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VIA EMAIL

The Secretary
Ontario Securities Commission
20 Queen Street West
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October 7, 2022

Re: Proposed amendments to OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (the “Trade Reporting Rule”), OSC Companion Policy 91-507CP (the “Trade Reporting CP”), and OSC Companion Policy 91-506CP (the “Product Determination CP”) to OSC Rule 91-506 *Derivatives: Product Determination* (the “Product Determination Rule”)

Dear Secretary,

Eurex Clearing AG (“Eurex Clearing”) appreciates the opportunity to provide comments to the Ontario Securities Commission (“OSC” or “Commission”) regarding the Commission’s Proposed Amendments to the Trade Reporting Rule, Trading Reporting CP, and Product Determination CP (collectively, the “Proposal”). Eurex Clearing has been an exempt clearing agency in Ontario since 2017 for all products except swaps and has been an exempt clearing agency in Ontario since 2020 for swaps as well. Eurex Clearing is one of the leading CCPs globally, clearing the broadest scope of products under a single framework in Europe and accepting the world’s widest spectrum of eligible collateral.

Eurex Clearing welcomes and generally strongly supports the Commission’s Proposal. The Commission’s Proposal represents an important and very positive step to simplifying the requirements for reporting swaps, lessening burdens for reporting counterparties, and harmonizing the Commission’s swap data reporting requirements with international technical guidance. Specifically, as discussed further in the responses below, the Proposal is a significant milestone in harmonizing Ontario requirements with both European regulations and guidance, including Regulation (EU) No 648/2012 of

the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (“EMIR”), and U.S. regulations and guidance, including Part 45 of the U.S. Commodity Futures Trading Commission (“CFTC”) regulations.

Eurex Clearing provides the following responses to the Commission’s specific requests for comment:

1. Harmonization with global standards

We have updated the required data fields for reporting market participants as set out in Appendix A of the Trade Reporting Rule with the goal of harmonizing with global standards and accordingly, reducing regulatory burden. As well, we created a new OSC Derivatives Data Technical Manual to inform reporting market participants on administrative matters for reporting in accordance with the Trade Reporting Rule.

Please provide your comments on whether you anticipate that the changes to the data field requirements and the corresponding OSC Derivatives Data Technical Manual will reduce regulatory burden and increase efficiency and clarity when meeting trade reporting requirements.

Eurex Clearing AG welcomes the proposed specification of reporting requirements and the harmonization and alignment with global standards. As Eurex Clearing considers itself an architect of trusted markets, it appreciates the Commission’s initiative, which improves the quality and reliability of data and which in turn fosters further confidence in the OTC derivatives market. Eurex Clearing agrees with the Commission that a reporting party that is active in various jurisdictions, including the U.S., must implement the first amendments effective December 2022, considering the technical specifications of the respective trade repository. Other jurisdictions will follow suit. These changes require resources in different areas of a CCP, and accordingly, once changes are effective in certain jurisdictions, it is desirable and significantly cost saving for there to be harmonization across all jurisdictions instead of there being different standards in different jurisdictions. The shorter the time in which regulations of different jurisdictions require different standards, the better for reporting parties and trade repositories.

Referring to the proposed changes to Section 33 (1) (b), Eurex Clearing understands that a recognized or exempt clearing agency must report to a designated trade repository each business day collateral and margin data. Eurex Clearing would like to emphasize to the Commission that, with CFTC’s final rules governing Part 45 swap data reporting,¹ derivatives clearing organizations (“DCOs”) are not required to report margin and collateral information with respect to cleared swaps but are obligated to continue reporting margin and collateral data pursuant to Part 39 of CFTC Regulations. Eurex Clearing would like to point out that this gives rise to a non-harmonized element in the North American

¹ CFTC, Final Rule: Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75,503 (Nov. 25, 2020).

regulations for central counterparties and would encourage the OSC and CFTC to work together towards harmonization on the basis of the Critical Data Elements of the CPMI-IOSCO working group.

Eurex Clearing furthermore appreciates that the Commission announced that it would provide further guidance to the market during the transition period where global standards are effective in some jurisdictions but not in Ontario.

Finally, given the upcoming global harmonization of swap data reporting rules, Eurex Clearing would welcome a reconsideration of the degree to which the equivalence concept is interpreted, which is proposed to be amended but remains limited to the conditions of paragraph 26 (5) and paragraph (c) of the “local counterparty” definition. Eurex Clearing notes that it currently reports all relevant transaction, position, collateral, and valuation data on a portfolio basis for all cleared swaps to the European Securities and Markets Authority (“ESMA”) pursuant to EMIR Article 9. EMIR is a double-sided reporting of conclusion, modification and termination of transactions/positions both counterparties must report, and common data must be identical. Eurex Clearing would welcome the opportunity to work with the OSC and other regulators and is very much in favor of a global revisit of the equivalence concept to harmonize reporting among the regulators across the globe.

2. Reporting hierarchy

We have developed a potential alternative to the reporting hierarchy, which we have set out in Annex E to the Notice. This alternative hierarchy is an effort by us to provide increased flexibility and reduce the need for delegated reporting where feasible. The alternative hierarchy still maintains a static approach in relation to transactions involving derivatives dealers that are financial entities but provides greater flexibility in relation to transactions between two derivatives dealers that are both non-financial entities. The increase in flexibility may, however, result in increased complexity to the reporting hierarchy as well as possible technological and operational changes for derivatives dealers.

Do you support adopting the hierarchy in the Proposed Trade Reporting Amendments (as set out in Annexes A and B) or the alternative hierarchy as set out in Annex E?

Eurex Clearing does not believe this question is applicable for it and would defer to others for comment.

3. Data accuracy

We have proposed replacing the current concept of confirmation of data accuracy with a requirement under paragraph 26.1(1)(a) for all reporting counterparties to ensure that all reported derivatives data is accurate and contains no misrepresentation and a requirement under paragraph 26.1(1)(b) for reporting counterparties that are derivatives dealers and recognized or exempt clearing agencies to verify the accuracy of data every 30 days. A designated trade repository must establish written policies and

procedures to enable the reporting counterparty to carry out its verification obligations under paragraph 26.1(1)(b); however, while a designated trade repository must provide counterparties to a transaction with access to derivatives data, we have not contemplated a specific requirement for policies and procedures designed to enable the requirement under paragraph 26.1(1)(a).

Is it necessary for a trade repository to implement policies and procedures to enable all reporting counterparties to ensure that all reported derivatives data is accurate and contains no misrepresentation, or is providing access to such counterparties sufficient to enable them to fulfill this requirement?

Eurex Clearing understands that the replacement of section 23 implies a shift in responsibilities from the trade repositories to the reporting parties. However, Eurex Clearing believes that for the purpose of fulfilling paragraph 26.1 (1) (a), Eurex Clearing and the designated trade repository with which it works already have a sound basis for fulfilling this proposal, considering:

- upcoming harmonization of reporting requirements,
- respective regulatory technical guidance,
- publication of the up-to-date specifications provided by our designated trade repository and
- existing notification by the designated trade repositories to reporting counterparties whether or not a respective trade record satisfies the derivatives data validation, further specified through the amendments to subsection 22.2(1)
- suggested requirement for designated trade repositories to provide written policies and procedures to enable the reporting counterparty to carry out its verification obligations under paragraph 26.1(1)(b)

Accordingly, Eurex Clearing does not believe that any additional policies and procedures requirement for its designated trade repository apart from the provision of access to derivatives data and the above-mentioned documentation is warranted.

4. Maintenance and renewal of LEIs

The Trade Reporting Rule requires a local counterparty under section 28.1 [*Maintenance and renewal of 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. This reduces the benefits associated with LEIs. While we do not currently expect reporting counterparties to verify the maintenance and renewal of LEIs of their counterparties, we are interested to receive comments from market participants regarding any potential steps that could be taken to improve the maintenance and renewal of LEIs of non-reporting counterparties.

Eurex Clearing notes that it must renew its LEIs on a yearly basis to comply with existing European regulations and believes this ensures that this data element is kept current. Accordingly, Eurex Clearing does not believe section 28.1 would imply an additional burden for Eurex Clearing in terms of its own LEI.

Regarding Eurex Clearing's clearing members, at Eurex Clearing, all applicants for clearing membership are required to provide an LEI as part of the admission process, and ongoing "Know Your Customer" procedures apply after the admission. Eurex Clearing as a reporting counterparty is furthermore obligated to provide to the designated trade repository an identifier for its counterparty in a trade record. The reported LEI must be a valid LEI per check in the GLEIF database, but not necessarily in the status "active". Beyond these measures, Eurex Clearing believes that clearing members and other counterparties should be responsible on their own for the maintenance and renewal of their LEIs.

Nevertheless, Eurex Clearing would welcome an improvement to the quality of LEI data. It is Eurex Clearing's understanding that in the first instance each reporting counterparty owns responsibility for obtaining, maintaining, and renewing its LEI. Eurex Clearing furthermore respectfully believes that any measures to improve the quality of LEI data would need to be coordinated centrally in the financial market in order to create a harmonized approach that ensures better compliance with the obligation to maintain a LEI without opposing smooth operation of trading or clearing. Eurex Clearing considers authorities in respective jurisdictions and the framework of the Legal Entity Identifier Regulatory Oversight Committee, the Global LEI Foundation, and the Local Operating Units to be important factors in this regard and would defer to these organizations for additional comment on this question.

In conclusion, Eurex Clearing reiterates its appreciation for the opportunity to comment on the Proposal and looks forward to working with the Commission on other proposals and initiatives in the future.

Yours faithfully,

Eric Seinsheimer
Director, Legal (Americas), Eurex & US CCO, Eurex Clearing