ANNEX A

SUMMARY OF COMMENTS AND RESPONSES
to
Proposed Multilateral Instrument 91-101 *Derivatives: Product Determination* (the Proposed Product Determination Rule) and Proposed Companion Policy 91-101 *Derivatives: Product Determination* (the Proposed Product Determination CP)
and
Proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the Proposed TR Rule) and Proposed Companion Policy 96-101 *Trade Repositories and Derivatives Data Reporting* (the Proposed TR CP)

1. Proposed Product Determination Rule and Proposed Product Determination CP

Section or Reference	**Comment Summary**	**Response**
Q. 1 – Does the Proposed Product Determination CP provide sufficient clarity as to the contracts and instruments that are subject to trade reporting?		
Q. 1	Two commenters appreciated the additional explanatory guidance provided in the Proposed Product Determination CP and felt that it provides sufficient clarity.	No change required. We thank the commenters for their submissions.
S. 2 – Excluded derivatives		
s. 2(1)	One commenter urged the Authorities to copy the CFTC and SEC approaches in further defining a derivative to provide an interpretation regarding the applicability of the exclusion in either paragraph 2(1)(c) (foreign exchange contracts) or 2(1)(d) (commodity contracts) from the derivative definition in the particular province. One commenter encouraged implementation of a system for submitting a request to the regulator to provide an interpretation of whether the exclusion in paragraph 2(1)(c) or paragraph 2(1)(d) would apply to a particular instrument.	No change. We believe that the Product Determination CP provides adequate guidance on the applicability of the exclusions under paragraphs 2(1)(c) and 2(1)(d) of the Product Determination Rule. No change. The suggested approach does not reflect the practice of the Authorities.
S. 2(1)(d) –	A number of commenters appreciated the additional	No change. We believe that the Product Determination

Commodities contracts	guidance in the Proposed Product Determination CP, but urged additional clarity relating to physically delivered commodity contracts, including with respect to the intention element.	CP provides adequate guidance with respect to the intention of the counterparties.
	One commenter noted that the nuances of certain commodity contracts structured to achieve balance in the supply and demand of the commodity and for risk management purposes do not easily fit into the exclusion in s. 2(1)(d). One commenter suggested transferring some wording from the Proposed Product Determination CP into the Proposed Product Determination Rule to provide additional clarity and commercial certainty with respect to the contracts and instruments that are or are not subject to trade reporting. The commenter suggested adding the following words to section 2(1)(d) of the Proposed Product Determination Rule: "or where cash settlement of a physical commodity contract 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." One commenter expressed a concern that the discussion of the application of s. 2(1)(d) in the Proposed Product Determination CP could suggest that standard termination provisions in a physical commodity contract could result in the contract not qualifying for the carve out from trade reporting requirements and recommended that additional clarification be provided in the Proposed Product Determination CP.	No change. We believe that the Product Determination CP provides adequate guidance with respect to the contracts excluded under the Product Determination Rule.

S. 2(1)(d)(i) – *Intention requirement*	One commenter noted the importance of book-outs for physical commodity market participants to manage risk, including in the natural gas and electricity markets, and recommended excluding book-outs from the requirements in the TR Rule.	No change. We believe that the Product Determination CP provides adequate guidance with respect to book-outs.
	One commenter noted that book-outs provide flexibility for utility end-users in managing customer load variability and costs. The commenter was concerned with the reference to the frequency of delivery (rather than cash settlement) as a factor in inferring the intention of the counterparties.	No change. The Authorities believe that the frequency with which a counterparty to a physical commodity contract makes or takes delivery is one of a number of factors that are relevant to determining the intention of the counterparty at the time of entering into a transaction.
Q. 2 – The Proposed Product Determination Rule and Proposed Product Determination CP indicate that options to purchase commodities are derivatives but that certain optionality embedded in an agreement to purchase commodities for future delivery will not, in itself, result in the agreement being a derivative. Do you agree with this approach?		
Q. 2	A number of commenters supported the notion that optionality embedded in a physical commodity contract should not, in itself, result in the contract or instrument being a reportable derivative.	No change. We thank the commenters for their submissions.
S. 2(1)(d) – *Intention requirement: embedded optionality and physically settled options*	A number of commenters sought clarification whether certain types of contracts were excluded:	
	• Variable quantity contracts (e.g., peaking contracts), including for zero-volume optionality, which may include a premium for the flexibility afforded though an additional premium included in the price for the volumes ultimately delivered or as an up-front premium or reservation fee. • Contracts for physical delivery of a commodity that provide for embedded optionality where the dominant characteristic of the arrangement is for physical delivery.	Change made. The Product Determination CP contains additional guidance with respect to embedded optionality and physically-settled commodity options.

	• Contracts that provide for a true-up mechanism. • Physical option contracts, where physical delivery (or purchase) of an agreed-upon quantity of a commodity is required upon election by the other counterparty or by occurrence of an external condition precedent, with no option to settle by cash or any other means.	
	• Power pool contracts, where cash settlement is not allowed in place of the statutory requirement to exchange electricity through the pool. • Retail electricity contracts which oblige the retailer to arrange for delivery of the electricity through the power pool to the customer's meter through the electricity system and for the customer to accept and pay for the electricity.	Change made. The Product Determination CP provides additional guidance with respect to regulated pool arrangements.
	A number of commenters requested clarification of the phrase "achieve an economic outcome that is, or is akin to, an option".	Change made. This phrase has been removed from the Product Determination CP.
S. 2(1)(d)(ii) – *Settlement by delivery except where impossible or commercially unreasonable*	One commenter expressed a concern that the Proposed Product Determination CP guidance on s. 2(1)(d)(ii) is confusing, as force majeure clauses typically relieve a party from any performance obligation.	No change. We believe that the Product Determination CP provides adequate guidance with respect to excluded contracts.
S. 2(1)(g) – *Exchange-traded derivatives*	One commenter proposed that block trades that are transacted subject to the rules of an exchange and disclosed to regulators in the same manner as screen-traded derivatives transactions be included in the carve-out for exchange-traded derivatives.	Change made. The Product Determination CP contains additional guidance interpreting "traded on an exchange" to include a contract that is made pursuant to the rules of an exchange and reported to the exchange after execution.

	One commenter sought clarification that a futures contract resulting from an off-facility future or an Exchange for Related Position (EFRP) is not required to be reported.	No change. We believe that the Product Determination Rule and CP provide adequate guidance with respect to excluded contracts.
	One commenter recommended that trades of "Ancillary Services" related to the distribution of electricity in Alberta executed on WattEx should be considered to be exchange-traded and therefore not subject to trade reporting.	No change. We believe that the Product Determination Rule and CP provide adequate guidance with respect to excluded contracts.
Proposed Product Determination CP – ***Additional contracts not considered to be derivatives***	One commenter sought confirmation that natural gas storage contracts fit the description of provision of a service, and therefore are not derivatives as defined in the Securities Act.	No change. We believe that the Product Determination Rule and CP provide adequate guidance with respect to excluded contracts, and note that the Product Determination Rule applies only to the TR Rule at this time.
	One commenter encouraged moving the list of "Additional contracts not considered to be derivatives" from the Proposed Product Determination CP into the Proposed Product Determination Rule to provide greater clarity and certainty.	No change. We believe that the Product Determination Rule and CP provide adequate guidance with respect to excluded contracts.
Q. 3 – In New Brunswick, Nova Scotia and Saskatchewan the definition of derivative specifically excludes a contract or instrument if the contract or instrument is an interest in or to a security and a trade in the security under the contract or instrument would constitute a distribution. In these provinces these contracts or instruments are defined as securities. Is the inclusion of (former) subsection 3(6) necessary given that these provinces have such a carve-out?		
Q. 3	One commenter submitted that the inclusion of s. 3(6) is necessary so that market participants would not have to refer to their applicable Securities Act.	Change made. We have taken this comment into consideration, but have removed the provision as it is redundant. We note that former s. 3 has been collapsed into s. 2.

2. Proposed TR Rule and Proposed TR CP

Section or Reference	Comment Summary	Response
General (unassigned)		
Harmonization	One commenter urged harmonization of trade reporting requirements in all Canadian jurisdictions. One commenter stressed the importance of harmonizing definitions (such as "derivative" and "security") in each Canadian jurisdiction, as participants operate on a national basis and derivatives cross provincial borders on a regular basis.	We thank the commenters for their submissions, and continue to work with our CSA colleagues to reach appropriate harmonization on the requirements and exemptions under the TR Rule. However, we note that statutory harmonization is outside the scope of the Instruments.
Inter-affiliate derivatives reporting	A number of commenters urged that derivatives between affiliated entities not be subject to derivatives trade reporting requirements, for reasons that include: (i) such derivatives do not create systemic risk; (ii) reporting of inter-affiliate derivatives would result in an end-user being the reporting counterparty for its inter-affiliate derivatives, with the resulting financial burden associated with reporting; (iii) the limited and conditional No-Action Relief for inter-affiliate derivatives under CFTC jurisdiction in the U.S. One commenter suggested that the test for an inter-affiliate exemption from reporting should be with respect to ownership as financial reporting requirements may exist that could complicate a test based on financial reporting practices.	No change. We direct the commenters to proposed amendments to the Local TR Rules in Manitoba, Ontario and Québec and note that we anticipate publishing corresponding proposed amendments in the near future. We have taken these comments into consideration and are working with our CSA colleagues towards a harmonized approach to inter-affiliate derivatives reporting.

Part 1 – Definitions and interpretation		
S. 1 – Definitions and interpretation		
"derivatives dealer"	A number of commenters noted concerns with the definition of derivatives dealer in the TR Rule and urged greater clarity with respect to: • the jurisdiction in which an entity must be "engaging in the business of trading in derivatives"; • the concept of "engaging in the business of trading in derivatives"; • whether the derivatives dealer concept will be applied on a transaction-specific basis or more generally based on the entity's collective business activities; One commenter noted that concepts applicable to securities markets, such as the concept of being "in the business of trading in derivatives" and elements determinative of securities dealing activity, when applied with only nominal changes to elements intended to be determinative of derivatives dealing activity, are poorly suited to derivatives markets, which are fundamentally different from securities markets.	Change made. Additional guidance has been added to the TR CP in the guidance relating to the definition of "derivatives dealer" with respect to: • the jurisdiction in which an entity conducts activities of a derivatives dealer; • the factors to be considered in determining whether an entity is a derivatives dealer for the purpose of the TR Rule; • a holistic consideration of an entity's activities, rather than a transaction-specific approach, to determine whether an entity is a derivatives dealer for the purpose of the TR Rule.
	One commenter indicated that a de minimis exemption from qualification as a derivatives dealer should be included in the discussion of factors to consider when determining whether an entity is a derivatives dealer for the purpose of the trade reporting rule.	No change. The objective of determining whether an entity is a derivatives dealer for the purpose of the TR Rule is to assign the reporting obligations to the more sophisticated counterparty. We do not believe that a de minimis exemption from the concept of "derivatives dealer" in the TR Rule will help to achieve that objective.

"local counterparty"	*Exclusion of "derivatives dealer"* A number of commenters supported the exclusion of derivatives dealers from the definition of local counterparty in the TR Rule. Comments were mixed on whether the exclusion may lead to uncertainty in whether a foreign counterparty that is the derivatives dealer for the derivative would be required to act as the reporting counterparty.	Change made. "Derivatives dealer" has been reinserted into the definition of "local counterparty" to harmonize with the corresponding definition in the local TR Rules in Manitoba, Ontario and Québec. At the same time, the Authorities believe that derivatives data relating to derivatives that do not involve a resident counterparty is not necessary to further our respective mandates. New section 42 excludes such derivatives from the reporting requirements.
	Affiliates One commenter requested that additional guidance be provided in relation to the concept of "guaranteed affiliate" referenced in the "local counterparty" definition. In particular does the "all or substantially all" refer to all liabilities, liabilities relating to derivatives trades, derivatives obligations on a trade-by-trade or counterparty-by-counterparty basis or something else? One commenter suggested revising the phrase to "responsible for the liabilities related to derivative trading".	Change made. The "all or substantially all" language has been moved from the TR CP into the TR Rule. We are of the view that the phrase "all or substantially all of the liabilities of the counterparty" provides sufficient clarity with respect to the extent of the guarantee expected.
	Inclusion of Individual One commenter submitted that the inclusion of "individual" is a significant divergence from the Local TR Rules and will cause significant new compliance costs for market participants.	Change made. "Individual" has been removed from the definition of "local counterparty" to harmonize with the corresponding definition in the local TR Rules in Manitoba, Ontario and Québec.
"reporting clearing	One commenter expressed concern arising from the use of the term "reporting clearing agency":	

	• There should be certainty for clearing agencies that when they assume the role of a reporting clearing agency in a province that they will not be subject to any obligations beyond those prescribed in the TR Rules.	No change. Obligations on clearing agencies operating in a jurisdiction are set out in the securities legislation of the jurisdiction and in any recognition or exemption order granted by the Authority.
	• The Authorities should maintain a list of clearing agencies that are recognized, exempted or have provided a written undertaking, to provide greater transparency with respect to which clearing agencies have officially assumed the role of a reporting clearing agency. • There may be gaps in the reporting of cleared derivatives, as a clearing agency that is not recognized or exempted in the jurisdiction is not obligated to accept the role of a reporting clearing agency.	No change. We believe that counterparties to cleared derivatives should ascertain from the clearing agency whether the clearing agency intends to comply with its obligations under the TR Rule. We note that the website of each Authority contains information about clearing agencies that have been recognized or exempted from recognition in the jurisdiction.
	• Neither a prescribed form nor specifications for a written undertaking to be provided by the clearing agency is included in TR Rule or the TR CP. The undertaking may not be necessary, as clearing agencies are voluntarily fulfilling the role of the reporting clearing agency under the Manitoba and Quebec Local TR Rules, without such an agreement.	No change. The Authorities will monitor compliance with the reporting obligations under the TR Rule and determine whether changes are necessary.
"affiliated entity" and **"control"**	One commenter strongly urged a singular, broad definition of affiliated entity across all of the derivatives rules in Canada, including in the trade reporting rules for determining local counterparty status or in the context of an inter-affiliate exemption. Absent harmonization, the derivatives of a pair of counterparties may be subject to public reporting under one province's rule and not the other.	We continue to work with our CSA colleagues to reach harmonization on definitions, including the definition of "affiliated entity" for the purpose of the TR Rule and other OTC derivatives rules.

	One commenter submitted that absent harmonization, a reporting counterparty would have no choice but to obtain and rely on a representation from its counterparties with respect to their status as an affiliate under the relevant local counterparty definition without certainty as to whether provincial distinctions have been appropriately considered.	We understand that reporting counterparties must rely on representations made by their non-reporting counterparties, with respect to a number of elements of the reporting requirements.
	With respect to agreeing to a harmonized definition of affiliate, we received the following comments: • A number of commenters supported the proposed definition. • One commenter submitted that a wider definition of affiliate is preferable, as corporate structures may involve a variety of entities for tax purposes. • One commenter submitted that the definition of affiliated entity in the TR Rule seems to be sufficiently broad as it includes both partnerships and trusts. • One commenter appreciated that the definition in the TR Rule does not include the term "deemed", which would imply that other relationships may also be affiliates.	No change. We thank the commenters for their submissions.
Part 2 – Trade Repository Recognition and Ongoing Requirements		
Harmonization and coordinated	Two commenters recommended the Authorities adopt identical recognition requirements to Ontario, Manitoba and Quebec.	No change. A trade repository recognition order granted by an Authority is outside the scope of the TR Rule.

	One commenter urged the Authorities to coordinate the review of trade repository applications, including a single application to for recognition from all of the Authorities. One commenter recommended that the Authorities review and approve trade repositories without a public comment process, in order to shorten the process and contain application costs.	No change. Review of applications for recognition of a trade repository is outside the scope of the TR Rule. No change. An Authority's policy on public comment periods for recognition orders is outside the scope of the TR Rule.
S. 2 – Filing of initial information on application for recognition as a trade repository		
Former s. 2(2)(b)	One commenter recommended allowing trade repositories to file entity-level unaudited financial statements and group-level audited financial statements, consistent with exemptive relief granted in Ontario, Manitoba and Québec.	No change in policy. The Authorities are aware of the exemptive relief granted in relation to trade repository recognition orders in Manitoba, Ontario and Québec. We note that former s. 2(2)(b) has been moved into the TR CP.
S. 3 – Change in information by a recognized trade repository		
S. 3(1)	One commenter recommended that trade repositories be permitted to make immaterial changes to fees with notification the following business day, consistent with practices in Ontario, Manitoba and Québec.	No change. We believe that fee structures and changes to fees may have a significant impact on certain market participants, even where the changes may seem, on the whole, immaterial.
S. 12 – Fees		
S. 12	One commenter recommended clarifying that a trade repository is not expected to disclose confidential, proprietary or competitively-sensitive information on a public website. One commenter emphasized that access and data reporting fees charged by trade repositories should not be material in amount or change significantly from year to year.	No change. We believe that disclosure of fee structures is important because fees and fee structures may have a significant impact on certain market participants.

S. 15 – Communication policies, procedures and standards		
S. 15	One commenter recommended deleting section 15, in the belief that certain data standards should not be forced upon participants for submitting to trade repositories and that trade repositories should not be forced to interconnect to one another.	No change. We note that these requirements are based on the Principles for Market Infrastructures (the "principles"). The TR CP notes that each Authority will consider the principles in its review of a trade repository's application for recognition and in ongoing oversight.
S. 17 – Rules, policies and procedures		
S. 17(6)	One commenter recommended amending or deleting subsection 17(6) to alleviate the requirement to file proposed new or amended rules, policies and procedures for approval unless such changes apply specifically to Canadian participants.	No change in policy. We are of the view that new or amended rules, policies and procedures that do not specifically apply to Canadian participants may still indirectly affect Canadian participants, particularly where those new or amended rules apply to a Canadian participant's counterparties. We note that former s. 17(6) has been moved into the TR CP.
S. 21 – System and other operational risk requirements		
S. 21(8)	One commenter recommended clarifying that a trade repository is not expected to disclose confidential, proprietary or competitively-sensitive information on a public website.	No change. We note that these requirements are based on the principles. The TR CP notes that each Authority will consider the principles in its review of a trade repository's application for recognition and in ongoing oversight.
S. 25 – Reporting counterparty waterfall		
S. 25(1)	A number of commenters submitted that the streamlined reporting counterparty waterfall was clear, elegant and non-convoluted, and that the reporting obligation rests appropriately with the parties best placed to report.	No change. We thank the commenters for their submissions.

	One commenter suggested that additional reporting tie-breakers should be considered, such as threshold-based distinctions, to ensure that the burden is imposed on the appropriate party, particularly in the case of disparate market participants. One commenter suggested clarifying that the non-reporting counterparty has no obligations to verify a report and will not be liable for a reporting counterparty's failures to comply.	No change. We believe that the reporting counterparty waterfall provides sufficient clarity in assignment of the reporting obligations and sufficient flexibility for counterparties at the same level of the hierarchy. No change. We believe that the TR Rule and the TR CP provide adequate guidance with respect to the obligations of reporting and non-reporting counterparties.
S. 25(1)	One commenter suggested a list of which companies are derivatives dealers, advisers, large derivatives participants and end users be maintained to help participants determine their roles in reporting and other obligations under the TR Rule.	No change. We believe that participants in the OTC derivatives market will be able to determine their roles and responsibilities under the TR Rule, including through the use of industry-standard representation letters such as those developed by ISDA and IECA.
S. 25(1)(a)	A number of commenters urged clarification in the TR Rule with respect to reporting responsibilities for cleared derivatives; in particular, the act of submitting a derivative to a clearing agency for clearing should completely discharge any reporting obligation for either counterparty to the original derivative.	No change. We note that reporting obligations with respect to cleared derivatives are being discussed by a number of regulators. We are monitoring these discussions and will determine whether changes are appropriate.
S. 25(1)(b)	A number of commenters were concerned that the reporting waterfall is dependent on appropriately identifying derivatives dealers, and noted the importance of this concept being clear. One commenter was concerned that a foreign entity that otherwise met the definition of derivatives dealer would simply refuse to act as the reporting counterparty to the derivative.	Change made. Additional guidance has been added to the TR CP with respect to the concept of derivatives dealer for the purpose of the TR Rule.

Former s. 25(1)(c)	One commenter urged that the "Canadian financial institution" prong be deleted from the reporting counterparty waterfall, to conform with the waterfall in Ontario Local TR Rule. Another commenter urged that the reference to financial institution be expanded to include foreign financial institutions, as foreign financial entities that may not qualify as a derivatives dealer in a jurisdiction should still bear the burden of trade reporting when transacting with an end-user.	Change made. "Canadian financial institution" has been removed from the TR Rule, including from the reporting counterparty waterfall.
Renumbered s. 25(1)(c)	A number of commenters supported the approach of allowing parties to enter into agreements regarding reporting obligations. Another commenter foresaw no issue with respect to parties at the same level in the reporting counterparty waterfall agreeing on whom will be the reporting counterparty.	No change. We thank the commenters for their submissions.
Renumbered s. 25(1)(d)	One commenter was concerned about potentially inconsistent reporting requirements for two local counterparties who are neither derivatives dealers nor Canadian financial institutions, and do not agree in writing who will report. The commenter suggested that the ISDA methodology in the Ontario TR Rule provides certainty and is well understood by market participants.	No change. The TR CP provides that the ISDA methodology referred to in the OSC Local TR Rule is an acceptable form of agreement. We note that renumbered paragraph 25(1)(d) now refers to "each counterparty".
Former s. 25(4)	A number of commenters expressed concern relating to the proposed requirement for counterparties, who cannot agree as to which will be the reporting counterparty, to each submit the unique transaction identifier (UTI) assigned by the trade repository to the derivative: • The additional burden will create a compliance risk for	Change made. In consideration of comments received and in the interest of harmonization with the Local TR Rules, the proposed provision has been deleted.

	otherwise compliant and reporting parties if the other party fails to, or is unwilling to, provide the requisite information. • The requirement should not apply (i) to parties that report the same UTI as their counterparty, or (ii) where there is only one local counterparty in the applicable province, given that the local regulator will not gain any additional information from the stand-alone UTI report. • The requirement would complicate post-trade processes for non-dealers while doing little to improve the accuracy of UTIs in the regulator's records.	
S. 26 – Duty to report		
S. 26(1)	One commenter sought more information about penalties for non-compliance with reporting requirements, and recommended a grace period following implementation.	No change. Enforcement actions and penalties for non-compliance are outside the scope of the TR Rule.
Renumbered s. 26(3)	One commenter expressed concern that a reporting counterparty is still obligated to report a derivative to a recognized trade repository, limiting the value of substituted compliance.	No change. The limitations of the substituted compliance provision are necessary to ensure the Authorities' access to trade repository data, in light of certain foreign legislative requirements that are outside of our control.
	One commenter encouraged Canadian regulators to enter into a Memorandum of Understanding with regulators in other jurisdictions to obtain direct access to relevant derivatives data reported pursuant to the foreign requirements, to eliminate the need for the conditions in s. 26(5)(b) and s. 26(5)(c).	No change. A Memorandum of Understanding with foreign regulators is outside the scope of the TR Rule.

	One commenter suggested that the concept of substituted compliance in s. 26(5) of the TR Rule be expanded to apply to all reporting counterparties.	No change. We believe that the objectives of the TR Rule are better served by data that is comparable across derivatives; data reported pursuant to foreign regimes will not necessarily be comparable, as different data fields maybe required to be reported.
	One commenter encouraged accommodation for a trade repository that (i) is a subsidiary entity of a recognized trade repository, or (ii) wishes to obtain recognition only for the purposes of facilitating substituted compliance. However, another commenter submitted that all trade repositories operating under the Authorities' oversight should be subject to the application process, to ensure all applicants fully meet the TR Rule's core principles and operating requirements.	No change. Each Authority will undertake an appropriate review of an application for recognition by any trade repository.
	Another commenter noted that, if derivatives data resides in a trade repository in another jurisdiction, there is additional complexity for data access by the Authorities and further costs to this trade repository to ensure this access, and that a trade repository operating under substituted compliance will need to pass these additional costs along to the reporting parties.	No change. We note that the trade repository would not be operating under substituted compliance; rather, the reporting counterparty would benefit from substituted compliance with its reporting obligations.
	One commenter requested clarity on when the list of equivalent trade reporting laws will be provided in Appendix B.	No change. We anticipate publishing proposed amendments to the TR Rule in the near future.
Renumbered s. 26(6) and **TR CP**	One commenter wrote that the phrase "as soon as technologically practicable" implies "as soon as the fastest available technology allows" and, inconsistent with the guidance offered in the TR CP, does not consider costs or intermediary administrative steps on behalf of the user. The commenter suggested using a term such as "as soon as commercially reasonable" or "as soon as reasonably	Change made. Renumbered s. 26(6) now requires a reporting counterparty to report an error or omission as soon as practicable after discovery of the error or omission.

	practicable".	
S. 28 –Legal entity identifiers		
S. 28	One commenter urged a direct obligation in the TR Rule requiring all counterparties to obtain a LEI. A number of commenters urged that the Authorities permit a reporting counterparty to submit an alternative identifier or client code in limited circumstances such as: • while the requirement to obtain an LEI expands globally; • where the non-reporting party has not obtained a LEI; • where the non-reporting party is not eligible for an LEI.	We direct the commenters to proposed amendments to the Local TR Rules in Manitoba, Ontario and Québec and note that staff anticipate publishing corresponding proposed amendments in the near future. We are working with our CSA colleagues towards a harmonized approach to legal entity identifiers.
S. 29 – Unique transaction identifiers (UTIs)		
S. 29(2)	One commenter urged that the TR rule should state that a trade repository should only create a UTI where: (i) the trade is not centrally cleared and not executed on a trading platform; (ii) where there is not already an existing unique identifier assigned to the transaction; or (iii) at the request of the reporting party.	No change. We believe that subsection 29(2) of the TR Rule provides sufficient flexibility with respect to UTI assignment. We note efforts are under way to develop international standards for UTIs.
S. 30 – Unique product identifiers		
S. 30	One commenter recommended flexibility with respect to product taxonomies, to ensure more useful reporting to the Authorities, relieve reporting counterparties of the burden of creating a unique product identifier (UPI) when a UPI is not available in a particular taxonomy, and conform to other trade reporting rules.	Change made to introduce flexibility into the assignment of a UPI. We note efforts are under way to develop international standards for UTIs.

S. 33 – Valuation data		
S. 33(1)	One commenter urged that Canadian financial institutions that are not derivatives dealers should not be required to submit valuation data on a daily basis but instead on a quarterly basis like other non-dealers, to harmonize with Ontario and the U.S.	Change made. "Canadian financial institution" has been removed from the TR Rule, including from the provisions relating to valuation data reporting.
S. 34 – Pre-existing derivatives		
S. 34	One commenter expressed concern that a reporting counterparty may not be able to predict which derivatives may be subject to a negotiated unwind, novation, credit event or other termination event that would render the trade no longer subject to reporting and, therefore, to the deemed consent provision, and thus may breach data privacy restrictions. The commenter suggested clarifying that the scope of reportable pre-existing derivatives excludes those which are no longer live as of the deadline or the date on which the reporting counterparty fulfills its obligation.	Change made. Paragraphs 34(1)(c) and 34(2)(c) of the TR Rule now provide that contractual obligations be outstanding as of the earlier of the date that the derivative is reported and the relevant deadline for reporting pre-existing derivatives.
S. 37 – Data available to regulators		
S. 37(1)(c)	One commenter recommended conforming valuation data reporting with the approach under trade repository recognition orders in Ontario, Quebec and Manitoba and under CFTC rules.	No change. We anticipate that trade repository recognition orders granted by the Authorities will be consistent with those granted in Manitoba, Ontario and Québec.
S. 37(3)	One commenter suggested replacing the phrase "best efforts" with the phrase "reasonable efforts". Another commenter requested clarification on what would	No change. We believe that the TR CP provides adequate guidance on the obligations of a reporting counterparty.

	be expected of a reporting counterparty under this section – e.g., is instructing the trade repository to provide access sufficient?	
S. 38 – Data available to counterparties		
S. 38(4)	One commenter expressed concern that the "deemed consent" provision in subsection 38(3) would override any confidentiality agreement or section within an agreement between the counterparties and requested the inclusion of an explicit safe harbour that is similar to the safe harbour in U.S. rules for large trader reporting of physical commodity swaps.	No change. The large trader reporting of physical commodity swaps rules in the U.S. do not serve a comparable objective to the TR Rule.
S. 39 – Data available to public		
s. 39	*Confidentiality concerns* Two commenters expressed concern that publicly disseminating trade data relating to illiquid derivative markets within one or two days of trade execution may disclose commercially sensitive information, compromising the ability to effectively hedge or conduct business, including entering into pricing/ supply agreements, by (1) enabling the identification of one or both of the counterparties, (2) providing information relating to a key business contracts, or (3) increasing the total cost of transacting to end-users hedging commercial exposures. One commenter noted that making transaction data available to the public was not part of the G20 Commitments.	We direct the commenters to proposed amendments to the Local TR Rules in Manitoba, Ontario and Québec and note that staff anticipate publishing corresponding proposed amendments in the near future. We are working with our CSA colleagues towards a harmonized approach that we believe adequately balances the objectives of confidentiality of market participants and transparency in the market.
	Timing of public dissemination A number of commenters urged harmonization by Canadian authorities with respect to timing for public	We direct the commenters to proposed amendments to the Local TR Rules in Manitoba, Ontario and Québec and note that staff anticipate publishing

	dissemination of transaction-level data for derivatives involving different types of counterparties, including Canadian financial institutions.	corresponding proposed amendments in the near future.
S. 40 – Commodity derivative		
S. 40	*Harmonization* One commenter submitted that, while it supports an exclusion for the reporting of commodity derivatives for end-users, it urged harmonization across trade reporting rules in Canada. If it is determined that the threshold amount or calculation should be different than currently provided in the Local TR Rules, the Local TR Rules should be harmonized with the TR Rule.	We continue to work with our CSA colleagues to reach appropriate harmonization on the requirements and exemptions under the TR Rule.
	Market impact of the exemption A number of commenters submitted that, regardless of approach, the exemption will not have a significant impact, because: • The nature of the commodity derivatives market does not lend itself to speculation; rather commodity derivatives tend to serve an end-user community with direct exposures. • There are few commodity derivative derivatives between end-users. Derivatives involving only one end-user would be required to be reported by the other party.	We have carefully reviewed all of the comments received, and thank the commenters for their submissions.
	Proposed $250 million notional threshold • One commenter submitted that the $500 000 threshold is so low that it is almost equivalent to having no exemption.	We have carefully reviewed all of the comments received, and thank the commenters for their submissions. After considering the comments and weighing a number of factors we believe that we have struck an appropriate balance between

	• One commenter suggested that a threshold in the order of $10 million would be more appropriate than the $500 000 threshold for smaller participants in the natural gas market. • A number of commenters were supportive of the $250 million threshold. • One commenter suggested that the exemption be available where only one counterparty is below the $250 million threshold and neither party is a derivatives dealer. • Some commenters were concerned that the $250 million threshold remains too low and may result in reporting for derivatives users who pose little or no systemic risk. • One commenter submitted that a number of companies who trade in commodity-based OTC derivatives may still do so for speculative purposes at amounts far lower than $250 million and that these derivatives should be reportable. • Three commenters suggested a threshold of at least $1 billion	achieving the policy aims of the TR Rule and mitigating the regulatory burden on smaller end-users of commodity-based derivatives. We have retained the $250 million threshold amount, but have altered the calculation of the notional amount outstanding for the purposes of the threshold. The revised provision requires including all outstanding commodity-based derivatives entered into by a local counterparty and each affiliated entity that is also a local counterparty in a jurisdiction of Canada, excluding inter-affiliate derivatives.
	Calculation method and threshold metric • A number of commenters urged that the threshold be based on net exposure, e.g., for derivatives executed with the same counterparty under the same master agreement, as net exposure is seen as a better measure of the potential risk that the entity represents to the market.	No change. We believe that a counterparty's month-end gross notional amount outstanding provides a useful proxy for the counterparty's derivatives activity.

	• One commenter noted that it may be easier for some parties to calculate their aggregate notional based on a single asset class rather than on all outstanding derivatives.	No change. We thank the commenters for their submissions.
	Several commenters sought clarification on whether the $250 million aggregate notional value calculation includes: • transactions entered into on an exchange, • derivatives with Canadian financial institutions, and • derivatives with affiliated entities.	Changes made. The TR Rule now explicitly refers to the scope of instruments considered to be "derivatives" under the TR Rule, and specifies the scope of contracts to be included in the calculation of a counterparty's month-end gross notional amount outstanding.
	Implementation considerations A number of commenters were concerned that Option #1 in the Proposed TR Rule implied that the parties must know each others' status under the provision to determine whether the derivative may be exempted from reporting, which would require specific representations and separate systems logic to determine whether the exemption applies in each province relevant to a local counterparty. Such complexity and burden would undermine the value of the exclusion.	Change made. The exemption provision has been redrafted to clarify that the exemption applies to a local counterparty if it is below the prescribed threshold.
	A number of commenters noted the importance of an exemption that can be practically administered, and raised practical concerns with calculating a fluctuating aggregate notional value:	
	• At what point in time do the reporting requirements apply to a counterparty that temporarily exceeds the threshold?	No change. We direct the commenters to proposed amendments anticipated to be published in the near future.
	• If a counterparty's exposure moves above and below the threshold, are they then obliged to report existing contracts?	No change. We direct the commenters to proposed amendments anticipated to be published in the near future.

	• Can an entity qualify for the exemption again at a later date if the aggregate notional value of outstanding commodity derivatives falls below $250 million? • Assuming notional amounts should be converted to Canadian dollars for aggregation, at what date and/or exchange rate should they be converted?	Change made. The TR Rule now provides that a local counterparty qualifies for the exemption if it stays below the threshold for 12 months. Change made. The TR CP now provides that notional amount currency conversions are made at the time of the transaction, based on official published exchange rates.
S. 43 – Exemption – general		
Renumbered s. 43	One commenter urged the Authorities to offer a mechanism for a participant to make a single request for exemptive relief under the TR Rule from all or more than one of the Authorities.	No change. Cross-jurisdictional coordination on applications for exemptive relief is outside the scope of the Instruments.
S. 44 – Transition period		
Renumbered s. 44(1)	A number of commenters supported staged implementation for non-dealers as both necessary and appropriate. One commenter suggested that staged implementation of reporting requirements would not be necessary if sufficient time is given before the obligations commence.	No change. The separate phase-in dates for the start of reporting obligations on (i) clearing agencies and derivatives dealers and (ii) all other counterparties have been retained in the TR Rule.
Ss. 43(2) and (3)	One commenter submitted that a separate, subsequent phase for reporting pre-existing derivatives will benefit data quality as reporting counterparties will not be working to prepare for and comply with the requirements to report both new derivatives and pre-existing derivatives simultaneously.	No change. The separate phase-in period for pre-existing derivatives has been retained in the TR Rule.
S 45 – Effective Date		
Renumbered s. 45	Comments were mixed on an appropriate phase-in of obligations under the TR Rule to allow reporting counterparties to onboard to a recognized trade repository	Change made. We have provided a phase-in period of more than 6 months following publication of the final TR Rule before the reporting obligations begin for clearing agencies and derivatives dealers, and an

	and implement and test systems: • One commenter supported the proposed three month period for trade repositories to seek and obtain recognition. • A number of commenters urged a minimum period of 6 months from the effective date of the final instrument and/or the recognition of at least one TR in the jurisdiction. • Two commenters suggested a period of 1 year from the date final rules are released. • One commenter recommended that implementation and transition dates not coincide with the end of the natural gas contract year, as companies' resources are focused on negotiating physical natural gas annual contracts.	additional three month period before reporting obligations begin for all other counterparties.
Appendix A – Data fields		
General	One commenter commended the Authorities for harmonizing the data fields in Appendix A to the corresponding data fields in Ontario, Quebec and Manitoba, and urged that, as in Ontario, Quebec and Manitoba, the field names reported on derivatives should not have to exactly match the field names listed in Appendix A, as long as the necessary data is reported.	No change. We note that the Authorities seek an approach to reporting of data fields that is harmonized across the CSA.
"delivery type" and **"delivery point"**	One commenter requested clarification on the "delivery type" and "delivery point" data fields, which indicate whether a derivative is settled physically or in cash, despite the exclusion in the Product Determination Rule for derivatives that are intended to be settled physically.	No change. We believe that the Product Determination Rule and Product Determination CP provide adequate guidance on what derivatives are subject to the reporting requirements under the TR Rule. We also note that the instructions in Appendix A state that the reporting counterparty is not required to provide a response to a field that is not applicable to the derivative.

List of Commenters:

1. BP Canada Energy Group ULC
2. The Canadian Advocacy Council (CFA Institute)
3. The Canadian Market Infrastructure Committee
4. Capital Power
5. Enbridge Inc.
6. Encana Corporation
7. Enmax Corporation
8. Fasken Martineau DuMoulin LLP
9. Intercontinental Exchange Trade Vault, LLC
10. The International Energy Credit Association
11. The International Swaps and Derivatives Association, Inc.
12. Markit North America Inc.
13. SaskEnergy Incorporated
14. Sutherland Asbill & Brennan LLP
15. TMX Group Limited
16. TransCanada Corporation
17. FortisBC Energy Inc. and FortisBC Inc.
18. Dentons LLP