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October 7, 2022

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Ontario Securities Commission
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-and to-

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*In respect of the Regulation to amend Regulation 91-507 respecting Trade
Repositories and Derivatives Data Reporting*

- and to –

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*In respect of proposed amendments to Multilateral Instrument 96-101 Trade
Repositories and Derivatives Data Reporting*

Dear Sirs/Mesdames:

**Re: Request for Comments - Proposed Amendments to OSC 91-507 Trade
Repositories and Derivatives Data Reporting and Proposed Changes to OSC**

Companion Policy 91-507CP and Proposed Changes to OSC Companion Policy 91-506CP

We submit the following comments in response to the Notice and Request for Comments published by the Ontario Securities Commission (**OSC**) on June 9, 2022 (the **Notice**), requesting comments on: (a) proposed amendments to OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting (the **Trade Reporting Rule**) and (b) proposed changes to OSC Companion Policy 91-507CP to the Trade Reporting Rule (collectively with the Trade Reporting Rule and the Trade Reporting CP the **Proposed Trade Reporting Amendments**). By copy of this letter to the regulators or regulatory authorities in other Canadian jurisdictions we submit the same comments in respect of the equivalent changes proposed to the trade reporting rules in those jurisdictions as noted above.

Bloomberg SEF LLC is a limited liability company organized under the laws of the State of Delaware in the United States (US) and is a wholly owned subsidiary of Bloomberg L.P., a Delaware limited partnership. Bloomberg SEF LLC is registered with the U. S. Commodity Futures Trading Commission (**CFTC**), as a swap execution facility (**SEF**) and pursuant to an order of the OSC dated June 13, 2016 was granted an exemption from the requirement to be recognized as an exchange in Ontario. Bloomberg SEF LLC also holds exemption orders from the securities regulators in Alberta, British Columbia, Quebec and Nova Scotia, and pursuant to such orders provides access to its SEF known as BSEF to participants in these provinces.

We understand that the Proposed Trade Reporting Amendments have been developed in response to coordinated international efforts to streamline and harmonize derivatives data reporting standards, efforts which we fully appreciate and support, particularly between Canadian regulators and the CFTC. As stated in the Notice, we agree that global harmonization of data reporting standards will significantly reduce regulatory burdens by enabling market participants to take a more consistent approach to compliance, but only to the extent such harmonization occurs.

As such, we are writing to comment on the proposed addition of the new section 36.1 to the Trade Reporting Rule, which proposes to impose a trade reporting obligation on a derivatives trading facility (**DTF**) where the transaction involves a local counterparty and is executed anonymously on the DTF and intended to be cleared, unless the transaction is reported by an exempt or recognized clearing agency. This proposed new obligation imposes a significant burden on SEFs, and in particular runs counter to the streamlined and pragmatic approach taken by Canadian securities regulators to exempt SEFs from recognition (and related compliance requirements) through harmonized blanket orders that allow such SEFs to rely ostensibly on compliance with CFTC requirements.

We know that the OSC has set out a number of factors that are considered to mitigate the burden this new obligation would represent on such SEFs and note that:

(a) While such SEFs have reporting obligations in these circumstances under CFTC requirements, the reporting requirements are materially different. Based on our own internal analysis, the difference in data fields will represent a significant added burden on SEFs and require time-consuming and costly modifications to existing reporting systems.¹

(b) The fact that three CFTC-registered swap data repositories (**SDRs**) are the same entities as the designated trade repositories in Ontario is not germane to the main issue, as the required data fields will be different.

(d) As noted above, the data elements under the Trade Reporting Rule are different from CFTC requirements. The Notice itself acknowledges there are exceptions and these exemptions do

¹ We specifically encourage the OSC to look to align reporting requirements in line with CFTC modifications to technical specification for Parts 43 and 45 which were published on September 15, 2022. See https://www.cftc.gov/PressRoom/PressReleases/8584-22?utm_source=govdelivery.

represent a significant additional compliance burden on SEFs. We also note that unlike other elements of trade reporting, SEFs will not be able to rely on substituted compliance under section 26(5) of the Trade Reporting Rule. While section 26(5) is limited, it provides an important exemption from reporting in the circumstances where the local counterparty falls under paragraph (c) of the definition of “local counterparty” in the Trade Reporting Rule (being a guaranteed affiliate). The effect of not extending this exemption to SEFs means that SEFs will need to determine whether a counterparty is a local counterparty and, if so, report in respect of local counterparties under paragraph (a) of the definition. The effect of not extending this exemption to SEFs also means that SEFs will need to determine if a SEF participant/counterparty to a SEF transaction is an affiliated entity of a Canadian/Ontario entity that is responsible for all or substantially all of the liabilities of the SEF participant/counterparty (**guaranteed affiliate**), which is data that the SEF does not otherwise collect. The obligation places SEFs in the unenviable position of having to potentially go out to every single participant (including non-Canadian participants) to determine if the participant is a guaranteed affiliate of such a local counterparty. The burden of such an obligation is directly at odds with the pragmatic approach taken by Canadian securities regulators in issuing exemption orders to SEFs, which are already subject to significant oversight by their home regulator.

Instead of reporting such data (and if the Proposed Trade Reporting Amendments are finalized in their current form), SEFs like BSEF may determine to cease making their anonymous central limit order book (CLOB) functionality available to Canadian participants to trade swaps which are intended to be cleared, but are not cleared through a clearing house that is recognized or exempt in Canada.² While most clearing houses that BSEF connects to are recognized in Ontario, we note that very few hold any type of recognition or exemption outside of Ontario, and so we anticipate the disruption in swaps trading if SEFs adopt the approach outlined above to be felt most acutely in provinces outside of Ontario.

We note that requiring SEFs to report directly to every national or subnational regulator in the world is not the only way for such regulators to obtain swap data. Rather, there are a number of arrangements in place—or potentially available with some coordination with the CFTC—for sharing such data. These include existing memoranda of understanding (**MOUs**), data sharing pursuant to authority delegated to CFTC staff and data sharing pursuant to CFTC rules (49.17 and 49.18)³ implementing a provision of the Dodd Frank Act designed to permit cross-border swap data sharing among regulators.

OSC is a party (as are many other Canadian regulators) to an MOU with the CFTC that covers among other things “the provision and maintenance of direct access to information and data stored in . . . trade repositories”⁴ OSC is also a party to another MOU with the CFTC that covers enforcement matters.⁵ Various senior CFTC staff are also empowered to share data with non-U.S. government agencies and futures authorities under CFTC Rule 140.73.⁶ Finally, CFTC Rules 49.17 and 49.18 were expressly designed to provide ongoing access to swap data held in U.S. SDRs to avoid burdening reporting parties with duplicative and/or conflicting reporting burdens imposed by dozens of regulators.⁷ We respectfully

² In such event, OSC would not obtain the data it is seeking, and liquidity in Ontario swap markets and the rest of Canada would decrease, perhaps markedly.

³ 17 C.F.R. §§ 49.17 and 49.18, available at <https://www.ecfr.gov/current/title-17/chapter-I/part-49/section-49.17> and <https://www.ecfr.gov/current/title-17/chapter-I/part-49/section-49.18>, respectively.

⁴ See Memorandum Of Understanding Concerning Cooperation And The Exchange Of Information Related To The Supervision Of Cross-Border Covered Entities, Section 21.d (Mar. 25, 2014), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@internationalaffairs/documents/file/asc-bcsc-osc-amfmou032514.pdf>.

⁵ See Memorandum Of Understanding (Jul. 7, 1992), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@internationalaffairs/documents/file/cosc92.pdf>.

⁶ See 17 C.F.R. §§ 140.73, available at <https://www.ecfr.gov/current/title-17/chapter-I/part-140/subpart-B/section-140.73>.

⁷ OSC is well aware of data sharing initiatives and their goals, having led an FSB workstream thereon. See generally Trade reporting legal barriers[:] Follow-up of 2015 peer review recommendations (19 November 2018), available at <https://www.fsb.org/wp-content/uploads/P191118-4.pdf>.

request that OSC seek the data it desires, or comparable data, through one or more of the foregoing means of data sharing rather than by imposing the burdensome reporting obligations listed above.

BSEF and other SEFs are subject to a comprehensive swap reporting regime administered by the CFTC, a regulator with which the OSC has had cooperative data sharing arrangements for decades. Although the data housed in U.S. SDRs is not identical to those data that the OSC is considering requiring SEFs to report, they are similar. As such, BSEF is open to providing copies of reports submitted to its SDR if the OSC or other provincial regulators explicitly request such reports in the interests of achieving the transparency goals laid out in the Proposed Trade Reporting Amendments. Although the CFTC, which is recognized as a global leader in swap reporting regulation, has amended its swap reporting rules from time to time, it has not done so in the manner the OSC is considering. To the extent OSC still wants the data in proposed section 36.1, we suggest that OSC obtain such data from market participants themselves or, in any case, sources other than SEFs. Lastly, we respectfully submit that to the extent it is retained, the proposed section 36.1 should be drafted in a manner that makes it clear exactly which obligations or provisions are proposed to apply to SEFs. For example, while subsection 36.1(a) refers to section 26 (conceivably which means the section in its entirety), we understand that substituted compliance under subsection 26(5) is not available to SEFs, and similarly while subsection 36.1(a) refers to subsection 26.1(1), 26.1(1)(b) would be inapplicable to SEFs.

We welcome the opportunity to discuss the differences in the proposed reporting requirements and the CFTC's recently amended reporting requirements.

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Thank you for the opportunity to comment on the Proposed Trade Reporting Amendments. Please do not hesitate to contact any of the undersigned if you have any questions in this regard.

Yours truly,

/s/ Derek Kleinbauer
President, Bloomberg SEF LLC

cc. Ramandeep K. Grewal, *Stikeman Elliott LLP*