for clients’ personal or business use (e.g., for purposes of travel or to make payment of an obligation denominated in a foreign currency).

Timing of delivery (subparagraph 2(c)(i))

To qualify for this exclusion the contract must require physical delivery of the currency referenced in the contract within the time periods prescribed in subparagraph 2(c)(i). If a contract does not have a fixed settlement date or otherwise allows for settlement beyond the prescribed periods or permits settlement by delivery of a currency other than the currency referenced in the contract, it will not qualify for this exclusion.

Clause 2(c)(i)(A) applies to a transaction that settles by delivery of the referenced currency within two business days – being the industry standard maximum settlement period for a spot foreign exchange transaction.

Clause 2(c)(i)(B) allows for a longer settlement period if the foreign exchange transaction is entered into contemporaneously with a related securities trade. This exclusion reflects the fact that the settlement period for certain securities trades can be three or more days. In order for the provision to apply the securities trade and foreign exchange transaction must be related, meaning that the currency to which the foreign exchange transaction pertains was used to facilitate the settlement of the related security purchase.

It is our view that where a contract for the purchase or sale of a currency provides for multiple exchanges of cash flows, all such exchanges must occur within the timelines prescribed in subparagraph 2(c)(i) in order for the exclusion in paragraph 2(c) to apply.

Settlement by delivery except where impossible or commercially unreasonable (subparagraph 2(c)(i))

Subparagraph 2(c)(i) requires that a contract must not permit settlement in a currency other than what is referenced in the contract unless delivery is rendered impossible or commercially unreasonable as a result of events not reasonably within the control of the counterparties.

Settlement by delivery of the currency referenced in the contract requires the currency contracted for to be delivered and not an equivalent amount in a different currency. For example, where a contract references Japanese Yen, such currency must be delivered in order for this exclusion to apply. We consider delivery to mean actual delivery of the original currency contracted for either in cash or through electronic funds transfer. In situations where settlement takes place through the delivery of an alternate currency or account notation without actual currency transfer, there is no settlement by delivery and therefore that the exclusion in paragraph 2(c) would not apply.

We consider events that are not reasonably within the control of the counterparties to include events that cannot be reasonably anticipated, avoided or remedied. An example of an intervening event that would render delivery to be commercially unreasonable would include a situation where a government in a foreign jurisdiction imposes capital controls that restrict the flow of the currency required to be delivered. A change in the market value of the currency itself will not render delivery commercially unreasonable.

Intention requirement (subparagraph 2(c)(ii))

Subparagraph 2(c)(ii) excludes from the reporting requirement a contract for the purchase and sale of a currency that is intended to be settled through the delivery of the currency referenced in such contract. The intention to settle a contract by delivery may be inferred from the terms of the relevant contract as well as from the surrounding facts and circumstances.

When examining the specific terms of a contract for evidence of intention to deliver, we take the position that the contract must create an obligation on the counterparties to make or take delivery of the currency and not merely an option to make or take delivery. Any agreement, arrangement or understanding between the parties, including a side agreement, standard account terms or operational procedures that allow for the settlement in a currency other than the referenced currency or on a date after the time period specified in subsection 2(c)(i) is an indication that the parties do not intend to settle the transaction by delivery of the prescribed security within the specified time periods.

We are generally of the view that certain provisions, including standard industry provisions, the effect of which may result in a transaction not being physically settled, will not necessarily negate the intention to deliver. The contract as a whole needs to be reviewed in order to determine whether the counterparties’ intention was to actually deliver the contracted currency. Examples of provisions that may be consistent with the intention requirement under subparagraph 2(c)(ii) include:

- a netting provision that allows two counterparties who are party to multiple contracts that require delivery of a currency to net offsetting obligations, provided that the counterparties intended to settle through delivery at the time the contract was created and the netted settlement is physically settled in the currency prescribed by the contract, and

- a provision where cash settlement is triggered by a termination right that arises as a result of a breach of the terms of the contract.

Although these types of provisions permit settlement by means other than the delivery of the relevant currency, they are included in the contract for practical and efficiency reasons.

In addition to the contract itself, intention may also be inferred from the conduct of the counterparties. Where a counterparty's conduct indicates an intention not to settle by delivery, the contract will not qualify for the exclusion in paragraph 2(c). For example, where it could be inferred from the conduct that counterparties intend to rely on breach or frustration provisions in the contract in order to achieve an economic outcome that is, or is akin to, settlement by means other than delivery of the relevant currency, the contract will not qualify for this exclusion. Similarly, a contract would not qualify for this exclusion where it can be inferred from their conduct that the counterparties intend to enter into collateral or amending agreements which, together with the original contract, achieve an economic outcome that is, or is akin to, settlement by means other than delivery of the relevant currency.

Rolling over (subparagraph 2(c)(iii))

Subparagraph 2(c)(iii) provides that a foreign exchange contract must not permit a rollover of the contract if it is to qualify for this reporting exclusion. Therefore, physical delivery of the relevant currencies must occur in the time periods prescribed in subparagraph 2(c)(i). To the extent that a contract does not have a fixed settlement date or otherwise allows the settlement date to be extended beyond the periods prescribed in subparagraph 2(c)(i), the Committee would consider it to permit a rollover of the contract. Similarly, any terms or practice that permits the settlement date of the contract to be extended by simultaneously closing the contract and opening a new contract without delivery of the relevant currencies would also not qualify for the exclusion in paragraph 2(c).

The Committee does not intend that the exclusion in paragraph 2(c) will apply to contracts entered into through platforms that facilitate investment or speculation based on the relative value of currencies. These platforms typically do not provide for physical delivery of the currency referenced in the contract but instead close out the positions by crediting client accounts held by the person operating the platform, often applying the credit using a standard currency.

(d) Commodities

Paragraph 2(d) of the Model Scope Rule prescribes a contract for the delivery of a commodity not to be a "derivative" if it meets the criteria in subparagraphs 2(d)(i) and (ii).

Commodity

The exclusion available under paragraph 2(d) is limited to commercial transactions in goods that can be delivered either in a physical form or by delivery of the instrument evidencing ownership of the commodity. We take the position that commodities include goods such as agricultural products, forest products, products of the sea, minerals, metals, hydrocarbon fuel, precious stones or other gems, electricity, oil and natural gas (and by-products, and associated refined products, thereof), and water. We also consider certain intangible commodities, such as carbon credits and emission allowances, to be commodities. In contrast, this exclusion will not apply to financial commodities such as currencies, interest rates, securities and indexes.

Intention requirement (subparagraph 2(d)(i))

Paragraph 2(d)(i) of the Model Scope Rule requires that counterparties *intend* to settle the contract by delivering the commodity. Intention can be inferred from the terms of the relevant contract as well as from the surrounding facts and circumstances.

When examining the specific terms of a contract for evidence of an intention to deliver, we take the position that the contract must create an obligation on the counterparties to make or take delivery of the commodity and not merely an option to make or take delivery. Subject to the comments below on subparagraph 2(d)(ii), we are of the view that a contract containing a provision that permits the contract to be settled by means other than delivery of the commodity, or that includes an option or has the effect of creating an option to settle the contract by a method other than through the delivery of the commodity, would not satisfy the intention requirement and therefore does not qualify for this exclusion.

We are generally of the view that certain provisions, including standard industry provisions, the effect of which may result in a transaction not being physically settled, may not necessarily negate the intention to deliver. The contract as a whole needs to be reviewed in order to determine whether the counterparties' intention was to actually deliver the commodity. Examples of provisions that may be consistent with the intention requirement under subparagraph 2(d)(i) include:

- an option to change the volume or quantity, or the timing or manner of delivery, of the commodity to be delivered;
- a netting provision that allows two counterparties who are party to multiple contracts that require delivery of a commodity to net offsetting obligations provided that the counterparties intended to settle each contract through delivery at the time the contract was created,
- an option that allows the counterparty that is to accept delivery of a commodity to assign the obligation to accept delivery of the commodity to a third-party; and

- a provision where cash settlement is triggered by a termination right arising as a result of the breach of the terms of the contract or an event of default thereunder.

Although these types of provisions permit some form of cash settlement, they are included in the contract for practical and efficiency reasons.

In addition to the contract itself, intention may also be inferred from the conduct of the counterparties. For example, where it could be inferred from the conduct that counterparties intend to rely on breach or frustration provisions in the contract in order to achieve an economic outcome that is, or is akin to, cash settlement, the contract will not qualify for this exclusion. Similarly, a contract will not qualify for this exclusion where it can be inferred from their conduct that the counterparties intend to enter into collateral or amending agreements which, together with the original contract, achieve an economic outcome that is, or is akin to, cash settlement of the original contract.

When determining the intention of the counterparties, we will examine their conduct at execution and throughout the duration of the contract. Factors that we will consider include whether a counterparty is in the business of producing, delivering or using the commodity in question and whether the counterparties regularly make or take delivery of the commodity relative to the frequency with which they enter into such contracts in relation to the commodity.

Situations may exist where, after entering into the contract for delivery of the commodity, the counterparties enter into an agreement that terminates their obligation to deliver or accept delivery of the commodity (often referred to as a “book-out” agreement). Book-out agreements are typically separately negotiated, new agreements where the counterparties have no obligation to enter into such agreements and such book-out agreements are not provided for by the terms of the contract as initially entered into. We will generally not consider a book-out to be “derivative” provided that, at the time of execution of the original contract, the counterparties intended that the commodity would be delivered.

Settlement by delivery except where impossible or commercially unreasonable (subparagraph 2(d)(ii))

Subparagraph 2(d)(ii) requires that a contract not permit cash settlement in place of delivery unless physical settlement is rendered impossible or commercially unreasonable as a result of an intervening event or occurrence not reasonably within the control of the counterparties, their affiliates or their agents. A change in the market value of the commodity itself will not render delivery commercially unreasonable. In general, we consider examples of events not reasonably within the control of the counterparties would include:

- events to which typical *force majeure* clauses would apply,
- problems in delivery systems such as the unavailability of transmission lines for electricity or a pipeline for oil or gas where an alternative method of delivery is not reasonably available, and
- problems incurred by a counterparty in producing the commodity that they are obliged to deliver such as a fire at an oil refinery or a drought preventing crops from growing where an alternative source for the commodity is not reasonably available.

In our view, cash settlement in these circumstances would not preclude the requisite intention under subparagraph 2(d)(i) from being satisfied.

(e) and (f) Evidence of a deposit

Paragraphs 2(e) and (f) of the Model Scope Rule prescribe certain evidence of deposits not to be a “derivative”.

Subsection 2(f) refers to “similar statutes of Canada or a jurisdiction of Canada”. While the provincial legislation initially referred to in subsection 2(f) is from Ontario, the intention is that all federal or province-specific statutes will receive the same treatment in every province or territory. For example, if a credit union to which the Ontario *Credit Unions and Caisses Populaires Act, 1994* (Ontario) applies issues an evidence of deposit to a market participant that is located in a different province, that province would apply the same treatment under its equivalent legislation.

(g) Exchange-traded derivatives

Paragraph 2(g) of the Model Scope Rule prescribes a contract not to be a derivative if it is traded on certain prescribed exchanges. Exchange-traded derivatives provide pre- and post-trade 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.

(h) Additional contracts not considered to be derivatives

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

These contracts include, but are not limited to:

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

3. Investment contracts and over-the-counter options

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

Similarly, options fall within both the definition of “derivative” and the definition of “security”. Section 3 of the Model Scope Rule prescribes an option that is only a security by virtue of paragraph (X) of the definition of “security”³ (and not described in section 5 of the Model Scope Rule), not to be a security. This section prescribes that such instruments will be treated as derivatives and therefore will be required to be reported to a designated trade repository. This treatment will only apply to options that are traded over-the-counter. Under paragraph 2(g), exchange-traded options will not be required to be reported to a designated trade repository. Further, in Ontario, options that are entered into on a commodity futures exchange pursuant to standardized terms and conditions are commodity futures options and therefore regulated under the *Commodity Futures Act* (Ontario) and excluded from the definition of “derivative”. This reporting exclusion for exchange-traded options will be implemented in other jurisdictions although the form of the exclusion may differ.

4. Derivatives that are securities

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

5. Derivatives prescribed to be securities

Section 5 of the Model Scope Rule prescribes a security-based derivative that is used by an issuer or its affiliate to compensate an officer, director, employee or service provider, or as a financing instrument, not to be a derivative. Examples of the compensation instruments that are contemplated as falling within section 5 include stock options, phantom stock units, restricted share units, deferred share units, restricted share awards, performance share units, stock appreciation rights and compensation instruments provided to service providers, such as broker options. Securities treatment would also apply to the aforementioned instruments when used as a financing instrument, for example, rights, warrants and special warrants, or subscription rights/receipts or convertible instruments issued to raise capital for any purpose. The Committee takes the view that an instrument would only be considered a financing instrument if it is used for capital-raising purposes. An equity swap, for example, would generally not be considered a financing instrument. The classes of derivatives referred to in section 5 can have similar or the same economic effect as a securities issuance and are therefore subject to requirements generally

² See, for example, paragraph (n) of the definition of “security” in the *Securities Act* (Ontario).

³ See, for example, paragraph (d) of the definition of “security” in the *Securities Act* (Ontario).

applicable to securities. As they are prescribed not to be derivatives they are not subject to the transaction reporting requirements.

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

**PART 1
DEFINITIONS AND INTERPRETATION**

Definitions

1. (1) In this Rule

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

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

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

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

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

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

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

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

“life-cycle event” means any event that results in a change to derivatives data previously reported to the designated⁴ trade repository in respect of a transaction;

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

- (a) the counterparty is a person or company, other than an individual, organized under the laws of [Province x] or that has its head office or principal place of business in [Province x],
- (b) the counterparty is registered under applicable securities legislation as a dealer or subject to regulations providing that a person or company trading in derivatives must be registered in a category of registration prescribed by the regulations,
- (c) the counterparty is an affiliate of a person described in paragraph (a) or (b), and such person described in paragraphs (a) or (b) is responsible for the liabilities of that affiliated party;

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

“participant” means a person that has entered into an agreement with a designated trade repository that allows them to access the designated trade repository services;

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

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

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

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

⁴ Note that the term “designated” would be replaced with “recognized” in certain jurisdictions.

“valuation data” means data that reflects the current value of the transaction and, at a minimum, includes the data in the applicable fields listed in Appendix A under the heading “Valuation Data”.

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

PART 2 TRADE REPOSITORY DESIGNATION AND ONGOING REQUIREMENTS

Trade repository initial filing of information and designation

2. (1) An applicant for designation under section [x]⁵ of the Act must file

- (a) a completed Form F1 – *Application For Designation and Trade Repository Information Statement*, and
- (b) an application letter that describes how it complies with or will comply with Parts 2 and 4 of this Rule.

(2) In its Form F1 or application letter, the applicant must include information sufficient to demonstrate that

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

(3) In addition to the requirements set out in subsections (1) and (2), an applicant that is located outside of [Province x] that is applying for designation under section [x] of the Act must

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

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

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

Change in information

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

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

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

⁵ Section x will be the designation or recognition provision in the applicable provincial securities legislation.

- (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 discloses the change publicly.

Ceasing to carry on business

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

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

Filing of initial audited financial statements

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

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

(2) The auditor's report must

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

Filing of annual audited and interim financial statements

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

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

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

Legal framework

7. (1) A designated trade repository must establish, implement, maintain and enforce 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 in all relevant jurisdictions.

(2) Without limiting the generality of subsection (1), a designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures that are not contrary to the public interest and that are reasonably designed to ensure that

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

Governance

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

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

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

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

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

Board of directors

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

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

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

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

Management

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

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

Chief compliance officer

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

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

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

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

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

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 for each service it offers with respect to the collection and maintenance of derivatives data.

Access to designated trade repository services

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

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

- (a) unreasonably prohibit, condition or limit access by a person or company to the services offered by it,
- (b) permit unreasonable discrimination among its participants,
- (c) impose any 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 it.

Acceptance of reporting

14. A designated trade repository must accept derivatives data for reporting purposes from its participants for all derivatives of the asset class or classes set out in its 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 and alternative trading systems, and
- (d) other service providers.

Due process

16. For any decision made by a designated trade repository that 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

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

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

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

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

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

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

Records of data reported

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

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

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

Comprehensive risk-management framework

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

General business risk

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

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

(3) A designated trade repository must identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for an orderly wind-down.

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

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

System and other operational risk requirements

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

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

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

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

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

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

(c) cover the exercise of authority in the event of any emergency.

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

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

(7) A designated trade repository must provide the report resulting from the review conducted under subsection (6) to

- (a) its board of directors or audit committee promptly upon the report's completion, and
- (b) the [applicable local securities regulator] not later than the 30th day after providing the report to its board of directors or audit committee.

(8) A designated trade repository must make publicly available, in their final form, all technology requirements regarding interfacing with or accessing the designated trade repository,

- (a) if operations have not begun, for at least 3 months immediately before operations begin, and
- (b) if operations have begun, for at least 3 months before implementing a material change to its technology requirements.

(9) After complying with subsection (8), a designated trade repository must make available testing facilities for interfacing with or accessing the designated trade repository,

- (a) if operations have not begun, for at least 2 months immediately before operations begin, and
- (b) if operations have begun, for at least 2 months before implementing a material change to its technology requirements.

(10) A designated trade repository must not begin operations in [Province x] until it has complied with paragraphs (8)(a) and (9)(a).

(11) Paragraphs (8)(b) and (9)(b) do not apply to a designated trade repository if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment and

- (a) the designated trade repository immediately notifies the [applicable local securities regulator] of its intention to make the change, and
- (b) the designated trade repository publishes the changed technology requirements as soon as practicable.

Data security and confidentiality

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

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

Confirmation of data and information

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

(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 any of its key services or systems to a service provider, including an associate or affiliate of the designated trade repository, it must

- (a) establish, implement, maintain and enforce written policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of those outsourcing arrangements,
- (b) identify any conflicts of interest between the designated trade repository and the service provider to which key services and systems are outsourced, and establish, implement, maintain and enforce written policies and procedures to mitigate and manage those conflicts of interest,
- (c) enter into a contract with the service provider that is appropriate for the materiality and nature of the outsourced activities and that provides for adequate termination procedures,
- (d) maintain access to the books and records of the service provider relating to the outsourced activities,
- (e) ensure that the [applicable local securities regulator] has the same access to all data, information and systems maintained by the service provider on behalf of the designated trade repository that it would have absent the outsourcing arrangements,
- (f) ensure that all persons conducting audits or independent reviews of the designated trade repository under this Rule have appropriate access to all data, information and systems maintained by the service provider on behalf of the designated trade repository that such persons would have absent the outsourcing arrangements,
- (g) take appropriate measures to determine that a service provider to which key services or systems are outsourced establishes, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan in accordance with section 21,
- (h) take appropriate measures to ensure that the service provider protects the designated trade repository users' confidential information and derivatives data in accordance with section 22, and
- (i) establish, implement, maintain and enforce written policies and procedures to regularly review the performance of the service provider under the outsourcing arrangements.

PART 3 DATA REPORTING

Duty to Report

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

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

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

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

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

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

Pre-existing derivatives

26. Despite subsection 25(1) and subject to subsection 42(4), a local counterparty to a transaction entered into before [*insert date*] that had outstanding contractual obligations on that day must report, or cause to be reported, the data indicated in the column entitled "Required for Pre-existing Transactions" in Appendix A in relation to that transaction to a designated trade repository in accordance with this Part not later than 365 days after [*insert date*].

Reporting counterparty

27. (1) The counterparty required to report derivatives data for a transaction to a designated trade repository is,

- (a) if the transaction is cleared through a clearing agency, the clearing agency,
- (b) if the transaction is not cleared through a clearing agency and is between a dealer and a counterparty that is not a dealer, the dealer,
- (c) if paragraphs (a) and (b) do not apply and both counterparties agree, in writing or otherwise, that one of them is required to report derivatives data for the transaction to the designated trade repository, the counterparty required to report the derivatives data under that agreement, and
- (d) in any other case, both counterparties.

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

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

(4) The 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.

Real-time reporting

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

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

(3) Despite subsections (1) and (2), where a designated trade repository ceases its operations or stops accepting derivatives data for a certain asset class of derivatives, the reporting counterparty will be permitted a reasonable time to fulfill its reporting obligations under this Rule through reporting the information otherwise required to be provided to the designated trade repository to another designated trade repository or the [applicable provincial securities regulator].

Identifiers, general

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

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

Legal entity identifiers

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

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

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

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

- (a) each counterparty must obtain a substitute legal entity identifier which complies with the standards established March 8, 2013 by the LEI 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 identifier in all derivatives data reported pursuant to this Rule in respect of transactions to which it is a counterparty.

Unique transaction identifiers

31. (1) A designated trade repository must identify each transaction that is subject to the reporting obligation under this Rule in all recordkeeping and all reporting required under this Rule by means of a unique transaction identifier.

(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.

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

Unique product identifiers

32. (1) A designated trade repository must identify each transaction that is subject to the reporting obligation under this Rule in all recordkeeping and all reporting required under this Rule by means of a unique product identifier.

(2) For the purposes of this section, subject to subsection (4), a unique product identifier is a code that uniquely identifies derivative products and is assigned in accordance with international or industry standards.

(3) The international or industry standard referenced in subsection (2) must be made publicly available by the designated trade repository.

(4) A designated trade repository must not assign more than one unique product identifier to a transaction.

(5) If international or industry standards for unique product identifiers are unavailable for a particular derivative product when a reporting obligation under this Rule arises, a designated trade repository must assign a unique product identifier to the transaction using its own methodology.

Creation data

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

Life-cycle data

34. For each transaction that is subject to the reporting obligations under this Rule, the reporting counterparty must report all life-cycle data to a designated trade repository at the end of each business day.

Valuation data

35. (1) For a transaction that is cleared, valuation data must be reported to the designated trade repository daily by both the clearing agency and the local counterparty using industry accepted valuation standards and relevant closing market data from the previous business day.

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

- (a) daily using industry accepted valuation standards and relevant closing market data from the previous business day by each local counterparty that is a dealer, and
- (b) at the end of each calendar quarter for all local counterparties that are not dealers.

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

Records of data reported

36. (1) Reporting counterparties 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.

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

PART 4 DATA DISSEMINATION AND ACCESS TO DATA

Data available to regulators

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

- (a) provide to the [applicable local securities regulator] direct, continuous and timely electronic access to such data in the designated trade repository's possession as is required by the [applicable local securities regulator] in order to carry out the [applicable local securities regulator]'s mandate,
- (b) accept and promptly fulfil any data requests from the [applicable local securities regulator] in order to carry out the [applicable local securities regulator]'s mandate,
- (c) create and make available to the [applicable local securities regulator] aggregate data derived from data in the designated trade repository's possession as required by the [applicable local securities regulator] in order to carry out the [applicable local securities regulator]'s mandate, and
- (d) disclose to the [applicable local securities regulator] the manner in which the derivatives data provided under paragraph (c) has been aggregated.

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

(3) A local counterparty must take any action necessary to ensure that the [applicable local securities regulator] has access to all derivatives data reported to a designated trade repository for transactions involving the local counterparty.

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.

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

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

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

Data available to public

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

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

(3) A designated trade repository must make transaction level reports of the 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 after receiving the data from the reporting counterparty to the transaction, if one of the counterparties to the transaction is a dealer, and
- (b) the end of the second day after receiving the data from the reporting counterparty to the transaction in all other circumstances.

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

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

(6) Despite subsections (1) to (5), a designated trade repository will not be required to make public any derivatives data for transactions entered into between affiliated companies as defined under subsection x of the [Provincial] *Securities Act*.

PART 5 EXCLUSIONS

40. Despite any other section of this Rule, there is no obligation under this Rule for a local counterparty to report derivatives data in relation to a physical commodity transaction if,

- (a) the local counterparty is not a dealer or adviser,
- (b) 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, and
- (c) the local counterparty is not the reporting counterparty under paragraph 27(1)(c).

PART 6 EXEMPTIONS

41. 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

42. (1) Parts 1, 2, 4, 5 and 6 come into force on *[insert date]*.

(2) Part 3 comes into force *[insert date + 6 months]*.

(3) Despite subsection (2), Part 3 does not apply so as to require a reporting counterparty that is not a dealer to make any reports under that Part until *[insert date + 9 months]*.

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

**Appendix A of Model Provincial Rule – Trade Repositories and Derivatives Data Reporting
Minimum Data Fields Required to be Reported to a Designated Trade Repository**

Instructions:

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

Data field	Description	Required for Public Dissemination	Required for Pre-existing Transactions
1. Operational data			
Transaction identifier	The unique transaction identifier as provided by the designated trade repository or, the identifier as identified by the two counterparties, electronic trading venue of execution or clearing agency.	N	N
Master agreement type	The type of master agreement, if used for the reported transaction.	N	N
Master agreement version	Date of the master agreement version (e.g. 2002, 2006).	N	N
Cleared	Indicate whether the transaction has been cleared by a clearing agency.	Y	Y
Clearing agency	LEI of the clearing agency where the transaction was cleared.	N	Y
Clearing member	LEI of the clearing member, if the clearing member is not a counterparty.	N	N
Clearing exemption	Indicate whether one or more of the counterparties to the transaction are exempted from a mandatory clearing requirement.	Y	N
End-user exemption	Indicate whether either counterparty to the transaction qualifies as an end-user.	Y	N
Broker	LEI of the broker acting as an intermediary for the reporting counterparty without becoming a counterparty.	N	N
Electronic trading venue	Indicate whether the transaction was executed on or off an electronic trading venue.	Y	N
Electronic trading venue identifier	LEI of the electronic trading venue where the transaction was executed.	N	Y
Inter-affiliate	Indicate whether the transaction is between two affiliated entities.	N	N
Custodian	LEI of the custodian if collateral is held by a third party custodian.	N	N
Collateralization	Indicate whether the transaction is collateralized Field Values: Fully (initial and variation margin posted by both parties), Partially (variation only posted by both parties), One-way (one party will post some form of collateral), Uncollateralized.	Y	N
2. Counterparty information			
Identifier of reporting counterparty	LEI of the reporting counterparty or, in case of an individual, its client code.	N	Y

Data field	Description	Required for Public Dissemination	Required for Pre-existing Transactions
Identifier of non-reporting counterparty	LEI of the non-reporting counterparty or, in case of an individual, its client code.	N	Y
Counterparty side	Indicate whether the reporting counterparty was the buyer or seller. In the case of swaps, other than credit default, the buyer will represent the payer of leg 1 and the seller will be the payer of leg 2.	N	Y
Identifier of agent reporting the transaction	LEI of the agent reporting the transaction if reporting of the transaction has been delegated by the reporting counterparty.	N	N
Reporting counterparty dealer or non-dealer	Indicate whether the reporting counterparty is a dealer or non-dealer.	N	N
Non-reporting counterparty is a local counterparty or not local.	Indicate whether the non-reporting counterparty is a local counterparty or not.	N	N
3. Principal economic terms	[fields do not have to be reported if the unique product identifier adequately describes those fields]		
A. Common data			
Unique product identifier	Unique product identification code based on the taxonomy of the product that is used by the trade repository.	Y	N
Contract type	The name of the contract type (e.g. swap, swaption, forwards, options, basis swap, index swap, basket swap, other).	Y	Y
Underlying asset identifier 1	The unique identifier of the asset referenced in the contract.	Y	Y
Underlying asset identifier 2	The unique identifier of the second asset referenced in the contract, if more than one. If more than two assets identified in the contract, report the unique identifiers for those additional underlying assets.	Y	Y
Asset class	Major asset class of the product (e.g. interest rate, credit, commodity, foreign exchange, equity, etc.).	Y	N
Effective date or start date	The date the transaction becomes effective or starts.	Y	Y
Maturity, termination or end date	The date the transaction expires.	Y	Y
Payment frequency or dates	The dates or frequency the transaction requires payments to be made(e.g. quarterly, monthly).	Y	Y
Reset frequency or dates	The dates or frequency at which the price resets (e.g. quarterly, semi-annually, annually).	Y	Y
Day count convention	Factor used to calculate the payments. (e.g. 30/360, actual/360).	Y	Y
Delivery type	Indicate whether transaction is settled physically or in cash.	N	Y
Price 1	The price, yield, spread, coupon, etc., of the derivative. The price/rate should not include any premiums such as commissions, collateral premiums, accrued interest, etc.	Y	Y
Price 2	The price, yield, spread, coupon, etc., of the derivative. The price/rate should not include any premiums such as commissions,	Y	Y

Data field	Description	Required for Public Dissemination	Required for Pre-existing Transactions
	collateral premiums, accrued interest, etc.		
Price notation type 1	The manner in which the price is expressed (e.g. percent, basis points etc.).	Y	Y
Price notation type 2	The manner in which the price is expressed (e.g. percent, basis points etc.).	Y	Y
Price multiplier	The number of units of the underlying reference entity represented by 1 unit of the contract.	N	N
Notional amount leg 1	Total notional amount(s) of leg 1 of the contract.	Y	Y
Notional amount leg 2	Total notional amount(s) of leg 2 of the contract.	Y	Y
Currency leg 1	Currency(ies) of leg 1.	Y	Y
Currency leg 2	Currency(ies) of leg 2.	Y	Y
Settlement currency	The currency used to determine the cash settlement amount.	Y	Y
Up-front payment	Amount of any up-front payment.	N	N
Currency or currencies of up-front payment	The currency in which any up-front payment is made by one counterparty to another.	N	N
B. Additional asset information			
i) Interest rate derivatives			
Fixed rate leg 1	The rate used to determine the payment amount for leg 1 of the transaction.	N	Y
Fixed rate leg 2	The rate used to determine the payment amount for leg 2 of the transaction.	N	Y
Floating rate leg 1	The floating rate used to determine the payment amount for leg 1 of the transaction.	N	Y
Floating rate leg 2	The floating rate used to determine the payment amount for leg 2 of the transaction.	N	Y
Fixed rate day count convention	Factor used to calculate the fixed payer payments. (e.g. 30/360, actual/360).	N	Y
Fixed leg payment frequency or dates	Frequency or dates of payments for the fixed rate leg of the transaction. (e.g. quarterly, semi-annually, annually).	N	Y
Floating leg payment frequency or dates	Frequency or dates of payments for the floating rate leg of the transaction. (e.g. quarterly, semi-annually, annually).	N	Y
Floating rate reset frequency or dates	The dates or frequency at which the floating leg of the transaction resets (e.g. quarterly, semi-annually, annually).	N	Y
ii) Currency derivatives			
Exchange rate	Contractual rate(s) of exchange of the currencies.	N	Y
iii) Commodity derivatives			
Sub-asset class	Specific information to identify the type of commodity derivative. (Y	N

Data field	Description	Required for Public Dissemination	Required for Pre-existing Transactions
	e.g. Agriculture, Energy, Freights, Metals, Index, Environmental, Exotic).		
Quantity	Total quantity in the unit of measure of an underlying commodity.	Y	Y
Unit of measure	Unit of measure for the quantity of each side of the transaction. (e.g. barrels, bushels, etc.)	Y	Y
Grade	Grade of product being delivered. (e.g grade of oil).	N	Y
Delivery point	The delivery location.	N	N
Delivery connection points	Description of the delivery route.	N	N
Load type	For power, load profile for the delivery of power.	N	Y
Transmission days	For power, the delivery days of the week.	N	Y
Transmission duration	For power, the hours of day transmission starts and ends.	N	Y
C. Options			
Embedded option	Indicate whether the option is an embedded option.	Y	N
Option exercise date	The date(s) on which the option may be exercised.	Y	Y
Option premium	Fixed premium paid by the buyer to the seller.	Y	Y
Strike price (cap/floor rate)	The strike price of the option.	Y	Y
Option style	Indicate whether the option can be exercised on a fixed date or anytime during the life of the contract. (e.g. American, European, Bermudan, Asian).	Y	Y
Option type	Put/call.	Y	Y
4. Event data			
Action	Describes the type of action to the transaction.(e.g. new transaction, modification or cancellation of existing transaction, etc.).	Y	N
Execution timestamp	The time and date the transaction was executed on a trading venue, expressed using Coordinated Universal Time (UTC).	Y	Y
Confirmation timestamp	The time and date the transaction was confirmed by both counterparties (for non-electronic transactions), expressed using UTC.	N	N
Clearing timestamp	The time and date the transaction was cleared, expressed using UTC.	N	N
Reporting date	The time and date the transaction was submitted to the trade repository, expressed using UTC.	N	N
5. Valuation data			
Value of contract calculated by the reporting counterparty	Mark-to-market valuation of the contract, or mark-to-model valuation.	N	N
Value of contract calculated by the non-reporting counterparty	Mark-to-market valuation of the contract, or mark-to-model valuation.	N	N

Data field	Description	Required for Public Dissemination	Required for Pre-existing Transactions
Valuation date	Date of the latest mark-to-market or mark-to-model valuation.	N	N
Valuation type	Indicate whether valuation was based on mark-to-market or mark-to-model.	N	N

10. Canadian counsel (if applicable)

Firm name:

Contact name:

Telephone number:

Facsimile:

E-mail address:

EXHIBITS

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

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

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

Exhibit A – Corporate Governance

1. Legal status:

Corporation

Partnership

Other (specify):

2. Indicate the following:

1. Date (DD/MM/YYYY) of formation.

2. Place of formation.

3. Statute under which trade repository was organized.

4. Regulatory status in other jurisdictions.

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

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

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

1. An opinion of legal counsel that, as a matter of law the applicant has the power and authority to provide the [applicable local securities regulator] with prompt access to the applicant's books and records and submit to onsite inspection and examination by the [applicable local securities regulator], and

2. A completed Form F2, Submission to Jurisdiction and Appointment of Agent for Service.

Exhibit B – Ownership

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

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

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

Exhibit C – Organization

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

Exhibit D – Affiliates

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

provide the following information:

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

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

Exhibit E – Operations of the Trade Repository

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

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

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

Exhibit F – Outsourcing

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

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

Exhibit G – Systems and Contingency Planning

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

1. Current and future capacity estimates.

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

Exhibit H – Access to Services

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

Exhibit I – Trade Repository Participants

1. Provide an alphabetical list of all the trade repository's participants who are counterparties to a transaction whose derivatives data is required to be reported pursuant to the TR Rule, including the following information:
 1. Name.
 2. Date of becoming a participant.
 3. Describe the type of derivatives reported whose counterparty is the participant.
 4. The class of participation or other access.
2. Provide a list of all local counterparties who were denied or limited access to the trade repository, indicating for each:
 1. Whether they were denied or limited access.
 2. The date the repository took such action.
 3. The effective date of such action.
 4. The nature and reason for any denial or limitation of access.

Exhibit J – Fees

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

CERTIFICATE OF TRADE REPOSITORY

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

DATED at _____ this _____ day of _____, 20____

(Name of trade repository)

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

(Signature of director, officer or partner)

(Official capacity – please type or print)

**IF APPLICABLE, ADDITIONAL CERTIFICATE
OF TRADE REPOSITORY THAT IS LOCATED OUTSIDE OF [PROVINCE]**

The undersigned certifies that

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

DATED at _____ this _____ day of _____, 20____

(Name of trade repository)

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

(Signature of director, officer or partner)

(Official capacity – please type or print)

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

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

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

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

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

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

5. Address of Agent for service of process in [province]:

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

Dated: _____

Signature of the Trade Repository

Print name and title of signing
officer of the Trade Repository

AGENT

CONSENT TO ACT AS AGENT FOR SERVICE

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

Dated: _____

Signature of Agent

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

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

CESSATION OF OPERATIONS REPORT FOR TRADE REPOSITORY

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

Exhibits

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

Exhibit A

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

Exhibit B

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

Exhibit C

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

CERTIFICATE OF TRADE REPOSITORY

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

DATED at _____ this _____ day of _____ 20 _____

(Name of trade repository)

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

(Signature of director, officer or partner)

(Official capacity – please type or print)

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

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PART 1 GENERAL COMMENTS

Introduction

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

(2) The numbering of Parts, sections and subsections from Part 2 on in this Model Explanatory Guidance generally corresponds to the numbering in the Model TR 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 Model Explanatory Guidance will skip to the next provision that does have guidance.

(3) Unless defined in the Model TR Rule or this Model Explanatory Guidance, terms used in the Model TR Rule and in this Final Model Explanatory Guidance have the meaning given to them in securities legislation, including, for greater certainty, in National Instrument 14-101 *Definitions* and OSC Rule 14-501 *Definitions*.⁷

Definitions and interpretation

2. (1) In this Model Explanatory Guidance,

“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,⁸ 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 Model TR Rule as any event that results in a change to derivatives data previously reported to a designated trade repository. Where a life-cycle event occurs, the change must be reported under section 34 of the Model TR Rule as life-cycle data 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 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. amortizing schedule),

⁷ The reference to OSC Rule 14-501 *Definitions* is only relevant in Ontario. Other jurisdictions may have a similar local rule.

⁸ The PFMI Report is available on the Bank for International Settlements’ website (www.bis.org) and the IOSCO website (www.iosco.org).

- 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) Subsection (c) of the definition of “local counterparty” captures affiliates of parties mentioned in subsections (a) or (b) 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 affiliates’ liabilities.

(4) The term “transaction” is defined in the Model TR Rule and used instead of the term “trade”, as defined in the *Securities Act* (Ontario), 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 34. 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. A novation 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 Model TR Rule as data that reflects the current value of a transaction. It is the Committee’s view that valuation data can be calculated based upon the use of an industry-accepted methodology such as mark-to-market or mark-to-model, or another valuation method that is in accordance with accounting principles and will result in a reasonable valuation of a transaction.⁹ The valuation methodology should be consistent over the entire life of a transaction.

PART 2 TRADE REPOSITORY DESIGNATION AND ONGOING REQUIREMENTS

Part 2 contains rules for designation of a trade repository and ongoing requirements for a designated trade repository.¹⁰ To obtain and maintain a designation as a trade repository, a person or entity must comply with these rules and requirements in addition to all of the terms and conditions in the designation order made by the [applicable local securities regulator]. In order to comply with the reporting obligations contained in Part 3, market participants must report to a designated trade repository. While there is no prohibition on an undesignated trade repository operating in [Province x], a market participant using it would not be in compliance with its reporting obligations.

Trade repository initial filing of information and designation

2. (1) The legal entity that applies to be a designated trade repository will typically be the entity that owns and operates the facility and collects and maintains records of completed transactions 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 apply.

In addition to the filing of Form F1, a letter describing how the entity complies with or will comply with Part 2 and Part 4 of the Model TR Rule should be included in the initial filing.

(2) Under paragraph 2(2)(a) in determining whether to designate an applicant a trade repository under section [x] of the Act¹¹, it is anticipated that the [applicable local securities regulator] will consider a number of factors, including

- (a) the manner in which the trade repository proposes to comply with the Model TR Rule,
- (b) whether the trade repository has meaningful representation on its governing body,

⁹ For example, see International Financial Reporting Standard 13, *Fair Value Measurement*.

¹⁰ Certain Canadian jurisdictions “recognize” trade repositories whereas others “designate” them. However, the Committee intends that consistent requirements will be applied in all jurisdictions regardless of whether a trade repository is designated or recognized.

¹¹ Section [x] would be the designation or recognition provision in the securities legislation of a province.

- (c) whether the trade repository has sufficient financial and operational resources for the proper performance of its functions,
- (d) 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 facilitates the [applicable local securities regulator]'s objectives of improving transparency in the derivatives market,
- (e) 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,
- (f) whether the requirements of the trade repository relating to access to its services are fair and reasonable,
- (g) whether the trade repository's process for setting fees is fair, transparent and appropriate,
- (h) 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 user or class of participants,
- (i) the manner and process for the [applicable local securities regulator] and other applicable regulatory agencies to receive or access derivatives data, including the timing, type of reports, and any confidentiality restrictions,
- (j) whether the trade repository has robust and comprehensive policies, procedures, processes and systems to ensure the security and confidentiality of derivatives data, and
- (k) whether the trade repository has entered into a memorandum of understanding with its local securities regulator.

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

Under paragraph 2(2)(c), a trade repository that is applying for designation 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 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 Model TR Rule the interpretation of which we consider ought to be consistent with the principles:

<i>Principle in the PFMI Report applicable to a trade repository</i>	<i>Relevant section(s) of the Model TR Rule</i>
Principle 1: Legal Basis	Section 7 – Legal Framework Section 17 – Rules (in part)
Principle 2: Governance	Section 8 – Governance Section 9 – Board of Directors Section 10 – Management
Principle 3: Framework for the comprehensive management of risks	Section 19 – Comprehensive Risk Management Framework Section 20 – General Business Risk (in part)
Principle 15: General business risk	Section 20 – General Business Risk
Principle 17: Operational risk	Section 21 – Systems and Other Operational Risk Requirements

<i>Principle in the PFMI Report applicable to a trade repository</i>	<i>Relevant section(s) of the Model TR Rule</i>
	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 Model TR Rule; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.
Principle 20: FMI links	No equivalent provisions in the Model TR Rule; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.
Principle 21: Efficiency and effectiveness	No equivalent provisions in the Model TR Rule; however, the trade repository may be expected to observe or broadly observe the principle, where applicable.
Principle 22: Communication procedures and standards	Section 15 – Communication Policies, Procedures and Standards
Principle 23: Disclosure of rules, key procedures, and market data	Section 17 – Rules (in part)
Principle 24: Disclosure of market data by trade repositories	Sections in Part 4 – Data Dissemination and Access to Data

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

The forms filed by an applicant or designated trade repository under the Model TR Rule will be kept confidential in accordance with the provisions of securities legislation. The Committee is of the view that the forms generally contain proprietary financial, commercial and technical information, and that the cost and potential risks to the filers of disclosure outweigh the benefit of the principle requiring that forms be made available for public inspection. However, the Committee 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.¹² 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 Model TR Rule or the terms and conditions of the designation order imposed by the [applicable local securities regulator].

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

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

¹² Publication available on the BIS website (www.bis.org) and the IOSCO website (www.iosco.org).

Change in information

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

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

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

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

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

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

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

Ceasing to carry on business

4. (1) In addition to filing Form F3 – *Cessation of Operations Report for Trade Repository*, a designated trade repository that intends to cease carrying on business in [Province x] as a designated trade repository must make an application to voluntarily surrender its designation to the [applicable local securities regulator] pursuant to securities legislation. The [applicable local securities regulator] may accept the voluntary surrender subject to terms and conditions.¹³

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.

Governance

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

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

¹³ In Ontario, for example, section 21.4 of the *Securities Act* (Ontario) provides that the Commission may impose terms and conditions on an application for voluntary surrender. The transfer of trade data/information can be addressed through the terms and conditions imposed by the Commission on such application.

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.

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

Under paragraph 9(1)(b), the board of directors of a designated trade repository must include individuals who are independent of the designated trade repository. The Committee would view individuals who have no direct or indirect material relationship with the designated trade repository as independent. The Committee would expect that independent directors of a designated trade repository would represent the public interest by ensuring that regulatory and public transparency objectives are fulfilled, and that the interests of participants who are not 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. Designated trade repositories are responsible for ensuring that the fees they set are in compliance with section 12. In assessing whether a designated trade repository's fees and costs are fairly and equitably allocated as required under paragraph 12(a), the [applicable local securities regulator] will consider a number of factors, including

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

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

Acceptance of reporting

14. Section 14 requires that a designated trade repository accept derivatives data for all derivatives of the asset class or classes set out in its designation order. For example, if the designation order of a designated trade repository

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

Communication policies, procedures and standards

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

Rules

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

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

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

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

Records of data reported

18. A designated trade repository is a market participant under securities legislation and therefore subject to the record-keeping requirements under 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 ongoing 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 sound risk-management framework (including policies, procedures, and systems) that enable it to identify, measure, monitor, and manage effectively the range of risks that arise in, or are borne by, 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 appropriately. General business risk includes any potential impairment of the designated trade repository's financial position (as a business concern) as a consequence of a decline in its revenues or an increase in its expenses, such that expenses exceed revenues and result in a loss that must be charged against capital or an inadequacy of resources necessary to carry on business as a designated trade repository.

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

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

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

Systems and other operational risk requirements

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

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

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

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

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

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

(4) Subsection 21(4) requires that a designated trade repository establish, implement, maintain and enforce business continuity plans, including disaster recovery plans. The Committee believes that these plans are intended to provide continuous and undisrupted service, as 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 resume operations within 2 hours following the disruptive event. Under paragraph 21(4)(c), an emergency event could include any external sources of operational risk, such as the failure of critical service providers or utilities or events affecting a wide metropolitan area, such as natural disasters, terrorism, and pandemics. Business continuity planning should encompass all policies and procedures to ensure uninterrupted provision of key services regardless of the cause of potential disruption.

(5) Subsection 21(5) requires a designated trade repository to test its business continuity plans 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. Before engaging a qualified party, the designated trade repository should notify the [applicable local securities regulator].

(8) Subsection 21(8) requires a designated trade repository to make its technology requirements regarding interfacing with, or accessing, the designated trade repository publicly available in their final form for at least 3 months. If there are material changes to these requirements after they are initially made publicly available, the revised requirements should be made publicly available for a new 3-month period prior to implementation, where applicable.

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

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

technology requirements are made publicly available as soon as practicable, either while the changes are being made or immediately thereafter.

Data security and confidentiality

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

(2) Subsection 22(2) prohibits a designated trade repository from utilizing reported derivatives data that is not required to be publicly disclosed for commercial or business purposes under section 39, without the written consent of the counterparties who supplied the derivatives data. The purpose of this provision is to ensure that participants of the designated trade repository have some measure of control over their derivatives data. This provision is not intended to prevent the use of data for non-commercial research in the public interest, subject to appropriate controls and confidentiality agreements.

Confirmation of data and information

23. Subsection 23(1) requires a designated trade repository to confirm the accuracy of the derivatives data it receives from a reporting counterparty. A designated trade repository must confirm the accuracy of 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.

Pursuant to section 25, only one counterparty is required to report a transaction. 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 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 25, confirmation under subsection 23(1) can be delegated to a third-party representative.

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 the service provider to which it outsources key services, systems or facilities. The requirements under section 24 apply regardless of whether the outsourcing arrangements are with third-party service providers, or affiliates of the designated trade repository. A designated trade repository that outsources its services or systems remains responsible for those services or systems and for compliance with securities legislation.

PART 3 DATA REPORTING

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

Duty to report

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

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

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

(4) Under subsection 25(4), where a local counterparty that is not a reporting counterparty, discovers an error or omission in respect of derivatives data 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 to report the error or omission to the designated trade repository, in accordance with subsection 25(3) or to the [applicable local securities regulator] in accordance with subsection 25(2). The Committee interprets the requirement in subsection 25(4) to notify the reporting counterparty of errors or omissions in derivatives data “promptly” after it is discovered, to mean on discovery and in any case no later than the end of the business day on which the error or omission is discovered.

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

Pre-existing derivatives

26. Section 26 requires that pre-existing transactions that have not expired or been terminated 365 days after the date prescribed in subsection 42(1) be reported to a designated trade repository. Transactions that terminate or expire prior to the date prescribed in subsection 42(1) will not be subject to the reporting obligation. Further, pursuant to subsection 42(4), transactions that expire or terminate within 365 days of the date prescribed in subsection 42(1), will not be subject to the reporting obligation. These transactions are exempted from the reporting obligation in the Model TR Rule, to relieve some of the reporting burden for market participants, and because they would provide marginal utility to the [applicable local securities regulator] due to their imminent termination or expiry. 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.

Reporting counterparty

27. Reporting obligations on dealers apply irrespective of whether the dealer is a registrant.

(1) Under paragraphs 27(1)(c) and (d), if the counterparties are unable to identify who should report the transaction, then both counterparties must act as reporting counterparty. However, it is the Committee’s view that one counterparty to every transaction should accept the reporting obligation to avoid duplicative reporting.

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

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

(4) Subsection 27(4) permits the delegation of all reporting obligations of a reporting counterparty. This includes reporting of initial creation data, life-cycle data and valuation data. For example, some or all of the reporting obligations may be delegated to a third-party service provider. However, the local counterparty remains responsible for ensuring that the derivatives data is accurate and reported within the timeframes required under the Model TR Rule.

Real-time reporting

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

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

Legal entity identifiers

30. (1) Subsection 30(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 initiative¹⁴ that will uniquely identify counterparties to 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 30(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 Model TR Rule, they must use a substitute legal entity identifier. The substitute legal entity identifier must be in accordance with the standards established by the 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. It is conceivable that the two identifiers could be identical.

Unique transaction identifier

31. A unique transaction identifier will be assigned by the designated trade repository to which the transaction has been submitted. 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 a similar 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.

Unique product identifier

32. (1) Subsection 32(1) requires that a designated trade repository identify each transaction that is subject to the reporting obligation under the Model TR Rule by means of a unique product identifier. There is currently a system of product taxonomy that could be used for this purpose¹⁵. To the extent that unique product identifiers are unavailable for a particular transaction type, a designated trade repository would be required to create one using an alternative methodology.

(5) Subsection 32(5) provides relief from the obligation of subsection 32(1) where no industry standards are available.

Valuation data

35. Valuation data is required to be reported by both counterparties to a reportable transaction. For both cleared and uncleared transactions counterparties may, as described in subsection 27(4), 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.

¹⁴ See http://www.financialstabilityboard.org/list/fsb_publications/tid_156/index.htm for more information.

¹⁵ See <http://www2.isda.org/identifiers-and-otc-taxonomies/> for more information.

(1) Subsection 35(1) requires that valuation data for a transaction that is cleared must be reported daily. A transaction is considered to be “cleared” where it has been novated to a clearing agency.

PART 4 DATA DISSEMINATION AND ACCESS TO DATA

Data available to regulators

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

The derivatives data covered by this subsection are data necessary to carry out the [applicable local securities regulator's] mandate to protect participants in the derivatives market from unfair, improper or fraudulent practice, to foster fair and efficient capital markets, 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 the provincial market.

Transactions that reference an underlying asset or class of assets with a nexus to [Province x] or Canada can impact the provincial market even if the counterparties to the transaction are not local counterparties. Therefore, the [applicable local securities regulator] has a regulatory interest in transactions involving such underlying interests even if such data is not submitted pursuant to the reporting obligations in the Model TR 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 are currently being developed by CPSS and IOSCO.¹⁶ It is expected that all designated trade repositories will comply with the access recommendations in the final report.

Data available to counterparties

38. Section 38 is intended to ensure that each counterparty, and any person acting on behalf of a counterparty, have access to all data relating to its transaction in a timely manner and for the duration of the transaction.

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 Model TR Rule (including open positions, volume, number of transactions, and price). It is expected that a designated trade repository will provide aggregate derivatives data by notional amounts outstanding and level of activity. Such data is anticipated to be available on the designated trade repository's website.

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

- currency of denomination (the currency in which the derivative is denominated);
- geographic location of the underlying reference entity (e.g., 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 ranges (broken down into maturity ranges, such as less than one year, 1-2 years, 2-3 years); and
- geographic location and type of counterparty (e.g., the United States, end user).

¹⁶ See report entitled “Authorities’ Access to TR Data” available at <http://www.bis.org/publ/cpss108.pdf>.

(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 Model TR Rule. For transactions where at least one counterparty is a dealer, such data must be publicly reported by the end of the day following the transaction being submitted to the designated trade repository. For transactions where neither counterparty is a dealer, such data must be publicly reported by the end of the second day after the transaction being reported to the designated trade repository. The purpose of the public reporting delays is to ensure that market participants have adequate time to enter into any offsetting transaction that are 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. Paragraph 40(a) provides that the reporting obligation for a physical commodity transaction 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 contracts, including the additional notional value related to that transaction. In calculating this exposure, the notional value of all outstanding transactions, including transactions from all asset classes and with all counterparties, domestic and foreign, should be included. The notional value of a physical commodity transaction would be calculated by multiplying the quantity of the physical commodity by the price for that commodity. A counterparty that is above the \$500 000 threshold is required to act as reporting counterparty for a transaction involving a counterparty that is exempt from the reporting obligation under paragraph 40(a).

This relief applies to physical commodity transactions that are not excluded derivatives for the purpose of the reporting obligation in paragraph 2(d) of Model Rule – *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

42. (2) Where the counterparty is a dealer or clearing agency, subsection 42(2) provides that no reporting is required until 6 months after the provisions of the Model TR Rule applicable to designated trade repositories come into force.

(3) For non-dealers, subsection 42(3) provides that no reporting is required until 9 months after the provisions of the Model TR Rule applicable to designated trade repositories come into force. This provision only applies where both counterparties are non-dealers. Where the counterparties to a transaction are a dealer and a non-dealer, the dealer will be required to report according to the timing outlined in subsection 42(2).

(4) Subsection 42(3) provides that no reporting is required for pre-existing transactions that terminate or expire within 365 days of the date the provisions of the Model TR Rule applicable to designated trade repositories come into force.

APPENDIX B

To CSA Staff Notice 91-302 - *Updated Model Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data*

COMMENT SUMMARY AND CSA RESPONSES

1. The Scope Rule

Section Reference	Issue/Comment	Response
General Comments	Two commenters urged the Committee to expressly provide that exchange-traded derivatives are excluded from the definition of “derivative”.	Change made. See new para. 2(g) of the Scope Rule which excludes a derivative traded on certain prescribed exchanges from the definition of “derivative”. We note this change was necessary in Ontario because although commodity futures contracts and commodity futures options are excluded from the definition of “derivative” in the <i>Securities Act</i> (Ontario), other types of exchange-traded derivatives exist. Such exchange-traded derivatives will not be characterized as “derivatives” as a consequence of the application of para. 2(g) of the Scope Rule.
	One commenter suggested that repurchase transactions or reverse repurchase transactions should be explicitly excluded from the definition of “derivative”.	No change. We believe an explicit exclusion for repurchase transactions or reverse repurchase transactions is unnecessary and would cause confusion because these products are not typically considered to be derivatives in the marketplace.
Para. 2(a) - Gaming	Three commenters expressed concern that gaming contracts not regulated by gaming control legislation in Canada should be explicitly excluded from the definition of “derivative”.	Change made. See new subpara. 2(a)(ii) of the Scope Rule which provides that gaming contracts or instruments regulated by gaming control legislation of a foreign jurisdiction will be excluded from the definition of “derivative” if the contract was entered into outside Canada, is not in violation of Canadian law and would be regulated under Canadian gaming control legislation if it had been entered into in Canada.
Para. 2(b) - Insurance	Five commenters pointed out that in certain situations Canadian entities may enter into an insurance or annuity contract with a foreign insurer not licensed in Canada. For example, a Canadian entity may enter into an insurance contract with a foreign insurer to insure a risk outside of Canada. Commenters suggested that certain insurance contracts issued by foreign insurers should be explicitly excluded from the definition of “derivative”.	Change made. See new subpara. 2(b)(ii) of the Scope Rule which provides that insurance or annuity contracts entered into with an insurer licensed in a jurisdiction outside of Canada will be excluded from the definition of “derivative” if the insurance or annuity contract would be regulated as insurance under Canadian insurance legislation if it had been entered into in Canada.
	Two commenters requested additional clarification that reinsurance will not be treated as a derivative.	Change made. Additional clarification has been added to the Scope CP which provides that, to the extent that reinsurance falls within the exemption in para. 2(b) of the Scope Rule, it will be treated as an insurance or annuity contract under that paragraph.
Para. 2(c) – FX Spot Transactions	Three commenters suggested that the Scope Rule should exclude from the definition of “derivative” all deliverable foreign exchange	No change. We believe that deliverable foreign exchange forward transactions that are not settled within the timelines prescribed in

Section Reference	Issue/Comment	Response
	<p>forward contracts provided that there is an intention to physically deliver.</p>	<p>subpara. 2(c)(i) should be treated as derivatives under the Scope Rule for the purposes of trade reporting. We note that the United States and Europe are similarly requiring the reporting of deliverable foreign exchange forward transactions. We intend to revisit the treatment of deliverable foreign exchange forward transactions for other derivatives regulatory requirements such as clearing and margin requirements.</p>
	<p>One commenter suggested that non-deliverable foreign exchange forward transactions be excluded from the definition of “derivative”.</p>	<p>No change. Our view is that non-deliverable foreign exchange forward transactions should be treated as a “derivative”.</p>
	<p>A number of commenters pointed out that in certain situations foreign exchange transactions are entered into in order to hedge foreign currency risk in connection with the purchase of equity securities. Typically, the settlement cycle for most non-US denominated securities is trade date plus three days. The commenters were concerned that the current two day settlement requirement under subpara. 2(c)(i) of the Scope Rule would prevent these transactions from being excluded for the definition of “derivative”.</p>	<p>Change made. See new clause 2(c)(i)(B) of the Scope Rule which allows for settlement of deliverable foreign exchange forward transactions after two days provided such settlement coincides with the settlement of a related securities trade denominated in the underlying currency.</p>
<p>Para. 2(d) – Non-Financial Commodities</p>	<p>A number of commenters raised concerns with the term “physical commodity”. Two commenters questioned whether intangible products (such as carbon offset credits, environmental attributes and biofuel components) will be treated as physical commodities.</p>	<p>Change made. See amendment to para. 2(d) of the Scope Rule which removes the term “physical commodity” and replaces it with the phrase “commodity other than cash or currency”. The corresponding guidance in the Scope CP also specifies that intangible commodities such as carbon credits and emission allowances will be considered to be non-financial commodities.</p>
	<p>A number of commenters raised concern regarding the requirement under subpara. 2(d)(ii) of the Scope Rule that, in order to be excluded from the definition of “derivative”, amongst other things, physical commodity contracts must not allow for cash settlement in place of physical delivery. Commenters provided a number of examples of current transactions terms and market practices that permit some form of cash delivery in lieu of physical settlement, including:</p> <ul style="list-style-type: none"> • A number of commenters pointed out that parties to physical commodity forward transactions commonly enter into book-out transactions. A book-out transaction is a subsequent, separately negotiated agreement whereby the purchaser under the original agreement sells some or all of the commodity back to the same counterparty or a third-party. The commenters raised concerns that these transactions may result in physical commodity transactions being improperly classified as “derivatives” as they would be considered to be cash settled under subpara. 2(d)(ii). 	<p>Change made. See amended para. 2(d) and accompanying guidance in the Scope CP which permits cash settlement where physical settlement is rendered impossible or commercially unreasonable as a result of events not reasonably within the control of the parties.</p> <p>Additional guidance has also been provided in the Scope CP outlining our position on the intention requirement in subpara. 2(d)(i). We take the view that a netting provision will not, in and of itself, be evidence of an intention not to settle by delivering the relevant commodity.</p>

Section Reference	Issue/Comment	Response
	<ul style="list-style-type: none"> • Two commenters expressed concern that netting arrangements may result in physical commodity transactions being improperly classified as “derivatives” as they would be considered to be cash settled under subpara. 2(d)(ii). The commenters pointed out these arrangements are standard industry practice and allow counterparties with offsetting delivery obligations to deliver just the net amount of commodity obligated to be transferred between the counterparties. • One commenter noted that standard industry contracts such as Gas Electronic Data Interchange Base Contract for Sale and Purchase of Natural Gas and North American Energy Standards Board Base Contract for the Purchase and Sale of Natural Gas contemplate cash settlement in place of physical delivery for reasons other than breach of contract, termination, or impossibility of delivery. • Four commenters pointed out that the Scope Rule does not discuss contracts having an optional-pricing component, such as contracts which include floor or ceiling pricing provisions. These commenters were concerned that using optional-pricing may result in the contract being considered to be cash settled and treated as a “derivative”. • One commenter requested clarification as to whether power purchase agreements will be treated as derivatives under the Scope Rule. As power purchase agreements may include a take or pay option which in the event that the utility decides to not take full delivery of electricity there may be a requirement to compensate the producer for lost revenue due to reduced production. 	
Para. 2(d) – Physically Settled Commodity Transactions	One commenter requested that transactions between provincially-owned utility companies and the Province owning such utility company should be excluded from the definition of “derivative”.	No change. The Scope Rule has not been amended to deal specifically with these types of transactions although exemptions may be considered on a case-by-case basis.

2. The TR Rule

Section Reference	Issue/Comment	Response
General Comments	One commenter suggested that there should be an explicit recognition that trade repositories and other service providers may not “tie” or “bundle” mandatory services with the trade repository function. It was argued that bundling of a mandated service with other mandated or ancillary services will only serve to limit reporting party choice and potentially result in data fragmentation as data is sent to multiple repositories complicating the ability of regulators or the public to get a comprehensive view of the	Change made. See new para. 13(2)(d) of the TR Rule which provides that designated trade repositories will not require the use or purchase of another services for a person to utilize the trade reporting service.

Section Reference	Issue/Comment	Response
	market or a single firm's exposures in any one place.	
	A number of commenters suggested that the TR Rule should address the extent to which reporting derivatives data pursuant to foreign rules would satisfy the reporting requirements under the TR Rule. They argued that such "substituted compliance" should be allowed as long as the foreign jurisdiction has a reporting regime substantially similar to the reporting regime in the "home Province".	We agree that where a transaction has been reported to a designated trade repository pursuant to the rules of an equivalent jurisdiction, an exemption from reporting under the TR Rule will be considered where the foreign report contains all of the information otherwise required to be reported under the TR Rule. Such situations will be considered on a case-by-case basis under the exemption power in s. 41 of the TR Rule or any other applicable provision under securities or derivatives legislation.
	Two commenters suggested that a system of reciprocity or recognition be developed to allow for a Trade Repository that is designated in any province to be automatically deemed designated in all provinces – "passport system". It was suggested that a principal regulator model should be implemented, similar to that used to determine a principal regulator for registrants and for reporting issuers.	No change. This issue is outside of the scope of the TR Rule.
S. 1 "Local Counterparty"	A number of commenters raised concerns that the definition of "local counterparty" is too broad and has extra-territorial implications. Particular concern was raised that paras. (c), (d), (e) and (f) may capture transactions where there is either no or insufficient connection to Canada.	Change made. See amended definition of "local counterparty" in subsection 1(1) of the TR Rule. The amended definition includes parties to a transaction where (a) the party is a person or company, other than an individual, organized under the laws of Ontario or that has its head office or principal place of business in Ontario, (b) the party is registered as a dealer or subject to regulations providing that a person or company trading in derivatives must be registered in a category of registration prescribed by the regulations, or (c) the party is an affiliate of a person or company described in paragraph (a) or (b), and such person or company is responsible for the liabilities of such affiliated party.
S. 2 – Initial filing and designation	One commenter suggested that the requirement that the applicable local securities regulator have access to the trade repository's books and records should be limited to matters that directly fall within the regulatory ambit of the local regulator.	Change made. The requirement to provide access to the trade repository's books and records is intended to be limited to matters that directly fall within the regulatory ambit of the local regulator. See amendment to s. 5 of Exhibit A of Form F1 which removes the requirement that an applicant obtain a legal counsel opinion stating that the trade repository will be able to provide prompt access to "data that is required to be reported to the trade repository".
	One commenter suggested that to provide greater legal certainty there should be more precise wording in para. 2(3)(b) to require applicants located outside of a province to certify that it "has the power and authority", not just "is able", to provide access to the regulator of its books and records.	Change made. See amendment made to subsection 2(3) and the certificate in Form F1. The phrase "is able" is replaced by "has the power and authority".

Section Reference	Issue/Comment	Response
S. 3 – Change in Information	One commenter argued that the requirement to provide 45 days' advance notice of a significant change to Form F1 information is too onerous and in practice will be difficult to comply with.	No change. We believe that 45 days prior notice of significant changes is necessary in order for the Commission to address any potential concerns that may arise with such changes.
S. 23 – Confirmation of Data and Information	<p>Three commenters supported the position that where a transaction is cleared through a clearing agency or traded on an exchange such clearing agency or exchange should be required to confirm the accuracy of any data required to be submitted to a trade repository. One commenter suggested that there be no confirmation requirement where derivatives data is reported by a clearing agency or exchange.</p> <p>Two commenters pointed out that placing an obligation on the trade repository to confirm data without placing a corresponding obligation on counterparties to provide such data would make it very difficult for a trade repository to fulfill its obligation.</p> <p>Two commenters took the position that requiring both counterparties to confirm the accuracy of derivatives data placed an unnecessary administrative and compliance burden on end-users.</p>	Change made. See new subsection 23(2) of the TR Rule which provides that a designated trade repository will only be required to confirm the accuracy of derivatives data with counterparties that are participants of the designated trade repository. Since clearing agencies, exchanges and dealers that will report derivatives data to a designated trade repository will be required to be participants of such designated trade repository, they will be required to confirm derivatives data. The designated trade repository will only be obligated to confirm the accuracy of derivatives data with an end-user if the end-user is a participant of the trade repository.
S. 25 – Duty to Report	Three commenters took the position that requiring end-users or non-dealer counterparties to report derivatives data is overly burdensome. Commenters pointed to the fact that dealers will have systems in place for such reporting while end-users will bear substantial costs to develop such expertise and logistic capabilities.	No change. We agree that dealers are in a better position to report transactions than end-users. However, in situations where the dealer is foreign, the Commission may not have jurisdiction over such an entity. As such, the ultimate reporting obligation must fall on a local counterparty. Where a transaction is between two end-users it would be expected that at least one of the counterparties would have reporting capabilities.
S. 26 – Pre-existing Derivatives Data	<p>A number of commenters raised concerns that the requirement to report derivatives data for pre-existing transactions will be problematic since not all information will be readily available to counterparties (for example, counterparties will not likely have in their possession certain creation data).</p> <p>One commenter pointed out that certain pre-existing transactions involving local-counterparties will have already been reported in the United States. They argued that it would be inefficient and costly to re-report such transactions or to require that additional information be provided for transactions which have already been reported.</p>	<p>Change made. The fields required to be reported for pre-existing transactions have been reduced. See column entitled "Required for Pre-existing Transactions" in Appendix A.</p> <p>We agree that where a transaction has been reported to a designated trade repository pursuant to the rules of an equivalent jurisdiction, an exemption from reporting under the TR Rule should be considered when the foreign report contains all of the information otherwise required to be reported under the TR Rule. Such situations will be considered on a case-by-case basis under the exemption power in s. 41 of the TR Rule or any other applicable provision under securities or derivatives legislation.</p>

Section Reference	Issue/Comment	Response
S. 27 – Reporting Counterparty	A number of commenters supported the position that where a transaction is cleared through a clearing agency, such clearing agency should be required to report any data required to be submitted to a trade repository.	Change made. See new para. 27(1)(a) of the TR Rule which provides that where a transaction is cleared, the clearing agency will be responsible for reporting derivatives data.
	Four commenters requested that the term “derivatives dealer” be defined in the TR Rule.	Change made. See new definition for “dealer” under subsection 1(1) which specifies that a “dealer” means a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives as a principal or agent.
S. 28 – Real-time Reporting	Three commenters suggested that it would be very difficult and costly for end-users to comply with a real-time reporting requirement. It was suggested that additional time be given for end-users reporting derivatives data.	No change. We note that the TR Rule and the accompanying TR CP already provides for a delay where reporting in real time is not technologically practicable.
	One commenter noted that the TR Rule does not contemplate circumstances where the trade repository ceases its operations or stops accepting data for a certain product. It was suggested that in such circumstances the TR Rule should allow a reporting counterparty a reasonable period of time to transition to another trade repository without contravening the timing requirements under s. 28 of the TR Rule provided that the reporting counterparty provides a copy of any notice it receives from the trade repository informing parties that it will be ceasing operations or stop accepting data for a certain product.	Change made. See amendment to subsection 28(3) of the TR Rule.
S. 30 – Legal Entity Identifier	Two commenters suggested that if the Global Legal Entity Identifier System is unavailable when the TR Rule comes into force other existing industry identifiers should be permitted to be used as a substitute pursuant to para. 30(3)(a) of the TR Rule (for example, CFTC Interim Compliant Identifiers, Bank Identifier Codes, etc.)	Change made. See amendments to subsection 30(3) of the TR Rule which allows for the use of substitute legal entity identifiers provided they comply with the standards established by the LEI Regulatory Oversight Committee for pre-LEI identifiers. Substitute legal entity identifiers which adhere to the requirements set by the LEI Regulatory Oversight Committee will in all likelihood convert to legal entity identifiers in their same form and will avoid the need for extensive mapping exercises.
S. 31 – Unique Transaction Identifier	Two commenters noted that unique transaction identifiers are commonly created by clearing agencies and exchanges. It was suggested that the TR Rule be amended to take into account such market practices.	Change made. See amendments to subsection 31(2) of the TR Rule which permits the use of unique transaction identifiers previously assigned by a clearing agency or an exchange.
S. 34 – Life-cycle Data	Two commenters suggested that reporting counterparties be given the option of reporting life-cycle events through an end-of-day snapshot data report. Under this approach, lifecycle events that occur during the day would be aggregated to show the final position at the end of the day.	Change made. See amendments to s. 34 of the TR Rule which permits the reporting of life-cycle data at the end of the business day that such life-cycle event occurred.

Section Reference	Issue/Comment	Response
S. 35 – Valuation Data	Two commenters suggested that the TR Rule should expressly provide that valuation data should be reported using the most current daily mark available. They noted that it is market standard that valuations of transactions are performed overnight and accordingly, the valuation data for a transaction will be first reported on the business day following the transaction date.	Change made. See amendment to para. 35(2)(a) of the TR Rule which requires the reporting of valuation data daily using industry accepted valuation standards and relevant closing market data from the previous trading day.
	One commenter pointed out that para. 35(2)(a) requires valuation data reporting by “each local counterparty if that counterparty is a derivatives dealer”. Where both parties are dealers, this paragraph would seem to unnecessarily obligate both of them to do the reporting, despite an arrangement between them that one would be the reporting counterparty. It was recommended that the wording be changed such that the reporting is done by the reporting counterparty where at least one of the counterparties is a dealer.	No change. Having two derivative dealers report valuation data is useful from a regulatory perspective as it allows for the relevant Commission to have access to two valuation data points for the same transaction.
S. 36 – Record of Data Reported	A number of commenters requested that the 7 year retention period be lowered to 5 years in order to comply with international practice.	No change. The seven year retention period is common practice in Canada and is in line with timing requirements under the <i>Limitations Act 2002</i> (Ontario).
	Three commenters cautioned that it would be overly burdensome for local counterparties to retain all transaction records particularly where they are not acting as reporting counterparty.	Change made. See amendments to subsection 36(1) of the TR Rule which only requires the reporting counterparty to keep records in relation to a transaction. The non-reporting counterparty has no obligation to retain any transaction records.
	Two commenters suggested that clarification is needed with respect to what is required to be retained – whether it is simply whatever records a local counterparty has relating to the transaction, or whether it is all the information that has been reported to the trade repository under the TR Rule.	Change made. See amendment to subsection 36(1) of the TR Rule which requires the reporting counterparty to keep records of a transaction.
S. 37 – Data available to Regulators	One commenter pointed out that a number of foreign jurisdictions place restrictions on the counterparty details that may be reported to a trade repository under local data protection and confidentiality laws. It was suggested that either (1) the reporting obligations be exempt where such conflicts exist or (2) reporting counterparties be permitted to mask confidential data in their reports where necessary.	No change. We note that this issue is currently being addressed at the international level. To the extent that a reporting counterparty encounters obstacles complying with the TR Rule as a result of foreign confidentiality laws, exemptions may be available on a case-by-case basis under the exemption power in s. 41 of the TR Rule or any other applicable provision under securities or derivatives legislation.
S. 38 – Data available to Counterparties	Two commenters pointed out that the consent provided under subsection 38(3) is limited to the release by the trade repository to counterparties to the transaction of the data relevant to that transaction only. The consent does not cover the initial disclosure by a counterparty to the transaction under its obligation to report derivatives data to a trade repository under s. 25, disclosure by the trade repository to regulators	Change made. See amendment to subsection 38(3) of the TR Rule which deems consent of a counterparty for all data required under the Rule.

Section Reference	Issue/Comment	Response
	under s. 37 or disclosure to the public under s. 39.	
	One commenter recommended that s. 38 expressly include the imposition of timely requirements of the trade repository to make data available to the transacting counterparties.	Change made. Subsection 38(1) of the TR Rule has been amended to require timely access to derivatives data by counterparties.
S. 39 – Data available to the Public	Many commenters were concerned that the requirement under subsection 39(3) to publicly provide data regarding the principal economic terms of a transaction does not go far enough to ensure confidentiality and anonymity of the derivatives data.	Change made. The fields required to be publically disseminated have been reduced. See “Required for Public Dissemination” in Appendix A.
	Two commenters suggested that the TR Rule specify that the trade repository must not publicly disseminate inter-affiliate transaction data.	Change made. See new subsection 39(6) which exempts transactions between affiliates from public reporting. We agree that reporting inter-affiliate transactions may skew pricing information and note that the United States also exempts public reporting of these types of transactions.
	Four commenters questioned how data regarding block trades would be made available to the public. They argued that the current time frame under subsection 39(3) is not enough time in certain circumstances for a party to hedge its position in the market.	No change. The TR Rule has not been amended to deal specifically with these block trades. Exemptions may be considered on a case-by-case basis under the exemption power in s. 41 of the TR Rule or any other applicable provision under securities or derivatives legislation.
S. 40 – Exemption	Three commenters pointed out that the term physical commodity transaction is not defined in the TR Rule and that physical commodity contracts are excluded from the definition of “derivative” under the Scope Rule. Further guidance was requested as to what types of physical commodity transactions this exemption applies to.	Change made. See amendment to TR CP which clarifies that the provision applies to all un-exempted physical commodity transactions.

3. List of Commenters

1. Alternative Investment Management Association
2. BC Hydro
3. BP Canada Energy Group ULC
4. Canadian Bankers Association
5. Canadian Electricity Association
6. Canadian Life and Health Insurance Association Inc.
7. Canadian Market Infrastructure Committee

8. Canadian Oil Sands Limited
9. Capital Power Corporation
10. Central 1 Credit Union
11. The Depository Trust & Clearing Corporation
12. Deutsche Bank AG, Canada Branch
13. Direct Energy Marketing Limited
14. Encana Corporation
15. Fidelity Investments Canada ULC
16. FIRMA Foreign Exchange Corp.
17. FortisBC Energy Inc.
18. Global Foreign Exchange Division
19. ICE Trade Vault, LLC
20. International Swaps and Derivatives Association, Inc.
21. Investment Industry Association of Canada
22. Just Energy Group Inc.
23. MarkitSERV LLC
24. Mouvement des caisses Desjardins
25. Natural Gas Exchange Inc.
26. Ontario Teachers' Pension Plan
27. Pension Investment Association of Canada
28. RBC Global Asset Management Inc.
29. SaskPower
30. Shell Energy North America (Canada) Inc./Shell Trading Canada
31. State Street Global Advisors, Ltd.
32. Stewart McKelvey
33. Stikeman Elliott LLP
34. Suncor Energy Inc.
35. TransAlta Energy Marketing Corp.