ANNEX B

Proposed Changes to
Companion Policy 96-101 *Trade Repositories and Derivatives Data Reporting*

1.   *Companion Policy 96-101 Trade Repositories and Derivatives Data Reporting is changed by this Instrument.*

2.   *The Policy is changed by replacing the guidance relating to subsection 26(3) with the following:*

(3) Subsection 26(3) provides for limited substituted compliance in three circumstances.

The first circumstance is where a counterparty to a derivative is organized under the laws of the local jurisdiction but does not conduct business in the jurisdiction other than activities incidental to being organized in the jurisdiction.

We are of the view that factors that would indicate that a person or company is conducting business in the jurisdiction would include the following:

- having a physical location in a jurisdiction;

- having employees or agents that reside in the jurisdiction;

- generating revenue in the jurisdiction;

- having customers or clients in the jurisdiction.

We are also of the view that activities that are incidental to being organized under the law of a jurisdiction would include instructing legal counsel to file materials with the government agency responsible for registering corporations and maintaining a local agent for service of legal documents.

The second circumstance is where the derivative involves a local counterparty that is a local counterparty solely on the basis that it is an affiliated entity of a person or company, other than an individual, that is organized in the local jurisdiction or has its head office and principal place of business in the local jurisdiction, and that person or company is liable for all or substantially all of the liabilities of the affiliated entity.

The third circumstance is where the derivative is between two affiliated entities, each of which is neither a derivatives dealer or a clearing agency, nor an affiliated entity of a derivatives dealer or a clearing agency.

In each instance, the counterparties can benefit from substituted compliance where the derivative has been reported to a recognized trade repository pursuant to the laws of a

province of Canada other than the local jurisdiction or of a foreign jurisdiction listed in Appendix B, provided that the additional conditions set out in paragraph 26(3)(c) are satisfied.**.**

3. *The Policy is changed by replacing the guidance relating to subsection 26(4) with the following:*

(4) Subsection 26(4) requires that all derivatives data reported for a derivative be reported to the same recognized trade repository or, with respect to a derivative reported under subsection 26(2), to the local securities regulatory authority.

For a bi-lateral derivative that is cleared by a clearing agency (novation), the recognized trade repository to which all derivatives data must be reported is the recognized trade repository to which the original bi-lateral derivative was reported.

The purpose of this requirement is to ensure the securities regulatory authority has access to all reported derivatives data for a particular derivative and its related transactions from the same entity. It is not intended to restrict counterparties' ability to report to multiple trade repositories.**.**

4. *The Policy is changed by replacing the guidance relating to subsection 26(6) with the following:*

(6) We interpret the requirement in subsection 26(6), to report errors or omissions in derivatives data "as soon as practicable" after it is discovered, to mean upon discovery and in any case no later than the end of the business day following the day on which the error or omission is discovered.**.**

5. *The Policy is changed by replacing the guidance relating to subsection 26(7) with the following:*

(7) Under subsection 26(7), where a local counterparty that is not a reporting counterparty discovers an error or omission in respect of derivatives data that has been reported to a recognized trade repository, such local counterparty has an obligation to report the error or omission to the reporting counterparty for the derivative. Once an error or omission is reported by the local counterparty to the reporting counterparty, the reporting counterparty then has an obligation under subsection 26(6) to report the error or omission to the recognized trade repository or to the securities regulatory authority in accordance with subsection 26(2). We interpret the requirement in subsection 26(7) to notify the reporting counterparty of errors or omissions in derivatives data to mean upon discovery and in any case no later than the end of the business day following the day on which the error or omission is discovered.**.**

6. *The Policy is changed by replacing the guidance relating to section 28 with the following:*

28. The Global LEI System is a G20 endorsed initiative[6] for uniquely identifying parties to financial transactions, designed and implemented under the direction of the LEI ROC, a governance body endorsed by the G20. The Global LEI System serves as a public-good utility responsible for overseeing the issuance of legal entity identifiers globally, including to counterparties who enter into derivatives or that are involved in a derivatives transaction.

(1) We are of the view that reporting counterparties will take steps to ensure that the non-reporting counterparty provides its LEI to facilitate reporting under the Instrument. If the reporting counterparty cannot, for any reason, obtain the LEI from the non-reporting counterparty, publicly accessible resources may be available for obtaining that information.

(2) Paragraph 28(2)(a) requires each local counterparty to a derivative that is required to be reported under the Instrument, other than an individual, to acquire an LEI, regardless of whether the local counterparty is the reporting counterparty.

(3) Some counterparties to a reportable derivative may not be eligible to receive an LEI. In such cases, the reporting counterparty must use an alternate identifier to identify each counterparty that is ineligible for an LEI when reporting derivatives data to a recognized trade repository.**.**

7. *The Policy is changed by replacing the guidance relating to subsection 39(3) with the following:*

(3) Subsection 39(3) requires a recognized trade repository to publicly disseminate transaction-level reports in accordance with the requirements set out in Appendix C.**.**

8. *The Policy is changed by adding the following new guidance immediately following the guidance relating to section 40:*

Derivative between affiliated entities

41.1. Section 41.1 provides an exclusion from the reporting requirement for derivatives between two affiliated entities that are each a local counterparty in a jurisdiction of Canada. The exclusion is not available to a person or company that is a derivatives dealer or a clearing agency, or is an affiliated entity of a derivatives dealer or a clearing agency.**.**

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[6] For more information, see FSB Report *A Global Legal Entity Identifier for Financial Markets*, June 8, 2012, online: Financial Stability Board http://www.financialstabilityboard.org/publications/.

9.   *The Policy is changed by adding the following new guidance immediately following the guidance relating to section 42:*

Reporting by a local counterparty that ceases to qualify for an exclusion

44.1. (1) Subsection 44.1(1) provides that a derivative that was excluded under any of section 40, 41, 41.1 or 42 from the reporting requirements under the Instrument, but which no longer meets the applicable condition or conditions, must be reported once the applicable condition or conditions are no longer met.

Subsection 44.1(2) is intended to provide a person or company that has previously benefitted from an exclusion from trade reporting under Part 6, and has not previously acted as a reporting counterparty under the Instrument or a similar instrument in another jurisdiction of Canada, with a reasonable transition period to allow them to develop the resources and implement policies and procedures necessary to meet the requirements applicable to a reporting counterparty.**.**

10.   *The Policy is changed by replacing the guidance relating to section 45 with the following:*

Effective date

45. (4) The requirement under subsection 39(3) for a recognized trade repository to make transaction-level data reports available to the public does not apply until July 29, 2016.**.**

11.   *The Policy is changed by adding the following new guidance immediately following the guidance relating to section 45:*

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APPENDIX C

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Instructions

1. The instructions provided at item 1 of this Appendix describe the types of derivatives for which the data fields described in Table 1 must be publicly disseminated by a recognized trade repository.

Public dissemination is not required for life-cycle events that do not contain new price information compared to the original transaction.

Table 1

Table 1 lists the data fields that must be publicly disseminated. Table 1 is a subset of the information that the trade repository is required to submit to the regulator and does not include all the fields required to be reported to a recognized trade repository pursuant to Appendix A. For example, valuation data fields are not required to be publicly disseminated.

Table 2

Only derivatives in any of the Asset Class and Underlying Asset Identifiers fields listed in Table 2 are subject to the public dissemination requirement under subsection 39(3) of the Instrument.

For further clarification, the identifiers listed under the Underlying Asset Identifier in Table 2 refer to the following:

"CAD-BA-CDOR" means all tenors of the Canadian Dollar Offered Rate (CDOR). CDOR is a financial benchmark for bankers' acceptances with a term to maturity of one year or less currently calculated and administered by Thomson Reuters.

"USD-LIBOR-BBA" means all tenors of the U.S. Dollar IntercontinentalExchange London Interbank Offered Rate (ICE LIBOR). ICE LIBOR is a benchmark currently administered by ICE Benchmark Administration and provides an indication of the average rate at which a contributor bank can obtain unsecured funding in the London interbank market for a given period, in a given currency.

"EUR-EURIBOR-Reuters" means all tenors of the Euro Interbank Offered Rate (Euribor). Euribor is a reference rate published by the European Banking Authority based on the average interest rates at which selected European prime banks borrow funds from one another.

"GBP-LIBOR-BBA" means all tenors of the GBP Pound Sterling IntercontinentalExchange London Interbank Offered Rate (ICE LIBOR). ICE LIBOR is a benchmark currently administered by ICE Benchmark Administration providing an indication of the average rate at which a contributor bank can obtain unsecured funding in the London interbank market for a given period, in a given currency.

"All Indexes" means any statistical measure of a group of assets that is administered by an organization that is not affiliated with the counterparties and whose value and calculation methodologies are publicly available. Examples of indexes that would satisfy this meaning are underlying assets that would be included in ISDA's Unique Product Identifier Taxonomy[9] under (i) the categories of Index and Index Tranche for credit products and (ii) the Single Index category for equity products.

Exclusions

2. Item 2 of this Appendix specifies the types of derivatives that are excluded from the public dissemination requirement in subsection 39(3) of the Instrument. An example of a derivative excluded under item 2(a) is a cross-currency swap. The type of derivative excluded under item 2(b) results from portfolio compression activity which occurs whenever a derivative is amended or entered into in order to reduce the gross notional amount of an outstanding derivative or group of derivatives without impacting the net

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[9] ISDA's Unique Product Identifier Taxonomy can be found at www.isda.org.

exposure. Item 2(c) excludes a derivative resulting from a novation on the part of a clearing agency when facilitating the clearing of a bi-lateral derivative.

Rounding of notional amount

3. The rounding thresholds are to be applied to the notional amount of a derivative in the currency of the derivative. For example, a derivative denominated in United States dollars (USD) would be rounded and disseminated in USD and not the Canadian dollar (CAD) equivalent.

Capping of notional amount

4. Item 4 of this Appendix requires a recognized trade repository to compare the Rounded Notional Amount of a derivative denominated in a non-CAD currency to the Capped Rounded Notional Amount in CAD that corresponds to the Asset Class and tenor of that derivative. Therefore, the recognized trade repository must convert the non-CAD currency into CAD in order to determine whether it would be above the capping threshold. The recognized trade repository must utilise a transparent and consistent methodology for converting to and from CAD for the purposes of comparing and publishing the capped notional amount.

For example, in order to compare the Rounded Notional Amount of a derivative denominated in UK Pounds (GBP) to the thresholds in Table 4, the recognized trade repository must convert this amount to a CAD-equivalent amount. If the CAD-equivalent notional amount of the GBP denominated derivative is above the capping threshold, the recognized trade repository must disseminate the Capped Rounded Notional Amount converted back into the currency of the derivative using a consistent and transparent process.

6. Item 6 of this Appendix requires a recognized trade repository to adjust the Option Premium field in a consistent and proportionate manner if the Rounded Notional Amount of a derivative is greater than the Capped Rounded Notional Amount. The Option Premium field adjustment should be proportionate to the size of the Capped Rounded Notional Amount compared to the Rounded Notional Amount.

Timing

7. Item 7 of this Appendix sets out when a recognized trade repository must publicly disseminate the required information from Table 1. The purpose of the public reporting delays is to ensure that counterparties have adequate time to enter into any offsetting derivative that may be necessary to hedge their positions. These time delays apply to all derivatives, regardless of size.**.**

12.   These changes become effective on [●].