Ontario Securities Commission

Companion Policy 91-507CP

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COMPANION POLICY 91-507CP
TO ONTARIO SECURITIES COMMISSION RULE 91-507
DERIVATIVES: TRADE REPORTING

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GENERAL COMMENTS

Introduction

This companion policy (the "Policy") sets out the views of the Commission ("our" or "we") on various matters relating to Ontario Securities Commission Rule 91-507 *Derivatives: Trade Reporting* (the "Rule") and related securities legislation.

Except for Part 1, the numbering and headings of Parts, sections and subsections in this Policy correspond to the numbering and headings in the Rule. Any general guidance for a Part or section appears immediately after the Part or section name. Any specific guidance on a section or subsection follows any general guidance. If there is no guidance for a Part or section, the numbering in this Policy will skip to the next provision that does have guidance.

Unless otherwise stated, any reference to a Part, section, subsection, paragraph, subparagraph or definition in this Policy is a reference to the corresponding Part, section, subsection, paragraph, subparagraph or definition in the Rule.

Definitions and interpretation

Unless defined in the Rule or this Policy, terms used in the Rule and in this Policy have the meaning given to them in securities legislation, including, for greater certainty, in National Instrument 14-101 *Definitions* and Ontario Securities Commission Rule 14-501 *Definitions*.

In this Policy,

"cleared derivative" means a derivative that is created under the rules of a recognized or exempt clearing agency and to which the recognized or exempt clearing agency is a counterparty, including any derivative resulting from a novation of an original derivative upon acceptance of the original derivative for clearing;

"CPMI" means the Committee on Payments and Market Infrastructures;[1]

"derivatives party"[2] means, in relation to a derivatives dealer, any of the following:

(a) a person or company for which the derivatives dealer acts or proposes to act as an agent in relation to a transaction;

(b) a person or company that is, or is proposed to be, a party to a derivative if the derivatives dealer is the counterparty;

"FMI" means a financial market infrastructure, as described in the PFMI Report;

"Global LEI System" means the Global Legal Entity Identifier System;

"IOSCO" means the Technical Committee of the International Organization of Securities Commissions;

"LEI" means a legal entity identifier;

"PFMI Report" means the April 2012 final report entitled *Principles for financial market infrastructures* published by CPMI and IOSCO, as amended from time to time;[3]

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[1] Prior to September 1, 2014, CPMI was known as the Committee on Payment and Settlement Systems.

[2] The term "derivatives party" is similar to the concept of a "client" in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Obligations* (**NI 31-103**). We have used the term "derivatives party" instead of "client" to reflect the circumstance where a derivatives dealer may not regard its counterparty as its "client."

[3] The PFMI Report is available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).

"principle" means, unless the context otherwise indicates, a principle set out in the PFMI Report;

"ROC" means the Legal Entity Identifier System Regulatory Oversight Committee;

"uncleared derivative" means a derivative that is not a cleared derivative, and includes both (i) an original derivative and (ii) a derivative that is not intended to be cleared (for example, under the terms of an ISDA Master Agreement);

"UPI" means a unique product identifier.

PART 1
DEFINITIONS AND INTERPRETATION

Interpretation of terms defined in the Rule

Section 1 – Definition of derivatives dealer

A person or company that meets the definition of "derivatives dealer" in Ontario is subject to the obligations of a derivatives dealer under the Rule, whether or not it is registered or exempted from the requirement to be registered in Ontario.

A person or company will be subject to the obligations of a "derivatives dealer" under the Rule if it is either of the following:

- in the business of trading derivatives;
- otherwise required to register as a derivatives dealer under securities legislation.

Factors in determining a business purpose – derivatives dealer

In determining whether a person or company is in the business of trading in derivatives, a number of factors should be considered. Several factors that we consider relevant are described below. This is not a complete list and other factors may also be considered.

- *Acting as a market maker* – Market making is generally understood as the practice of routinely standing ready to transact derivatives by
    - responding to requests for quotes on derivatives, or
    - making quotes available to other persons or companies that seek to transact derivatives, whether to hedge a risk or to speculate on changes in the market value of the derivative.

  Market makers are typically compensated for providing liquidity through spreads, fees or other compensation, including fees or compensation paid by an exchange or a trading facility that do not relate to the change in the market value of the derivative transacted. A person or company that contacts another person or company about a transaction to accommodate its own risk management needs or to speculate on the market value of a derivative will not, typically, be considered to be acting as a market maker.

  A person or company will be considered to be "routinely standing ready" to transact derivatives if it is responding to requests for quotes or it is making quotes available with some frequency, even if it is not on a continuous basis. Persons or companies that respond to requests or make quotes available occasionally are not "routinely standing ready".

  A person or company would also typically be considered to be a market maker when it holds itself out as undertaking the activities of a market maker.

Engaging in bilateral discussions relating to the terms of a transaction will not, on its own, constitute market making activity.

- *Directly or indirectly carrying on the activity with repetition, regularity or continuity* – Frequent or regular transactions are a common indicator that a person or company may be engaged in trading for a business purpose. The activity does not have to be its sole or even primary endeavour for it to be in the business. We consider regularly trading in any way that produces, or is intended to produce, profits to be for a business purpose.

- *Facilitating or intermediating transactions* – The person or company provides services relating to the facilitation of trading or intermediation of transactions between third-party counterparties to derivatives contracts.

- *Transacting with the intention of being compensated* – The person or company receives, or expects to receive, any form of compensation for carrying on transaction activity. This would include any compensation that is transaction or value-based including compensation from spreads or built-in fees. It does not matter if the person or company actually receives compensation or what form the compensation takes. However, a person or company would not be considered to be a derivatives dealer solely by reason that it realizes a profit from changes in the market price for the derivative (or its underlying reference asset), regardless of whether the derivative is intended for the purpose of hedging or speculating.

- *Directly or indirectly soliciting in relation to transactions* – The person or company directly solicits transactions. Solicitation includes contacting someone by any means, including communication that offers (i) transactions, (ii) participation in transactions or (iii) services relating to transactions. This would include providing quotes to derivatives parties or potential derivatives parties that are not provided in response to a request. This also includes advertising on the internet with the intention of encouraging transacting in derivatives by local persons or companies. A person or company might not be considered to be soliciting solely because it contacts a potential counterparty, or a potential counterparty contacts them to inquire about a transaction, unless it is the person or company's intention or expectation to be compensated as a result of the contact. For example, a person or company that wishes to hedge a specific risk is not necessarily soliciting for the purpose of the Rule if it contacts multiple potential counterparties to inquire about potential transactions to hedge the risk.

- *Engaging in activities similar to a derivatives dealer* – The person or company carries out any activities related to transactions involving derivatives that would reasonably appear, to a third party, to be similar to the activities discussed above. This would not include the operator of an exchange or a clearing agency.

- *Providing derivatives clearing services* – The person or company provides services to allow third parties, including counterparties to transactions involving the person or company, to clear derivatives through a clearing agency. These services are actions in furtherance of a trade conducted by a person or company that would typically play the role of an intermediary in the derivatives market.

In determining whether or not it is, for the purposes of the Rule, a derivatives dealer, a person or company should consider its activities holistically. Assessment of the factors discussed above may depend on a person or company's particular facts and circumstances. We do not consider that all of the factors discussed above necessarily carry the same weight or that any one factor will be determinative.

Factors in determining a business purpose – general

Generally, we would consider a person or company that engages in the activities discussed above in an organized and repetitive manner to be a derivatives dealer. Ad hoc or isolated instances of the activities discussed above may not necessarily result in a person or company being a derivatives dealer. Similarly,

organized and repetitive proprietary trading, in and of itself, absent other factors described above, may not result in a person or company being considered to be a derivatives dealer for the purposes of the Rule.

A person or company does not need to have a physical location, staff or other presence in Ontario to be a derivatives dealer in Ontario. A derivatives dealer in Ontario is a person or company that conducts the described activities in Ontario. For example, this would include a person or company that is located in Ontario and that conducts dealing activities in Ontario or in a foreign jurisdiction. This would also include a person or company located in a foreign jurisdiction that conducts dealing activities with a derivatives party located in Ontario.

Where dealing activities are provided to derivatives parties in Ontario or where dealing activities are otherwise conducted within Ontario, regardless of the location of the derivatives party, we would generally consider a person or company to be a derivatives dealer.

Section 1 – Definition of financial entity

The definition of "financial entity" is only relevant for derivatives dealers. The reporting hierarchy under subsection 25(1) distinguishes between derivatives dealers that are financial entities and those that are not.

We interpret the term "financing company" in paragraph (d) of the definition to include entities that provide financing services.

Section 1 – Definition of lifecycle event

A "lifecycle event" is defined in the Rule as an event that results in a change to derivatives data previously reported to a designated trade repository. Where a lifecycle event occurs, the corresponding lifecycle event data must be reported under section 32 of the Rule. When reporting a lifecycle event, there is no obligation to re-report derivatives data that has not changed – only new data and changes to previously reported data need to be reported. Examples of a lifecycle event include:

- a change to the termination date for the derivative,
- a change in the cash flows, payment frequency, currency, numbering convention, spread, benchmark, reference entity or rates originally reported,
- the availability of a LEI for a counterparty previously identified by some other identifier,
- a corporate action affecting a security or securities on which the derivative is based (e.g., a merger, dividend, stock split, or bankruptcy),
- a change to the notional amount of a derivative including contractually agreed upon changes (e.g., amortization schedule),
- the exercise of a right or option that is an element of the derivative, and
- the satisfaction of a level, event, barrier or other condition contained in the derivative.

Section 1 – Definition of local counterparty

The definition of "local counterparty" includes a number of factors that are different from the addresses under a counterparty's LEI. As a result, the Commission does not view using the address information in a counterparty's LEI as an acceptable substitute for determining whether the counterparty is a local counterparty in Ontario.

With respect to the reference to “derivatives dealer in Ontario” under paragraph (b), a person or company does not need to have a physical location, staff or other presence in Ontario to be a derivatives dealer in Ontario. A derivatives dealer in Ontario is a person or company that conducts the described activities in Ontario. For example, this would include a person or company that is located in Ontario and that conducts dealing activities in Ontario or in a foreign jurisdiction. This would also include a person or company located in a foreign jurisdiction that conducts dealing activities with a derivatives party located in Ontario. Please see below under Section 41.2 with respect to an exclusion from the reporting requirement that may be relevant in relation to this paragraph of the definition of “local counterparty”.

Even though the definition of “local counterparty” does not include an individual who is a resident of Ontario, a derivatives dealer in Ontario is required to report derivatives with such individuals because the derivatives dealer is a local counterparty. Reporting counterparties are required to identify the country and province or territory of an individual in Data Element Number 9 specified in Appendix A to the Rule, whether or not such individuals have an LEI.

Section 1 – Definition of transaction

We use the term “transaction” in the Rule instead of the term “trade” as defined in the Act. The term “transaction” reflects that certain types of activities or events, whether or not they constitute a “trade”, must be reported as a unique derivative. The primary differences between the two definitions are that (i) the term “trade” as defined in the Act includes material amendments and terminations, whereas “transaction” as defined in the Rule does not, and (ii) the term “transaction” as defined in the Rule includes a novation, whereas “trade” as defined in the Act does not.

A material amendment to a derivative is not a “transaction” and is required to be reported as a lifecycle event in connection with an existing derivative under section 32. Similarly, a termination is not a “transaction”, as the expiry or termination of a derivative is required to be reported as a lifecycle event under section 32.

In addition, the definition of “transaction” in the Rule includes a novation to a clearing agency. Each derivative resulting from the novation of a bilateral derivative to a clearing agency is required to be reported as a distinct derivative with reporting links to the original derivative.

PART 2
TRADE REPOSITORY DESIGNATION AND ONGOING REQUIREMENTS

Introduction

Part 2 contains rules for designation of a trade repository and ongoing requirements for a designated trade repository. To obtain and maintain a designation as a trade repository, a person or entity must comply with these rules and requirements in addition to all of the terms and conditions in the designation order made by the Commission. In order to comply with the reporting obligations contained in Part 3, a reporting counterparty must report to a designated trade repository. While there is no prohibition on an undesignated trade repository operating in Ontario, a counterparty that reports a derivative to an undesignated trade repository would not be in compliance with its reporting obligations under the Rule with respect to that derivative.

The legal entity that applies to be a designated trade repository will typically be the entity that operates the facility and collects and maintains records of derivatives data reported to the trade repository by other persons or companies. In some cases, the applicant may operate more than one trade repository facility. In such cases, the trade repository may file separate forms in respect of each trade repository facility, or it may choose to file one form to cover all of the different trade repository facilities. If the latter alternative is chosen, the trade repository must clearly identify the facility to which the information or changes submitted under this Part 2 apply.

Section 2 – Trade repository initial filing of information and designation

In determining whether to designate an applicant as a trade repository under section 21.2.2 of the Act, it is anticipated that the Commission will consider a number of factors, including

- whether it is in the public interest to designate the applicant,
- the manner in which the trade repository proposes to comply with the Rule,
- whether the trade repository has meaningful representation, as described in subsection 9(2), on its governing body,
- whether the trade repository has sufficient financial and operational resources for the proper performance of its functions,
- whether the rules and procedures of the trade repository ensure that its business is conducted in an orderly manner that fosters fair, efficient and competitive capital markets, and improves transparency in the derivatives market,
- whether the trade repository has policies and procedures to effectively identify and manage conflicts of interest arising from its operation or the services it provides,
- whether the requirements of the trade repository relating to access to its services are fair and reasonable,
- whether the trade repository's process for setting fees is fair, transparent and appropriate,
- whether the trade repository's fees are inequitably allocated among the participants, have the effect of creating barriers to access or place an undue burden on any participant or class of participants,
- the manner and process for the Commission and other applicable regulatory agencies to receive or access derivatives data, including the timing, type of reports, and any confidentiality restrictions,
- whether the trade repository has robust and comprehensive policies, procedures, processes and systems to ensure the security and confidentiality of derivatives data, and
- whether the trade repository has entered into a memorandum of understanding with its local securities regulator.

The Commission will examine whether the trade repository has been, or will be, in compliance with securities legislation. This includes compliance with the Rule and any terms and conditions attached to the Commission's designation order in respect of a designated trade repository.

As part of this examination, a trade repository that is applying for designation must demonstrate that it has established, implemented, maintained and enforced appropriate written rules, policies and procedures that are in accordance with standards applicable to trade repositories, as required by the Rule. We consider that these rules, policies and procedures include, but are not limited to, the principles and key considerations and explanatory notes applicable to trade repositories in the PFMI Report. The applicable principles, which have been incorporated into the Rule and the interpretation of which we consider ought to be consistent with the PFMI Report, are set out in the following chart, along with the corresponding sections of the Rule:

Principle in the PFMI Report applicable to a trade repository	Relevant section(s) of the Rule
Principle 1: Legal Basis	Section 7 – Legal framework Section 17 – Rules, policies and procedures (in part)
Principle 2: Governance	Section 8 – Governance Section 9 – Board of directors Section 10 – Management
Principle 3: Framework for the comprehensive management of risks	Section 19 – Comprehensive risk-management framework Section 20 – General business risk (in part)
Principle 15: General business risk	Section 20 – General business risk
Principle 17: Operational risk	Section 21 – System and other operational risks Section 22 – Data security and confidentiality Section 24 – Outsourcing
Principle 18: Access and participation requirements	Section 13 – Access to designated trade repository services Section 16 – Due process (in part) Section 17 – Rules, policies and procedures (in part)
Principle 19: Tiered participation arrangements	Section 7 – Legal framework Section 19 – Comprehensive risk-management framework Section 21 – System and other operational risks
Principle 20: FMI links	Section 7 – Legal Framework Section 19 – Comprehensive risk-management framework Section 21 – System and other operational risks Section 24 – Outsourcing
Principle 21: Efficiency and effectiveness	Section 7 – Legal framework Section 8 - Governance Section 11 - Chief compliance officer Section 12 – Fees Section 21 – System and other operational risks

Principle 22: Communication procedures and standards	Section 15 – Communication policies, procedures and standards
Principle 23: Disclosure of rules, key procedures, and market data	Section 17 – Rules, policies and procedures (in part)
Principle 24: Disclosure of market data by trade repositories	Sections in Part 4 – Data Dissemination and Access to Data

It is anticipated that the Commission will apply the principles in its oversight activities of designated trade repositories. Therefore, in complying with the Rule, designated trade repositories will be expected to observe the principles.

The forms filed by an applicant or designated trade repository under the Rule will be kept confidential in accordance with the provisions of securities legislation. The Commission is of the view that the forms generally contain proprietary financial, commercial and technical information, and that the cost and potential risks to the filers outweigh the benefit of the principle requiring that forms be made available for public inspection. However, the Commission would expect a designated trade repository to publicly disclose its responses to the CPMI-IOSCO consultative report entitled *Disclosure framework for financial market infrastructures*, which is a supplement to the PFMI Report.[4] In addition, much of the information that will be included in the forms that are filed will be required to be made publicly available by a designated trade repository pursuant to the Rule or the terms and conditions of the designation order imposed by the Commission.

While Form 91-507F1 – *Application for Designation and Trade Repository Information Statement* and any amendments to it will generally be kept confidential, if the Commission considers that it is in the public interest to do so, it may require the applicant or designated trade repository to publicly disclose a summary of the information contained in the form, or amendments to it.

Notwithstanding the confidential nature of the forms, an applicant's application itself (excluding forms) will be published for comment for a minimum period of 30 days.

Section 3 – Change in information

Significant changes

Under subsection 3(1), a designated trade repository is required to file an amendment to the information provided in Form 91-507F1 at least 45 days prior to implementing a significant change. We would consider a change to be significant when it could significantly impact a designated trade repository, its systems, its users, participants, market participants, or the capital markets (including derivatives markets and the markets for assets underlying a derivative). A change may significantly impact a designated trade repository if it is likely to give rise to potential conflicts of interest, to limit access to its services, to make changes to its structure with direct impact to users, to affect regulators' access to data, or to result in additional costs.

We would generally consider a significant change to include, but not be limited to, the following:

- a change in the structure of the designated trade repository, including procedures governing how derivatives data is collected and maintained (including in any back-up sites), that has or may have a direct and significant impact on users in Ontario;

[4] Publication available on the BIS website (www.bis.org) and the IOSCO website (www.iosco.org).

- a change to the services provided by the designated trade repository, or a change that affects the services provided, including the hours of operation, that has or may have a direct and significant impact on users in Ontario;

- a change to means of access to the designated trade repository's facility and its services, including changes to data formats or protocols, that has or may have a direct and significant impact on users in Ontario;

- a change to the types of derivative asset classes or categories of derivatives that may be reported to the designated trade repository;

- a change to the systems and technology used by the designated trade repository that collect, maintain and disseminate derivatives data, including matters affecting capacity;

- a change to the governance of the designated trade repository that involves a significant change to the structure of its board of directors or board committees and/or their related mandates;

- a change in control of the designated trade repository;

- a change in entities that provide key services or systems to, or on behalf of, the designated trade repository, where such change may have a significant impact on the functioning of the designated trade repository;

- a change to outsourcing arrangements for key services or systems of the designated trade repository, where such change may have a significant impact on the functioning of the designated trade repository;

- a change to fees or the fee structure of the designated trade repository;

- a change in the designated trade repository's policies and procedures relating to risk management, including relating to business continuity and data security, that has or may have a direct and significant impact on the designated trade repository's provision of services to its participants;

- the commencement of a new type of business activity, either directly or indirectly through an affiliated entity;

- a change in the location of the designated trade repository's head office or primary place of business, or a change in the location where the main data servers or contingency sites are housed, where such change in location is in a different province, territory or country than the current location.

We generally consider a change in a designated trade repository's fees or fee structure to be a significant change. However, we recognize that designated trade repositories may frequently change their fees or fee structure and may need to implement fee changes within timeframes that are shorter than the 45 day notice period contemplated in subsection (1). To facilitate this process, subsection 3(2) provides that a designated trade repository may provide information that describes the change to fees or fee structure in a shorter timeframe (at least 15 days before the implementation date of the change to fees or fee structure). See below in relation to section 12 for guidance with respect to fee requirements applicable to designated trade repositories.

The Commission will endeavour to review amendments to Form 91-507F1 filed in accordance with subsections 3(1) and 3(2) before the proposed date of implementation of the change. However, where the changes are complex, raise regulatory concerns, or when additional information is required, the Commission's review may exceed these timeframes.

Changes that are not significant

Subsection 3(3) sets out the filing requirements for changes to information provided in a filed Form 91 - 507F1 other than those described in subsections 3(1) or (2). Such changes to information are not considered significant and include the following:

- changes that would not have a direct and significant impact on the designated trade repository's structure or participants, or more broadly on market participants or the capital markets;
- changes in the routine processes, policies, practices, or administration of the designated trade repository that would not impact participants;
- changes due to standardization of terminology;
- changes to the types of designated trade repository participants in Ontario;
- necessary changes to conform to applicable regulatory or other legal requirements of a jurisdiction of Canada;
- minor system or technology changes that would not significantly impact the system or its capacity.

For the changes referred to in subsection 3(3), the Commission may review these filings to ascertain whether they have been categorized appropriately. If the Commission disagrees with the categorization, the designated trade repository will be notified in writing. Where the Commission determines that changes reported under subsection 3(3) are in fact significant changes, the designated trade repository will be required to file an amended Form 91-507F1 that will be subject to review by the Commission.

Section 6 – Ceasing to carry on business

In addition to filing a completed Form 91-507F3 – *Cessation of Operations Report for Trade Repository* referred to in subsection 6(1), a designated trade repository that intends to cease carrying on business in Ontario as a designated trade repository must make an application to voluntarily surrender its designation to the Commission pursuant to securities legislation. The Commission may accept the voluntary surrender subject to terms and conditions.[5]

Section 7 – Legal framework

Under subsection 7(1), we would generally expect designated trade repositories to have rules, policies, and procedures in place that provide a legal basis for their activities in all relevant jurisdictions where they have activities, whether within Canada or any foreign jurisdiction.

References to "contracts" in paragraph 7(2)(a) include contracts with "links", as this term is referred to in the PFMI Report. A designated trade repository's rules, policies and procedures may address risks arising from a conflict of law in various ways, including by providing that they are managed contractually.

Section 8 – Governance

Designated trade repositories are required to have in place governance arrangements that meet the minimum requirements and policy objectives set out in subsections 8(1) and 8(2).

Under subsection 8(1), the board of directors must establish well-defined, clear and transparent governance arrangements, which should ensure that the risk management and internal control functions have sufficient authority, independence, resources and access to the board of directors.

[5] Section 21.4 of the Act provides that the Commission may impose terms and conditions on an application for voluntary surrender. The transfer of derivatives data/information can be addressed through the terms and conditions imposed by the Commission on such application.

Under subsection 8(3), a designated trade repository is required to make the written governance arrangements required under subsections 8(1) and 8(2) available to the public on its website. The Commission expects that this information will be posted on the trade repository's publicly accessible website and that interested parties will be able to locate the information through a web search or through clearly identified links on the designated trade repository's website. Despite paragraph (3)(a), the Commission does not expect a designated trade repository to publicly disclose governance arrangements where the designated trade repository reasonably determines that such disclosure would be prejudicial to the interests of the designated trade repository or could compromise the security of the designated trade repository, its staff or derivatives data.

Section 9 – Board of directors

The board of directors of a designated trade repository is subject to various requirements, such as requirements pertaining to board composition and conflicts of interest. To the extent that a designated trade repository is not organized as a corporation, the requirements relating to the board of directors may be fulfilled by a body that performs functions that are equivalent to the functions of a board of directors.

Paragraph 9(2)(a) requires individuals who comprise the board of directors of a designated trade repository to have an appropriate level of skill and experience to effectively and efficiently oversee the management of its operations. This would include individuals with experience and skills in areas such as business recovery, contingency planning, financial market systems and data management.

Under paragraph 9(2)(b), the board of directors of a designated trade repository must include individuals who are independent of the designated trade repository. The Commission would view individuals who have no direct or indirect material relationship with the designated trade repository as independent. The Commission would expect that independent directors of a designated trade repository would represent the public interest by ensuring that regulatory and public transparency objectives are fulfilled, and that the interests of participants who are not derivatives dealers are considered.

Under subsections 9(3) and 9(5), it is expected that in its governance arrangements, the designated trade repository will clarify the roles and responsibilities of its board of directors, including procedures for its functioning. We expect such procedures to, among other things, identify, address, and manage board member conflicts of interest. The board of directors should also review its overall performance and the performance of its individual board members regularly.

Section 11 – Chief compliance officer

References to harm to the capital markets in subsection 11(3) may be in relation to domestic or international capital markets.

Section 12 – Fees

A designated trade repository is responsible for ensuring that the fees it sets are in compliance with section 12. In assessing whether a designated trade repository's fees and costs are fairly allocated among participants as required under paragraph 12(a), the Commission will consider a number of factors, including

- the number and complexity of the derivatives being reported,
- the amount of the fee or cost imposed relative to the cost of providing the services,
- the amount of fees or costs charged by other comparable trade repositories, where relevant, to report similar derivatives in the market,
- with respect to market data fees and costs, the amount of market data fees charged relative to the market share of the designated trade repository, and

- whether the fees or costs represent a barrier to accessing the services of the designated trade repository for any category of participant.

A designated trade repository should provide clear descriptions of priced services for comparability purposes. Other than fees for individual services, a designated trade repository should also disclose other fees and costs related to connecting to or accessing the trade repository. For example, a designated trade repository should disclose information on the system design, as well as technology and communication procedures, that influence the costs of using the designated trade repository. A designated trade repository is also expected to provide timely notice to participants and the public of any changes to services and fees. A designated trade repository should regularly review its fees, including any indirect charges to customers, to ensure fair allocation and efficiency and effectiveness of service, at least once every 2 calendar years.

Section 13 – Access to designated trade repository services

The criteria for participation established by a designated trade repository under subsection 13(1) should not limit access to its services except in limited circumstances where the designated trade repository has a reasonable belief that such access would result in risks to the trade repository, its technology systems or to the accuracy or integrity of the data it provides to the Commission or the public. In addition, such criteria could restrict access to a person that has failed to pay the designated trade repository's fees, in whole or in part, that have been set in accordance with section 12 of the Rule.

Under subsection 13(3), a designated trade repository is prohibited from unreasonably limiting access to its services, permitting unreasonable discrimination among its participants, imposing unreasonable burdens on competition or requiring the use or purchase of another service in order for a person or company to utilize its trade reporting service. For example, a designated trade repository should not engage in anti-competitive practices such as setting overly restrictive terms of use or engaging in anti-competitive price discrimination. A designated trade repository should not develop closed, proprietary interfaces that result in vendor lock-in or barriers to entry with respect to competing service providers that rely on the data maintained by the designated trade repository. As an example, a designated trade repository that is an affiliated entity of a clearing agency must not impose barriers that would make it difficult for a competing clearing agency to report derivatives data to the designated trade repository.

Section 14 – Receiving derivatives data

Section 14 requires that a designated trade repository not refuse to receive derivatives data for all derivatives of the asset class or classes set out in its designation order. For example, if the designation order of a designated trade repository includes interest rate derivatives, the designated trade repository is required to accept derivatives data for all types of interest rate derivatives that are entered into by a local counterparty. It is possible that a designated trade repository may accept derivatives data for only a subset of a class of derivatives if this is indicated in its designation order. For example, there may be designated trade repositories that accept derivatives data for only certain types of commodity derivatives such as energy derivatives.

Section 14 also requires that a designated trade repository not refuse to receive derivatives data in respect of all data elements listed in Appendix A. For example, a designated trade repository is not permitted to choose to receive derivatives data in respect of only certain data elements.

Derivatives data received by a designated trade repository is subject to its validation procedure under section 22.2.

Section 15 – Communication procedures and standards

Section 15 sets out the communication standards required to be used by a designated trade repository in communications with other specified entities. The reference in paragraph 15(d) to "other service providers" could include persons or companies who offer technological or transaction processing or post-transaction services.

Section 16 – Due Process

Section 16 imposes a requirement that a designated trade repository provide participants or applicants with an opportunity to be heard before making a decision that directly and adversely affects the participant or applicant. We would generally expect that a recognized trade repository would meet this requirement by allowing the participant or applicant to make representations in any form.

Section 17 – Rules, policies and procedures

Section 17 requires that the publicly disclosed written rules and procedures of a designated trade repository be clear and comprehensive, and include explanatory material written in plain language so that participants can fully understand the system's design and operations, their rights and obligations, and the risks of participating in the system. Moreover, a designated trade repository should disclose to its participants and to the public, basic operational information and responses to the CPMI-IOSCO consultative report entitled *Disclosure framework for financial market infrastructures*.

Subsection 17(2) requires that a designated trade repository monitor compliance with its rules and procedures. The methodology of monitoring such compliance should be fully documented.

Subsection 17(3) requires a designated trade repository to implement processes for dealing with non-compliance with its rules and procedures. This subsection does not preclude enforcement action by any other person or company, including the Commission or other regulatory body.

Subsection 17(5) requires a designated trade repository to file its rules and procedures with the Commission for approval, in accordance with the terms and conditions of the designation order. Upon designation, the Commission may develop and implement a protocol with the designated trade repository that will set out the procedures to be followed with respect to the review and approval of rules and procedures and any amendments thereto. Generally, such a rule protocol will be appended to and form part of the designation order. Depending on the nature of the changes to the designated trade repository's rules and procedures, such changes may also impact the information contained in Form 91-507F1. In such cases, the designated trade repository will be required to file a revised Form 91-507F1 with the Commission. See section 3 of this Policy for a discussion of the filing requirements.

Section 18 – Records of data reported

We interpret the term "error or omission", when used throughout the Rule, to mean, in relation to derivatives data, that the derivatives data is not accurate or complete.

A designated trade repository is a market participant under securities legislation and therefore subject to the record-keeping requirements under securities legislation. The record-keeping requirements under section 18 are in addition to the requirements under securities legislation.

Subsection 18(2) requires that records be maintained for 7 years after the expiration or termination of a derivative. The requirement to maintain records for 7 years after the expiration or termination of a derivative, rather than from the date the derivative was entered into, reflects the fact that derivatives create on-going obligations and information is subject to change throughout the life of a derivative. For example, under subsection 22.2(5), there is an ongoing requirement for a designated trade repository to accept a correction to data relating to a derivative for 7 years after the expiration or termination of the derivative.

As part of the record-keeping requirements under section 18, we expect a designated trade repository will maintain records relating to errors or omissions in derivatives data, including corrections to derivatives data that has previously been disseminated under Part 4. In addition, we expect a designated trade repository will maintain records relating to derivatives data that does not satisfy the validation procedure of the designated trade repository, including, but not limited to, validation errors, messages and timestamps.

A correction to derivatives data, whether before or after expiration or termination of the derivative, does not extend or reduce the maintenance period under subsection 18(2) unless the correction relates to the date of expiration or termination of the derivative. For example, if a derivative expired on December 31, 2020 and the notional amount of the derivative was subsequently corrected on December 31, 2021, the correction would not impact the record maintenance period. However, if the correction was to the expiration date, such that the derivative actually expired on December 31, 2019, then the record maintenance period should reflect the corrected expiration date.

Section 19 – Comprehensive risk-management framework

Requirements for a comprehensive risk-management framework of a designated trade repository are set out in section 19.

Features of framework

A designated trade repository should have a written risk-management framework (including policies, procedures, and systems) that enable it to identify, measure, monitor, and manage effectively the range of risks that arise in, or are borne by, a designated trade repository. A designated trade repository's framework should include the identification and management of risks that could materially affect its ability to perform or to provide services as expected, such as interdependencies.

Establishing a framework

A designated trade repository should have comprehensive internal processes to help its board of directors and senior management monitor and assess the adequacy and effectiveness of its risk-management policies, procedures, systems, and controls. These processes should be fully documented and readily available to the designated trade repository's personnel who are responsible for implementing them.

Maintaining a framework

A designated trade repository should regularly review the material risks it bears from, and poses to, other entities (such as other FMIs, settlement banks, liquidity providers, or service providers) as a result of interdependencies, if applicable, and develop appropriate risk-management tools to address these risks. These tools should include business continuity arrangements that allow for rapid recovery and resumption of critical operations and services in the event of operational disruptions and recovery or orderly wind-down plans should the trade repository become nonviable.

Tiered Participation Arrangements and Links

A designated trade repository should identify, monitor, manage and regularly review

- any material risks to the designated trade repository arising in connection with tiered participation arrangements (as such term is referred to in the PFMI Report), if applicable, and

- any risks to the designated trade repository arising in connection with links, if applicable.

Section 20 – General business risk

Subsection 20(1) requires a designated trade repository to manage its general business risk effectively. General business risk includes any potential impairment of the designated trade repository's financial position (as a business concern) as a consequence of a decline in its revenues or an increase in its expenses, such that expenses exceed revenues and result in a loss that must be charged against capital or an inadequacy of resources necessary to carry on business as a designated trade repository.

For the purposes of subsection 20(2), the amount of liquid net assets funded by equity that a designated trade repository should hold is to be determined by its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services,

if such action is taken. Subsection 20(3) requires a designated trade repository, for the purposes of subsection (2), to hold, at a minimum, liquid net assets funded by equity equal to no less than six months of current operating expenses. We expect a designated trade repository or its board of directors to address any need for additional equity should it fall close to or below the amount required under subsection 20(3).

For the purposes of subsections 20(4) and (5), and in connection with developing a comprehensive risk-management framework under section 19, a designated trade repository should identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern, and assess the effectiveness of a full range of options for recovery or orderly wind-down. These scenarios should take into account the various independent and related risks to which the designated trade repository is exposed.

Based on the required assessment of scenarios under subsection 20(4) (and taking into account any constraints potentially imposed by legislation), the designated trade repository should prepare an appropriate written plan for its recovery or orderly wind-down. The plan should contain, among other elements, a substantive summary of the key recovery or orderly wind-down strategies, the identification of the designated trade repository's critical operations and services, and a description of the measures needed to implement the key strategies. The designated trade repository should maintain the plan on an ongoing basis, to achieve recovery and orderly wind-down, and should hold sufficient liquid net assets funded by equity to implement this plan (also see above in connection with subsections 20(2) and (3)). A designated trade repository should also take into consideration the operational, technological, and legal requirements for participants to establish and move to an alternative arrangement in the event of an orderly wind-down.

Section 21 – System and other operational risks

Subsection 21(1) sets out a general principle concerning the management of operational risk. In interpreting subsection 21(1), the following key considerations should be applied:

- a designated trade repository should establish a robust operational risk-management framework with appropriate systems, policies, procedures, and controls to identify, monitor, and manage operational risks;

- a designated trade repository should review, audit, and test systems, operational policies, procedures, and controls, periodically and after any significant changes; and

- a designated trade repository should have clearly defined operational-reliability objectives and policies in place that are designed to achieve those objectives.

Under subsection 21(2), the board of directors of a designated trade repository should approve the designated trade repository's operational risk-management framework, which should include clear identification of the roles and responsibilities for addressing operational risks.

Paragraph 21(3)(a) requires a designated trade repository to develop and maintain an adequate system of internal control over its systems as well as adequate general information-technology controls. The latter controls are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, and security. COBIT from ISACA may provide guidance as to what constitutes adequate information technology controls. A designated trade repository should ensure that its information-technology controls address the integrity of the data that it maintains, by protecting all derivatives data submitted from corruption, loss, improper disclosure, unauthorized access and other processing risks.

Paragraph 21(3)(b) requires a designated trade repository to thoroughly assess future needs and make systems capacity and performance estimates in a method consistent with prudent business practice at least once a year. The paragraph also imposes an annual requirement for designated trade repositories

to conduct periodic capacity stress tests. Ongoing changes in technology, risk management requirements and competitive pressures may require these activities or tests to be carried out more frequently.

Paragraph 21(3)(c) requires a designated trade repository to notify the Commission of any material systems failure. The Commission would consider a failure, malfunction, delay or other disruptive incident to be "material" if the designated trade repository would in the normal course of its operations escalate the incident to, or inform, its senior management that is responsible for technology, or the incident would have an impact on participants. The Commission also expects that, as part of this notification, the designated trade repository will provide updates on the status of the failure, the resumption of service, and the results of its internal review of the failure. Further, the designated trade repository should have comprehensive and well-documented procedures in place to record, analyze, and resolve all systems failures, malfunctions, delays and security incidents. In this regard, the designated trade repository should undertake a "post-mortem" review to identify the causes and any required improvement to the normal operations or business continuity arrangements. Such reviews should, where relevant, include an analysis of the effects on the trade repository's participants. The results of such internal reviews are required to be communicated to the Commission as soon as practicable.

Subsection 21(4) requires that a designated trade repository establish, implement, maintain and enforce business continuity plans, including disaster recovery plans. The Commission believes that these plans should allow the designated trade repository to provide continuous and undisrupted service, as back-up systems ideally should commence processing immediately. Where a disruption is unavoidable, a designated trade repository is expected to provide prompt recovery of operations, meaning that it resumes operations within 2 hours following the disruptive event. Under paragraph 21(4)(c), an emergency event could include any external sources of operational risk, such as the failure of critical service providers or utilities or events affecting a wide metropolitan area, such as natural disasters, terrorism, and pandemics. Business continuity planning should encompass all policies and procedures to ensure uninterrupted provision of key services regardless of the cause of potential disruption.

Subsection 21(5) requires a designated trade repository to test and audit its business continuity plans at least once a year. The expectation is that the designated trade repository would engage relevant industry participants, as necessary, in tests of its business continuity plans, including testing of back-up facilities for both the designated trade repository and its participants.

Subsection 21(6) requires a designated trade repository to engage a qualified party to conduct an annual independent audit of the internal controls referred to in paragraphs 21(3)(a) and (b) and subsections 21(4) and (5). A qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment, such as external auditors or third party information system consultants. The Commission is of the view that this obligation may also be satisfied by an independent assessment by an internal audit department that is compliant with the *International Standards for the Professional Practice of Internal Auditing* published by The Institute of Internal Auditors. Before engaging a qualified party, the designated trade repository should notify the Commission.

Subsection 21(8) requires designated trade repositories to make public all material changes to technology requirements to allow participants a reasonable period to make system modifications and test their modified systems. In determining what a reasonable period is, the Commission is of the view that the designated trade repository should consult with participants and that a reasonable period would allow all participants a reasonable opportunity to develop, implement and test systems changes. We expect that the needs of all types of participants would be considered, including those of smaller and less sophisticated participants.

Subsection 21(9) requires designated trade repositories to make available testing facilities in advance of material changes to technology requirements to allow participants a reasonable period to test their modified systems and interfaces with the designated trade repository. In determining what a reasonable period is, the Commission is of the view that the designated trade repository should consult with participants and that a reasonable period would allow all participants a reasonable opportunity to develop, implement and

test systems changes. We expect that the needs of all types of participants would be considered, including those of smaller and less sophisticated participants.

Section 22 – Data security and confidentiality

Subsection 22(1) provides that a designated trade repository must establish policies and procedures to ensure the safety, privacy and confidentiality of derivatives data to be reported to it under the Rule. The policies must include limitations on access to confidential trade repository data and safeguards to protect against entities affiliated with the designated trade repository from using trade repository data for their personal benefit or the benefit of others.

Subsection 22(2) prohibits a designated trade repository from releasing reported derivatives data, for a commercial or business purpose, that is not required to be publicly disclosed under section 39 without the express written consent of the counterparties to the derivative. The purpose of this provision is to ensure that users of the designated trade repository have some measure of control over their derivatives data.

Section 22.1 – Transactions executed anonymously on a derivatives trading facility

The purpose of section 22.1 is to ensure that the identities of counterparties to an original derivative are not disclosed to users of the designated trade repository post-execution where the transaction is executed anonymously on a derivatives trading facility and results in a cleared derivative. Only a derivative in respect of which a counterparty does not know the identity of its counterparty prior to or at the time of execution of the transaction is protected under section 22.1. For greater certainty, section 22.1 does not apply to data provided or made available to the Commission under the Rule or pursuant to a designated trade repository's designation order.

A derivatives trading facility means a person or company that constitutes, maintains, or provides a facility or market that brings together buyers and sellers of over-the-counter derivatives, brings together the orders of multiple buyers and multiple sellers, and uses methods under which the orders interact with each other and the buyers and sellers agree to the terms of trades. The following are examples of derivatives trading facilities: a "swap execution facility" as defined in the Commodity Exchange Act 7 U.S.C. §(1a)(50); a "security-based swap execution facility" as defined in the Securities Exchange Act of 1934 15 U.S.C. §78c(a)(77); a "multilateral trading facility" as defined in Directive 2014/65/EU Article 4(1)(22) of the European Parliament; and an "organised trading facility" as defined in Directive 2014/65/EU Article 4(1)(23) of the European Parliament.

Section 22.2 – Validation of data

In accordance with subsection 22.2(1) and any other validation conditions set out in its designation order, a designated trade repository must validate that the derivatives data that it receives from a reporting counterparty satisfies the derivatives data elements listed in Appendix A of the Rule and the administrative technical specifications set out in the CSA Derivatives Data Technical Manual.

Subsection 22.2(2) requires a designated trade repository, as soon as technologically practicable after receiving derivatives data, to notify a reporting counterparty (or agent acting on its behalf) whether or not the derivatives data satisfies its validation procedure, and the designated trade repository will reject derivatives data that has failed to satisfy its validation procedure. In evaluating what will be considered to be "technologically practicable", the Commission will take into account the prevalence, implementation and use of technology by comparable trade repositories. The Commission may also conduct independent reviews to determine the state of technology.

Under subsection 22.2(3), a designated trade repository must accept derivatives data that satisfies its validation procedure. Only derivatives data that conforms to the derivatives data elements in Appendix A of the Rule and the administrative technical specifications set out in the CSA Derivatives Data Technical Manual must be accepted.

The requirement in subsection 22.2(4) to create and maintain records of derivatives data that failed to satisfy the validation procedure applies both before and after the expiration or termination of a derivative, subject to the record retention period under section 18.

Subsection 22.2(5) requires a designated trade repository to accept corrections to errors or omissions in derivatives data if the corrected derivatives data satisfies its validation procedure. This requirement applies both before and after the expiration or termination of the derivative, subject to the record retention period under section 18. We view the term "participant" under subsection 22.2(5) to be limited to counterparties to the derivative and their agents or service providers.

Section 23 – Verification of data

Under paragraph 26.1(b), reporting counterparties that are notional amount threshold derivatives dealers must verify that the derivatives data that they are reporting does not contain an error or omission at least once every calendar quarter, with at least two calendar months between verifications. Under paragraph 26.1(c), reporting counterparties that are recognized or exempt clearing agencies or derivatives dealers that are not notional amount threshold derivatives dealers must verify that the derivatives data that they are reporting does not contain an error or omission at least every 30 days. Subsection 23(2) requires a designated trade repository to maintain and adhere to written policies and procedures that are designed to enable such reporting counterparties to meet their obligations under paragraph 26.1(b) or (c).

A designated trade repository may satisfy its obligation under section 23 by providing the reporting counterparty, or its delegated third-party representative, where applicable, a means of accessing derivatives data for open derivatives involving the reporting counterparty that is maintained by the designated trade repository as of the time of the reporting counterparty's access to the derivatives data. Access provided to a third-party representative is in addition to, and not instead of, the access provided to a relevant counterparty.

Section 24 – Outsourcing

Section 24 sets out requirements applicable to a designated trade repository that outsources any of its key services or systems to a service provider. Generally, a designated trade repository must establish policies and procedures to evaluate and approve these outsourcing arrangements. Such policies and procedures include assessing the suitability of potential service providers and the ability of the designated trade repository to continue to comply with securities legislation in the event of bankruptcy, insolvency or the termination of business of the service provider. A designated trade repository is also required to monitor the ongoing performance of a service provider to which it outsources a key service, system or facility. The requirements under section 24 apply regardless of whether the outsourcing arrangements are with third-party service providers or affiliates of the designated trade repository. A designated trade repository that outsources its services or systems remains responsible for those services or systems and for compliance with securities legislation.

PART 3
DATA REPORTING

Introduction

Part 3 addresses reporting obligations for derivatives that involve a local counterparty, including the determination of which counterparty is required to report derivatives data, when derivatives data is required to be reported, different types of derivatives data that are required to be reported, and other requirements regarding verification of data accuracy and reporting of errors and omissions.

Section 25 – Reporting counterparty

Introduction

Subsection 25(1) outlines a hierarchy for determining which counterparty to a derivative is required to report derivatives data based on the counterparty to the derivative that is best suited to fulfill the reporting obligation.

Under the definition of "transaction" in the Rule, each act of entering into, assigning, selling, or otherwise acquiring or disposing of a derivative, or the novation of a derivative is a separate transaction that must be reported as a unique derivative. Market participants should consider the hierarchy under subsection 25(1) separately for each derivative.

The hierarchy under subsection 25(1) does not apply to an original derivative where the transaction is executed anonymously on a derivatives trading facility and the derivative is intended to be submitted for clearing contemporaneously with execution. In these circumstances, as provided under section 36.1, the derivatives trading facility has the reporting requirement instead of the reporting counterparty under subsection 25(1). However, the hierarchy applies to all other derivatives involving a local counterparty where the transaction is executed on a derivatives trading facility and to all derivatives involving a local counterparty where the transaction is not executed on a derivatives trading facility.

Please see above under Part 1 for the Commission's views on the definition of "derivatives dealer" and the factors in determining a business purpose.

(a) Cleared derivatives

Under paragraph 25(1)(a), derivatives data relating to a cleared derivative is required to be reported by the recognized or exempt clearing agency. The recognized or exempt clearing agency is required to report each cleared derivative resulting from a novation of the original derivative to the clearing agency as a separate, new derivative with reporting links to the original derivative, and is also required to report the termination of the original derivative under subsection 32(4). For clarity, the recognized or exempt clearing agency is not the reporting counterparty for the original derivative.

The following chart illustrates reporting responsibilities in respect of derivatives that are cleared:

Derivative	**Reporting counterparty**
Original derivative between Party A and Party B (sometimes referred to as the "*alpha*" transaction)	If the transaction is executed anonymously on a derivatives trading facility, the derivatives trading facility has the reporting requirement under section 36.1. If the transaction is not executed anonymously on a derivatives trading facility, the reporting counterparty is determined under section 25. For example, if Party A were a derivatives dealer and Party B were not, Party A would be the reporting counterparty.
Cleared derivative between Party A and the clearing agency (sometimes referred to as the "*beta*" transaction)	Clearing agency
Cleared derivative between Party B and the clearing agency (sometimes referred to as the "*gamma*" transaction)	Clearing agency
Termination of the original derivative between Party A and Party B	Clearing agency

(b) Uncleared derivatives between derivatives dealers that are both party to the ISDA Multilateral

Paragraphs (b) to (g) below relate to uncleared derivatives.

Under paragraph 25(1)(b), where an uncleared derivative is between two derivatives dealers both of which are party to the ISDA Multilateral, the reporting counterparty under the Rule is determined in accordance with the ISDA methodology.[6] The ISDA Multilateral is a multilateral agreement administered by the International Swaps and Derivatives Association, Inc. Parties to the ISDA Multilateral agree, as between each other, to follow the ISDA methodology to determine the reporting counterparty. The ISDA methodology sets out a consistent and static logic for determining the reporting counterparty, which promotes efficiency in reporting systems.

Derivatives dealers may contact ISDA to adhere to the ISDA Multilateral. ISDA provides all parties to the ISDA Multilateral and the Commission with any updates to the list of the parties to the ISDA Multilateral. This enables both the parties and the Commission to determine which derivatives dealer is the reporting counterparty for a derivative under paragraph 25(1)(b).

Paragraph 25(1)(b) does not apply if the parties have simply exchanged representation letters or otherwise agreed to follow the ISDA methodology, but have not both adhered to the ISDA Multilateral.

All derivatives dealers, regardless of whether they are financial entities or non-financial entities, may adhere to the ISDA Multilateral. However, paragraph 25(1)(b) only applies where both counterparties that are derivatives dealers have adhered to the ISDA Multilateral in advance of the transaction and have followed the ISDA methodology in determining the reporting counterparty.

The ISDA Multilateral is not available in respect of derivatives between a dealer and non-dealer; these derivatives are always required to be reported by the dealer.

(c) Uncleared derivatives between a derivatives dealer that is a financial entity and a derivatives dealer that is not a financial entity, where both dealers have not adhered to the ISDA Multilateral

Under paragraph 25(1)(c), where an uncleared derivative is between a derivatives dealer that is a financial entity, and a derivatives dealer that is not a financial entity, and where only one derivatives dealer is a party to the ISDA Multilateral or neither is a party to the ISDA Multilateral, the derivatives dealer that is a financial entity has the reporting requirement.

(d) Uncleared derivatives between derivatives dealers that are both financial entities, where both counterparties have not adhered to the ISDA Multilateral

Under paragraph 25(1)(d), where an uncleared derivative is between two derivatives dealers that are both financial entities, and only one is a party to the ISDA Multilateral or neither is a party to the ISDA Multilateral, each derivatives dealer is the reporting counterparty under the Rule.

In this situation, the counterparties should delegate the reporting obligation to one of the counterparties or to a third-party service provider, as this would avoid duplicative reporting. The intention is to facilitate single counterparty reporting through delegation while requiring both dealers to have procedures or contractual arrangements in place to ensure that reporting occurs. Please see below under Subsection 26(3) for further discussion regarding delegated reporting.

[6] The terms of the ISDA Multilateral and ISDA methodology are available at www.isda.com.

(e) Uncleared derivatives between a derivatives dealer and a non-derivatives dealer

Under paragraph 25(1)(e), where an uncleared derivative is between a derivatives dealer and non-derivatives dealer, the counterparty that is the derivatives dealer has the reporting requirement under the Rule.

(f) Uncleared derivatives where the parties have agreed in writing, before or at the time of the transaction, which counterparty has the reporting requirement

Paragraph 25(1)(f) only applies where an uncleared derivative is between

- two derivatives dealers, both of which are non-financial entities (for example, two commodity dealers), and where only one is a party to the ISDA Multilateral or neither is a party to the ISDA Multilateral, or

- two non-derivatives dealers.

In these circumstances, the counterparties may (at or before the time the transaction occurs) enter into a written agreement to determine which of them is the reporting counterparty. To avoid duplicative reporting, counterparties in these situations are encouraged to enter into such an agreement. Under paragraph 25(1)(f), the counterparty that is determined to be the reporting counterparty under this agreement is the reporting counterparty under the Rule.

For greater certainty, paragraph 25(1)(f) does not apply to uncleared derivatives between

- two derivatives dealers that are financial entities (determined under paragraph 25(1)(b) or (d))

- two derivatives dealers, one of which is a financial entity and the other is not (determined under paragraph 25(1)(b) or (c))

- a derivatives dealer and a non-derivatives dealer (determined under paragraph 25(1)(e))

Under subsection 25(4), a local counterparty to a derivative where the reporting counterparty is determined through such a written agreement must keep a record of the written agreement for 7 years, in a safe location and durable form, following expiration or termination of the derivative. A local counterparty has the obligation to retain this record even if it is not the reporting counterparty under the agreement.

The written agreement under paragraph 25(1)(f) may take the form of a multilateral agreement;[7] alternatively, it may be a bilateral agreement between the counterparties. Use of a multilateral agreement does not alleviate a local counterparty from its obligation under subsection 25(4) to keep a record of the agreement; such a record should show that both counterparties were party to the multilateral agreement in advance of the transaction. A bilateral agreement to determine the reporting counterparty may be achieved through exchange of written representation letters by each counterparty,[8] provided both counterparties have agreed in their respective representation letter to the same reporting counterparty determination. In this situation, a local counterparty should retain a record of the representation letters of both counterparties under subsection 25(4).

Subsection 25(5) provides that a local counterparty that agrees to be the reporting counterparty for a derivative under paragraph 25(1)(f) must fulfill all reporting obligations as the reporting counterparty in relation to that derivative even if that local counterparty would otherwise be excluded from the trade reporting obligation under section 40.

(g) Each local counterparty to the uncleared derivative

[7] For example, the ISDA 2015 Multilateral Non-Dealer Canadian Reporting Party Agreement.
[8] For example, an exchange of the ISDA Canadian Representation Letter.

Under paragraph 25(1)(g), each local counterparty to the derivative has the reporting obligation under the Rule. In this situation, a local counterparty may delegate the reporting obligation to a third-party service provider. Please see below under Subsection 26(3) for further discussion regarding delegated reporting.

For greater certainty, paragraph 25(1)(g) applies to uncleared derivatives between two derivatives dealers that are not financial entities and that have not adhered to the ISDA Multilateral Agreement or another written agreement. In this situation, because a derivatives dealer is a local counterparty, both derivatives dealers have the reporting obligation. Paragraph 25(1)(g) also applies to derivatives between two non-derivatives dealers that have not entered into a written agreement.

Section 26 – Duty to report

Section 26 outlines the duty to report derivatives data. For certainty, the duty to report derivatives data does not apply to contracts or instruments prescribed not to be derivatives by OSC Rule 91-506 *Derivatives: Product Determination*.

Subsection 26(1) requires that, subject to certain limited exclusions under the Rule, derivatives data for each derivative to which one or more counterparties is a local counterparty be reported to a designated trade repository in accordance with the Rule. The counterparty required to report the derivatives data is the reporting counterparty as determined under section 25.

Under subsection 26(2), the reporting counterparty for a derivative must ensure that all reporting obligations are fulfilled. This includes ongoing requirements such as the reporting of lifecycle event data, valuation data , collateral and margin data and position level data.

Subsection 26(3) permits the delegation of all reporting obligations of a reporting counterparty. This includes reporting of creation data, lifecycle event data, valuation data, collateral and margin data and position level data. For example, some or all of the reporting obligations may be delegated to either of the counterparties or to a third-party service provider.

A reporting delegation agreement does not alter the reporting counterparty obligation as determined under section 25. A reporting counterparty under the Rule remains responsible for ensuring that the derivatives data does not contain an error or omission and is reported within the timeframes required under the Rule. However, if Commission staff are provided with a reporting delegation agreement between the counterparties to the derivative, staff would in some situations attempt to address any reporting errors or omissions with the delegated party before addressing them with the delegating party. Counterparties should put into place contracts, systems and practices to implement delegation under subsection 26(3) before entering into a reportable derivative.

With respect to subsection 26(4), in this situation market participants should contact the Commission in advance to make arrangements to report the data electronically.

Subsection 26(5) provides for limited substituted compliance with the Rule where a derivative has been reported to a designated trade repository under the securities legislation of a province or territory of Canada other than Ontario or under the laws of a foreign jurisdiction listed in Appendix B of the Rule, provided that the additional conditions set out in paragraphs (a) and (c) are satisfied. The derivatives data reported to a designated trade repository under paragraph (b) may be provided to the Commission under paragraph (c) in the same form as required to be reported pursuant to the applicable foreign jurisdiction's requirements for reporting derivatives data.

Under Subsection 26(6), the reporting counterparty to a derivative has not fulfilled its reporting obligations under the Rule unless and until all derivatives data that it has reported satisfies the validation procedure of the designated trade repository, which may include timing, methods of reporting, and data standards in respect of the elements listed in Appendix A to the Rule and the administrative technical specifications set out in the CSA Derivatives Data Technical Manual. Under subsection 22.2(2), the trade repository is required to notify a reporting counterparty or its agent whether or not the derivatives data received by the

designated trade repository satisfies its validation procedure and will reject derivatives data that does not satisfy its validation procedure.

The purpose of subsection 26(7) is to ensure the Commission has access to all derivatives data reported to a designated trade repository for a particular derivative (from the initial submission to the designated trade repository through all lifecycle events to termination or expiration) from one designated trade repository. It is not intended to restrict counterparties' ability to report different derivatives to different trade repositories or from changing the designated trade repository to which derivatives data relating to a derivative is reported (see below under section 26.4). Where the entity to which the derivative was originally reported is no longer a designated trade repository, all derivatives data relevant to that derivative should be reported to another designated trade repository as otherwise required by the Rule.

We expect a recognized or exempt clearing agency to report all derivatives data in respect of a cleared derivative to the designated trade repository to which derivatives data was reported in respect of the original derivative, unless the clearing agency obtains the consent of the local counterparties to the original derivative or unless a local counterparty to the cleared derivative has specified a different designated trade repository under subsection 26(9).

Section 26.1 – Verification of data

Under paragraph 26.1(a), the reporting counterparty in respect of a derivative is responsible for ensuring that reported derivatives data does not contain an error or omission. To facilitate this, subsection 38(1) requires designated trade repositories to provide counterparties with timely access to data. For greater certainty, paragraph 26.1(a) applies both to open derivatives and derivatives that have expired or terminated (unless the record-keeping requirements under section 36 have expired at the time that the error or omission is discovered).

A reporting counterparty that is a derivatives dealer or a recognized or exempt clearing agency has the additional requirement under paragraph 26.1(c) to verify at least every 30 days that the reported derivatives data does not contain an error or omission. In the case of a notional amount threshold derivatives dealer, verification must occur under paragraph 26.1(b) at least every calendar quarter, but there must be at least two calendar months between verifications. To verify data, a reporting counterparty must follow the rules, policies and procedures of the designated trade repository (established under section 23) to compare all derivatives data for each derivative for which it is the reporting counterparty with all derivatives data contained in its internal books and records to ensure that there are no errors or omissions. Paragraphs 26.1(b) and (c) do not apply to derivatives that have expired or terminated. Reporting counterparties should implement verification in a manner that is reasonably designed to provide an effective verification that the data does not contain an error or omission, for example, by comparing data in the designated trade repository against data in the reporting counterparty's source systems.

Similar to the reporting obligations under section 26, the obligations under section 26.1 can also be delegated under subsection 26(3) to a third party.

Please see above under section 18 for the Commission's views on the term "error or omission".

Section 26.2 – Derivatives reported in error

Section 26.2 addresses situations where a reporting counterparty erroneously reports a derivative, for example, where the transaction in respect of a derivative never occurred, or where the report was a duplicate. In these situations, the reporting counterparty must report the error to the designated trade repository as soon as practicable after discovery of the error and in any case no later than the end of the business day following the day on which the error is discovered. This requirement is satisfied by reporting an "error" action type. Section 26.2 does not address other errors or omissions, such as errors in particular data elements. This requirement applies both to open and expired or terminated derivatives, subject to the record retention period under section 36.

Section 26.3 – Notification of errors and omissions with respect to derivatives data

Introduction

For purposes of this section, we consider an error or omission to be any error or omission including, for example, derivatives that were not reported, reports relating to transactions that never occurred, derivatives for which there are duplicate reports, and derivatives that were reported with missing or erroneous data.

Reporting of errors and omissions by the non-reporting counterparty

Under subsection 26.3(1), where a local counterparty that is not a reporting counterparty discovers an error or omission in respect of derivatives data that is reported to a designated trade repository, such local counterparty has an obligation to report the error or omission to the reporting counterparty as soon as practicable after discovery of the error or omission and in any case no later than the end of the business day following the day on which the error or omission is discovered.

Notifying the Commission of significant errors or omissions

Under subsection 26.3(2), a reporting counterparty must notify the Commission of a significant error or omission that has occurred as soon as practicable after discovery of the error or omission. We consider a significant error or omission to be an error or omission that, due to its scope, type or duration, or due to other circumstances, may impair the ability of the Commission to fulfill its mandate. These factors operate independently of each other and the presence of any one factor may impact the ability of the Commission to fulfill its mandate.

- ***Scope*** – This factor refers to the number of derivatives in respect of which an error or omission has occurred. We generally consider the scope to be significant if it affects, at any time while the error or omission persists, more than 10% of the reporting counterparty's derivatives, for which it is the reporting counterparty, and that are required to be reported under the Rule. This factor applies to errors in reported derivatives data and unreported derivatives.

  Exception for this factor:

  - If the error relates to non-reporting, we only consider this factor significant if reporting is delayed beyond 24 hours after the reporting deadline, provided none of the other factors are present.

- ***Type*** – This factor refers to the nature of the error or omission. We generally consider the type to be significant if it is related to any of the following and persists for longer than 7 business days:

  - Counterparty 1 (Data Element Number 1)
  - Counterparty 2 (Data Element Number 2)
  - Jurisdiction of Counterparty 1 (Data Element Number 10)
  - Jurisdiction of Counterparty 2 (Data Element Number 11)
  - Notional amount (Data Element Number 26)
  - Notional currency (Data Element Number 27)
  - Notional quantity (Data Element 32)
  - Price (Data Element Number 46)

- Valuation amount (Data Element Number 101)
- Valuation currency (Data Element Number 102)
- Data Elements Related to Collateral and Margin (Data Element Numbers 79-94)
- Unique Product Identifier (Data Element Number 117)

- ***Duration*** – This factor refers to the length of time an error or omission has persisted. We would generally consider the duration to be significant if it is longer than 3 months. This time period refers to the total period during which the error or omission is outstanding, regardless of when it was discovered.

- ***Other Circumstances*** – This factor refers to an error or omission in respect of a derivative that involves
  - a counterparty that was, at the time of the error or omission, in default under the terms of the derivative, or
  - a counterparty or underlying asset that was, at the time of the error or omission, determined to be in a credit event under the terms of the derivative.

    Exception for this factor:

  - If the error or omission occurred more than three years before it is discovered, we do not consider it significant, provided none of the other factors are present.

The requirement under subsection 26.3(2) applies both to open and expired or terminated transactions, subject to the record retention period under section 36. It also applies even if the reporting counterparty has already corrected the error before the Commission has been notified.

If errors or omissions are reasonably related and were discovered at approximately the same time, the reporting counterparty may provide a single notification in respect of all such errors or omissions.

The reporting counterparty should describe the general nature of the error or omission, the reason the error or omission is significant, the number of derivatives impacted, the date and duration of the error, the steps taken to remedy the error or omission, and any planned remediation steps including dates the remediation will occur. For errors that involve derivatives that were required to be reported under the rules of two or more jurisdictions, reporting counterparties are expected to notify each relevant regulatory authority, or may request that a regulatory authority provide relevant details and the reporting counterparty's contact information to the other relevant securities regulatory authorities.

The timeframe under subsection 26.3(2) refers to "as soon as practicable after discovery". With respect to this timeframe:

- We recognize that, at the time an error or omission is discovered, the reporting counterparty may not be in a position to determine whether it is significant. In this situation, we expect the reporting counterparty to diligently and expeditiously determine whether the error or omission meets any of the above factors and notify us as soon as practicable after discovery of the error or omission meeting any of the above factors.

- We recognize that a reporting counterparty may have determined that an error or omission is significant, but it may not yet have a complete understanding of the error or omission. For example, it may have determined that an error is significant because it impacts the notional data element for certain derivatives, but it may still be in the process of researching the precise list of impacted derivatives. In this situation, we would expect the reporting counterparty to advise us

with the information available as soon as practicable after discovery of the significant error or omission and be kept updated as the reporting counterparty diligently assesses the full scope of the breach and develops a remediation plan.

Under the Rule, a reporting counterparty is required to report data that does not contain an error or omission. We expect reporting counterparties to correct all errors and omissions relating to derivatives data that they reported, or failed to report, and thereby comply with the reporting requirements, as soon as possible. This applies both to open and expired or terminated derivatives, subject to the record retention period under section 36.

Section 26.4 – Transferring a derivative to a different designated trade repository

Should a reporting counterparty wish to report derivatives data relating to a derivative to a different designated trade repository, it must follow the process set out in this section.

Section 28 – Legal entity identifiers

Subsection 28(1) is intended to ensure that a designated trade repository, a reporting counterparty, and a derivatives trading facility that has the reporting requirement under section 36.1 identify all counterparties to a derivative by a LEI under the Global LEI System. The Global LEI System is a G20 endorsed initiative that uniquely identifies parties to derivatives. It is designed and implemented under the direction of the ROC, a governance body endorsed by the G20.

The "Global Legal Entity Identifier System" referred to in subsection 28(2) means the G20 endorsed system that serves as a public-good utility responsible for overseeing the issuance of LEIs globally to counterparties who enter into derivatives. LEIs can only be obtained from a Local Operating Unit (LOU) endorsed by the ROC.[9]

Some counterparties to a reportable derivative are not eligible to receive an LEI. In such cases, an alternate identifier must be used to identify each counterparty that is ineligible for an LEI. The alternate identifier must be unique for each such counterparty and the same alternate identifier must be used in respect of all derivatives involving that counterparty.

An individual is not required to obtain an LEI. An alternate identifier must be used to identify each counterparty that is an individual.

Section 28.1 – Maintenance and renewal of legal entity identifiers

Under Section 28.1, a local counterparty (other than an individual) that is party to a derivative that is required to be reported to a designated trade repository, must obtain, maintain and renew an LEI regardless of whether the local counterparty is the reporting counterparty. For greater certainty, this obligation applies to a derivatives dealer in Ontario under paragraph (b) of the definition of "local counterparty", and the exclusion under section 41.2 is not available in respect of this requirement.

This requirement applies for such time as the counterparty has open derivatives. When all of the counterparty's derivatives that are required to be reported under the Rule have expired or terminated, the counterparty is no longer required to maintain or renew its LEI until such time as it may enter into a new derivative.

Maintenance of an LEI means ensuring that the reference data associated with the LEI assigned to the counterparty is updated with all relevant and accurate information in a timely manner. Renewal of an LEI means providing the associated Local Operating Unit with acknowledgement that the reference data associated with the LEI assigned to the counterparty is accurate.

[9] The list of ROC-endorsed LOUs and their contact information is available at https://www.gleif.org or https://www.leiroc.org

The Rule does not require a reporting counterparty to verify that its counterparties to each derivative that it reports have maintained and renewed their LEIs, although the reporting counterparty must maintain and renew its own LEI.

Section 29 – Unique transaction identifiers

Introduction

Subsection 29(1) is intended to ensure that a designated trade repository, a reporting counterparty, and a derivatives trading facility that has the reporting requirement under section 36.1 identify each derivative, and each position under section 33.1, by means of a single UTI, the form of which is set out in the CSA Derivatives Data Technical Manual (Data Element Number 16).

Subsection 29(2) outlines a hierarchy for determining which person or company has the obligation to assign a UTI for a derivative that is required to be reported. Further to the February 2017 publication of *Technical Guidance on the Harmonisation of the Unique Transaction Identifier* by the CPMI-IOSCO working group for the harmonization of key OTC derivatives data elements, section 29 intends to achieve a globally common UTI generator outcome, while generally aligning with the framework of the Rule.

Allocated derivatives

Where an agent facilitates and executes a transaction on behalf of several principals, and subsequently allocates a portion of the derivative among these principals, each derivative between a principal and its counterparty is a separate derivative and therefore requires a separate UTI. For example, if a fund manager, acting as agent, executes a transaction with a counterparty on behalf of several of the funds that it manages, each allocated derivative between a fund and its counterparty requires a separate UTI.

Earlier UTI generator

Paragraph 29(2)(a) provides that where a derivative is required to be reported under the securities legislation of a jurisdiction of Canada other than Ontario, or under the laws of a foreign jurisdiction, under an earlier reporting deadline, the person or company required to assign the UTI under the laws of that other jurisdiction or foreign jurisdiction must assign the UTI. This reflects the intention that a derivative should be assigned the same UTI for the purposes of all global trade reporting requirements.

Cleared derivatives

Under paragraph 29(2)(b), where derivatives are cleared through a recognized or exempt clearing agency, the clearing agency must assign the UTI. For clarity, the clearing agency does not assign the UTI in respect of an original derivative that is intended to be cleared, to which it is not a counterparty.

Transactions executed on a derivatives trading facility

A counterparty must not assign another UTI to a derivative, in respect of a transaction that is executed on a derivatives trading facility, where that derivatives trading facility (whether or not it has the reporting requirement under section 36.1) has already assigned a UTI to the derivative. This is intended to ensure that a derivative is identified by means of only one UTI. Please see above under section 22.1 for the Commission's views on the term "derivatives trading facility".

Last resort determination

Paragraph 29(2)(d) provides that if none of the other fallbacks apply, the reporting counterparty must assign the UTI. This paragraph includes a "last resort" determination in the event that there are two reporting counterparties and none of the other paragraphs under the hierarchy apply. In this event, the counterparty that assigns the UTI is determined by a reverse LEI sorting of the LEIs of the counterparties. Therefore, the counterparty whose LEI with the characters reversed would appear first if

the reversed LEIs of the counterparties were sorted in alphanumeric (ASCII) order, where digits are sorted before letters, and the number “0” is sorted before the number “1”, as in the following examples:

	Example 1	**Example 2**
LEI of Counterparty 1	1111ABCDEABCDEABC123	ABCDEABCDEABCDE12345
LEI of Counterparty 2	1111AAAAABBBBBCCC23	ABCDEABCDEAAAAA12344
Characters reversed for the LEI of Counterparty 1	321CBAEDCBAEDCBA1111	54321EDCBAEDCBAEDCBA
Characters reversed for the LEI of Counterparty 2	32CCCBBBBBAAAAA1111	44321AAAAAEDCBAEDCBA
First appearing after sorting on a character by character basis in ASCII order	321CBAEDCBAEDCBA1111 because "1" (digit) comes before "C" (letter)	44321AAAAAEDCBAEDCBA because "4" comes before "5"
Entity that assigns the UTI under paragraph 29(2)(d)	Counterparty 1	Counterparty 2

Agreement

Under subsection 29(3), if the counterparties to the derivative have agreed in writing that one of them will be the person or company responsible for generating the UTI for the derivative, the counterparty that is responsible under that agreement must assign the UTI instead of the reporting counterparty. This does not apply if paragraphs 29(2)(a), (b) or (c) apply.

UTI generation by a designated trade repository

Paragraph 29(4) applies to a person or company that is either (a) a notional amount threshold derivatives dealer or (b) not a recognized or exempt clearing agency, derivatives trading facility or derivatives dealer. Instead of assigning a UTI as required under subsection 29(2), these entities may, at their option, instead request that a designated trade repository assign the UTI. In this situation, we expect that the designated trade repository may need the person or company making this request to inform the designated trade repository whether the derivative is intended to be cleared and, if so, the recognized or exempt clearing agency. This is because this information must be provided by the designated trade repository to the clearing agency under paragraph 29(9)(b). We expect the person or company to provide this information if required, and that the designated trade repository will establish a process for these participants to provide this request.

Timeframe

In evaluating what will be considered to be “technologically practicable” with respect to assigning and providing the UTI, the Commission will take into account the prevalence, implementation and use of technology by comparable persons or companies located in Canada and in comparable foreign jurisdictions. The Commission may also conduct independent reviews to determine the state of technology. In particular, the Commission notes that the timing for reporting obligations are predicated on UTIs being assigned and provided in an expedient manner.

Provision of UTI to others

Subsections 29(7), (8) and (9) address requirements to provide the UTI to others that may be required to report it. If the person or company responsible for assigning the UTI is the reporting counterparty, it must also report the UTI to the designated trade repository as part of the derivatives data that it is required to report under the Rule (Data Element Number 16 in Appendix A to the Rule).

Delegation

Similar to the reporting obligations in section 26, the requirements to assign and provide a UTI under section 29 can be delegated to a third party, but the person or company responsible for assigning and providing the UTI remains ultimately responsible for ensuring compliance with section 29.

Section 30 – Unique product identifiers

Section 30 is intended to ensure that a designated trade repository, a reporting counterparty, and a derivatives trading facility that has the reporting requirement under section 36.1 identify each type of derivative by means of a single UPI. The UPI must be obtained from the Derivatives Service Bureau.

Section 31 – Creation data

For qualified reporting counterparties, section 31 requires that reporting of creation data be made in real time. We interpret “real time” as immediately after execution of the transaction. If it is not technologically practicable to report creation data in real time, it must be reported as soon as technologically practicable. In all cases, the outside limit for reporting is the end of the business day following execution of the transaction. In evaluating what will be considered to be “technologically practicable”, the Commission will take into account the prevalence, implementation and use of technology by comparable counterparties located in Canada and in comparable foreign jurisdictions. The Commission may also conduct independent reviews to determine the state of technology.

We are of the view that it is not technologically practicable for a reporting counterparty to report creation data in respect of a derivative entered into by an agent of a counterparty if the transaction is executed before the derivative is allocated among the counterparties on whose behalf the agent is acting, until the reporting counterparty receives and, as soon as technologically practicable, processes this allocation from the agent. We expect that an agent will inform the reporting counterparty of the identities of the reporting counterparty's counterparties resulting from the allocation as soon as technologically practicable after execution. For example, if a fund manager executes a transaction on behalf of several of the funds that it manages, but has not allocated the derivative among these funds, it would not be technologically practicable for the reporting counterparty to report each derivative between itself and each allocated fund until it receives and, as soon as technologically practicable, processes the allocation. However, in all cases the outside limit for reporting by qualified reporting counterparties is the end of the business day following execution of the transaction.

Subsection 31(5) requires non-qualified reporting counterparties to report creation data no later than the end of the second business day following execution of the transaction.

Section 32 – Lifecycle event data

For qualified reporting counterparties, lifecycle event data is not required to be reported in real time but rather at the end of the business day on which the lifecycle event occurs. The end of business day report may include multiple lifecycle events that occurred on that day. If it is not technologically practicable to report lifecycle event data by the end of the business day on which the lifecycle event occurs, it must be reported by the end of the business day following the day on which the lifecycle event occurs. In evaluating what will be considered to be “technologically practicable”, the Commission will take into account the prevalence, implementation and use of technology by comparable counterparties located in Canada and in comparable foreign jurisdictions. The Commission may also conduct independent reviews to determine the state of technology.

Subsection 32(3) requires non-qualified reporting counterparties to report lifecycle event data no later than the end of the second business day on which the lifecycle event occurs. This report may include multiple lifecycle events that occurred on that day.

The Commission notes that, in accordance with subsection 26(6), all reported derivatives data relating to a particular derivative must be reported to the same designated trade repository or to the Commission for

derivatives for which derivatives data was reported to the Commission in accordance with subsection 26(4).

A recognized or exempt clearing agency is required to report the termination of the original derivative in respect of a cleared derivative under subsection 32(4). The termination report must be made to the same designated trade repository to which the original derivative was reported by the end of the business day following the day on which the original derivative is terminated. We stress that the reporting counterparty of the original derivative is required to report that derivative accurately and must correct any errors or omissions in respect of that original derivative. Reporting counterparties of the original derivative and recognized or exempt clearing agencies should ensure accurate data reporting so that original derivatives that have cleared can be reported as terminated.

Section 33 – Valuation data and collateral and margin data

Under subsection 33(1), a reporting counterparty that is a derivatives dealer or a recognized or exempt clearing agency must report valuation data and collateral and margin data with respect to a derivative that is subject to the reporting obligations under the Rule each business day until the derivative is terminated or expires. The Commission notes that, in accordance with subsection 26(7), all reported derivatives data relating to a particular derivative must be reported to the same designated trade repository.

Subsection 33(2) requires a reporting counterparty that is reporting position level data for certain derivatives under section 33.1 to calculate and report valuation data and collateral and margin data on the net amount of all purchases and sales reported as position level data for such derivatives.

Section 33.1 – Position level data

As an alternative to reporting lifecycle event data in relation to each derivative, a reporting counterparty may, at its option, report aggregated position level data. Likewise, as an alternative to reporting valuation data and collateral and margin data in relation to each derivative, a reporting counterparty that is a derivatives dealer or a recognized or exempt clearing agency may, at its option, report aggregated position level data. These options are only available in respect of derivatives that meet the criteria under section 33.1.

Section 33.1 allows for position level reporting in two cases:

- derivatives that are commonly referred to as “contracts for difference”, where each derivative included in the reported position is fungible with all other derivatives in the reported position and has no fixed expiration date;

- derivatives for which the only underlying interest is a commodity other than cash or currency, where each derivative included in the reported position is fungible with all other derivatives in the reported position.

The Rule does not apply to a commodity derivative that is an excluded derivative under paragraph 2(1)(d) of OSC Rule 91-*506 Derivatives: Product Determination*. An example of a commodity derivative to which section 33.1 could apply is a fungible derivative in relation to a physical commodity that allows for cash settlement in place of delivery. We take the position that commodities include goods such as agricultural products, forest products, products of the sea, minerals, metals, hydrocarbon fuel, precious stones or other gems, electricity, oil and natural gas (and by-products, and associated refined products, thereof), and water. We also consider certain intangible commodities, such as carbon credits and emission allowances, to be commodities. In contrast, this provision will not apply to financial commodities such as currencies, interest rates, securities and indexes, as well as crypto assets that would be considered to be financial commodities.

We view the term “fungible” in this section to refer to derivatives that have certain contract specifications that are identical and replaceable with one another or can be bought or sold to offset a prior derivative having these identical contract specifications. The contract specifications that we expect to be identical are the identity of the counterparties, the maturity date, the underlying asset, and the delivery location. However, we do not expect other contract specifications to be identical, including the execution date, notional amount, price or notional quantity. Derivatives within each reported position must be fungible with all other derivatives in the same reported position.

If a person or company is the reporting counterparty in respect of some derivatives that meet this criteria and others that do not, it may only report position level data in respect of the derivatives that meet this criteria and must report lifecycle events under section 32 and, if applicable, valuation data and collateral and margin data under section 33, in respect of derivatives that do not.

Contracts for difference and commodity derivatives may not be reported in the same position.

If a reporting counterparty chooses not to report position level data, it must instead report lifecycle events under section 32 and, if applicable, valuation data and collateral and margin data under subsection 33(1), in relation to each derivative.

A reporting counterparty that is not a derivatives dealer or recognized or exempt clearing agency that opts to report position level data is only required to report lifecycle event data as position level data, and is not required to report valuation data, collateral and margin data.

Creation data cannot be reported as an aggregated position under section 33.1. Reporting counterparties must report creation data separately for each derivative.

The CSA Derivatives Data Technical Manual provides technical specifications on reporting position level data.

Section 36 – Records of data reported

A reporting counterparty is a market participant under securities legislation and therefore subject to the record-keeping requirements under securities legislation. The record-keeping requirements under section 36 are in addition to the requirements under securities legislation.

A reporting counterparty must keep records relating to a derivative that is required to be reported under this Rule, including transaction records, for 7 years after the expiration or termination of a derivative. The requirement to maintain records for 7 years after the expiration or termination of a derivative, rather than from the date the derivative was entered into, reflects the fact that derivatives create on-going obligations and information is subject to change throughout the life of a derivative.

As part of the record-keeping requirements under section 36, we expect a reporting counterparty will maintain records of each verification it performs to confirm the accuracy of reported derivatives data as well as records relating to any errors or omissions discovered in reported derivatives data or any corrections to such data.

A correction to derivatives data, whether before or after expiration or termination of the derivative, does not extend or reduce the maintenance period under section 36 unless the correction relates to the date of expiration or termination of the derivative. For example, if a derivative expired on December 31, 2020 and the notional amount of the derivative was subsequently corrected on December 31, 2021, the correction would not impact the record maintenance period. However, if the correction was to the expiration date, such that the derivative actually expired on December 31, 2019, then the record maintenance period should reflect the corrected expiration date.

Section 36.1 – Derivatives trading facility

Under subsection 36.1(2), where a transaction is executed anonymously on a derivatives trading facility and, at the time of execution, is intended to be cleared, the reporting hierarchy under section 25 does not apply with respect to the derivative. Instead, under subsection 36.1(3), certain provisions in the Rule that refer to "reporting counterparty" and "qualified reporting counterparty" must be read as referring to "derivatives trading facility". These provisions are summarized in the following table:

Provision	Summary
22.2(2)	A designated trade repository must, as soon as technologically practicable after receiving the derivatives data, notify a derivatives trading facility (including, for greater certainty, an agent acting on its behalf) whether or not the derivatives data received by the designated trade repository from the derivatives trading facility, or from a party to whom a derivatives trading facility has delegated its reporting obligation under the Rule, satisfies the validation procedure of the designated trade repository.
26(1)	A derivatives trading facility must report, or cause to be reported, the data required to be reported under Part 3 to a designated trade repository; however, this only applies to creation data.
26(2)	A derivatives trading facility must ensure that all reporting obligations in respect of the derivative have been fulfilled.
26(3)	The derivatives trading facility may delegate reporting obligations under the Rule, but remains responsible for ensuring the reporting of derivatives data required by the Rule.
26(4)	A derivatives trading facility must electronically report the data required to be reported by Part 3 to the Commission if no designated trade repository accepts the data required to be reported by Part 3.
26(6)	A derivatives trading facility must ensure that all reported derivatives data relating to a derivative satisfies the validation procedure of the designated trade repository to which the derivative is reported.
26(7)	A derivatives trading facility must ensure that all reported derivatives data relating to a derivative is reported to the same designated trade repository or, if reported to the Commission under s. 26(4), to the Commission.
26.1(a)	A derivatives trading facility must ensure that all reported derivatives data does not contain an error or omission.
26.2	If a derivatives trading facility reports a derivative in error, it must report the error to the designated trade repository or, if the derivatives data was reported to the Commission under subsection 26(4), to the Commission, as soon as practicable after discovery of the error, and in no event later than the end of the business day following the day of discovery of the error.
26.3(1)	Where a derivatives trading facility has the reporting requirement, a local counterparty must notify the derivatives trading facility of an error or omission with respect to derivatives data relating to a derivative to which it is a counterparty as soon as practicable after discovery of the error or omission, and in no event later than the end of the business day following the day of discovery of the error or omission.

26.3(2)	A derivatives trading facility must notify the Commission of a significant error or omission as soon as practicable after discovery of the error or omission.
26.4	A derivatives trading facility may change the designated trade repository to which derivatives data relating to a derivative is reported by following the procedures set out in this section (although in practice we do not expect that a derivatives trading facility would use these procedures, given that the facility is only required to report creation data for original derivatives that should be terminated once they are cleared).
27	A derivatives trading facility must include the following in every report required by Part 3: (a) the LEI of each counterparty to the derivative as set out in section 28, (b) the UTI for the derivative as set out in section 29, and (c) the UPI for the type of derivative as set out in section 30.
28(1)	In all recordkeeping and reporting that is required under the Rule, a derivatives trading facility must identify each counterparty to a derivative by means of a single LEI.
28(4)	If a counterparty to a derivative is an individual or is not eligible to receive a LEI as determined by the Global Legal Entity Identifier System, a derivatives trading facility must identify such a counterparty with a single unique alternate identifier.
29(1)	In all recordkeeping and reporting that is required under the Rule, a derivatives trading facility must identify each derivative by means of a single UTI.
29(7)	A derivatives trading facility is required to provide the UTI that it has assigned, as set out in this subsection.
30(2)	In all recordkeeping and reporting that is required under the Rule, a derivatives trading facility must identify the type of each derivative by means of a single UPI.
31(1) 31(2) 31(3)	Upon execution of a transaction relating to a derivative that is required to be reported under the Rule, a derivatives trading facility must report the creation data relating to that derivative to a designated trade repository in real time. If it is not technologically practicable to report creation data in real time, the derivatives trading facility must report creation data as soon as technologically practicable and in no event later than the end of the business day following the day on which the data would otherwise be required to be reported.
35	Where a designated trade repository ceases operations or stops accepting derivatives data for a certain asset class of derivatives, the derivatives trading facility may fulfill its reporting obligations under the Rule by reporting the derivatives data to another designated trade repository, or the Commission if there is not an available designated trade repository, within a reasonable period of time.
36	A derivatives trading facility must keep records relating to a derivative for which it has the reporting requirement, including transaction records, for 7 years after the date on which the derivative expires or terminates. It must keep these records in a safe location and in a durable form.
37(3)	A derivatives trading facility must use its best efforts to provide the Commission with access to all derivatives data that it is required to report pursuant to the Rule, including instructing a trade repository to provide the Commission with access to such data.
41	A derivatives trading facility is not required to report derivatives data relating to a derivative if it is entered into between His Majesty in right of Ontario or the Ontario

	Financing Authority when acting as agent for His Majesty in right of Ontario, and an Ontario crown corporation or crown agency that forms part of a consolidated entity with His Majesty in right of Ontario for accounting purposes.
41.2	A derivatives trading facility is not required to report derivatives data relating to a derivative if the derivative is required to be reported solely because one or both counterparties is a local counterparty under paragraph (b) of the definition of "local counterparty". This exclusion is not available in respect of derivatives data relating to a derivative involving an individual who is a resident of Ontario.

Please see above under section 22.1 for the Commission's views on the term "derivatives trading facility".

This section is only intended to apply to original derivatives (sometimes referred to as "*alpha*" transactions) and to exclude derivatives that have cleared, and for which the recognized or exempt clearing agency is the reporting counterparty. The chart above under section 25 illustrates the distinction between original derivatives and cleared derivatives.

Subsection 36.1(2) applies only where it is not possible for a counterparty to establish the identity of the other counterparty prior to execution of a transaction.

Subsection 36.1(4) provides for certain exceptions where an anonymous derivative is intended to be cleared. We expect that paragraph 36.1(4)(a) would apply to, for example, a fund manager that is allocating a derivative among funds that it manages.

Subsection 36.1(5) provides for a grace period to enable derivatives trading facilities to determine whether their participants, and their customers, are a local counterparty under paragraph (c) of the definition of "local counterparty" under Canadian trade reporting rules. The grace period only applies if the derivatives trading facility makes diligent efforts on a reasonably frequent basis to determine this.

Because a derivatives trading facility is not the reporting counterparty under section 25, but rather may have certain requirements of a reporting counterparty under section 36.1, a derivatives trading facility is not a fee payer in respect of a derivatives participation fee under OSC Rule 13-502 *Fees* as a result of the requirements under section 36.1.

PART 4
DATA DISSEMINATION AND ACCESS TO DATA

Introduction

Part 4 includes obligations on designated trade repositories to make data available to the Commission, counterparties and the public.

Section 37 – Data available to regulators

The derivatives data covered by this subsection is data that is necessary to carry out the Commission's mandate. This includes derivatives data with respect to any derivative that may impact Ontario's capital markets.

Derivatives that reference an underlying asset or class of assets with a nexus to Ontario or Canada can impact Ontario's capital markets even if the counterparties to the derivative are not local counterparties. Therefore, the Commission has a regulatory interest in derivatives involving such underlying interests even if such data is not submitted pursuant to the reporting obligations in the Rule, but is held by a designated trade repository.

Electronic access under paragraph 37(1)(a) includes the ability of the Commission to access, download, or receive a direct real-time feed of derivatives data maintained by the designated trade repository.

When a participant corrects an error or omission in derivatives data, the Commission does not expect designated trade repositories to re-issue any static reports that were previously provided to the Commission to reflect the correction. However, any new static reports provided to the Commission, as soon as technologically practicable after recording the correction, should reflect the correction, if applicable. Similarly, the Commission expects the data that it accesses through its electronic access to be updated to reflect any corrections as soon as technologically practicable after the designated trade repository recorded the correction. In evaluating what will be considered to be "technologically practicable", the Commission will take into account the prevalence, implementation and use of technology by comparable trade repositories. The Commission may also conduct independent reviews to determine the state of technology.

Subsection 37(2) requires a designated trade repository to conform to internationally accepted regulatory access standards applicable to trade repositories. Trade repository regulatory access standards have been developed by CPMI and IOSCO. It is expected that all designated trade repositories will comply with the access recommendations in CPMI-IOSCO's final report.[7]

The Commission interprets the requirement under subsection 37(3) for a reporting counterparty to use best efforts to provide the Commission with access to derivatives data to mean, at a minimum, instructing the designated trade repository to release derivatives data to the Commission.

Section 38 – Data available to participants

Subsections 38(1) and (2) are intended to ensure that each counterparty, and any person or company acting on behalf of a counterparty, has access to all derivatives data relating to its derivative(s) in a timely manner and that designated trade repositories have appropriate authorization procedures in place to enable such access. The Commission is of the view that where a counterparty has provided consent to a trade repository to grant access to data to a third-party service provider, the trade repository should grant such access on the terms consented to.

We note that reporting counterparties require access to derivatives data relating to their derivatives in order to fulfill their obligation under paragraph 26.1(a) to ensure the accuracy of reported data.

We expect that data made available by a designated trade repository to counterparties and any person or company acting on their behalf will not include the identity or LEI of the other counterparty in respect of transactions executed anonymously on a derivatives trading facility, as required under section 22.1.

Section 39 – Data available to public

Subsection 39(1) requires a designated trade repository to make available to the public at no cost certain aggregate data for all derivatives reported to it under the Rule, including open positions (which refers to derivatives that have not expired or terminated), volume, and number of derivatives. It is expected that a designated trade repository will provide aggregate data by notional amounts outstanding and level of activity. Such aggregate data is expected to be available on the designated trade repository's website.

When a participant corrects an error or omission in derivatives data, the Commission does not expect designated trade repositories to re-publish aggregate data that was previously published before the correction was recorded. However, any new publication of aggregate data, as soon as technologically practicable after recording the correction, should reflect the correction, if applicable. In evaluating what will be considered to be "technologically practicable", the Commission will take into account the prevalence, implementation and use of technology by comparable trade repositories. The Commission may also conduct independent reviews to determine the state of technology.

[7] See report entitled *Authorities' access to trade repository data* available at http://www.bis.org/publ/cpss110.htm.

Subsection 39(2) requires that the aggregate data that is disclosed under subsection 39(1), be broken down into various categories of information. The following are examples of the aggregate data required under subsection 39(2):

- currency of denomination (the currency in which the derivative is denominated);
- asset class of underlier (e.g., fixed income, credit, or equity);
- product type (e.g., options, forwards, or swaps);
- cleared or uncleared;
- expiration (broken down into expiration ranges).

Subsection 39(3) requires a designated trade repository to make available to the public at no cost transaction level reports that meet the requirements under Appendix C to the Rule. These transaction level reports are expected to be available on the designated trade repository's website for at least one year after the initial public dissemination. We expect designated trade repositories, as soon as technologically practicable after recording a correction to derivatives data by a participant, to publicly disseminate the correction as required under paragraph 1(c) of Appendix C to the Rule. While the correction is required to be publicly disseminated, the designated trade repository is not required to edit previously published transaction level reports to reflect the corrected data. In evaluating what will be considered to be "technologically practicable", the Commission will take into account the prevalence, implementation and use of technology by comparable trade repositories. The Commission may also conduct independent reviews to determine the state of technology.

Subsection 39(4) provides that a designated trade repository must not disclose the identity of either counterparty to the derivative. This means that published data must be anonymized and the names or LEIs of counterparties must not be published. This provision is not intended to create a requirement for a designated trade repository to determine whether anonymized published data could reveal the identity of a counterparty based on the terms of the derivative.

PART 5
EXCLUSIONS

Introduction

Part 5 provides for various exclusions from the reporting requirements under the Rule.

Section 40 – Commodity derivatives

Section 40 provides an exclusion for a derivative for which the only underlying interest is a commodity other than cash or currency. The Rule does not apply to a commodity derivative that is an excluded derivative under paragraph 2(1)(d) of OSC Rule 91-506 *Derivatives: Product Determination*. An example of a commodity derivative to which section 40 could apply (subject to the other terms set out in that section) is a derivative in relation to a physical commodity that allows for cash settlement in place of delivery. We take the position that commodities include goods such as agricultural products, forest products, products of the sea, minerals, metals, hydrocarbon fuel, precious stones or other gems, electricity, oil and natural gas (and by-products, and associated refined products, thereof), and water. We also consider certain intangible commodities, such as carbon credits and emission allowances, to be commodities. In contrast, this exclusion will not apply to financial commodities such as currencies, interest rates, securities and indexes, as well as crypto assets that would be considered to be financial commodities.

This exclusion does not apply to a local counterparty that is a qualified reporting counterparty.

In calculating the month-end notional outstanding for any month, the notional amount of all outstanding derivatives required to be reported under the Rule and relating to a commodity other than cash or currency, with all counterparties other than affiliated entities, whether domestic or foreign, should be included. A notional amount that is not denominated as a monetary amount should be converted to a monetary amount using the methodology set out in Appendix 3.1 of the CSA Derivatives Data Technical Manual.

A local counterparty that qualifies for this exclusion is required to report a derivative involving an asset class other than commodity or involving cash or currency, if it is the reporting counterparty for the derivative under section 25.

As provided under subsection 25(5), a local counterparty that agrees to be the reporting counterparty for a derivative under paragraph 25(1)(f) must fulfill all reporting obligations as the reporting counterparty in relation to that derivative even if that local counterparty would otherwise be excluded from the trade reporting obligation under section 40.

This exclusion is not relevant to an original derivative where the transaction is executed anonymously on a derivatives trading facility. In this situation, even if both local counterparties to the derivative would otherwise qualify for this exclusion, the derivatives trading facility must report the original derivative under section 36.1.

In a derivative between two local counterparties, where the reporting counterparty is determined under paragraph 25(1)(g), and where section 36.1 does not apply, each local counterparty should determine whether it qualifies for this exclusion. If only one local counterparty to the derivative qualifies for the exclusion, the other local counterparty must still report the derivative. If each local counterparty qualifies for the exclusion, the derivative is not required to be reported under the Rule.

In a derivative between a local counterparty that qualifies for this exclusion and a non-local counterparty, where the reporting counterparty is determined under paragraph 25(1)(g) and where section 36.1 does not apply, the derivative is not required to be reported under the Rule.

Section 41.1 – Derivatives between affiliated entities

Section 41.1 provides an exclusion from the reporting requirement for derivatives between non-qualified reporting counterparties. For example, if an affiliated entity of a derivatives dealer enters into a derivative with its affiliated derivatives dealer, or with another affiliated entity of the derivatives dealer, this exclusion does not apply. Also, the exclusion does not apply to a derivatives trading facility with respect to derivatives data for a transaction that is executed anonymously on such facility and intended to be cleared.

Section 41.2 – Derivatives between non-resident derivatives dealers or between a non-resident derivatives dealer and a non-local counterparty

Section 41.2 provides an exclusion from the reporting requirement in respect of derivatives that are only required to be reported because one or both counterparties is a local counterparty under paragraph (b) of the definition of "local counterparty". This exclusion applies to a foreign derivatives dealer that is a local counterparty under paragraph (b) of that definition, in respect of derivatives with another foreign dealer or a foreign non-dealer.

However, this exclusion is not available where a derivative involves an individual who is a resident of Ontario. A derivatives dealer is required to report derivatives with such an individual, even though the individual is not a "local counterparty".

The following chart includes examples to illustrate whether this exclusion applies:

Counterparty A	Counterparty A "local counterparty" status	Counterparty B	Counterparty B "local counterparty" status	Result
European bank that is a derivatives dealer in Ontario	"local counterparty" only under para. (b) of that definition	European bank	Either a non-local counterparty or a "local counterparty" only under para. (b) of that definition	Exclusion applies
U.S. bank that is a derivatives dealer in Ontario	"local counterparty" only under para. (b) of that definition	U.S. based counterparty (not guaranteed by a local counterparty)	Non-local counterparty	Exclusion applies
Japanese bank that is a derivatives dealer in Ontario	"local counterparty" only under para. (b) of that definition	Ontario pension fund	Local counterparty under para. (a) of that definition	Exclusion does not apply – derivative is reportable
U.K. bank that is a derivatives dealer in Ontario	"local counterparty" only under para. (b) of that definition	Individual resident in Ontario	Non-local counterparty	Exclusion does not apply – derivative is reportable
Canadian bank that is a derivatives dealer in Ontario	"local counterparty" under paras. (a) and (b) of that definition	Not relevant	Not relevant	Exclusion does not apply – derivative is reportable

Appendix C

Item 1

Item 1 of Appendix C describes the types of derivatives that must be publicly disseminated by the designated trade repository.

Public dissemination is not required for lifecycle events that do not contain new price information compared to the derivatives data initially reported for the derivative.

Table 2

The identifiers listed under the Underlying Asset Identifier for the Interest Rate Asset Class in Table 2 refer to the following:

“CAD-BA-CDOR” means all tenors of the Canadian Dollar Offered Rate (CDOR). CDOR is a financial benchmark for bankers’ acceptances with a term to maturity of one year or less calculated and administered by Refinitiv.

“USD-LIBOR-BBA” means all tenors of the U.S. Dollar ICE LIBOR. ICE LIBOR is a benchmark administered by ICE Benchmark Administration and provides an indication of the average rate at which a contributor bank can obtain unsecured funding in the London interbank market for a given period, in a given currency.

“EUR-EURIBOR-Reuters” means all tenors of the Euro Interbank Offered Rate (Euribor). Euribor is a reference rate published by the European Banking Authority based on the average interest rates at which selected European prime banks borrow funds from one another.

“GBP-LIBOR-BBA” means all tenors of the GBP Pound Sterling ICE LIBOR. ICE LIBOR is a benchmark administered by ICE Benchmark Administration providing an indication of the average rate at which a contributor bank can obtain unsecured funding in the London interbank market for a given period, in a given currency.

The identifiers listed under the Underlying Asset Identifier for the Credit and Equity Asset Classes in Table 2 refer to the following:

“All Indexes” means any statistical measure of a group of assets that is administered by an organization that is not affiliated with the counterparties and whose value and calculation methodologies are publicly available.

Exclusions

Item 2

Item 2 of Appendix C specifies certain types of derivatives that are excluded from the public dissemination requirement under subsection 39(3) of the Rule with respect to transaction level data. An example of a derivative excluded under item 2(a) is cross currency swaps. The types of derivatives excluded under item 2(b) result from portfolio compression activity which occurs whenever a derivative is amended or entered into in order to reduce the gross notional exposure of an outstanding derivative or group of derivatives without impacting the net exposure. Under item 2(c), derivatives resulting from novation on the part of a recognized or exempt clearing agency when facilitating the clearing of a derivative between counterparties are excluded from public dissemination. As a result, with respect to derivatives involving a recognized or exempt clearing agency, the timing requirements under item 7 apply only to derivatives entered into by the recognized or exempt clearing agency on its own behalf.

Rounding

Item 3

The rounding thresholds are to be applied to the notional amount of a derivative in the currency of the derivative. For example, a derivative denominated in US dollars would be rounded and disseminated in US dollars and not the CAD equivalent.

Capping

Item 4

For derivatives denominated in a non-CAD currency, item 4 of Appendix C requires the designated trade repository to compare the rounded notional amount of the derivative in a non-CAD currency to the capped rounded notional amount in CAD that corresponds to the asset class and tenor of that derivative. Therefore, the designated trade repository must convert the non-CAD currency into CAD in order to determine whether it would be above the capping threshold. The designated trade repository must utilise a transparent and consistent methodology for converting to and from CAD for the purposes of comparing and publishing the capped notional amount.

For example, in order to compare the rounded notional amount of a derivative denominated in GBP to the thresholds in Table 4, the designated trade repository must convert this amount to a CAD equivalent amount. If the CAD equivalent notional amount of the GBP denominated derivative is above the capping threshold, the designated trade repository must disseminate the capped rounded notional amount converted back to the currency of the derivative using a consistent and transparent process.

Item 6

Item 6 of Appendix C requires the designated trade repository to adjust the option premium field in a consistent and proportionate manner if the derivative's rounded notional amount is greater than the capped rounded notional amount. The option premium field adjustment should be proportionate to the size of the capped rounded notional amount compared to the rounded notional amount.

Timing

Item 7

Item 7 of Appendix C sets out when the designated trade repository must publicly disseminate the required information from Table 1. The purpose of the public reporting delay is to ensure that counterparties have adequate time to enter into any offsetting derivative that may be necessary to hedge their positions. The time delay applies to all derivatives, regardless of derivative size.

Item 8

Item 8 of Appendix C allows for certain periods of downtime for a designated trade repository to perform testing, maintenance and upgrades. The designated trade repository must publicly disseminate the required information from Table 1 as soon as technologically practicable following the conclusion of the period of downtime. In evaluating what will be considered to be "technologically practicable", the Commission will take into account the prevalence, implementation and use of technology by comparable trade repositories. The Commission may also conduct independent reviews to determine the state of technology.

We expect periods of downtime will be scheduled during times when the designated trade repository receives the least amount of derivatives data. A designated trade repository should provide prior notice to its participants and to the public of such downtime on its website, where possible.

Only maintenance and upgrades that cannot otherwise be performed during routine downtime should be performed on an ad hoc basis. In such cases, the downtime should be during a time that would be least disruptive to the designated trade repository's obligations under the Rule.