

ANNEX A

Summary of Comments

Multilateral Instrument 91-101 <i>Derivatives: Product Determination</i> (MI 91-101) and Companion Policy 91-101 <i>Derivatives: Product Determination</i> (91-101CP)		
<u>Section Reference</u>	<u>Summary of Issues/Comments</u>	<u>Response</u>
General Comments		
General comments	One commenter expressed concern that MI 91-101 currently does not capture the same products in each Participating Jurisdiction, despite guidance stating that this is the intention. The commenter was concerned that this may lead to over-reporting, and encouraged revisions to better align the scope of products captured in each Participating Jurisdiction.	Change made. See revised s. 1(4) in MI 91-101.

Multilateral Instrument 96-101 <i>Trade Repositories and Derivatives Data Reporting</i> (MI 96-101) and Companion Policy 96-101 <i>Trade Repositories and Derivatives Data Reporting</i> (96-101CP)		
<u>Section Reference</u>	<u>Summary of Issues/Comments</u>	<u>Response</u>
General Comments		
“affiliated entity”	Two commenters supported the interpretation of “affiliated entity” in MI 96-101, noting that it does business through a variety of business structures which include corporations as well as partnerships and limited partnerships.	No change required.
	One commenter urged harmonization in the concept of “affiliate” across the Canadian trade reporting rules, expressing concern that differences in the concept of affiliate in different Canadian trade reporting rules could result in the inter-affiliate exemption, or public dissemination, applying to a particular derivative in one	No change. The Participating Jurisdictions are working with our CSA colleagues to increase harmonization in the different trade reporting rules.

	jurisdiction but not in another.	
“local counterparty” and “derivatives dealer”	<p>Two commenters noted that the definition of “local counterparty”, which includes a “derivatives dealer”, would lead to complications in reporting the data required in the “Jurisdiction of reporting counterparty” and “Jurisdiction of non-reporting counterparty” data fields in Appendix A of both MI 96-101 and the local trade reporting rules in Manitoba, Ontario and Québec. Two concerns were raised:</p> <p>(i) The industry-standard representation letters that have become an important part of a counterparty’s implementation of reporting systems are not designed to track jurisdictions in which the counterparty is a derivatives dealer unless it is a registered derivatives dealer. Therefore, tracking this information would require amending and updating all representations previously made, as well as updates to reporting systems.</p> <p>(ii) Requiring the data in those fields to be reported would contradict the intent of the s. 42 exemption.</p>	<p>Change made. The description in the “Jurisdiction of reporting counterparty” and “Jurisdiction of non-reporting counterparty” data fields in Appendix A have been revised. Harmonizing amendments have been made to the corresponding data fields in the local trade reporting rules in Manitoba, Ontario and Québec.</p>
Duty to report	<p>One commenter requested confirmation that a non-reporting local counterparty has no obligation to verify the data related to a transaction that has been submitted to a trade repository by the reporting party.</p>	<p>The obligations of a non-reporting counterparty under the TR Rule (as amended) are (i) to obtain an LEI, and to maintain and renew the LEI, all in accordance with the requirements imposed by the Global LEI System; and (ii) to inform the reporting counterparty of an error or omission it discovers as soon as practicable after discovery of the error or omission.</p>

<p>Calculating notional amount for a commodity derivative</p>	<p>One commenter requested clarification on calculating notional amount for certain commodity derivatives transactions, in order to measure against the threshold set out in Section 40 of the TR Rule.</p>	<p>No change. Greater clarification to the guidance relating to calculation of notional amounts for commodity derivatives is outside the scope of the current amendments. We encourage industry groups to develop best practices in this regard.</p>
<p>Duty to report: Substituted compliance <i>and</i> Appendix B: Trade Reporting Laws of Foreign Jurisdictions</p>		
<p>General comments</p>	<p>A number of commenters expressed concern that the current provisions for substituted compliance in MI 96-101 are unworkable and do not provide the intended relief, for a number of reasons.</p>	<p>No change. We recognize that the substituted compliance provisions do not provide sufficient relief. We are working with our foreign counterparts to improve regulator access to trade repository data, in order to provide greater relief through substituted compliance.</p>
	<p>Two commenters recommended making accommodation in the recognition requirements for TRs that are affiliate entities of a recognized TR. One commenter encouraged a streamlined recognition process for TRs that only wish to obtain recognition for purposes of facilitating substituted compliance under MI 96-101.</p>	<p>No change. Revisions to the recognition requirements for trade repositories is outside the scope of these amendments.</p>
	<p>Two commenters encouraged Canadian regulators to enter into MOUs with regulators in other jurisdictions to obtain direct access to relevant derivatives data that has been reported subject to another recognized jurisdiction's requirements, in order to eliminate the need for the reporting party to specifically authorize access on a trade-by-trade basis.</p>	<p>No change. A memorandum of understanding on sharing of derivatives data is outside the scope of these amendments.</p>

	<p>One commenter requested that Section 26(3) of the TR Rule be modified to allow end-user affiliates to continue to rely on the relief provided by the CFTC while still qualifying for the exemption under Section 26(3).</p> <p>A number of commenters expressed support for making substituted compliance available for an inter-affiliate derivative involving an affiliate of a derivatives dealer or clearing agency.</p>	<p>Change made. Because the inter-affiliate exemption in s. 41.1 has been broadened, substituted compliance for inter-affiliate derivatives has been removed.</p>
Appendix B	<p>One commenter supported the revisions to subsection 26(3) and the addition of Appendix B to include certain foreign jurisdictions in the reporting exception for substituted compliance.</p>	<p>No change required.</p>
Duty to Report – Locations to Report Data		
s. 26(4)	<p>One commenter supported the concept of trade data portability by allowing reporting parties to transfer data to the TR of its choice. The commenter also suggested that Authorities consider collaboratively engaging TRs to promulgate guidance on portability procedures.</p>	<p>Change made. Additional guidance provided in 96-101CP in relation to s. 26(4).</p>
Legal Entity Identifiers (LEIs)		
General comments	<p>One commenter requested clarification that a reporting counterparty should not be restricted from reporting an LEI for its counterparty if the LEI has not been renewed. The commenter noted that a lapsed LEI still uniquely identifies a counterparty, and that not permitting the use of a lapsed LEI would undermine the quality of the data available to the Authorities.</p>	<p>No change. The obligation to maintain and renew an LEI rests with the counterparty that obtained the LEI.</p>
	<p>One commenter recommended that the descriptions in the “Identifier of reporting counterparty” and “Identifier of non-reporting counterparty” data fields Appendix A be revised to refer to, in the case of an individual, an “alternate identifier” instead of its “client code”.</p>	<p>Change made. The descriptions for these fields now refer to “alternate identifier”.</p>

<p>S. 28(2)</p>	<p>One commenter supported new section 28(2), as it provides clarity regarding the obligation of each local counterparty intending to execute a derivative transaction or that has ongoing obligations pursuant to a reportable derivative to obtain, renew and maintain an LEI.</p>	<p>No change required.</p>
<p>Excluding individuals from the requirement to obtain an LEI</p>	<p>Several commenters expressed support for excluding individuals from the requirement to obtain an LEI, for reasons including that disclosure of an individual’s LEI a by reporting party could breach privacy laws in certain jurisdictions.</p>	<p>No change required.</p>
<p>Assigning an alternate identifier</p>	<p>One commenter supported placing the responsibility of assigning an alternate identifier on the reporting counterparty because, among other reasons, disclosing the identity of the non-reporting counterparty to the recognized trade repository to facilitate the alternate identifier may breach certain jurisdictions’ privacy laws.</p>	<p>No change. The responsibility to assign an alternate identifier rests with the reporting counterparty. However, a reporting counterparty may delegate this responsibility to another party.</p>
	<p>One commenter recommended that the responsibility be placed solely on TRs to issue a unique alternate identifier for non-LEI eligible counterparties, in order to improve data aggregation, data validation, traceability and market oversight.</p>	<p>No change. The responsibility to assign an alternate identifier rests with the reporting counterparty. However, a reporting counterparty may delegate this responsibility to another party.</p>
<p>Section 34: Pre-existing Derivatives and section 44 Transition period</p>		
<p>s. 34 – General comments</p>	<p>Two commenters appreciated the clarification in the timelines for reporting pre-existing transactions.</p>	<p>No change required.</p>
<p>s. 44 – General comments</p>	<p>One commenter requested clarification in subsections 44(2) and (3) with respect to whether a derivative entered into before the applicable reporting start date for the reporting counterparty are required to be reported if the transaction is terminated before the reporting date for pre-existing derivatives.</p>	<p>Change made. Subsections 44(2) and (3) have been revised to reflect that reporting is not required for a derivative that is entered into before the applicable reporting start date and that is terminated before the applicable reporting date for pre-existing derivatives.</p>

Section 41.1 - Derivatives between affiliated entities		
General comments	A number of commenters supported exempting inter-affiliate derivatives transactions.	No change required.
	However, numerous commenters urged that the inter-affiliate exemption is too narrow, and encouraged broader relief for derivatives between all affiliated entities, regardless of whether both are local counterparties in Canada.	Change made. The inter-affiliate exclusion has been broadened to apply to all derivatives between affiliated entities that are each not a derivatives dealer, a clearing agency or an affiliated entity of a derivatives dealer or clearing agency, regardless of jurisdiction.
	Several commenters urged that the inter-affiliate exemption should also be available to end-user affiliates with a derivatives dealer in their corporate group; the focus should be on the character of the counterparties to a transaction and not their affiliates.	No change. We believe it is important for the regulators to have a view of inter-affiliate derivatives by corporate groups that include a derivatives dealer.
Reporting valuation data on a quarterly basis for inter-affiliate derivatives	One commenter noted that, while it supports minimizing the effects of reporting obligations on market participants, quarterly reporting of inter-affiliate trades (along with other bespoke reporting exceptions) increases the complexity of reporting and impairs TRs' ability to internally monitor compliance.	No change. The inter-affiliate exemption in s. 41.1 has been broadened to include derivatives between all affiliated entities, regardless of whether both are local counterparties in a jurisdiction of Canada.
Section 44.1: Reporting by a Local Counterparty that Ceases to Benefit from an Exclusion		
General Comments	One commenter expressed concern with exclusions and exceptions that provide certain local counterparties with unique reporting time periods and indicated this will hinder the ability of the Authorities and TRs to compile and monitor trade data.	No change. We believe this transition period is an important accommodation for a local counterparty that has become a reporting counterparty for the first time; we do not anticipate that this accommodation will be frequently used.
	One commenter appreciated the clarity given by detailing the timelines and process to follow pursuant to Section 44.1 of the Proposed Amendments.	No change required.

Appendix C: Public Dissemination of Transaction-level Data		
General Comments	<p>One commenter supported the proposed public dissemination requirements.</p> <p>One commenter noted that in general, the proposed amendments strike the right balance between the protection of counterparty anonymity and the benefits of public transparency of transaction-level data.</p>	No change required.
	<p>A number of commenters expressed reservations about whether the information that is proposed to be released will be helpful to the market, including end-users.</p>	No change. Feedback from consultations indicates that publicly disseminated transaction-level data will be useful to the market.
	<p>One commenter questioned whether transaction-level public dissemination is warranted at all in Canada.</p> <p>Three commenters expressed concern about the benefits of publicly disseminating transaction-level data, particularly in light of the following.</p> <ul style="list-style-type: none"> • The costs of implementing transaction-level public dissemination. • The risk of counterparty identification, given the relatively small market in Canada. • Public dissemination not currently being required in Europe. 	No change. Analysis of the reported trade data indicates that there is sufficient liquidity to support the public dissemination of transaction-level data for all classes of products currently subject to public dissemination under the TR Rule.

	<p>One commenter strongly recommended that the public dissemination of transaction-level data be postponed to conduct a thorough study of the benefits of transaction-level public dissemination, particularly in light of the relatively small market in Canada.</p> <p>One commenter asked whether the public dissemination of aggregate derivatives data by trade repositories might sufficiently meet the commitments and goals of Canadian regulators to improve the transparency of derivatives markets.</p>	<p>No change. Analysis of the reported trade data indicates that there is sufficient liquidity to support the public dissemination of transaction-level data for all classes of products currently subject to public dissemination under the TR Rule.</p>
Harmonization	<p>One commenter expressed appreciation for the efforts of the Authorities to harmonize the public dissemination requirements with the corresponding requirements in Manitoba, Ontario and Québec.</p>	<p>No change required. The final amendments relating to transaction-level public dissemination are substantively harmonized with the in Manitoba, Ontario and Québec.</p>
	<p>One commenter expressed appreciation for the efforts of the Authorities to align the public dissemination requirements with existing requirements in the U.S., where appropriate, while also providing additional protections that are appropriate to the Canadian derivatives market.</p>	<p>No change required.</p>
Derivatives transactions excluded from transaction-level public dissemination		
Firm trades/ forced trades	<p>Two commenters suggested that “firm trades” (or “forced trades”) that are facilitated by clearing agencies be expressly excluded from the transaction-level public dissemination requirements. The commenters explained that a clearing agency may facilitate “firm trades” as a means to obtain settlement prices for derivatives with limited price discovery.</p>	<p>No change. Firm trades represent true and accurate pricing information and make up a very small portion of the trades that will be publicly disseminated. There should be no adverse impact on the clearing agencies who conduct firm trades or on market participants, generally, by requiring the reporting and dissemination of firm trades. In addition, to the extent that firm trades relate to derivatives with</p>

		limited publicly available pricing information, transactions in illiquid derivatives are not subject to transaction-level public dissemination at this time.
Bilateral Compression	One commenter supported the exclusion of transactions resulting from multilateral portfolio compression exercises from the transaction-level public dissemination requirements, as the act of compression does not result in a new pricing event. The commenter requested, on the same basis, that the exclusion be expanded to include transactions resulting from bilateral compression exercises.	Change made. Derivatives resulting from bilateral portfolio compression exercises are excluded from the transaction-level public dissemination requirements.
Prime Brokerage Transactions	One commenter suggested that, since there is a single execution event in a basic prime brokerage arrangement, there should be only one public report of transaction-level data; and further that this should be reflect in the exclusions from transaction-level public dissemination.	No change. At this time, there are no data elements required to be reported that would distinguish which trades are prime broker trades and therefore no effective way to prevent public dissemination of both trades associated with a transaction conducted through a prime broker. Any prime broker transactions that are subject to public dissemination under the TR Rule will be subject to masking and rounding and to dissemination delays which will minimize any minor differences between the two mirror trades including when each is reported.
Clearing transactions	One commenter supported excluding from transaction-level public dissemination the novated transactions that result from the central counterparty clearing process.	No change required.

	One commenter requested clarification that the timing of public dissemination in section 7 of Appendix C would apply, in respect of derivatives involving a clearing agency, only to derivatives entered into directly by a clearing agency on its own behalf (e.g. as a result of a clearing default) and not to novated transactions that result from the clearing process.	Change made. Clarifying language has been added to 96-101CP. Section 2 of Appendix C provides that novated transactions are not subject to public dissemination, and therefore section 7 of Appendix C does not apply.
Cross-currency swaps	One commenter expressed support for excluding cross-currency swaps from public dissemination.	No change required.
Asset classes subject to transaction-level public dissemination		
General comments	One commenter noted that if public dissemination of transaction-level data is required, it is generally supportive of the approach proposed with respect to asset classes and caps.	No change required.
Foreign exchange	Two commenters supported the proposal to exclude foreign exchange derivatives transactions from public reporting due to the maturity and size of these markets in Canada.	No change required.
Commodities	Two commenters agreed with the proposal to exclude commodity derivatives transactions from public reporting due to the maturity and size of these markets in Canada.	No change required.
	One commenter requested confirmation that commodity derivative transactions are excluded from transaction-level public dissemination.	No change required. Table 1 of Appendix C sets out the asset classes and underlying asset identifiers that are subject to transaction-level public dissemination.
Equity indices and sub-indices	Two commenters supported the inclusion of equity indices in the product set, but recommended that certain sub-indices which are illiquid in the Canadian derivatives market should be excluded from the public dissemination requirements.	No change. Analysis of the reported trade data indicates that there is sufficient liquidity to support the public dissemination of transaction-level data for all classes of products currently subject to public dissemination under the TR Rule.

<p>Credit indices and sub-indices</p>	<p>One commenter expressed concern with the public dissemination of transactions in any credit index, as these products are traded more thinly in Canada than in the U.S. and there is therefore a greater likelihood of compromising anonymity.</p>	<p>No change. Analysis of the reported trade data indicates that there is sufficient liquidity to support the public dissemination of transaction-level data for all classes of products currently subject to public dissemination under the TR Rule.</p>
<p>Equity and credit sub-indices</p>	<p>One commenter expressed concern about the public dissemination of the strike price and option type due to illiquidity in the Canadian market for these sub-index transaction and requested that they be excluded from or masked in the data that is publicly disseminated.</p>	<p>No change. Analysis of the reported trade data indicates that there is sufficient liquidity to support the public dissemination of transaction-level data for all classes of products currently subject to public dissemination under the TR Rule. In addition, anonymising measures (including rounding and masking) provide protection from identification through reverse engineering.</p>
<p>Masking of counterparty identity</p>		
<p>General comments</p>	<p>One commenter recommended that the specific maturity date of the transaction not be publicly disclosed and instead, the term of the transaction could be disclosed in general terms, for example, “greater than 10 years”.</p>	<p>No change. Feedback during consultations indicated to us that masking of maturity dates would significantly impair the usefulness of the data in price formation.</p>
<p>Rounding</p>	<p>Two commenters supported requirements and conventions for the rounding of notional amounts by a TR for the purposes of transaction-level public dissemination as an important safeguard for the preservation of participant anonymity and market liquidity. However, three commenters requested that transactions be assembled into larger groups and that fewer rounded notational amounts be used in public dissemination to prevent reverse engineering of transactions in an illiquid market.</p>	<p>No change. Based on our analysis, the rounded notional amounts are appropriate for the products for which trade data will be publicly disseminated.</p>

Capping	One commenter supported the capping of notional amounts in publicly disseminated data, in order to preserve participant anonymity and market liquidity, but requested that the capped rounded notional amount for credit and equity asset classes be reduced to \$20 million.	No change. Based on our analysis, the capped rounded notional amounts for credit and equity asset classes are appropriate for the products for which trade data will be publicly disseminated.
	One commenter requested the addition of a \$20 million capped rounded notional amount for any interest rate swap with a maturity date of 20 years or more.	No change. Based on our analysis, the capped rounded notional amounts for interest rate swaps are appropriate for the products for which trade data will be publicly disseminated.
Timing	A number of commenters recommended explicit and distinct time periods for the delay of transaction-level public dissemination by TRs.	Change made. All derivatives data reported to a recognized trade repository that is subject to public dissemination will not be publicly disseminated until 48 hours after the time reported as the transaction's execution timestamp.
	Two commenters recommended that the public dissemination time delay be based on the execution timestamp reported for a derivative, and not based on the time the report was received by the TR, so as not to disadvantage parties that report earlier and disincentivize prompt reporting.	Change made. The timeframe for public dissemination of trade data in the TR Rule was revised and is now based on the execution timestamp of the transaction rather than the date it was reported to the recognized trade repository.
Effective date	One commenter was concerned about the timing of exemptive relief for reporting counterparties from certain requirements in MI 96-101 and potential dis-harmonization in the effective date of the Amendments to MI 96-101 relative to corresponding amendments in Manitoba, Ontario and Québec.	No change required. Applications for exemptive relief are outside the scope of these amendments. The Participating Jurisdictions have endeavoured to harmonize, to the extent possible, effective dates and requirements with those in Manitoba, Ontario and Québec.

	<p>Two commenters supported a harmonized start date for public dissemination across Canada.</p> <p>One commenter expressed concern that the proposed start date of July 29, 2016 was not feasible as trade repositories would need time to build out their systems to reflect the requirements.</p>	<p>Change made. The requirements relating to public dissemination will become effective January 16, 2017 in all CSA jurisdictions.</p>
--	---	--

List of Commenters:

1. Canadian Advocacy Council for Canadian CFA Institute Societies
2. Canadian Market Infrastructure Committee
3. Encana Corporation
4. ICE Trade Vault, LLC
5. International Swaps and Derivatives Association
6. Sutherland Asbill Brennan LLP, on behalf of the Canadian Commercial Energy Working Group
7. TransCanada Corporation