



55 Water Street
New York, NY 10041
212-855-2670
mcollazo@dtcc.com

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John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8
comments@osc.gov.on.ca

via email

Re: Proposed OSC Rule 91-506 – Derivatives Product Determination and Companion Policy and Proposed OSC Rule 91-507 Trade Repository and Derivatives Data Reporting and Companion Policy (the “Proposed Rules”)

Dear Sir or Madam,

On behalf of The Depository Trust & Clearing Corporation (“DTCC”), we appreciate the opportunity to comment on the Proposed Rules. As an organization that is looking to seek designation of one of its existing Trade Repositories as a foreign Trade Repository in Canada, we would like to share our thoughts on certain aspects of the Proposed Rules.

DTCC’s Repository Service

DTCC through its subsidiary DTCC Deriv/SERV LLC operates, and proposes to operate in the near future, companies that provide trade reporting around the world. These companies and the countries in which they are incorporated are listed below:

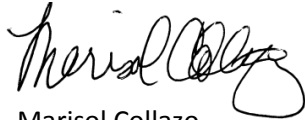
DTCC Data Repository (U.S.) LLC	(“DDR”)	United States
DTCC Derivatives Repository Ltd.	(“DDRL”)	United Kingdom
DTCC Data Repository (Japan) KK	(“DDRJ”)	Japan
DTCC Data Repository (Singapore) Pte Ltd	(“DDRS”)	Singapore

It should be noted that DDR and DDRJ are licensed as trade repositories at present in their countries of incorporation and are actively engaged in operating as trade repositories. DDR is provisionally licensed to act as a Swap Data Repository. DDRL is licensed as an FCA service company and offers trade repository services for voluntary reporting. We anticipate DDRL being licensed as a trade repository under EMIR in the near future operating as a European trade repository to meet reporting compliance on January 1, 2014. DDRS is applying to be licensed as a trade repository in Singapore where reporting is expected to commence on October 31, 2013.

We anticipate DDRS handling trade reporting for Australia within a year as a licensed foreign trade repository pursuant to recognition of DDRS by the Australian authorities. On July 2, 2013 the Australian Treasury “prescribed” all of the companies listed above to allow “for interim reporting of derivatives contracts to repositories that are licensed in other jurisdictions prior to the establishment of licensed trade repositories.” We expect to be handling trade reporting for Australia through one or more of these companies beginning on October 1, 2013 pursuant to the aforementioned prescription.

Attached are our comments to the Proposed Rules, some of which we have previously made to the Ontario Securities Commission (“Commission” or “OSC”). We look forward to discussing these comments with the Commission if it so desires.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Marisol Collazo', with a stylized flourish at the end.

Marisol Collazo
Managing Director
Head of Regulatory Relations
DTCC Deriv/SERV LLC

General Comments

DTCC applauds the Commission for revising a number of the provisions of the previously proposed model rules to take into account the comments of the industry. The current proposed OSC rules are a step in the right direction toward international harmonization. There are however, a few components of the rules that we believe can be amended or revised to further accommodate the registration of foreign trade repositories in Ontario and enhance the quality of trade reporting as well.

Foreign-based trade repositories

In the interest of efficiency in establishing a trade repository in Ontario and international comity, the Commission should provide for flexibility where possible in its trade repository licensing rules to enable registered foreign trade repositories to be designated in Canada. Specifically, we would suggest expanded usage of the Exemption under Section 41 in instances where minor conflicts exist between the laws and regulations governing a foreign trade repository in its home jurisdiction and those proposed by the OSC.

Specific Comments

Companion Policy 91-507CP

Section 1 (2)

DTCC recommends that OSC modify its rules to allow firms to report life-cycle events on either a message by message approach or end of business day “snapshot” reflecting all updates that occurred on the record on the given day. Specifically, the following language “..., the change must be reported under section 34 of the Rule as life-cycle data by the end of the business day...” seems to imply that only life-cycle messages are acceptable for this purpose. DTCC suggests changing the sentence to read “...the life-cycle change must be reported under section 34 of the Rule by the end of the business day...”

Rule 91-507

Life-cycle event definition

DTCC believes that the definition of life cycle event is too broad as it would seem to require the reporting of any change to the contract. DTCC believes the scope of reportable life cycle events should be limited to those events that change the counterparties to, or impact the key economic terms of, a derivatives transaction. Accordingly, DTCC suggests that the definition be revised to include the language in italics below so as to read:

“life-cycle event means an event that would result in a change in the counterparty or key economic terms of a transaction previously reported to the designated trade repository. Key economic terms means any change to the transaction that impacts the price of the trade.”

Section 2(5) – TR initial filing

This section calls for notification to the Commission “in writing immediately” of changes to, or inaccuracy of information in Form 1. We believe this requirement should be for notice in writing as soon as practicable upon the applicant making such changes or becoming aware of such changes, which would be consistent with the requirement to amend a submitted Form 1 within 7 days of such change occurring or the applicant becoming aware of such inaccuracy.

Section 13(2)(d) – No Bundling of Services

DTCC applauds the Commission’s adoption of a provision that will prohibit trade repositories from requiring the use or purchase of another service offered by that trade repository in order to utilize the trade reporting service. DTCC would like to point out that by naming a clearinghouse as a reporting party in Section 27 there may be an increased likelihood that in circumstances where a clearinghouse operates a trade repository there will be a loss of choice as the clearinghouse will be incented to report to its own trade repository. DTCC recommends that the clearinghouse should report the transaction to the same trade repository where the original trade was reported.

Section 20(2) – General Business Risk

DTCC would recommend inclusion in the model rules some of the language in the policy statement related to this section of the model rules. DTCC suggests this section be revised to include the language in italics below so as to read:

*“Without limiting the generality of subsection (1), a designated trade repository must hold sufficient insurance coverage and/or liquid assets funded by equity to cover potential general business losses so that it can continue operations and services as an ongoing concern *in order to achieve a recovery or orderly wind down* if those losses materialize, *which in no instance may be less than 6 months of current operating expenses.*”*

Section 21 – Systems and Other Operational Risk Requirements

DTCC believes the current requirements of the board in sections 21(1) and (2) are too broad and inconsistent with the Principles of Financial Market Infrastructures and place on the board responsibilities better seated with the management of the trade repository. We would recommend the section be revised to include the language in italics below so as to read:

*“21 (1) A designated trade repository must establish a *risk management framework, which conforms with applicable international standards*, to implement, maintain and enforce appropriate systems, controls and procedures to identify and minimize the impact of all plausible sources of operational risk, both internal and external, including risks to data integrity, data security, business continuity and capacity and performance management.*

*(2) The *risk management framework* must be approved by the board of directors of the designated trade repository.”*

Section 21(4) - Business Continuity Plans

DTCC agrees with the requirements of section 21(4)(a) to have a business continuity plan in place to promptly recover operations following any disruptions. However, in the Companion Policy to the Proposed Rules, it states “these plans are intended to provide continuous and uninterrupted 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.” DTCC believes the requirement to recover within 2 hours is unnecessary and unduly burdensome versus the risk a longer recovery time presents. By design, trade repositories do not engage in monetary transactions, which may give rise to financial risks nor serve banking or financial intermediation purposes or deal with depositor, investor or client funds; trade repositories instead function as information gatherers and disseminators. These functions are important parts of the new regulatory regimes that seek to enhance transparency in the derivatives market by providing regulators and the public with information concerning derivative markets, but they do not need to have a 2 hour recovery to perform that function. Presently, the CFTC and EMIR regulations require same day recovery for business continuity plans.

Section 21(6) - Independent Review of Systems

Section 21(6) of the proposed regulation requires that “For each of its systems for collecting and maintaining reports of derivatives data, a designated trade repository must annually engage a qualified party to conduct an independent review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraphs (3)(a) and (b) and subsections (4) and (5).” It further defines a qualified party as follows:

“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.”

DTCC believes this requirement would force designated trade repositories to incur excessive cost, would be inconsistent with oversight requirements promulgated in other jurisdictions requiring trade reporting, and be duplicative of independent assessments undertaken by competent Internal Audit functions. As such, we suggest subsection 21(6) be amended to allow the independent assessment requirement to be performed by internal audit departments that are compliant with Institute of Internal Audit’s (IIA) ‘International Standards for the Professional Practice of Internal Auditing’, and align the frequency of reviews to coincide with such standards.

21(8) - Publication of Requirements

DTCC would encourage the Commission to reconsider the requirement that all material changes be announced publicly at least 3 months prior to implementation of such material changes. Even with the exception made in paragraph (11), DTCC believes this requirement is overly prescriptive and not based upon any risk assessment of the proposed changes. DTCC would suggest the 3 month requirement be changed to state “a period of time sufficiently in advance of implementation to allow for sufficient testing and system modification by participants”.

21. - Testing Environments

Similar to the comment above, DTCC believes this requirement is overly prescriptive and not based upon any risk assessment of the time needed for testing. DTCC would suggest the 2 month requirement be changed to state “a period of time sufficiently in advance of implementation to allow for sufficient testing and system modification by participants”.

Section 23 – Confirmation of Data

DTCC is pleased that the Commission has revised the confirmation requirement to apply only to *participants* of a trade repository and limited the confirmation to the accuracy of data. DTCC suggests requiring notice to the parties of a transaction reported in their name with the ability for them to check the accuracy of the reported data should suffice to meet this requirement. Such treatment would be consistent with the requirements of Section 25(4) for a local counterparty to notify the reporting counterparty of any errors and Section 25(5), which places responsibility for accurate reporting on the reporting party.

Sections 26 and 42(4) - Pre-Existing Derivatives

DTCC believes that for clarity and simplicity, the obligation to report pre-existing transactions should include all those transactions that are open as of the day that mandatory reporting begins as opposed to when the Proposed Rules come into effect regardless of whether any such trade expires or terminates within the 365 day back load period post the mandatory compliance date.

Section 27 – Reporting Counterparty

27(4) – Delegation of Reporting Responsibility

DTCC believes that the responsibility for reporting should rest with the initial counterparties to a trade and not the clearing agency. The counterparty should be allowed to delegate that responsibility to a clearing agency pursuant to the terms of section 27(4).

Section 30(3)(a) - Legal Entity Identifiers

DTCC agrees with the change in section 30(3)(a) to require the counterparties to obtain substitute legal entity identifiers to ensure that records are submitted to the trade repository with an identifier from the outset.

Section 32 - Unique Product Identifiers

DTCC does not agree with new provisions related to UPIs. DTCC believes the counterparties to a transaction are best situated to understand the product and assign a UPI to that product in accordance with either industry or international standards such as the ISDA Taxonomy. DTCC does agree that a trade repository disclose the UPI structure utilized when reporting a transaction, but it is not the province of the trade repository to analyze transactions and determine the type of product being reported.

Section-35 – Valuation Data

DTCC believes this rule needs to be clarified to require that all valuation data must be reported to the same trade repository where the transaction was originally reported. The current language requires reporting to “the designated trade repository” instead of “the Trade Repository to which the transaction has been reported pursuant to Section 33”.

Section 37 – Data Available to Regulators

DTCC suggests the language in subsection 2 be revised to include the language in italics to read: “A designated trade repository must conform its access standards to internationally accepted regulatory access standards applicable to trade repositories *to the extent they comport with the standards of any regulatory body with oversight responsibility for the designated trade repository.*”

DTCC would like to express its concern with language in the policy statement:

“Transactions 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 transaction are not local counterparties. Therefore, the Commission has a regulatory interest in transactions 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.”

This statement provides too broad a requirement for designated trade repositories to follow without future guidance. At a minimum, a nexus requirement would have to be defined. Furthermore, trade repositories would need to be granted the authority to disclose such data in line with internationally agreements and subject to MOUs between regulators of the parties reporting.

Section 39 – Data Available to Public

DTCC would like to point out concerns that have been previously raised by reporting parties concerned about their identity being discerned from public reporting in certain circumstances. While transaction level reporting may be acceptable in jurisdictions where volume is high like the United States and Europe, firms have expressed the concern that in a less voluminous market, trading firms’ identities could be discerned from transaction level detail, which is not in the best interest of the market.

This concern is heightened with respect to the content of the data to be reported, specifically the inclusion of information such as the “geographic location and type of counterparty” mentioned in section 39(2).

39(2) Form 1 – Exhibit I – Trade Repository Participants

DTCC believes it may be problematic to provide the names of participants prior to designation of its applicant company. Prior to designation, participant names may not be available due to constraints imposed by the home regulator. Post designation, and consistent with reporting obligations, participants have the duty to report rather than the TR identifying which of its participants are counterparties to a transaction required to be reported. Post designation and upon the commencement of reporting, a TR will be able to readily determine which participants have reported for purposes of complying with the Ontario rules and thus will be able to provide a list of such participants to the OSC. Even if a trade repository could determine which of its “participants are counterparties to a transaction whose derivative data is required to be reported” prior to actual reporting, there is a serious concern that absent consent to provide such information, the trade repository may be in violation of the privacy rights of such participants.

Data Field Analysis

Clearing Exemption and End-User Exemption fields – Currently DTCC only supports one field for clearing exemptions and exceptions. Generally, users only qualify for one exemption/exception and if they were to qualify for more than one exemption/exception, the counterparty would need to select the one that is being utilized for the particular transaction. DTCC suggests that Clearing Exemption be used and End User Exemption be dropped as a field. The type of Clearing Exemption can be detailed in the Clearing Exemption field itself.

Electronic Trading Venue and Electronic Trading Venue Identifier fields – Currently DTCC only supports one field for execution venue. DTCC suggests that Electronic Trading Venue Identifier be dropped as a field. The identifier of the execution venue can be used as the value under the Electronic Trading Venue field.

Custodian field – Currently DTCC does not support a field that captures custodian information. DTCC suggests removing this field as a requirement.

Unique Product Identifier and Contract Type fields – DTCC uses the industry standard ISDA taxonomy as a UPI. Contract type is a part of the ISDA Taxonomy. DTCC Suggests that Contract Type be dropped as a field since the information will already be included in the ISDA Taxonomy under Unique Product Identifier.