

**CSA Multilateral Notice and Request for Comments**  
**Proposed Amendments to Multilateral Instrument 96-101**  
*Trade Repositories and Derivatives Data Reporting*  
**and**  
**Proposed Changes to Companion Policy 96-101CP**  
*Trade Repositories and Derivatives Data Reporting*

**February 16, 2016**

## **Introduction**

The securities regulatory authorities (each an **Authority** and collectively the **Authorities** or **we**) in Alberta, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon (together with the British Columbia Securities Commission, the **Participating Jurisdictions**) are publishing the following for a 60-day comment period expiring April 17, 2016:

- proposed amendments (the **Proposed TR Rule Amendments**) to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the **TR Rule**), and
- proposed changes (the **Proposed TR CP Changes**) to Companion Policy 96-101CP *Trade Repositories and Derivatives Data Reporting* (the **TR CP**).

Together, the Proposed TR Rule Amendments and the Proposed TR CP Changes are referred to as the **Proposed Amendments**. We are issuing this notice to solicit comments on the Proposed Amendments.

While the British Columbia Securities Commission is not an Authority publishing the Proposed Amendments under this notice, it anticipates that, subject to receiving the necessary approvals, it will, in the coming weeks, publish for comment proposed amendments to the TR Rule that are identical to the Proposed Amendments described in this notice. The Participating Jurisdictions anticipate that the Proposed Amendments will be fully harmonized.

## **Background**

The Participating Jurisdictions published the TR Rule on January 22, 2016, with an effective date of May 1, 2016 subject to Ministerial approval and legislative amendments in certain participating jurisdictions.

The Proposed Amendments have been developed in cooperation with staff from the securities regulatory authorities in Manitoba, Ontario and Québec. The Proposed Amendments are intended to be substantively harmonized with proposed amendments (collectively, the **Proposed**

**Local TR Rule Amendments**) to corresponding instruments in Manitoba, Ontario and Québec<sup>1</sup> (collectively, the **Local TR Rules**). The Proposed Local TR Rule Amendments were published for comment on November 5, 2015.

In developing the Proposed TR Rule Amendments and the Proposed Local TR Rule Amendments, Canadian Securities Administrators (**CSA**) Derivatives Committee has considered comment letters received in relation to previous publications of the TR Rule.

### *Harmonization*

We intend to work together with staff of the securities regulatory authorities in Manitoba, Ontario and Québec in the context of the CSA Derivatives Committee to review all comments received on the Proposed Amendments and the Proposed Local TR Rule Amendments. Our objective is to seek harmonized amendments in all CSA jurisdictions, in particular with respect to reporting of derivatives between affiliated entities and public dissemination of transaction-level data.

### **Substance and Purpose**

The key objectives of the Proposed TR Rule Amendments are to:

- make explicit the requirement that a local counterparty have a legal entity identifier (**LEI**), and revise the provisions relating to LEIs to reflect international developments;
- provide relief from the reporting obligations under the TR Rule for derivatives between two end-users (i.e., not derivatives dealers or affiliates of derivatives dealers, or clearing agencies or affiliates of clearing agencies) that are affiliated entities if either
  - each is a local counterparty in at least one jurisdiction in Canada, or
  - reporting is done in compliance with equivalent trade reporting laws of specified foreign jurisdictions or under the securities legislation of another jurisdiction of Canada;
- provide a transition period before the reporting obligations under the TR Rule become effective for an end-user that previously qualified for an exclusion from reporting derivatives under the TR Rule and becomes the reporting counterparty for the first time;
- set out the requirements for public dissemination of transaction-level data, balancing the objective of providing price information on the Canadian over-the-counter (**OTC**) derivatives market and the need to preserve the anonymity of counterparties to limit the negative impact of transparency on market participants; and

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<sup>1</sup> Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* and Québec Regulation 91-507 respecting trade repositories and derivatives data reporting, CQLR, c. I-14.01, r. 1.1

- specify certain laws, regulations or instruments of foreign jurisdictions in Appendix B, for the purpose of providing that, for certain derivatives, reporting in compliance with these specified laws, regulations or instruments is deemed to also be in compliance with the reporting obligations under the TR Rule.

The Proposed TR CP Changes correspond to the Proposed TR Rule Amendments.

#### *Implementation*

At present, the TR Rule provides that the reporting obligations for derivatives between affiliated entities and the requirements with respect to public dissemination of transaction-level data do not take effect until January 1, 2017. Staff anticipate making a determination on whether to recommend adoption of the Proposed Amendments by the respective securities regulatory authorities before the provisions relating to the reporting of derivatives between affiliated entities and public dissemination of transaction-level data take effect.

#### **Summary of the Proposed TR Rule Amendments**

##### *(a) Subsection 26(3): Duty to report – substituted compliance for inter-affiliate derivatives*

We are proposing to amend subsection 26(3) to extend the availability of substituted compliance. Local counterparties will be deemed to comply with the TR Rule where a derivative is between affiliated entities that are end-users if the derivative is reported to a trade repository that is recognized in that local jurisdiction and the reporting is done pursuant to trade reporting laws of another jurisdiction of Canada or a foreign jurisdiction specified in Appendix B (**proposed substituted compliance for inter-affiliate derivatives**). This is intended to alleviate the reporting burden for certain derivatives that are reported under prescribed foreign trade reporting legislation. To benefit from substituted compliance, the conditions set out in paragraphs 26(3)(a) through (c) of the TR Rule must be satisfied.

#### *Question:*

1. The corresponding provision in the Proposed Local TR Rule Amendments would make the proposed substituted compliance for inter-affiliate derivatives available to an affiliate of a derivatives dealer or of a clearing agency. Is it appropriate to permit an affiliate of a derivatives dealer or of a clearing agency to avail itself of the proposed substituted compliance for inter-affiliate derivatives?

##### *(b) Subsection 26(4): Duty to report – locations to report data*

We are proposing to amend the requirement under subsection 26(6) of the TR Rule to provide that all derivatives data in respect of a derivative must be reported to the same recognized trade repository, but not necessarily to the recognized trade repository to which the initial report relating to the derivative was made. This amendment is intended to facilitate the porting of derivatives data from one recognized trade repository to another while ensuring that all data relating to a derivative is available in a single facility.

(c) *Section 28: Legal entity identifiers*

The identification of counterparties by LEI is an initiative endorsed by G20 nations and provides a globally recognized and standardised identification system of legal entities engaged in financial transactions. LEIs support authorities and market participants in identifying and managing financial risks and simplify reporting and accessing reported data across jurisdictions.

Under proposed paragraph 28(2)(a), each local counterparty, other than an individual, to a derivative that is required to be reported under the TR Rule would, if eligible, be required to have an LEI issued in accordance with the standards set by the Global LEI System. Absent this proposed requirement, the reporting counterparty would be responsible for ensuring that both counterparties to a derivative were identified using an LEI. Reporting counterparties have indicated that they have encountered challenges in complying with the Local TR Rules as some of their counterparties did not have LEIs. This amendment ensures that all local counterparties to reportable derivatives are under a direct obligation to have an LEI.

Proposed subsection 28(3) would require the reporting counterparty to identify a counterparty that is ineligible to receive an LEI by an alternate identifier. Proposed subsection 28(4) would require a recognized trade repository to identify the counterparty with the alternate identifier supplied by the reporting counterparty.

*Questions:*

2. Proposed subsection 28(2) excludes an individual from the requirement to obtain an LEI. Is it appropriate to exclude individuals from the requirement to obtain an LEI? Please identify and discuss any specific privacy law related concerns.
3. Proposed subsection 28(3) would require the reporting counterparty to identify a counterparty that is ineligible to receive an LEI by an alternate identifier. Proposed subsection 28(4) would require a recognized trade repository to identify a counterparty that is ineligible to receive an LEI with this alternate identifier assigned by the reporting counterparty.
  - a. Is it appropriate to place the responsibility on the reporting counterparty to assign the alternate identifier? Would a recognized trade repository be better situated to assign the alternate identifier?
  - b. Would current practices and technological capabilities permit a recognized trade repository to identify a counterparty by an alternate identifier supplied by the reporting counterparty?
  - c. Would current practices and technological capabilities permit a recognized trade repository to assign an alternate identifier to a counterparty, and to notify the reporting counterparty of the alternate identifier assigned?
4. Requiring a trade repository to identify a counterparty using an alternate identifier supplied by the reporting counterparty may result in a particular counterparty being

identified by different alternate identifiers supplied by multiple reporting counterparties – within a single trade repository’s database and across the databases of multiple trade repositories. Do recognized trade repositories have the technological capability to reconcile, within their own databases, different alternate identifiers that have been reported for a particular counterparty?

(d) *Section 34: Pre-existing derivatives*

The purpose of the proposed amendments to paragraph 34(1)(b) and 34(2)(b) is to correct an error. The proposed amendments reflect our intention that transactions entered into before the reporting obligation commences for new transactions, for which there are contractual obligations outstanding as of a prescribed date, be reported to a recognized trade repository on or before that prescribed date.

(e) *Section 41.1: Derivative between affiliated entities*

We are proposing an exclusion from the reporting requirements in the TR Rule for a derivative between local counterparties that are end-users and that are also affiliated entities (the **proposed exclusion for inter-affiliate derivatives**). We have received feedback that many end-users, trade exclusively with derivatives dealers, other than inter-affiliate derivatives; under the TR Rule, the derivatives dealer would be the reporting counterparty. End-users would then be required to incur the cost of developing reporting systems and subscribing to trade repository services exclusively for the purpose of reporting inter-affiliate derivatives. We have weighed these costs against the benefits of requiring these derivatives to be reported. We think that the primary source of risk to a corporate group may arise from its market-facing derivatives, i.e., derivatives with counterparties that are not affiliated with the corporate group. While inter-affiliate derivative reporting may provide some valuable information regarding the redistribution of risk between affiliated entities, we think this value may be outweighed by the costs of end-users reporting inter-affiliate derivatives where one of the counterparties or another affiliated entity is responsible for the liabilities of the two affiliated counterparties.

The proposed exclusion for inter-affiliate derivatives applies to a derivative involving two affiliated entities where each is a local counterparty in any jurisdiction of Canada. This allows corporate groups with affiliates in Canada to benefit from the exclusion while ensuring that one or more securities regulatory authorities in Canada has access to reports relating to all of the corporate group’s market-facing derivatives, including a market-facing derivative related to the inter-affiliate derivative. This exclusion is also available to affiliates located in foreign jurisdictions that qualify as local counterparties pursuant to paragraph (c) of the definition of “local counterparty”.

The proposed exclusion for inter-affiliate derivatives is not available for inter-affiliate derivatives involving an affiliate that is not a local counterparty pursuant to the trade reporting rules of a jurisdiction of Canada. As discussed above, we think that it is important for securities regulatory authorities in Canada to have a comprehensive view of a corporate group’s exposure to over-the-counter derivatives, and therefore to have access to reports relating to all relevant market-facing derivatives. For example, a corporate group might consolidate its risk

management program by transacting with a third party (e.g., a derivatives dealer) through a single market-facing entity for the corporate group. The market-facing entity might then enter into an identical back-to-back derivative with an affiliated entity to hedge the risk of the affiliated entity. Where both the market-facing entity and the affiliated entity are local counterparties in a jurisdiction of Canada, at least one securities regulatory authority in Canada would have access to reports relating to the market-facing derivative. However, this would not be the case if the market-facing entity was not a local counterparty in a jurisdiction of Canada.

We are interested in hearing market participants' views on whether the combination of the proposed substituted compliance for inter-affiliate derivatives and the proposed exclusion for inter-affiliate derivatives will be effective in reducing the reporting burden for end-users corporate groups with respect to inter-affiliate derivatives.

*Question:*

5. Inter-affiliate derivatives that involve an affiliated entity that is not a local counterparty in a Canadian jurisdiction do not qualify for the proposed exclusion in section 41.1. Would a requirement to report creation data on a quarterly basis, instead of the current creation data reporting requirement, be of significant assistance in reducing the burden with respect to reporting these derivatives?

*(f) Section 44.1: Reporting by a local counterparty that ceases to benefit from an exclusion*

We are proposing a transition period (the **proposed transition period**) for an end-user counterparty that has previously qualified for an exclusion from reporting derivatives under the TR Rule and has not previously acted as the reporting counterparty under the TR Rule or a similar rule in another jurisdiction of Canada. We are aware that some local counterparties may not be required to act as the reporting counterparty for a derivative because they are currently under the \$250 000 000 aggregate month-end gross notional outstanding threshold in the commodity derivative exemption in section 40 of the TR Rule. Additionally, other local counterparties may not be required to act as the reporting counterparty as a result of the proposed exclusion for inter-affiliate derivatives.

For such a local counterparty, the reporting obligations under the TR Rule would become effective 180 days after the date on which the local counterparty no longer qualifies for the relevant exclusion. Immediately following the expiry of the 180-day transition period, the local counterparty would be required to report all of its outstanding derivatives that have not already been reported pursuant to the TR Rule – for example, by its counterparty – as of the date the transition period expires.

We think that 180 days would be a sufficient period of time to prepare for fulfilling the reporting obligations under the TR Rule.

(g) *Section 45: Effective date – Requirement for public dissemination of transaction-level data*

The Authorities are proposing to revise the effective date of subsection 39(3) of the Instrument, which sets out the requirement that a recognized trade repository make transaction-level reports available to the public. Under the Proposed TR Rule Amendments, a recognized trade repository would be required to begin making transaction-level reports publicly available on July 29, 2016. The July 29, 2016 date is the intended start date for transaction-level public dissemination under the Local TR Rules; harmonizing the effective date for public dissemination of transaction-level data will facilitate a single, Canada-wide report of transaction-level data, and will help to mitigate the risk that a particular local counterparty's derivatives activity could be identified within the public reports. We note that the reporting requirements for end-users take effect on November 1, 2016. Derivatives that are subject to the transaction-level public dissemination requirements as set out in subsection 39(3) and proposed Appendix C and that are reported by an end-user would be included in the public dissemination report once they are reported, in accordance with the timing set out in Appendix C.

(h) *Appendix B: Trade Reporting Laws of Foreign Jurisdictions*

Subsection 26(3) provides that, in certain circumstances, a derivative that is reported pursuant to trade reporting laws of a jurisdiction of Canada or a foreign jurisdiction specified in Appendix B to the TR Rule is deemed to comply with the reporting requirements under the TR Rule (**substituted compliance**).

We have proposed to include in Appendix B the European Union (**EU**) trade reporting rules and the U.S. Commodity Futures Trading Commission (**CFTC**) swap data reporting rules. This amendment would permit certain OTC derivatives market participants that are subject to the reporting obligation under the TR Rule to benefit from substituted compliance when they report pursuant to the EU trade reporting rules or the CFTC swap data reporting rules.

The Authorities will review and assess the EU trade reporting rules and the CFTC swap data reporting rules during the comment period and will take into account any comments received.

The inclusion of the EU trade reporting rules and the CFTC swap data reporting rules in Appendix B will harmonize the operation of substituted compliance under the TR Rule with the corresponding provision in the Local TR Rules, and alleviate the burden of certain obligations in the TR Rule on certain market participants. The inclusion does not impose any new obligations on market participants.

(i) *Appendix C: Requirements for the Public Dissemination of Transaction-level Data*

Subsection 39(3) of the TR Rule requires a recognized trade repository to publicly disseminate transaction-level data for certain derivatives reported to it. The TR Rule currently provides that this requirement becomes effective January 1, 2017. Under the Proposed Amendments, this requirement would become effective approximately 5 months earlier, on July 29, 2016.

At present, subsection 39(3) does not establish any criteria with respect to this requirement. We are proposing to amend subsection 39(3) to refer to proposed Appendix C, and to establish specific requirements relating to the types of OTC derivatives that will be subject to public dissemination of transaction-level data, and the data required to be publicly disseminated, in proposed Appendix C.

Public dissemination of derivatives data provides important information to the OTC derivatives market by facilitating price discovery. This will allow market participants to value existing derivatives more accurately and to assess whether they are achieving quality execution when entering into new derivatives.

Despite the importance of transparency, we appreciate the importance of maintaining the anonymity of OTC derivative counterparties in the context of public dissemination of transaction-level data. The publication of transaction-level data, even anonymised data, could potentially allow market participants to determine the identity and amount of exposure under derivatives of one or both of the counterparties to a specific derivative through, for example, the size and/or underlying interest of the derivative. The indirect identification of counterparties to a derivative could make future transactions in derivatives, including derivative hedging the risks of a particular published derivative, more difficult and expensive as market participants adjust pricing in anticipation of the counterparties' immediate hedging needs. This is a particularly relevant risk for counterparties engaged in derivatives related to asset classes that are relatively illiquid in the Canadian market.

To effectively protect the anonymity of counterparties while providing appropriate transparency, we propose to limit, through proposed Appendix C, the application of the transaction-level public dissemination requirement to OTC derivatives relating to only certain asset classes and underlying benchmarks that exhibit sufficient market activity to make it difficult to identify a specific counterparty. Proposed Appendix C also provides for additional anonymising measures, such as the rounding and capping of notional amounts, to further protect counterparty identity without eliminating the value of the published information to the market.

The details for transaction-level public dissemination in proposed Appendix C were developed in conjunction with other members of the CSA Derivatives Committee including, in particular, staff of the securities regulatory authorities in Manitoba, Ontario and Québec. Those jurisdictions have had several months experience of derivatives data being reported under their respective Local TR Rules. Capping levels for each asset class and category were determined by assessing the unique market characteristics for each type of OTC derivative, including the relative size and frequency of derivatives transactions in Canada.

We anticipate coordinating harmonized amendments to Appendix C with the other members of the CSA over a series of phases following additional study of trade repository data and public consultation, to determine additional data and types of OTC derivatives that are appropriate for public dissemination and appropriate timing for publicly disseminating the data. We are particularly interested in the type of post-trade information that could be publicly disseminated for OTC derivatives involving less liquid underlying assets or that appear infrequently in the Canadian OTC derivatives market, without facilitating undue identification of the counterparties.



*Question:*

6. Do the Proposed TR Rule Amendments relating to public dissemination of transaction-level data appropriately balance (i) the protection of counterparty anonymity, and (ii) the benefits to the market of useful and timely transaction-level public transparency?

*(j) Proposed TR CP Changes corresponding to the Proposed TR Rule Amendments*

We propose to revise the guidance in the TR CP to correspond to the Proposed TR Rule Amendments.

**Request for Comments**

We welcome your comments on the Proposed Amendments. We invite any general comments you may have, in addition to any comments on the specific questions set out above.

Please submit your comments in writing on or before April 17, 2016. If you are not sending your comments by email, please send a CD containing the submissions.

We do not intend to keep submissions confidential. All comments received will be posted on the websites of the Alberta Securities Commission at [www.albertasecurities.com](http://www.albertasecurities.com). You should not include personal information directly in your comments. It is important that you state on whose behalf you are providing comments.

Thank you in advance for your comments. Please address your submission to the following:

Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Financial and Consumer Services Commission (New Brunswick)  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating jurisdictions.

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## **Contents of Annexes**

The following annexes form part of this CSA Notice:

- Annex A Proposed amendments to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*,
- Annex B Proposed changes to Companion Policy 96-101CP *Trade Repositories and Derivatives Data Reporting*,
- Annex C Blackline of Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* showing the Proposed TR Rule Amendments, and
- Annex D Blackline of Companion Policy 96-101CP *Trade Repositories and Derivatives Data Reporting* showing the Proposed TR CP Changes.

## **Questions**

Please refer your questions to any of the following:

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