

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

**June 9, 2022**

### **Introduction**

The jurisdictions that have implemented Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the **MI jurisdictions** or **we**) are publishing for a 120-day comment period, expiring on October 7, 2022:

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

Collectively, the proposed amendments to the Trade Reporting Rule and the proposed changes to the Trade Reporting CP are referred to as the **Proposed Amendments**. We are issuing this Notice to solicit comments on the Proposed Amendments and welcome all comments on this publication, as well as responses to the specific questions in the Request for Comments section later in this Notice.

This Notice, including its annexes, is available on the websites of the following CSA jurisdictions:

[www.albertasecurities.com](http://www.albertasecurities.com)

[www.besc.bc.ca](http://www.besc.bc.ca)

[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)

[www.fcnb.ca](http://www.fcnb.ca)

[nssc.novascotia.ca](http://nssc.novascotia.ca)

### **Background**

The Trade Reporting Rule came into effect in 2016. As a result of feedback from various market participants, a need to improve both the quality of market data and the efficiency of reporting, and international developments, we are proposing the Proposed Amendments. The Proposed Amendments balance these regulatory objectives while also minimizing the regulatory burden for

market participants subject to the Trade Reporting Rule. Detailed information relating to these changes is set out below.

### **Substance and Purpose of the Proposed Amendments**

Since the implementation of derivatives trade reporting requirements, global regulators have identified shortcomings in the data that they received and have been working to implement global standards to improve the quality of data, create standardized systems to identify the parties to each derivative, identify the type of derivative being traded and assign a unique identifier for each derivative. We have also recognized these shortcomings and are proposing the Proposed Amendments in order to address these shortcomings by

- implementing new requirements to improve data quality by ensuring that reported data is accurate and complete, and
- ensuring that these changes are consistent with regulatory requirements that are being implemented in other jurisdictions where derivatives trade repositories operate, including requirements relating to certain identifiers such as unique transaction identifiers (**UTIs**) and unique product identifiers (**UPIs**).

The Proposed Amendments also

- implement regulatory requirements for derivatives trade repositories that are consistent with international regulatory standards, particularly the Principles for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems Technical Committee of the International Organization of Securities Commissions, dated April 2012 (the **PFMI principles**), and
- establish an option to report position data for certain derivatives, including contracts for difference.

### **Summary of Proposed Amendments**

The Proposed Amendments include the following amendments to the Trade Reporting Rule:

- *Amendments to Comply with the PFMI principles<sup>1</sup>*

In order for the Trade Reporting Rule to comply with the PFMI principles, we have introduced updated trade repository governance, risk and operational requirements. For this purpose, we have included:

- new section 14.1 [*Operational efficiency and effectiveness*] that requires a recognized trade repository to establish, implement and maintain policies and procedures to

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<sup>1</sup> See, <https://www.bis.org/cpmi/publ/d101a.pdf>

- review its service efficiency and effectiveness, and
- specify measurable goals and objectives that promote operational efficiency and effectiveness for all aspects of its business as a derivatives trade repository;
- amendments to section 8 [*Governance*] that require a recognized trade repository to establish, implement and maintain certain governance arrangements;
- amendments to section 9 [*Board of directors*] that require a recognized trade repository to establish, implement and maintain policies and procedures to review on a regular basis the overall performance of the board of directors and individual board members;
- new section 24.1 [*Links and tiered participation arrangements*] that requires a recognized trade repository to maintain controls and procedures to review and manage risk arising from links, such as electronic networks that connect various entities.
- ***Interpretation of what constitutes an affiliated entity***

The Proposed Amendments clarify that, for the purpose of this Instrument, two persons or companies will not be affiliated entities if at least one of them is an investment fund as defined in National Instrument 81-106 [*Investment Fund Continuous Disclosure*]. This change will align with the concept of affiliated entity in other instruments relating to derivatives.

- ***Definition of “derivatives dealer”***

We have updated the definition of “derivatives dealer” to include any person or company required to be registered as a derivatives dealer under securities legislation. This has been included

- to align the definition with the proposed National Instrument 93-101 *Derivatives: Business Conduct (NI 93-101)*, and
- because the proposed National Instrument 93-102 *Derivatives: Registration* may designate or prescribe entities to be derivatives dealers based on specified activities.

It is, however, important to note that this definition continues to include a “business trigger” test, based on whether the person or company is engaging in, or holding themselves out as engaging in, the business of trading in derivatives as principal or agent, regardless of whether they are registered or exempted from the requirement to be registered. We have updated the Trade Reporting CP to include guidance regarding the “business trigger”, which aligns with the Companion Policy to NI 93-101.

- ***Prohibition on disclosure of counterparty identity by a recognized trade repository***

New section 22.1 [*Transactions executed anonymously on a facility or platform for trading derivatives*], which aligns with the CFTC name give-up prohibition,<sup>2</sup> ensures that the identity of a counterparty to an anonymous transaction executed on a facility or platform for trading derivatives and intended to be cleared is not disclosed to users of the recognized trade repository. The name give-up prohibition applies only to a derivative in respect of which a counterparty does not know the identity of its counterparty prior to or at the time of execution.

- ***Validation of data***

New section 22.2 [*Validation of data*] will impose new obligations on a recognized trade repository to establish, implement and maintain rules, policies and procedures to validate that the derivatives data received from a reporting counterparty satisfies the data elements in Appendix A of the Trade Reporting Rule.<sup>3</sup> Under subsection 22.2(2), a recognized trade repository must notify a reporting counterparty whether or not the derivatives data that it has reported has satisfied the recognized trade repository's validation procedures.

Under subsection 26(9), a reporting counterparty must ensure that all reported derivatives data satisfies the derivatives data validation procedures of the recognized trade repository to which the derivative is reported.

By ensuring that required derivatives data is reported in a consistent manner, we hope to promote more efficient reporting and superior data quality.<sup>4</sup>

- ***Verification of data accuracy***

Reporting counterparties will have the general obligation to ensure that all reported derivatives data is accurate and contains no misrepresentation (paragraph 26.1(1)(a)). In addition, reporting counterparties that are derivatives dealers or reporting clearing agencies will need to verify the accuracy of data every 30 days.<sup>5</sup> (paragraph 26.1(1)(b)) Reporting counterparties also must report errors and omissions under section 26.1.

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<sup>2</sup> 17 CFR § 49.17(f)(2).

<sup>3</sup> As an element of the Proposed Amendments, we are proposing a new Appendix A to the Companion Policy [*Multilateral Derivatives Data Technical Manual*] that provides technical guidance about how to satisfy the data requirements in Appendix A to the Trade Reporting Rule.

<sup>4</sup> This process is also intended generally to align with the revised CFTC requirements regarding validation. See 17 CFR § 45.13 and 17 CFR § 49.10.

<sup>5</sup> Verification of data accuracy is intended broadly to align with similar CFTC requirements under 17 CFR § 45.14 and 17 CFR § 49.11. One important difference is that the CFTC requires reporting counterparties that are not swap dealers, major swap participants or derivatives clearing organizations to verify data once every calendar quarter, while we propose that it is appropriate not to require this in MI jurisdictions due to the resulting burden.

To allow and enable a reporting counterparty to carry out these data verification responsibilities, a recognized trade repository will need to establish, implement and maintain appropriate rules, policies and procedures under section 23.

- ***UTI generation***

We are implementing UTI technical guidance published by the CPMI-IOSCO Working Group.<sup>6</sup> The amendments to section 29 [*Unique transaction identifiers*] set out a new hierarchy to determine which entity is responsible for generating the UTI for a transaction. The hierarchy is intended to align globally, while also being generally consistent with the reporting counterparty hierarchy under subsection 25(1).

- ***UPI specification***

We are implementing UPI technical guidance published by the CPMI-IOSCO Working Group.<sup>7</sup> The proposed amendments to section 30 [*Unique product identifiers*] require a reporting counterparty to identify a transaction by means of a UPI assigned by the Derivatives Service Bureau.<sup>8</sup>

- ***Termination of an original derivative by a clearing agency***

A reporting clearing agency will have to report the termination of a cleared derivative by the end of the business day on which the original derivative is terminated. This is consistent with CFTC requirements.<sup>9</sup> (s. 32(3))

- ***Position level data***

The Proposed Amendments address the issue of insufficient and inadequate reporting of certain short-term derivatives such as contracts for difference (**CFDs**). New section 32.1 [*Position level data*] will permit a reporting counterparty to report aggregate position level data as an optional alternative in certain circumstances to reporting lifecycle events. This will enable some market participants to report a netted aggregate of multiple derivatives, instead of reporting lifecycle events separately for each derivative, provided the derivatives meet certain criteria, including that they have no expiration date, involve identical contract specifications, and are replaceable with one another.

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<sup>6</sup> Technical Guidance – Harmonization of the Unique Transaction Identifier, September, 2017 (<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD557.pdf>).

<sup>7</sup> Technical Guidance – Harmonization of the Unique Product Identifier, September, 2017 (<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD580.pdf>).

<sup>8</sup> The Derivatives Service Bureau is a subsidiary of the Association of National Numbering Agencies incorporated as The Derivatives Service Bureau (DSB) Limited and designated by the Financial Stability Board as both the service provider for the unique product identifier system assigned to a derivative and the operator of the unique product identifier reference data library, or any successor thereto.

<sup>9</sup> 17 CFR § 45.4(b).

- ***Reporting of collateral and margin data***

The Trade Reporting Rule currently requires reporting counterparties to indicate whether a transaction is collateralized. The Proposed Amendments to subsection 33(1) will require a reporting counterparty to report collateral and margin data each business day. Accordingly, we have introduced new data elements relating to collateral and margin data in Appendix A to the Trade Reporting Rule that reflect new global standards set out in the CDE Technical Guidance published by the CPMI-IOSCO Working Group. This additional data will support systemic risk analysis.

- ***Facility or platform for trading derivatives***

Where a derivative involving a local counterparty is executed anonymously on a facility or platform for trading derivatives and is intended to be cleared, new section 36.1 [*Facility or platform for trading derivatives*] will require the facility or platform for trading derivatives to have the obligations of a reporting counterparty under the specified provisions. In this limited case, the reporting hierarchy in section 25 [*Reporting counterparty*] does not apply.

We believe that this Proposed Amendment is appropriate because it is not feasible for the counterparties to the derivative to report. For example, in an anonymous derivative involving a local counterparty, Party A, and another counterparty, Party B, Party A will know that the derivative is required to be reported but will not know the identity of Party B. Party A will be unable to determine which counterparty has the reporting obligation and will not be able to report the legal entity identifier of Party B or Party B's local counterparty jurisdiction.

In these circumstances, we believe that the facility or platform for trading derivatives is best positioned to report the derivative, given that it is able to ascertain the identity of both counterparties. We believe there is no other alternative that results in accurate and complete data.

While this represents a new obligation on facilities or platforms for trading derivatives, we considered the following factors that may mitigate the impact of this change:

- at this time, we are only aware of swap execution facilities that permit such anonymous transactions, and these entities already have reporting obligations in these circumstances under CFTC requirements;<sup>10</sup>
- the data elements under the Trade Reporting Rule generally align with CFTC requirements, with some exceptions;
- because these original derivatives are typically novated immediately to the clearing agency, there should be no ongoing reporting of valuation and collateral and margin

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<sup>10</sup> 17 CFR § 43.3(a)(2) and 17 CFR § 45.3(a).

data, and as mentioned above, the reporting clearing agency will report the termination of the original derivative consistent with CFTC requirements.

We continue to require reporting counterparties to report derivatives that are not anonymously executed on a facility or platform for trading derivatives.

- ***Correction of data available to regulators and correction of data available to the public***

A recognized trade repository will be required to correct the data it provides to a securities regulator as soon as technologically practicable following a correction to an error or omission in reported derivatives data. (paragraph 37(1)(d)) Similarly, aggregate data and transaction level reports made available to the public by a recognized trade repository will have to be corrected as soon as technologically practicable following a correction to an error or omission. (paragraphs 39(1)(b) and 39(3)(b))

- ***Appendix A of the Trade Reporting Rule***

The updated Appendix A [*Data elements required to be reported to a recognized trade repository*] reflects global standards set out by the CFTC and in the CDE Technical Guidance published by the CPMI-IOSCO Working Group.<sup>11</sup> We have revised the “Data Element Description” column and streamlined and removed a number of data elements to align with the CDE Technical Guidance and other global regulators. For example, by eliminating the “Other details” data element that is in the current Trade Reporting Rule, which requires market participants to “provide any additional information that may be necessary” we will eliminate uncertainty as to what is required under this data element.

- ***Appendix B of the Trade Reporting Rule***

The updated Appendix B [*Equivalent trade reporting laws of foreign jurisdictions subject to deemed compliance pursuant to subsection 26(3)*] reflects current equivalent derivatives trade reporting laws of the European Union and United Kingdom. We remind market participants that the substituted compliance under subsection 26(3) is limited and subject to certain conditions.

- ***Appendix C of the Trade Reporting Rule***

Recognized trade repositories require certain periods of downtime to perform testing, maintenance and upgrades, and may therefore not be able to publicly disseminate certain information 48 hours after the time and date represented by the execution timestamp field of a derivative transaction as required under Appendix C [*Requirements for the public dissemination of transaction level data*]. As a result, the Proposed Amendments allow recognized trade repositories to publicly disseminate certain information as soon as technologically practicable.

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<sup>11</sup> Available here: [https://www.leiroc.org/leiroc\\_gls/index.htm](https://www.leiroc.org/leiroc_gls/index.htm)

We are monitoring changes to benchmark reference rates, including recent updates relating to CDOR, USD LIBOR, EURIBOR and GBP LIBOR, which could affect trading liquidity and lead to changes in the indices that we require to be publicly disseminated. We will also assess whether other products are suitable for public dissemination at a later date.

The Proposed Amendments also include specific changes to the Trade Reporting CP. The changes include:

- ***New Multilateral Derivatives Data Technical Manual***

The Trade Reporting CP includes a new Multilateral Derivatives Data Technical Manual (the **Manual**). The Manual provides guidance on how to comply with the requirements in the Trade Reporting Rule, including Appendix A. The guidance in the Manual pertains to the format and values for reporting and aligns with global data standards. We also plan to include useful examples in the final version of the Manual.

- ***Redraft of the Trade Reporting CP***

We have redrafted the Trade Reporting CP to provide clearer guidance to market participants subject to the Trade Reporting Rule. Notably, the Trade Reporting CP includes additional guidance regarding the definition of “derivatives dealer” that is aligned with the proposed Companion Policy to proposed NI 93-101.

- ***Guidance relating to compliance with the PFMI principles***

Changes to the Trade Reporting CP include specific guidance relating to the application of PFMI principles to the Trade Reporting Rule. In particular, the changes provide additional guidance relating to compliance with PFMI principles in:

- section 7 [*Legal framework*];
- section 8 [*Governance*];
- subsections 3 and 4 of section 9 [*Board of directors*];
- section 12 [*Fees*];
- section 14.1 [*Operational efficiency and effectiveness*];
- subsection (3) of section 20 [*General business risk*];
- subsection (3) of section 21 [*System and other operational risks*];
- section 24.1 [*Link and tiered participation arrangements*].



## **Transition Period/Differences in Data Elements with CFTC**

We understand that the CFTC will be harmonizing with the global trade reporting standards set out by the CPMI-IOSCO Working Group in two phases, with the first set of amendments to take effect in December, 2022 and the second set of amendments to take effect in December, 2023 (the **CFTC Amendments**). The Proposed Amendments are scheduled to be implemented in 2024 after the implementation of CFTC Amendments. Accordingly, there will be a period of time where reporting counterparties will be subject to the new global standards in some jurisdictions but not subject to them in our jurisdictions (the **Transition Period**). We intend to provide future guidance regarding the Transition Period and welcome comments.

## **List of Annexes**

The following annexes form part of this Notice:

- Annex A – Proposed Amendments to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (**MI 96-101**)
- Annex B – Blackline of MI 96-101
- Annex C – Proposed Changes to Companion Policy 96-101 *Trade Repositories and Derivatives Data Reporting* (the **CP**)
- Annex D – Blackline of the CP
- Annex E – Local Matters

## **Request for Comments**

In addition to your comments on all aspects of the Proposed Amendments, we also seek specific feedback on the following questions:

### 1) Reporting deadline for “end-users”

The deadline of the next business day for reporting derivatives data to a trade repository applies to reporting counterparties whether they are derivatives dealers or end-users. In contrast, we note that the finalized amendments to CFTC Regulation Part 45 allow for reporting by end-users by T + 2 following the execution date. Do market participants anticipate compliance issues regarding the proposed shorter time frame? Please provide reasons.

### 2) Framework for validation, verification and correction of derivatives data

We have set out a new framework for validation, verification and correction of derivatives data. Please provide any comments regarding the proposed requirements. Is it necessary for a trade repository to implement policies and procedures to enable reporting counterparties to ensure that

reported derivatives data is accurate and contains no misrepresentation, or is providing data access to such counterparties sufficient to enable them to fulfill this requirement?

3) Timing of implementation

We anticipate that the implementation date for the Proposed Instrument will be in 2024. Does the proposed implementation timing pose any particular problems for market participants, particularly with regard to implementation of other global trade reporting changes?

4) Reporting hierarchy and potential issues with reporting hierarchy under OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting (the Ontario TR Rule)*

Does the hierarchy enunciated in section 25 for determining the reporting counterparty achieve efficiency in reporting and place the reporting obligations on the entities that are practically able and best situated to do the reporting? We invite comments on the differences in the reporting counterparty hierarchy among the various CSA jurisdictions and how these differences affect market participants.

We note that section 25 of the Ontario TR Rule does not include a provision similar to paragraph 25(2)(c) of the Trade Reporting Rule. Paragraph 25(2)(c) provides that counterparties to a derivative that are either both derivatives dealers or both not derivatives dealers can agree, in writing, about which counterparty will be the reporting counterparty. Under the Ontario TR Rule, if each counterparty to a derivative is a derivatives dealer and one counterparty to the derivative is not a party to the “ISDA Multilateral”, each counterparty would be required to be a reporting counterparty.

The OSC has developed a potential alternative reporting hierarchy, set out in Annex E to the *OSC Notice and Request for Comment* dated June 9, 2022, which reduces the need for delegated reporting between derivatives dealers. Please provide any comments on whether you consider the alternative hierarchy to function better for local market participants trading with Ontario counterparties, particularly in comparison with the functioning of the MI 96-101 hierarchy.

5) Reporting collateral and margin data

The new requirement to report collateral and margin data is consistent with the current ESMA requirements and the new CFTC rules. Are the collateral and margin data reporting requirements and elements capable of being complied with in an efficient manner?

6) Hierarchy for generating UTIs

Under new subsection 29(1), a new hierarchy has been set out for responsibility for generating UTIs. Does the proposed hierarchy match the practicalities of UTI generation? We have included a new provision for cross-jurisdictional derivatives, such that if a derivative is also reportable to one or more other jurisdictions with a regulatory reporting deadline earlier than under the Instrument, the derivative should be identified in all reporting with the same UTI that was generated according to the rules of the jurisdiction with the earliest regulatory reporting deadline. Please provide any comments on the practicality of this cross-jurisdictional provision.

7) Harmonization with global standards

In order to harmonize with global standards, we have updated the required data elements for reporting counterparties, as set out in Appendix A to the Trade Reporting Rule. To provide further detail regarding formats for the data elements, we have created a new Manual, as set out in Appendix A to the Trade Reporting CP. Please provide any comments regarding the data elements, the Manual and whether the updates would reduce regulatory burden. We also invite comments on the data elements pertaining to commodity derivatives, while noting that international guidance on such data elements is still being developed.

8) Requirement to correct errors relating to closed derivatives

The requirement to correct errors applies to derivatives that are no longer open, as long as the record retention period for the derivative has not expired at the time the error is discovered, while the verification requirements only apply to open derivatives. Please provide any comments regarding the practicability of these proposed requirements, which are consistent with the analogous requirements in the finalized amendments to CFTC Regulation Part 45.

9) Maintenance and renewal of LEIs

The Proposed Amendments require a local counterparty under section 28 [*Legal entity identifiers*] to maintain and renew its LEI. However, we have identified instances where non-reporting local counterparties are not maintaining and renewing their LEIs, as required. As a result, the LEIs lapse and the information associated with them is no longer current, which reduces the efficiency of the LEI system. While we do not currently expect reporting counterparties to verify the maintenance and renewal of LEIs of their counterparties, we invite comments from market participants regarding any potential steps that could be taken to improve the maintenance and renewal of LEIs of non-reporting counterparties.

Please provide your comments in writing by **October 7, 2022**.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In addition, all comments received will be posted on the websites of the Alberta Securities Commission at [www.albertasecurities.com](http://www.albertasecurities.com), and the British Columbia Securities Commission at [www.bcsc.bc.ca](http://www.bcsc.bc.ca). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Please address your comments to each of the following:

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

Please send your comments **only** to the following addresses. Your comments will be forwarded to the remaining jurisdictions.

Janice Cherniak  
Senior Legal Counsel  
Alberta Securities Commission  
Suite 600, 250 – 5<sup>th</sup> Street SW  
Calgary, Alberta T2P 0R4  
Fax: 403-297-4113  
[Janice.cherniak@asc.ca](mailto:Janice.cherniak@asc.ca)

Michael Brady  
Deputy Director, Capital Markets Regulation  
British Columbia Securities Commission  
P.O. Box 10142 Pacific Centre  
701 West Georgia Street  
Vancouver, British Columbia V7Y 1L2  
Fax: 1-888-801-0607  
[mbrady@bcsc.bc.ca](mailto:mbrady@bcsc.bc.ca)

## Questions

Please refer your questions to any of the following:

Janice Cherniak  
Senior Legal Counsel  
Alberta Securities Commission  
403-355-4864  
[janice.cherniak@asc.ca](mailto:janice.cherniak@asc.ca)

Michael Brady  
Deputy Director, CMR  
British Columbia Securities Commission  
604-899-6561  
[mbrady@bcsc.bc.ca](mailto:mbrady@bcsc.bc.ca)

David Shore  
Legal Counsel, Securities  
Financial and Consumer Services Commission  
New Brunswick  
506-658-3038  
[David.shore@fcnb.ca](mailto:David.shore@fcnb.ca)

Abel Lazarus  
Director, Corporate Finance  
Nova Scotia Securities Commission  
902-424-6859  
[abel.lazarus@novascotia.ca](mailto:abel.lazarus@novascotia.ca)

Legal Counsel, Securities Division  
Financial and Consumer Affairs Authority  
of Saskatchewan  
306-787-5867  
[graham.purse2@gov.sk.ca](mailto:graham.purse2@gov.sk.ca)