

# Chapter 5

## Rules and Policies

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### 5.1.1 OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting and Companion Policy 91-506CP to OSC Rule 91-506 Derivatives: Product Determination

#### ONTARIO SECURITIES COMMISSION

#### NOTICE OF AMENDMENTS TO

#### ONTARIO SECURITIES COMMISSION RULE 91-507 *TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING*

#### AND

#### COMPANION POLICY 91-506CP TO ONTARIO SECURITIES COMMISSION RULE 91-506 *DERIVATIVES: PRODUCT DETERMINATION*

### 1. Introduction

The Ontario Securities Commission (the **OSC**, the **Commission** or **we**) has made amendments to the following instruments:

- OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (the **TR Rule**), and
- OSC Companion Policy 91-506CP to OSC Rule 91-506 *Derivatives: Product Determination* (the **Scope CP**).

Ministerial approval is required for the TR Rule amendments to come into force. These amendments were delivered to the Minister of Finance on February 12, 2015. The Minister may approve or reject these amendments or return them for further consideration. If the Minister approves the TR Rule amendments or does not take any further action by April 28, 2015, the TR Rule amendments will come into force on April 30, 2015. The Scope CP changes become effective on the coming into force of the TR Rule amendments.

### 2. Background

On November 14, 2013, the OSC published the TR Rule and *OSC Rule 91-506 Derivatives: Product Determination* (the **Scope Rule**). The TR Rule and Scope Rule became effective on December 31, 2013. Amendments to the TR Rule were published on April 17, 2014 and became effective on July 2, 2014. Subsequent amendments to the TR Rule were published on June 26, 2014 and became effective on September 9, 2014. Based on consultations with and feedback from various market participants, and in order to more effectively and efficiently promote the underlying policy aims, the Commission has further amended the TR Rule and made some changes to the Scope CP. Details of the amendments are discussed further below.

### 3. Substance and Purpose of the TR Rule amendments

The key objectives of the TR Rule amendments are to:

- alleviate the burden of reporting obligations under the TR Rule for certain market participants that comply with equivalent trade reporting laws of specified foreign jurisdictions; and
- delay the effective date of the public dissemination of transaction-level data requirement on designated trade repositories in order to permit study of the Canadian over-the-counter (**OTC**) derivatives market data and development of publication delay rules designed to maintain the anonymity of counterparties.

The Scope CP changes provide further clarification with respect to the interpretation of a provision of the Scope Rule to reflect certain classes of international market facilities.

Given their limited nature, the TR Rule amendments are not required to be published for comment under s.143.2(5) of the Act.

Given that the Scope CP changes merely provide clarification in respect of the interpretation of the Scope Rule to reflect certain international market facilities, the Scope CP changes do not require publication for comment under s.143.8(6) of the Act.

#### **4. Summary of the TR Rule amendments**

*(a) Appendix B: inclusion of European derivatives trade reporting rules for s.26(5) deemed compliance*

The Commission has amended Appendix B to the TR Rule to include the European Union (“EU”) derivatives trade reporting rules listed in the amended Appendix. This amendment permits certain OTC derivatives market participants who are subject to the reporting obligation under the TR Rule to benefit from substituted compliance when they report pursuant to the EU derivatives trade reporting rules. Substituted compliance through EU trade reporting is available to market participants only in the limited circumstances in which all of the conditions set out in paragraphs (a) through (c) of subsection 26(5) of the TR Rule are satisfied.

The TR Rule contemplated prospective substituted compliance amendments when it was published on November 14, 2013. The inclusion of the EU derivatives trade reporting rules in Appendix B may alleviate the burden of certain TR Rule obligations on applicable market participants and does not impose any new obligations on market participants.

*(b) Subsections 43(2) and 39(3): delay of public dissemination of transaction-level data*

The Commission has amended the effective date for the public dissemination of transaction-level data requirement under subsection 39(3) of the TR Rule. The effective date of the requirement on designated trade repositories to publish transaction-level data has been changed from April 30, 2015 to July 29, 2016.

The Commission appreciates the importance of maintaining the anonymity of OTC derivative transaction counterparties in the context of public dissemination of market data. We note that real-time publication of anonymized transaction-level data by designated trade repositories could potentially allow market participants to determine the identity of one or both of the counterparties to specific transactions through, for example, the size and/or underlying interest of a particular transaction. The indirect identification of counterparties to a transaction could make hedging the risks of a particular transaction more difficult and expensive as market participants adjust pricing in anticipation of the derivative counterparties’ immediate hedging needs.

The Commission seeks to balance the benefits of post-trade transparency against the potential harm that may be caused to market participants’ ability to hedge risk. Accordingly, the Commission believes that certain transactions or classes of products should be subject to publication delays so that market participants may avoid signalling the market. Further study will be required to determine the appropriate parameters for publication delays in the Canadian market. The factors to be considered in making this determination could include the type of asset underlying the derivative, the size of a transaction relative to other similar transactions or the size of the transaction relative to the overall volume for a particular class or instrument. Derivatives trade reporting in Ontario commenced on October 31, 2014. Because OTC derivatives trade reporting is a new regime, market participants have experienced challenges to implementation which have affected the quality of data reported to designated trade repositories. Accordingly, in order to effectively analyze trade repository data, the Commission must first verify the reported data in order to perform fact-based analysis. As a result, the Commission is amending subsection 43(2) of the TR Rule to delay the application of the requirement for public dissemination of transaction-level reports under subsection 39(3) of the TR Rule from April 30, 2015 to July 29, 2016, in order to permit analysis of existing market data.

This amendment provides an implementation delay for public dissemination of transaction-level data by designated trade repositories and does not impose any new obligations on market participants.

*(c) Scope CP: examples of derivatives trading facilities*

Under paragraph 2(1)(g) of the Scope Rule, contracts traded on prescribed exchanges are deemed not to be “derivatives” for purposes of the reporting obligations under the TR Rule. However, subsection 2(2) of the Scope Rule provides that “derivatives trading facilities” are not exchanges for the purposes of the deeming provision. The Scope CP has been updated to provide examples of international market facilities that fall within the meaning of “derivatives trading facility”.

This amendment to the Scope CP further clarifies the interpretation of the Scope Rule by providing additional examples of relevant international market facilities and does not impose any new obligations on market participants.

#### **5. Legislative Authority for Rule Making**

The TR Rule amendments will come into force under the rulemaking authority provided under subparagraph 35(ii) of subsection 143(1) of the Act. Subparagraph 35(ii) authorizes the Commission to make rules requiring or respecting record keeping, reporting and transparency relating to derivatives.

**6. Annexes**

Appended as part of this Notice are the following Annexes:

- Annex A, which sets out the TR Rule amendments;
- Annex B, which is the blackline of the TR Rule corresponding to Annex A; and
- Annex C, in which the Scope CP changes are presented by way of blackline.

**February 12, 2015**

ANNEX A

AMENDMENTS TO  
ONTARIO SECURITIES COMMISSION RULE 91-507  
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

1. **Ontario Securities Commission Rule 91-507 Trade Repositories and Derivatives Data Reporting is amended by this Instrument.**
2. **Subsection 43(2) is amended by replacing “April 30, 2015” with “July 29, 2016”.**
3. **Appendix B is amended by adding the following below United States of America:**
  - European Union      Regulation (EU) 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.  
  
Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories.  
  
Commission Delegated Regulation (EU) No 151/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data.  
  
Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories..
4. This Instrument comes into force on April 30, 2015.

**ANNEX B**

*Note: This blackline is provided for convenience.*

**ONTARIO SECURITIES COMMISSION RULE 91-507  
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING**

**PART 1  
DEFINITIONS AND INTERPRETATION**

**Definitions**

**1. (1) In this Rule**

“asset class” means the asset category underlying a derivative and includes interest rate, foreign exchange, credit, equity and commodity;

“board of directors” means, in the case of a designated trade repository that does not have a board of directors, a group of individuals that acts in a capacity similar to a board of directors;

“creation data” means the data in the fields listed in Appendix A;

“derivatives dealer” means a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives in Ontario as principal or agent;

“derivatives data” means all data related to a transaction that is required to be reported pursuant to Part 3;

“Global Legal Entity Identifier System” means the system for unique identification of parties to financial transactions developed by the Legal Entity Identifier System Regulatory Oversight Committee;

“Legal Entity Identifier System Regulatory Oversight Committee” means the international working group established by the Finance Ministers and the Central Bank Governors of the Group of Twenty nations and the Financial Stability Board, under the Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier System dated November 5, 2012;

“life-cycle event” means an event that results in a change to derivatives data previously reported to a designated trade repository in respect of a transaction;

“life-cycle event data” means changes to creation data resulting from a life-cycle event;

“local counterparty” means a counterparty to a transaction if, at the time of the transaction, one or more of the following apply:

- (a) the counterparty is a person or company, other than an individual, organized under the laws of Ontario or that has its head office or principal place of business in Ontario;
- (b) the counterparty is registered under Ontario securities law as a derivatives dealer or in an alternative category as a consequence of trading in derivatives;
- (c) the counterparty is an affiliate of a person or company described in paragraph (a), and such person or company is responsible for the liabilities of that affiliated party;

“participant” means a person or company that has entered into an agreement with a designated trade repository to access the services of the designated trade repository;

“reporting counterparty” means the counterparty to a transaction as determined under section 25 that is required to report derivatives data under section 26;

“transaction” means entering into, assigning, selling or otherwise acquiring or disposing of a derivative or the novation of a derivative;

“user” means, in respect of a designated trade repository, a counterparty (or delegate of a counterparty) to a transaction reported to that designated trade repository pursuant to this Rule; and

“valuation data” means data that reflects the current value of the transaction and includes the data in the applicable fields listed in Appendix A under the heading “Valuation Data”.

(2) In this Rule, each of the following terms has the same meaning as in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*: “accounting principles”; “auditing standards”; “publicly accountable enterprise”; “U.S. AICPA GAAS”; “U.S. GAAP”; and “U.S. PCAOB GAAS”.

(3) In this Rule, “interim period” has the same meaning as in section 1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*.

## **PART 2 TRADE REPOSITORY DESIGNATION AND ONGOING REQUIREMENTS**

### **Trade repository initial filing of information and designation**

2. (1) An applicant for designation under section 21.2.2 of the Act must file a completed Form 91-507F1 – *Application For Designation and Trade Repository Information Statement*.

(2) In addition to the requirement set out in subsection (1), an applicant for designation under section 21.2.2 of the Act whose head office or principal place of business is located outside of Ontario must

- (a) certify on Form 91-507F1 that it will provide the Commission with access to its books and records and will submit to onsite inspection and examination by the Commission,
- (b) certify on Form 91-507F1 that it will provide the Commission with an opinion of legal counsel that
  - (i) the applicant has the power and authority to provide the Commission with access to its books and records, and
  - (ii) the applicant has the power and authority to submit to onsite inspection and examination by the Commission.

(3) In addition to the requirements set out in subsections (1) and (2), an applicant for designation under section 21.2.2 of the Act whose head office or principal place of business is located in a foreign jurisdiction must file a completed Form 91-507F2 – *Submission to Jurisdiction and Appointment of Agent for Service of Process*.

(4) Within 7 days of becoming aware of an inaccuracy in or making a change to the information provided in Form 91-507F1, an applicant must file an amendment to Form 91-507F1 in the manner set out in that Form.

### **Change in information**

3. (1) Subject to subsection (2), a designated trade repository must not implement a significant change to a matter set out in Form 91-507F1 unless it has filed an amendment to Form 91-507F1 in the manner set out in that Form at least 45 days before implementing the change.

(2) A designated trade repository must file an amendment to the information provided in Exhibit I (Fees) of Form 91-507F1 in the manner set out in the Form at least 15 days before implementing a change to the information provided in the Exhibit.

(3) For a change to a matter set out in Form 91-507F1 other than a change referred to in subsection (1) or (2), a designated trade repository must file an amendment to Form 91-507F1 in the manner set out in that Form by the earlier of

- (a) the close of business of the designated trade repository on the 10th day after the end of the month in which the change was made, and
- (b) the time the designated trade repository publicly discloses the change.

### **Filing of initial audited financial statements**

4. (1) An applicant must file audited financial statements for its most recently completed financial year with the Commission as part of its application for designation under section 21.2.2 of the Act.

- (2) The financial statements referred to in subsection (1) must
- (a) be prepared in accordance with one of the following
    - (i) Canadian GAAP applicable to a publicly accountable enterprise,
    - (ii) IFRS, or
    - (iii) U.S. GAAP, if the person or company is incorporated or organized under the laws of the United States of America,
  - (b) identify in the notes to the financial statements the accounting principles used to prepare the financial statements,
  - (c) disclose the presentation currency, and
  - (d) be audited in accordance with
    - (i) Canadian GAAS,
    - (ii) International Standards on Auditing, or
    - (iii) U.S. AICPA GAAS or U.S. PCAOB GAAS if the person or company is incorporated or organized under the laws of the United States of America.
- (3) The financial statements referred to in subsection (1) must be accompanied by an auditor's report that
- (a) expresses an unmodified opinion if the financial statements are audited in accordance with Canadian GAAS or International Standards on Auditing,
  - (b) expresses an unqualified opinion if the financial statements are audited in accordance with U.S. AICPA GAAS or U.S. PCAOB GAAS,
  - (c) identifies all financial periods presented for which the auditor's report applies,
  - (d) identifies the auditing standards used to conduct the audit,
  - (e) identifies the accounting principles used to prepare the financial statements,
  - (f) is prepared in accordance with the same auditing standards used to conduct the audit, and
  - (g) is prepared and signed by a person or company that is authorized to sign an auditor's report under the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.

**Filing of annual audited and interim financial statements**

5. (1) A designated trade repository must file annual audited financial statements that comply with the requirements in subsections 4(2) and 4(3) with the Commission no later than the 90th day after the end of its financial year.

(2) A designated trade repository must file interim financial statements with the Commission no later than the 45th day after the end of each interim period.

- (3) The interim financial statements referred to in subsection (2) must
- (a) be prepared in accordance with one of the following
    - (i) Canadian GAAP applicable to a publicly accountable enterprise,
    - (ii) IFRS, or
    - (iii) U.S. GAAP, if the person or company is incorporated or organized under the laws of the United States of America, and

- (b) identify in the notes to the financial statements the accounting principles used to prepare the financial statements.

**Ceasing to carry on business**

6. (1) A designated trade repository that intends to cease carrying on business in Ontario as a trade repository must make an application and file a report on Form 91-507F3 – *Cessation of Operations Report For Trade Repository* at least 180 days before the date on which it intends to cease carrying on that business.

(2) A designated trade repository that involuntarily ceases to carry on business in Ontario as a trade repository must file a report on Form 91-507F3 as soon as practicable after it ceases to carry on that business.

**Legal framework**

7. (1) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures reasonably designed to ensure a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities.

(2) Without limiting the generality of subsection (1), a designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures that are not contrary to the public interest and that are reasonably designed to ensure that

- (a) such rules, policies and procedures and the contractual arrangements are supported by the laws applicable to those rules, policies, procedures and contractual arrangements,
- (b) the rights and obligations of a user, owner and regulator with respect to the use of the designated trade repository's information are clear and transparent,
- (c) the contractual arrangements that it enters into and supporting documentation clearly state service levels, rights of access, protection of confidential information, intellectual property rights and operational reliability, and
- (d) the status of records of contracts in its repository and whether those records of contracts are the legal contracts of record are clearly established.

**Governance**

8. (1) A designated trade repository must establish, implement and maintain written governance arrangements that

- (a) are well-defined, clear and transparent,
- (b) set out a clear organizational structure with consistent lines of responsibility,
- (c) provide for effective internal controls,
- (d) promote the safety and efficiency of the designated trade repository,
- (e) ensure effective oversight of the designated trade repository,
- (f) support the stability of the broader financial system and other relevant public interest considerations, and
- (g) properly balance the interests of relevant stakeholders.

(2) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures reasonably designed to identify and manage existing and potential conflicts of interest.

(3) A designated trade repository must publicly disclose on its website

- (a) the governance arrangements established in accordance with subsection (1), and
- (b) the rules, policies and procedures established in accordance with subsection (2).

### Board of directors

9. (1) A designated trade repository must have a board of directors.

(2) The board of directors of a designated trade repository must include

- (a) individuals who have an appropriate level of skill and experience to effectively and efficiently oversee the management of its operations in accordance with all relevant laws, and
- (b) appropriate representation by individuals who are independent of the designated trade repository.

(3) The board of directors of a designated trade repository must, in consultation with the chief compliance officer of the designated trade repository, resolve conflicts of interest identified by the chief compliance officer.

(4) The board of directors of a designated trade repository must meet with the chief compliance officer of the designated trade repository on a regular basis.

### Management

10. (1) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures that

- (a) specify the roles and responsibilities of management, and
- (b) ensure that management has the experience, competencies, integrity and mix of skills necessary to discharge its roles and responsibilities.

(2) A designated trade repository must notify the Commission no later than the 5th business day after appointing or replacing its chief compliance officer, chief executive officer or chief risk officer.

### Chief compliance officer

11. (1) The board of directors of a designated trade repository must appoint a chief compliance officer with the appropriate experience, competencies, integrity and mix of skills necessary to serve in that capacity.

(2) The chief compliance officer of a designated trade repository must report directly to the board of directors of the designated trade repository or, if so directed by the board of directors, to the chief executive officer of the designated trade repository.

(3) The chief compliance officer of a designated trade repository must

- (a) establish, implement, maintain and enforce written rules, policies and procedures to identify and resolve conflicts of interest,
- (b) establish, implement, maintain and enforce written rules, policies and procedures to ensure that the designated trade repository complies with securities legislation,
- (c) monitor compliance with the rules, policies and procedures required under paragraphs (a) and (b) on an ongoing basis,
- (d) report to the board of directors of the designated trade repository as soon as practicable upon becoming aware of a circumstance indicating that the designated trade repository, or an individual acting on its behalf, is not in compliance with the securities laws of a jurisdiction in which it operates and one or more of the following apply:
  - (i) the non-compliance creates a risk of harm to a user;
  - (ii) the non-compliance creates a risk of harm to the capital markets;
  - (iii) the non-compliance is part of a pattern of non-compliance;
  - (iv) the non-compliance may have an impact on the ability of the designated trade repository to carry on business as a trade repository in compliance with securities legislation,

- (e) report to the designated trade repository's board of directors as soon as practicable upon becoming aware of a conflict of interest that creates a risk of harm to a user or to the capital markets, and
- (f) prepare and certify an annual report assessing compliance by the designated trade repository, and individuals acting on its behalf, with securities legislation and submit the report to the board of directors.

(4) Concurrently with submitting a report under paragraph (3)(d), (3)(e) or (3)(f), the chief compliance officer must file a copy of the report with the Commission.

### **Fees**

**12.** All fees and other material costs imposed by a designated trade repository on its participants must be

- (a) fairly and equitably allocated among participants, and
- (b) publicly disclosed on its website for each service it offers with respect to the collection and maintenance of derivatives data.

### **Access to designated trade repository services**

**13. (1)** A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures that establish objective, risk-based criteria for participation that permit fair and open access to the services it provides.

(2) A designated trade repository must publicly disclose on its website the rules, policies and procedures referred to in subsection (1).

(3) A designated trade repository must not do any of the following:

- (a) unreasonably prohibit, condition or limit access by a person or company to the services offered by the designated trade repository;
- (b) permit unreasonable discrimination among the participants of the designated trade repository;
- (c) impose a burden on competition that is not reasonably necessary and appropriate;
- (d) require the use or purchase of another service for a person or company to utilize the trade reporting service offered by the designated trade repository.

### **Acceptance of reporting**

**14.** A designated trade repository must accept derivatives data from a participant for a transaction in a derivative of the asset class or classes set out in the designated trade repository's designation order.

### **Communication policies, procedures and standards**

**15.** A designated trade repository must use or accommodate relevant internationally accepted communication procedures and standards in order to facilitate the efficient exchange of data between its systems and those of

- (a) its participants,
- (b) other trade repositories,
- (c) exchanges, clearing agencies, alternative trading systems, and other marketplaces, and
- (d) other service providers.

### **Due process**

**16.** For a decision made by a designated trade repository that directly adversely affects a participant or an applicant that applies to become a participant, the designated trade repository must ensure that

- (a) the participant or applicant is given an opportunity to be heard or make representations, and

- (b) it keeps records of, gives reasons for, and provides for reviews of its decisions, including, for each applicant, the reasons for granting, denying or limiting access.

**Rules, policies and procedures**

17. (1) The rules, policies and procedures of a designated trade repository must

- (a) be clear and comprehensive and provide sufficient information to enable a participant to have an accurate understanding of its rights and obligations in accessing the services of the designated trade repository and the risks, fees, and other material costs they incur by using the services of the designated trade repository,
- (b) be reasonably designed to govern all aspects of the services offered by the designated trade repository with respect to the collection and maintenance of derivatives data and other information on a completed transaction, and
- (c) not be inconsistent with securities legislation.

(2) A designated trade repository must monitor compliance with its rules, policies and procedures on an ongoing basis.

(3) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures for sanctioning non-compliance with its rules, policies and procedures.

(4) A designated trade repository must publicly disclose on its website

- (a) its rules, policies and procedures referred to in this section, and
- (b) its procedures for adopting new rules, policies and procedures or amending existing rules, policies and procedures.

(5) A designated trade repository must file its proposed new or amended rules, policies and procedures for approval in accordance with the terms and conditions of its designation order, unless the order explicitly exempts the designated trade repository from this requirement.

**Records of data reported**

18. (1) A designated trade repository must design its recordkeeping procedures to ensure that it records derivatives data accurately, completely and on a timely basis.

(2) A designated trade repository must keep, in a safe location and in a durable form, records of derivatives data in relation to a transaction for the life of the transaction and for a further 7 years after the date on which the transaction expires or terminates.

(3) Throughout the period described in subsection (2), a designated trade repository must create and maintain at least one copy of each record of derivatives data required to be kept under subsection (2), in a safe location and in a durable form, separate from the location of the original record.

**Comprehensive risk-management framework**

19. A designated trade repository must establish, implement and maintain a written risk-management framework for comprehensively managing risks including business, legal, and operational risks.

**General business risk**

20. (1) A designated trade repository must establish, implement and maintain appropriate systems, controls and procedures to identify, monitor, and manage its general business risk.

(2) Without limiting the generality of subsection (1), a designated trade repository must hold sufficient insurance coverage and liquid net assets funded by equity to cover potential general business losses in order that it can continue operations and services as a going concern in order to achieve a recovery or an orderly wind down if those losses materialize.

(3) For the purposes of subsection (2), a designated trade repository must hold, at a minimum, liquid net assets funded by equity equal to six months of current operating expenses.

(4) A designated trade repository must 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 an orderly wind-down.

(5) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures reasonably designed to facilitate its orderly wind-down based on the results of the assessment required by subsection (4).

(6) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures to ensure that it or a successor entity, insolvency administrator or other legal representative, will continue to comply with the requirements of subsection 6(2) and section 37 in the event of the bankruptcy or insolvency of the designated trade repository or the wind-down of the designated trade repository's operations.

**System and other operational risk requirements**

**21.** (1) A designated trade repository must establish, 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 systems, controls and procedures established pursuant to subsection (1) must be approved by the board of directors of the designated trade repository.

(3) Without limiting the generality of subsection (1), a designated trade repository must

- (a) develop and maintain
  - (i) an adequate system of internal controls over its systems, and
  - (ii) adequate information technology general controls, including without limitation, controls relating to information systems operations, information security and integrity, change management, problem management, network support and system software support,
- (b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually
  - (i) make reasonable current and future capacity estimates, and
  - (ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner, and
- (c) promptly notify the Commission of a material systems failure, malfunction, delay or other disruptive incident, or a breach of data security, integrity or confidentiality, and provide a post-incident report that includes a root-cause analysis as soon as practicable.

(4) Without limiting the generality of subsection (1), a designated trade repository must establish, implement, maintain and enforce business continuity plans, including disaster recovery plans reasonably designed to

- (a) achieve prompt recovery of its operations following a disruption,
- (b) allow for the timely recovery of information, including derivatives data, in the event of a disruption, and
- (c) provide for the exercise of authority in the event of an emergency.

(5) A designated trade repository must test its business continuity plans, including disaster recovery plans, at least annually.

(6) 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).

(7) A designated trade repository must provide the report prepared in accordance with subsection (6) to

- (a) its board of directors or audit committee promptly upon the completion of the report, and
- (b) the Commission not later than the 30th day after providing the report to its board of directors or audit committee.

(8) A designated trade repository must publicly disclose on its website all technology requirements regarding interfacing with or accessing the services provided by the designated trade repository,

- (a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and
- (b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

(9) A designated trade repository must make available testing facilities for interfacing with or accessing the services provided by the designated trade repository,

- (a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and
- (b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

(10) A designated trade repository must not begin operations in Ontario unless it has complied with paragraphs (8)(a) and (9)(a).

(11) Paragraphs (8)(b) and (9)(b) do not apply to a designated trade repository if

- (a) the change to its technology requirements must be made immediately to address a failure, malfunction or material delay of its systems or equipment,
- (b) the designated trade repository immediately notifies the Commission of its intention to make the change to its technology requirements, and
- (c) the designated trade repository publicly discloses on its website the changed technology requirements as soon as practicable.

#### **Data security and confidentiality**

**22.** (1) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures reasonably designed to ensure the safety, privacy and confidentiality of the derivatives data.

(2) A designated trade repository must not release derivatives data for commercial or business purposes unless

- (a) the derivatives data has otherwise been disclosed pursuant to section 39, or
- (b) the counterparties to the transaction have provided the designated trade repository with their express written consent to use or release the derivatives data.

#### **Confirmation of data and information**

**23.** (1) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures to confirm with each counterparty to a transaction, or agent acting on behalf of such counterparty, that the derivatives data that the designated trade repository receives from a reporting counterparty, or from a party to whom a reporting counterparty has delegated its reporting obligation under this Rule, is accurate.

(2) Despite subsection (1), a designated trade repository need only confirm the accuracy of the derivatives data it receives with those counterparties that are participants of the designated trade repository.

#### **Outsourcing**

**24.** If a designated trade repository outsources a material service or system to a service provider, including to an associate or affiliate of the designated trade repository, the designated trade repository must

- (a) establish, implement, maintain and enforce written rules, policies and procedures for the selection of a service provider to which a material service or system may be outsourced and for the evaluation and approval of such an outsourcing arrangement,
- (b) identify any conflicts of interest between the designated trade repository and a service provider to which a

- material service or system is outsourced, and establish, implement, maintain and enforce written rules, policies and procedures to mitigate and manage those conflicts of interest,
- (c) enter into a written contract with the service provider that is appropriate for the materiality and nature of the outsourced activity and that provides for adequate termination procedures,
  - (d) maintain access to the books and records of the service provider relating to the outsourced activity,
  - (e) ensure that the Commission has the same access to all data, information and systems maintained by the service provider on behalf of the designated trade repository that it would have absent the outsourcing arrangement,
  - (f) ensure that all persons conducting audits or independent reviews of the designated trade repository under this Rule have appropriate access to all data, information and systems maintained by the service provider on behalf of the designated trade repository that such persons would have absent the outsourcing arrangement,
  - (g) take appropriate measures to determine that a service provider to which a material service or system is outsourced establishes, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan in accordance with the requirements under section 21,
  - (h) take appropriate measures to ensure that the service provider protects the safety, privacy and confidentiality of derivatives data and of users' confidential information in accordance with the requirements under section 22, and
  - (i) establish, implement, maintain and enforce written rules, policies and procedures to regularly review the performance of the service provider under the outsourcing arrangement.

**PART 3  
DATA REPORTING**

**Reporting counterparty**

**25. (1)** The reporting counterparty with respect to a transaction involving a local counterparty is

- (a) if the transaction is cleared through a recognized or exempt clearing agency, the recognized or exempt clearing agency,
- (b) if the transaction is not cleared through a recognized or exempt clearing agency and is between two derivatives dealers, the derivatives dealer determined to be the reporting counterparty under the ISDA methodology,
- (c) if paragraphs (a) and (b) do not apply to the transaction and the transaction is between two derivatives dealers, each derivatives dealer,
- (d) if the transaction is not cleared through a recognized or exempt clearing agency and is between a derivatives dealer and a counterparty that is not a derivatives dealer, the derivatives dealer,
- (e) if paragraphs (a) to (d) do not apply to the transaction, the counterparty determined to be the reporting counterparty under the ISDA methodology, and
- (f) in any other case, each local counterparty to the transaction.

(2) A party that would not be the reporting counterparty under the ISDA methodology with regard to a transaction required to be reported under this Rule may rely on paragraph (1)(b) or (e) in respect of that transaction only if

- (a) each party to the transaction has agreed to the terms of a multilateral agreement
  - (i) that is administered by and delivered to the International Swaps and Derivatives Association, Inc., and
  - (ii) under which the process set out in the ISDA methodology is required to be followed by it with respect to each transaction required to be reported under this Rule,

- (b) the ISDA methodology process is followed in determining the reporting counterparty in respect of that transaction, and
- (c) each party to the transaction consents to the release to the Commission by the International Swaps and Derivatives Association, Inc. of information relevant in determining the applicability of paragraphs (a) and (b) to it.

(3) For the purposes of this section, "ISDA methodology" means the methodology described in the Canadian Transaction Reporting Party Requirements (issued by the International Swaps and Derivatives Association, Inc. and dated April 4, 2014).

**Duty to report**

**26.** (1) A reporting counterparty to a transaction involving a local counterparty must report, or cause to be reported, the data required to be reported under this Part to a designated trade repository.

(2) A reporting counterparty in respect of a transaction is responsible for ensuring that all reporting obligations in respect of that transaction have been fulfilled.

(3) A reporting counterparty may delegate its reporting obligations under this Rule, but remains responsible for ensuring the timely and accurate reporting of derivatives data required by this Rule.

(4) Despite subsection (1), if no designated trade repository accepts the data required to be reported by this Part, the reporting counterparty must electronically report the data required to be reported by this Part to the Commission.

(5) A reporting counterparty satisfies the reporting obligation in respect of a transaction required to be reported under subsection (1) if

- (a) the transaction is required to be reported solely because a counterparty to the transaction is a local counterparty pursuant to paragraph (b) or (c) of the definition of "local counterparty",
- (b) the transaction is reported to a designated trade repository pursuant to
  - (i) the securities legislation of a province of Canada other than Ontario, or
  - (ii) the laws of a foreign jurisdiction listed in Appendix B; and
- (c) the reporting counterparty instructs the designated trade repository referred to in paragraph (b) to provide the Commission with access to the derivatives data that it is required to report pursuant to this Rule and otherwise uses its best efforts to provide the Commission with access to such derivatives data.

(6) A reporting counterparty must ensure that all reported derivatives data relating to a transaction

- (a) is reported to the same designated trade repository to which the initial report was made or, if the initial report was made to the Commission under subsection (4), to the Commission, and
- (b) is accurate and contains no misrepresentation.

(7) A reporting counterparty must report an error or omission in the derivatives data as soon as technologically practicable upon 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.

(8) A local counterparty, other than the reporting counterparty, must notify the reporting counterparty of an error or omission with respect to derivatives data relating to a transaction to which it is a counterparty as soon as technologically practicable upon 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.

(9) A recognized or exempt clearing agency must report derivatives data to the designated trade repository specified by a local counterparty and may not report derivatives data to another trade repository without the consent of the local counterparty where

- (a) the reporting counterparty to a transaction is the recognized or exempt clearing agency, and
- (b) the local counterparty to the transaction that is not a recognized or exempt clearing agency has specified a designated trade repository to which derivatives data in respect of that transaction is to be reported.

### Identifiers, general

27. A reporting counterparty must include the following in every report required by this Part:

- (a) the legal entity identifier of each counterparty to the transaction as set out in section 28;
- (b) the unique transaction identifier for the transaction as set out in section 29;
- (c) the unique product identifier for the transaction as set out in section 30.

### Legal entity identifiers

28. (1) A designated trade repository must identify each counterparty to a transaction that is required to be reported under this Rule in all recordkeeping and all reporting required under this Rule by means of a single legal entity identifier.

(2) Each of the following rules apply to legal entity identifiers

- (a) a legal entity identifier must be a unique identification code assigned to a counterparty in accordance with the standards set by the Global Legal Entity Identifier System, and
- (b) a local counterparty must comply with all applicable requirements imposed by the Global Legal Entity Identifier System.

(3) Despite subsection (2), if the Global Legal Entity Identifier System is unavailable to a counterparty to a transaction at the time when a report under this Rule is required to be made, all of the following rules apply

- (a) each counterparty to the transaction must obtain a substitute legal entity identifier which complies with the standards established March 8, 2013 by the Legal Entity Identifier Regulatory Oversight Committee for pre-legal entity identifiers,
- (b) a local counterparty must use the substitute legal entity identifier until a legal entity identifier is assigned to the counterparty in accordance with the standards set by the Global Legal Entity Identifier System as required under paragraph (2)(a), and
- (c) after the holder of a substitute legal entity identifier is assigned a legal entity identifier in accordance with the standards set by the Global Legal Entity Identifier System as required under paragraph (2)(a), the local counterparty must ensure that it is identified only by the assigned legal entity identifier in all derivatives data reported pursuant to this Rule in respect of transactions to which it is a counterparty.

### Unique transaction identifiers

29. (1) A designated trade repository must identify each transaction that is required to be reported under this Rule in all recordkeeping and all reporting required under this Rule by means of a unique transaction identifier.

(2) A designated trade repository must assign a unique transaction identifier to a transaction, using its own methodology or incorporating a unique transaction identifier previously assigned to the transaction.

(3) A designated trade repository must not assign more than one unique transaction identifier to a transaction.

### Unique product identifiers

30. (1) For the purposes of this section, a unique product identifier means a code that uniquely identifies a derivative and is assigned in accordance with international or industry standards.

(2) A reporting counterparty must identify each transaction that is required to be reported under this Rule in all recordkeeping and all reporting required under this Rule by means of a unique product identifier.

(3) A reporting counterparty must not assign more than one unique product identifier to a transaction.

(4) If international or industry standards for a unique product identifier are unavailable for a particular derivative when a report is required to be made to a designated trade repository under this Rule, a reporting counterparty must assign a unique product identifier to the transaction using its own methodology.

**Creation data**

31. (1) Upon execution of a transaction that is required to be reported under this Rule, a reporting counterparty must report the creation data relating to that transaction to a designated trade repository.

(2) A reporting counterparty in respect of a transaction must report creation data in real time.

(3) If it is not technologically practicable to report creation data in real time, a reporting counterparty 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.

**Life-cycle event data**

32. (1) For a transaction that is required to be reported under this Rule, the reporting counterparty must report all life-cycle event data to a designated trade repository by the end of the business day on which the life-cycle event occurs.

(2) If it is not technologically practicable to report life-cycle event data by the end of the business day on which the life-cycle event occurs, the reporting counterparty must report life-cycle event data no later than the end of the business day following the day on which the life-cycle event occurs.

**Valuation data**

33. (1) For a transaction that is required to be reported under this Rule, a reporting counterparty must report valuation data, based on industry accepted valuation standards, to a designated trade repository

(a) daily, based on relevant closing market data from the previous business day, if the reporting counterparty is a derivatives dealer or a recognized or exempt clearing agency, or

(b) quarterly, as of the last day of each calendar quarter, if the reporting counterparty is not a derivatives dealer or a recognized or exempt clearing agency.

(2) Valuation data required to be reported pursuant to paragraph 1(b) must be reported to the designated trade repository no later than 30 days after the end of the calendar quarter.

**Pre-existing transactions**

34. (1) Despite section 31 and subject to subsection 43(5), a reporting counterparty (as determined under subsection 25(1)) to a transaction required to be reported under subsection 26(1) is required to report only the creation data indicated in the column in Appendix A entitled "Required for Pre-existing Transactions" on or before April 30, 2015 if

(a) the reporting counterparty is a derivatives dealer or a recognized or exempt clearing agency,

(b) the transaction was entered into before October 31, 2014, and

(c) there were outstanding contractual obligations with respect to the transaction on October 31, 2014.

(1.1) Despite section 31 and subject to subsection 43(6), a reporting counterparty (as determined under subsection 25(1)) to a transaction required to be reported under subsection 26(1) is required to report only the creation data indicated in the column in Appendix A entitled "Required for Pre-existing Transactions" on or before December 31, 2015 if

(a) the reporting counterparty is neither a derivatives dealer nor a recognized or exempt clearing agency,

(b) the transaction was entered into before June 30, 2015, and

(c) there were outstanding contractual obligations with respect to the transaction on June 30, 2015.

(2) Despite section 32, for a transaction to which subsection (1) or (1.1) applies, a reporting counterparty's obligation to report life-cycle event data under section 32 commences only after it has reported creation data in accordance with subsection (1) or (1.1).

(3) Despite section 33, for a transaction to which subsection (1) or (1.1) applies, a reporting counterparty's obligation to report valuation data under section 33 commences only after it has reported creation data in accordance with subsection (1) or (1.1).

### Timing requirements for reporting data to another designated trade repository

35. Despite the data reporting timing requirements in sections 31, 32, 33 and 34, where a designated trade repository ceases operations or stops accepting derivatives data for a certain asset class of derivatives, the reporting counterparty may fulfill its reporting obligations under this 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.

### Records of data reported

36. (1) A reporting counterparty must keep transaction records for the life of each transaction and for a further 7 years after the date on which the transaction expires or terminates.

(2) A reporting counterparty must keep records referred to in subsection (1) in a safe location and in a durable form.

## PART 4 DATA DISSEMINATION AND ACCESS TO DATA

### Data available to regulators

37. (1) A designated trade repository must, at no cost

- (a) provide to the Commission direct, continuous and timely electronic access to such data in the designated trade repository's possession as is required by the Commission in order to carry out the Commission's mandate,
- (b) accept and promptly fulfil any data requests from the Commission in order to carry out the Commission's mandate,
- (c) create and make available to the Commission aggregate data derived from data in the designated trade repository's possession as required by the Commission in order to carry out the Commission's mandate, and
- (d) disclose to the Commission the manner in which the derivatives data provided under paragraph (c) has been aggregated.

(2) A designated trade repository must conform to internationally accepted regulatory access standards applicable to trade repositories.

(3) A reporting counterparty must use its best efforts to provide the Commission with access to all derivatives data that it is required to report pursuant to this Rule, including instructing a trade repository to provide the Commission with access to such data.

### Data available to counterparties

38. (1) A designated trade repository must provide counterparties to a transaction with timely access to all derivatives data relevant to that transaction which is submitted to the designated trade repository.

(2) A designated trade repository must have appropriate verification and authorization procedures in place to deal with access pursuant to subsection (1) by non-reporting counterparties or a party acting on behalf of a non-reporting counterparty.

(3) Each counterparty to a transaction is deemed to have consented to the release of all derivatives data required to be reported or disclosed under this Rule.

(4) Subsection (3) applies despite any agreement to the contrary between the counterparties to a transaction.

### Data available to public

39. (1) A designated trade repository must, on a periodic basis, create and make available to the public, at no cost, aggregate data on open positions, volume, number and, where applicable, price, relating to the transactions reported to it pursuant to this Rule.

(2) The periodic aggregate data made available to the public pursuant to subsection (1) must be complemented at a minimum by breakdowns, where applicable, by currency of denomination, geographic location of reference entity or asset, asset class, contract type, maturity and whether the transaction is cleared.

(3) A designated trade repository must make transaction level reports of the data indicated in the column entitled "Required for Public Dissemination" in Appendix A for each transaction reported pursuant to this Rule available to the public at no cost not later than

- (a) the end of the day following the day on which it receives the data from the reporting counterparty to the transaction, if one of the counterparties to the transaction is a derivatives dealer, or
- (b) the end of the second day following the day on which it receives the data from the reporting counterparty to the transaction in all other circumstances.

(4) In disclosing transaction level reports required by subsection (3), a designated trade repository must not disclose the identity of either counterparty to the transaction.

(5) A designated trade repository must make the data required to be made available to the public under this section available in a usable form through a publicly accessible website or other publicly accessible technology or medium.

(6) Despite subsections (1) to (5), a designated trade repository is not required to make public any derivatives data for transactions entered into between affiliated companies as defined under subsection 1(2) of the Act.

#### **PART 5 EXCLUSIONS**

**40.** Despite any other section of this Rule, a local counterparty is under no obligation to report derivatives data for a transaction if,

- (a) the transaction relates to a derivative the asset class of which is a commodity other than cash or currency,
- (b) the local counterparty is not a derivatives dealer, and
- (c) the local counterparty has less than \$500,000 aggregate notional value, without netting, under all its outstanding transactions at the time of the transaction including the additional notional value related to that transaction.

**41.** Despite any other section of this Rule, a counterparty is under no obligation to report derivatives data in relation to a transaction if it is entered into between

- (a) Her Majesty in right of Ontario or the Ontario Financing Authority when acting as agent for Her Majesty in right of Ontario, and
- (b) an Ontario crown corporation or crown agency that forms part of a consolidated entity with Her Majesty in right of Ontario for accounting purposes.

#### **PART 6 EXEMPTIONS**

**42.** A Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

#### **PART 7 EFFECTIVE DATE**

##### **Effective date**

**43.** (1) Parts 1, 2, 4, and 6 come into force on December 31, 2013.

(2) Despite subsection (1), subsection 39(3) does not apply until ~~April 30, 2015~~ July 29, 2016.

(3) Parts 3 and 5 come into force October 31, 2014.

(4) Despite subsection (3), Part 3 does not apply so as to require a reporting counterparty that is not a derivatives dealer or a recognized or exempt clearing agency to make any reports under that Part until June 30, 2015.

(5) Despite subsection (3) and section 34, Part 3 does not apply to a transaction entered into before October 31, 2014 that expires or terminates on or before April 30, 2015 if the reporting counterparty to the transaction is a derivatives dealer or a recognized or exempt clearing agency.

(6) Despite subsection (3) and section 34, Part 3 does not apply to a transaction entered into before June 30, 2015 that expires or terminates on or before December 31, 2015 if the reporting counterparty to the transaction is neither a derivatives dealer nor a recognized or exempt clearing agency.

**Appendix A to OSC Rule 91-507 – Trade Repositories and Derivatives Data Reporting  
Minimum Data Fields Required to be Reported to a Designated Trade Repository**

**Instructions:**

The reporting counterparty is required to provide a response for each of the fields unless the field is not applicable to the transaction.

<b>Data field</b>	<b>Description</b>	<b>Required for Public Dissemination</b>	<b>Required for Pre-existing Transactions</b>
Transaction identifier	The unique transaction identifier as provided by the designated trade repository or the identifier as identified by the two counterparties, electronic trading venue of execution or clearing agency.	N	Y
Master agreement type	The type of master agreement, if used for the reported transaction.	N	N
Master agreement version	Date of the master agreement version (e.g., 2002, 2006).	N	N
Cleared	Indicate whether the transaction has been cleared by a clearing agency.	Y	Y
Intent to clear	Indicate whether the transaction will be cleared by a clearing agency.	N	N
Clearing agency	LEI of the clearing agency where the transaction is or will be cleared.	N	Y
Clearing member	LEI of the clearing member, if the clearing member is not a counterparty.	N	N
Clearing exemption	Indicate whether one or more of the counterparties to the transaction are exempted from a mandatory clearing requirement.	Y	N
Broker/Clearing intermediary	LEI of the broker acting as an intermediary for the reporting counterparty without becoming a counterparty.	N	N
Electronic trading venue identifier	LEI of the electronic trading venue where the transaction was executed.	Y (Only "Yes" or "No" shall be publicly disseminated)	Y
Inter-affiliate	Indicate whether the transaction is between two affiliated entities. (This field is only required to be reported as of April 30' 2015.)	N	N
Collateralization	Indicate whether the transaction is collateralized. Field Values: <ul style="list-style-type: none"> <li>• Fully (initial and variation margin required to be posted by both parties),</li> <li>• Partially (variation only required to be posted by both parties),</li> <li>• One-way (one party will be required to post some form of collateral),</li> <li>• Uncollateralized.</li> </ul>	Y	N
Identifier of reporting counterparty	LEI of the reporting counterparty or, in case of an individual, its client code.	N	Y

Data field	Description	Required for Public Dissemination	Required for Pre-existing Transactions
Identifier of non-reporting counterparty	LEI of the non-reporting counterparty or, in case of an individual, its client code.	N	Y
Counterparty side	Indicate whether the reporting counterparty was the buyer or seller. In the case of swaps, other than credit default, the buyer will represent the payer of leg 1 and the seller will be the payer of leg 2.	N	Y
Identifier of agent reporting the transaction	LEI of the agent reporting the transaction if reporting of the transaction has been delegated by the reporting counterparty.	N	N
Jurisdiction of reporting counterparty	If the reporting counterparty is a local counterparty under the derivatives data reporting rules of one or more provinces of Canada, indicate all of the jurisdictions in which it is a local counterparty.	N	N
Jurisdiction of non-reporting counterparty	If the non-reporting counterparty is a local counterparty under the derivatives data reporting rules of one or more provinces of Canada, indicate all of the jurisdictions in which it is a local counterparty.	N	N
<b>A. Common Data</b>	<ul style="list-style-type: none"> <li>• These fields are required to be reported for all derivative transactions even if the information may be entered in an Asset field below.</li> <li>• Fields do not have to be reported if the unique product identifier adequately describes those fields.</li> </ul>		
Unique product identifier	Unique product identification code based on the taxonomy of the product.	Y	N
Transaction type	The name of the transaction type (e.g., swap, swaption, forwards, options, basis swap, index swap, basket swap, other).	Y	Y
Underlying asset identifier 1	The unique identifier of the asset referenced in the transaction.	Y	Y
Underlying asset identifier 2	The unique identifier of the second asset referenced in the transaction, if more than one.  If more than two assets identified in the transaction, report the unique identifiers for those additional underlying assets.	Y	Y
Asset class	Major asset class of the product (e.g., interest rate, credit, commodity, foreign exchange, equity, etc.).	Y	N
Effective date or start date	The date the transaction becomes effective or starts.	Y	Y
Maturity, termination or end date	The date the transaction expires.	Y	Y
Payment frequency or dates	The dates or frequency the transaction requires payments to be made (e.g., quarterly, monthly).	Y	Y
Reset frequency or dates	The dates or frequency at which the price resets (e.g., quarterly, semi-annually, annually).	Y	Y
Day count convention	Factor used to calculate the payments (e.g., 30/360, actual/360).	Y	Y

Data field	Description	Required for Public Dissemination	Required for Pre-existing Transactions
Delivery type	Indicate whether transaction is settled physically or in cash.	N	Y
Price 1	The price, yield, spread, coupon, etc., of the derivative. The price/rate should not include any premiums such as commissions, collateral premiums, accrued interest, etc.	Y	Y
Price 2	The price, yield, spread, coupon, etc., of the derivative. The price/rate should not include any premiums such as commissions, collateral premiums, accrued interest, etc.	Y	Y
Price notation type 1	The manner in which the price is expressed (e.g., percent, basis points, etc.).	Y	Y
Price notation type 2	The manner in which the price is expressed (e.g., percent, basis points, etc.).	Y	Y
Price multiplier	The number of units of the underlying reference entity represented by 1 unit of the transaction.	N	N
Notional amount leg 1	Total notional amount(s) of leg 1 of the transaction.	Y	Y
Notional amount leg 2	Total notional amount(s) of leg 2 of the transaction.	Y	Y
Currency leg 1	Currency(ies) of leg 1.	Y	Y
Currency leg 2	Currency(ies) of leg 2.	Y	Y
Settlement currency	The currency used to determine the cash settlement amount.	Y	Y
Up-front payment	Amount of any up-front payment.	N	N
Currency or currencies of up-front payment	The currency in which any up-front payment is made by one counterparty to another.	N	N
Embedded option	Indicate whether the option is an embedded option.	Y	N
<b>B. Additional Asset Information</b>	These additional fields are required to be reported for transactions in the respective types of derivatives set out below, even if the information is entered in a Common Data field above.		
<b>i) Interest rate derivatives</b>			
Fixed rate leg 1	The rate used to determine the payment amount for leg 1 of the transaction.	N	Y
Fixed rate leg 2	The rate used to determine the payment amount for leg 2 of the transaction.	N	Y
Floating rate leg 1	The floating rate used to determine the payment amount for leg 1 of the transaction.	N	Y
Floating rate leg 2	The floating rate used to determine the payment amount for leg 2 of the transaction.	N	Y
Fixed rate day count convention	Factor used to calculate the fixed payer payments (e.g., 30/360, actual/360).	N	Y

**Rules and Policies**

<b>Data field</b>	<b>Description</b>	<b>Required for Public Dissemination</b>	<b>Required for Pre-existing Transactions</b>
Fixed leg payment frequency or dates	Frequency or dates of payments for the fixed rate leg of the transaction (e.g., quarterly, semi-annually, annually).	N	Y
Floating leg payment frequency or dates	Frequency or dates of payments for the floating rate leg of the transaction (e.g., quarterly, semi-annually, annually).	N	Y
Floating rate reset frequency or dates	The dates or frequency at which the floating leg of the transaction resets (e.g., quarterly, semi-annually, annually).	N	Y
<b>ii) Currency derivatives</b>			
Exchange rate	Contractual rate(s) of exchange of the currencies.	N	Y
<b>iii) Commodity derivatives</b>			
Sub-asset class	Specific information to identify the type of commodity derivative (e.g., Agriculture, Power, Oil, Natural Gas, Freights, Metals, Index, Environmental, Exotic).	Y	Y
Quantity	Total quantity in the unit of measure of an underlying commodity.	Y	Y
Unit of measure	Unit of measure for the quantity of each side of the transaction (e.g., barrels, bushels, etc.).	Y	Y
Grade	Grade of product being delivered (e.g., grade of oil).	N	Y
Delivery point	The delivery location.	N	N
Load type	For power, load profile for the delivery.	N	Y
Transmission days	For power, the delivery days of the week.	N	Y
Transmission duration	For power, the hours of day transmission starts and ends.	N	Y
<b>C. Options</b>	These additional fields are required to be reported for options transactions set out below, even if the information is entered in a Common Data field above.		
Option exercise date	The date(s) on which the option may be exercised.	Y	Y
Option premium	Fixed premium paid by the buyer to the seller.	Y	Y
Strike price (cap/floor rate)	The strike price of the option.	Y	Y
Option style	Indicate whether the option can be exercised on a fixed date or anytime during the life of the transaction (e.g., American, European, Bermudan, Asian).	Y	Y
Option type	Put/call.	Y	Y
<b>D. Event Data</b>			
Action	Describes the type of event to the transaction (e.g., new transaction, modification or cancellation of existing transaction, etc.).	Y	N

**Rules and Policies**

<b>Data field</b>	<b>Description</b>	<b>Required for Public Dissemination</b>	<b>Required for Pre-existing Transactions</b>
Execution timestamp	The time and date of execution or novation of a transaction, expressed using Coordinated Universal Time (UTC).	Y	Y (If available)
Post-transaction events	Indicate whether the transaction resulted from a post-transaction service (e.g. compression, reconciliation, etc.) or from a lifecycle event (e.g. novation, amendment, etc.).	N	N
Reporting date	The time and date the transaction was submitted to the trade repository, expressed using UTC.	N	N
<b>E. Valuation data</b>	These additional fields are required to be reported on a continuing basis for all reported derivative transactions, including reported pre-existing transactions.		
Value of transaction calculated by the reporting counterparty	Mark-to-market valuation of the transaction, or mark-to-model valuation	N	N
Valuation currency	Indicate the currency used when reporting the value of the transaction.	N	N
Valuation date	Date of the latest mark-to-market or mark-to-model valuation.	N	N
<b>F. Other details</b>	Where the terms of the transaction cannot be effectively reported in the above prescribed fields, provide any additional information that may be necessary.	N	Y

**Appendix B to OSC Rule 91-507 – Trade Repositories and Derivatives Data Reporting  
Equivalent Trade Reporting Laws of Foreign Jurisdictions  
Subject to Deemed Compliance Pursuant to Subsection 26(5)**

The Commission has determined that the laws and regulations of the following jurisdictions outside of Ontario are equivalent for the purposes of the deemed compliance provision in subsection 26(5).

<b>Jurisdiction</b>	<b>Law, Regulation and/or Instrument</b>
United States of America	<p><i>CFTC Real-Time Public Reporting of Swap Transaction Data</i>, 17 C.F.R. pt. 43 (2013).</p> <p><i>CFTC Swap Data Recordkeeping and Reporting Requirements</i>, 17 C.F.R. pt. 45 (2013).</p> <p><i>CFTC Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps</i>, 17 C.F.R. pt. 46 (2013).</p>
<u>European Union</u>	<p><u>Regulation (EU) 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories</u></p> <p><u>Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories</u></p> <p><u>Commission Delegated Regulation (EU) No 151/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data</u></p> <p><u>Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories</u></p>

ANNEX C

*Note: This blackline is provided for convenience.*

**COMPANION POLICY 91-506CP  
TO ONTARIO SECURITIES COMMISSION RULE 91-506  
DERIVATIVES: PRODUCT DETERMINATION**

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**PART 1  
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 91-506 *Derivatives: Product Determination* (the “Rule”).

Except for Part 1, the numbering and headings in this Companion Policy correspond to the numbering and headings in the Rule. Any general guidance for a Section appears immediately after the Section name. Any specific guidance on sections in the Rule follows any general guidance.

The Rule applies only to the Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*.

Unless defined in the Rule or this Companion Policy, terms used in the Rule and in this Companion 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 Companion Policy, the term “contract” is interpreted to mean “contract or instrument”.

**PART 2  
GUIDANCE**

**Excluded derivatives**

**2. (1)(a) Gaming contracts**

Paragraph 2(1)(a) of the Rule prescribes certain domestic and foreign gaming contracts not to be “derivatives”. While a gaming contract may come within the definition of “derivative”, it is generally not recognized as being a financial derivative and typically does not pose the same potential risk to the financial system as other derivatives products. In addition, the Commission does not believe that the derivatives regulatory regime will be appropriate for this type of contract. Further, gaming control legislation of Canada (or a jurisdiction of Canada), or equivalent gaming control legislation of a foreign jurisdiction, generally has consumer protection as an objective and is therefore aligned with the objective of securities legislation to provide protection to investors from unfair, improper or fraudulent practices.

With respect to subparagraph 2(1)(a)(ii), a contract that is regulated by gaming control legislation of a foreign jurisdiction would only qualify for this exclusion if: (1) its execution does not violate legislation of Canada or Ontario, and (2) it would be considered

a gaming contract under domestic legislation. If a contract would be treated as a derivative if entered into in Ontario, but would be considered a gaming contract in a foreign jurisdiction, the contract does not qualify for this exclusion, irrespective of its characterization in the foreign jurisdiction.

*(b) Insurance and annuity contracts*

Paragraph 2(1)(b) of the Rule prescribes qualifying insurance or annuity contracts not to be “derivatives”. A reinsurance contract would be considered to be an insurance or annuity contract.

While an insurance contract may come within the definition of “derivative”, it is generally not recognized as a financial derivative and typically does not pose the same potential risk to the financial system as other derivatives products. The Commission does not believe that the derivatives regulatory regime will be appropriate for this type of contract. Further, a comprehensive regime is already in place that regulates the insurance industry in Canada and the insurance legislation of Canada (or a jurisdiction of Canada), or equivalent insurance legislation of a foreign jurisdiction, has consumer protection as an objective and is therefore aligned with the objective of securities legislation to provide protection to investors from unfair, improper or fraudulent practices.

Certain derivatives that have characteristics similar to insurance contracts, including credit derivatives and climate-based derivatives, will be treated as derivatives and not insurance or annuity contracts.

Subparagraph 2(1)(b)(i) requires an insurance or annuity contract to be entered into with a domestically licensed insurer and that the contract be regulated as an insurance or annuity contract under Canadian insurance legislation. Therefore, for example, an interest rate derivative entered into by a licensed insurance company would not be an excluded derivative.

With respect to subparagraph 2(1)(b)(ii), an insurance or annuity contract that is made outside of Canada would only qualify for this exclusion if it would be regulated under insurance legislation of Canada or Ontario if made in Ontario. Where a contract would otherwise be treated as a derivative if entered into in Canada, but is considered an insurance contract in a foreign jurisdiction, the contract does not qualify for this exclusion, irrespective of its characterization in the foreign jurisdiction. Subparagraph 2(1)(b)(ii) is included to address the situation where a local counterparty purchases insurance for an interest that is located outside of Canada and the insurer is not required to be licensed in Canada.

*(c) Currency exchange contracts*

Paragraph 2(1)(c) of the Rule prescribes a short-term contract for the purchase and sale of a currency not to be a “derivative” if it is settled within the time limits set out in subparagraph 2(1)(c)(i). This provision is intended to apply exclusively to contracts that facilitate the conversion of one currency into another currency specified in the contract. These currency exchange services are often provided by financial institutions or other businesses that exchange one currency for another for clients’ personal or business use (e.g., for purposes of travel or to make payment of an obligation denominated in a foreign currency).

Timing of delivery (subparagraph 2(1)(c)(i))

To qualify for this exclusion the contract must require physical delivery of the currency referenced in the contract within the time periods prescribed in subparagraph 2(1)(c)(i). If a contract does not have a fixed settlement date or otherwise allows for settlement beyond the prescribed periods or permits settlement by delivery of a currency other than the currency referenced in the contract, it will not qualify for this exclusion.

Clause 2(1)(c)(i)(A) applies to a transaction that settles by delivery of the referenced currency within two business days – being the industry standard maximum settlement period for a spot foreign exchange transaction.

Clause 2(1)(c)(i)(B) allows for a longer settlement period if the foreign exchange transaction is entered into contemporaneously with a related securities trade. This exclusion reflects the fact that the settlement period for certain securities trades can be three or more days. In order for the provision to apply, the securities trade and foreign exchange transaction must be related, meaning that the currency to which the foreign exchange transaction pertains was used to facilitate the settlement of the related security purchase.

Where a contract for the purchase or sale of a currency provides for multiple exchanges of cash flows, all such exchanges must occur within the timelines prescribed in subparagraph 2(1)(c)(i) in order for the exclusion in paragraph 2(1)(c) to apply.

Settlement by delivery except where impossible or commercially unreasonable (subparagraph 2(1)(c)(i))

Subparagraph 2(1)(c)(i) requires that a contract must not permit settlement in a currency other than what is referenced in the contract unless delivery is rendered impossible or commercially unreasonable as a result of events not reasonably within the control of the counterparties.

Settlement by delivery of the currency referenced in the contract requires the currency contracted for to be delivered and not an equivalent amount in a different currency. For example, where a contract references Japanese Yen, such currency must be delivered in order for this exclusion to apply. We consider delivery to mean actual delivery of the original currency contracted for either in cash or through electronic funds transfer. In situations where settlement takes place through the delivery of an alternate currency or account notation without actual currency transfer, there is no settlement by delivery and therefore the exclusion in paragraph 2(1)(c) would not apply.

We consider events that are not reasonably within the control of the counterparties to include events that cannot be reasonably anticipated, avoided or remedied. An example of an intervening event that would render delivery to be commercially unreasonable would include a situation where a government in a foreign jurisdiction imposes capital controls that restrict the flow of the currency required to be delivered. A change in the market value of the currency itself will not render delivery commercially unreasonable.

#### Intention requirement (subparagraph 2(1)(c)(ii))

Subparagraph 2(1)(c)(ii) excludes from the reporting requirement a contract for the purchase and sale of a currency that is intended to be settled through the delivery of the currency referenced in such contract. The intention to settle a contract by delivery may be inferred from the terms of the relevant contract as well as from the surrounding facts and circumstances.

When examining the specific terms of a contract for evidence of intention to deliver, we take the position that the contract must create an obligation on the counterparties to make or take delivery of the currency and not merely an option to make or take delivery. Any agreement, arrangement or understanding between the parties, including a side agreement, standard account terms or operational procedures that allow for the settlement in a currency other than the referenced currency or on a date after the time period specified in subparagraph 2(1)(c)(i) is an indication that the parties do not intend to settle the transaction by delivery of the prescribed currency within the specified time periods.

We are generally of the view that certain provisions, including standard industry provisions, the effect of which may result in a transaction not being physically settled, will not necessarily negate the intention to deliver. The contract as a whole needs to be reviewed in order to determine whether the counterparties' intention was to actually deliver the contracted currency. Examples of provisions that may be consistent with the intention requirement under subparagraph 2(1)(c)(ii) include:

- a netting provision that allows two counterparties who are party to multiple contracts that require delivery of a currency to net offsetting obligations, provided that the counterparties intended to settle through delivery at the time the contract was created and the netted settlement is physically settled in the currency prescribed by the contract, and
- a provision where cash settlement is triggered by a termination right that arises as a result of a breach of the terms of the contract.

Although these types of provisions permit settlement by means other than the delivery of the relevant currency, they are included in the contract for practical and efficiency reasons.

In addition to the contract itself, intention may also be inferred from the conduct of the counterparties. Where a counterparty's conduct indicates an intention not to settle by delivery, the contract will not qualify for the exclusion in paragraph 2(1)(c). For example, where it could be inferred from the conduct that counterparties intend to rely on breach or frustration provisions in the contract in order to achieve an economic outcome that is, or is akin to, settlement by means other than delivery of the relevant currency, the contract will not qualify for this exclusion. Similarly, a contract would not qualify for this exclusion where it can be inferred from their conduct that the counterparties intend to enter into collateral or amending agreements which, together with the original contract, achieve an economic outcome that is, or is akin to, settlement by means other than delivery of the relevant currency.

#### Rolling over (subparagraph 2(1)(c)(iii))

Subparagraph 2(1)(c)(iii) provides that, in order to qualify for the reporting exclusion in paragraph 2(1)(c), a currency exchange contract must not permit a rollover of the contract. Therefore, physical delivery of the relevant currencies must occur in the time periods prescribed in subparagraph 2(1)(c)(i). To the extent that a contract does not have a fixed settlement date or otherwise allows for the settlement date to be extended beyond the periods prescribed in subparagraph 2(1)(c)(i), the Commission would consider it to permit a rollover of the contract. Similarly, any terms or practice that permits the settlement date of the contract to be extended by simultaneously closing the contract and entering into a new contract without delivery of the relevant currencies would also not qualify for the exclusion in paragraph 2(1)(c).

The Commission does not intend that the exclusion in paragraph 2(1)(c) will apply to contracts entered into through platforms that facilitate investment or speculation based on the relative value of currencies. These platforms typically do not provide for

physical delivery of the currency referenced in the contract, but instead close out the positions by crediting client accounts held by the person operating the platform, often applying the credit using a standard currency.

(d) *Commodities*

Paragraph 2(1)(d) of the Rule prescribes a contract for the delivery of a commodity not to be a “derivative” if it meets the criteria in subparagraphs 2(1)(d)(i) and (ii).

Commodity

The exclusion available under paragraph 2(1)(d) is limited to commercial transactions in goods that can be delivered either in a physical form or by delivery of the instrument evidencing ownership of the commodity. 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.

Intention requirement (subparagraph 2(1)(d)(i))

Subparagraph 2(1)(d)(i) of the Rule requires that counterparties *intend* to settle the contract by delivering the commodity. Intention can be inferred from the terms of the relevant contract as well as from the surrounding facts and circumstances.

When examining the specific terms of a contract for evidence of an intention to deliver, we take the position that the contract must create an obligation on the counterparties to make or take delivery of the commodity and not merely an option to make or take delivery. Subject to the comments below on subparagraph 2(1)(d)(ii), we are of the view that a contract containing a provision that permits the contract to be settled by means other than delivery of the commodity, or that includes an option or has the effect of creating an option to settle the contract by a method other than through the delivery of the commodity, would not satisfy the intention requirement and therefore does not qualify for this exclusion.

We are generally of the view that certain provisions, including standard industry provisions, the effect of which may result in a transaction not being physically settled, may not necessarily negate the intention to deliver. The contract as a whole needs to be reviewed in order to determine whether the counterparties’ intention was to actually deliver the commodity. Examples of provisions that may be consistent with the intention requirement under subparagraph 2(1)(d)(i) include:

- an option to change the volume or quantity, or the timing or manner of delivery, of the commodity to be delivered;
- a netting provision that allows two counterparties who are party to multiple contracts that require delivery of a commodity to net offsetting obligations provided that the counterparties intended to settle each contract through delivery at the time the contract was created,
- an option that allows the counterparty that is to accept delivery of a commodity to assign the obligation to accept delivery of the commodity to a third-party; and
- a provision where cash settlement is triggered by a termination right arising as a result of the breach of the terms of the contract or an event of default thereunder.

Although these types of provisions permit some form of cash settlement, they are included in the contract for practical and efficiency reasons.

In addition to the contract itself, intention may also be inferred from the conduct of the counterparties. For example, where it could be inferred from the conduct that counterparties intend to rely on breach or frustration provisions in the contract in order to achieve an economic outcome that is, or is akin to, cash settlement, the contract will not qualify for this exclusion. Similarly, a contract will not qualify for this exclusion where it can be inferred from their conduct that the counterparties intend to enter into collateral or amending agreements which, together with the original contract, achieve an economic outcome that is, or is akin to, cash settlement of the original contract.

When determining the intention of the counterparties, we will examine their conduct at execution and throughout the duration of the contract. Factors that we will consider include whether a counterparty is in the business of producing, delivering or using the commodity in question and whether the counterparties regularly make or take delivery of the commodity relative to the frequency with which they enter into such contracts in relation to the commodity.

Situations may exist where, after entering into the contract for delivery of the commodity, the counterparties enter into an agreement that terminates their obligation to deliver or accept delivery of the commodity (often referred to as a “book-out” agreement). Book-out agreements are typically separately negotiated, new agreements where the counterparties have no obligation to enter into such agreements and such book-out agreements are not provided for by the terms of the contract as initially entered into. We will generally not consider a book-out to be a “derivative” provided that, at the time of execution of the original contract, the counterparties intended that the commodity would be delivered.

Settlement by delivery except where impossible or commercially unreasonable (subparagraph 2(1)(d)(ii))

Subparagraph 2(1)(d)(ii) requires that a contract not permit cash settlement in place of delivery unless physical settlement is rendered impossible or commercially unreasonable as a result of an intervening event or occurrence not reasonably within the control of the counterparties, their affiliates or their agents. A change in the market value of the commodity itself will not render delivery commercially unreasonable. In general, we consider examples of events not reasonably within the control of the counterparties would include:

- events to which typical *force majeure* clauses would apply,
- problems in delivery systems such as the unavailability of transmission lines for electricity or a pipeline for oil or gas where an alternative method of delivery is not reasonably available, and
- problems incurred by a counterparty in producing the commodity that they are obliged to deliver such as a fire at an oil refinery or a drought preventing crops from growing where an alternative source for the commodity is not reasonably available.

In our view, cash settlement in these circumstances would not preclude the requisite intention under subparagraph 2(1)(d)(i) from being satisfied.

(e) and (f) *Evidence of a deposit*

Paragraphs 2(1)(e) and (f) of the Rule prescribe certain evidence of deposits not to be a “derivative”.

Paragraph 2(1)(f) refers to “similar statutes of Canada or a jurisdiction of Canada”. While the *Credit Unions and Caisses Populaires Act, 1994* (Ontario) is Ontario legislation, it is intended that all federal or province-specific statutes will receive the same treatment in every province or territory. For example, if a credit union to which the Ontario *Credit Unions and Caisses Populaires Act, 1994* (Ontario) applies issues an evidence of deposit to a market participant that is located in a different province, that province would apply the same treatment under its equivalent legislation.

(g) *Exchange-traded derivatives*

Paragraph 2(1)(g) of the Rule prescribes a contract not to be a derivative if it is traded on certain prescribed exchanges. Exchange-traded derivatives provide a measure of transparency to regulators and to the public, and for this reason are not required to be reported. We note that where a transaction is cleared through a clearing agency, but not traded on an exchange, it will not be considered to be exchange-traded and will be required to be reported.

Subsection 2(2) of the Rule excludes derivatives trading facilities from the meaning of exchange as it is used in paragraph 2(1)(g). A derivatives trading facility ~~includes any trading system, facility or platform in which multiple participants have the ability to execute or trade derivative instruments by accepting bids and offers made by multiple participants in the facility or system, and in which multiple third party buying and selling interests in~~ 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 have the ability to interact in the system, facility or platform in a way that results in a contract, 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.

For example, the following would not be considered an exchange for purposes of paragraph 2(1)(g): 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); ~~and a “Multilateral~~ “multilateral trading facility” as defined in Directive 2014/65/EU Article 4(1)(22) of the European Parliament; and an “organized trading facility” as defined in Directive 2004/39/EC 2014/65/EU Article 4(1)(4&23) of the European Parliament. Therefore derivatives traded on the foregoing facilities that would otherwise be considered derivatives for the purposes of this Rule are required to be reported.

(h) *Additional contracts not considered to be derivatives*

Apart from the contracts expressly prescribed not to be derivatives in section 2 of the Rule, there are other contracts that we do not consider to be “derivatives” for the purposes of securities or derivatives legislation. A feature common to these contracts is that they are entered into for consumer, business or non-profit purposes that do not involve investment, speculation or hedging. Typically, they provide for the transfer of ownership of a good or the provision of a service. In most cases, they are not traded on a market.

These contracts include, but are not limited to:

- a consumer or commercial contract to acquire, or lease real or personal property, to provide personal services, to sell or assign rights, equipment, receivables or inventory, or to obtain a loan or mortgage, including a loan or mortgage with a variable rate of interest, interest rate cap, interest rate lock or embedded interest rate option;
- a consumer contract to purchase non-financial products or services at a fixed, capped or collared price;
- an employment contract or retirement benefit arrangement;
- a guarantee;
- a performance bond;
- a commercial sale, servicing, or distribution arrangement;
- a contract for the purpose of effecting a business purchase and sale or combination transaction;
- a contract representing a lending arrangement in connection with building an inventory of assets in anticipation of a securitization of such assets; and
- a commercial contract containing mechanisms indexing the purchase price or payment terms for inflation such as via reference to an interest rate or consumer price index.

**Investment contracts and over-the-counter options**

3. Section 3 of the Rule prescribes a contract (to which section 2 of the Rule does not apply) that is a derivative and a security solely by reason of being an investment contract under paragraph (n) of the definition of “security” in subsection 1(1) of the Act, not to be a security. Some types of contracts traded over-the-counter, such as foreign exchange contracts and contracts for difference meet the definition of “derivative” (because their market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest) but also meet the definition of “security” (because they are investment contracts). This section prescribes that such instruments will be treated as derivatives and therefore be required to be reported to a designated trade repository.

Similarly, options fall within both the definition of “derivative” and the definition of “security”. Section 3 of the Rule prescribes an option that is only a security by virtue of paragraph (d) of the definition of “security” in subsection 1(1) of the Act (and not described in section 5 of the Rule), not to be a security. This section prescribes that such instruments will be treated as derivatives and therefore will be required to be reported to a designated trade repository. This treatment will only apply to options that are traded over-the-counter. Under paragraph 2(g), exchange-traded options will not be required to be reported to a designated trade repository. Further, options that are entered into on a commodity futures exchange pursuant to standardized terms and conditions are commodity futures options and therefore regulated under the *Commodity Futures Act* (Ontario) and excluded from the definition of “derivative”.

**Derivatives that are securities**

4. Section 4 of the Rule prescribes a contract (to which sections 2 and 3 of the Rule do not apply) that is a security and a derivative, not to be a derivative. Derivatives that are securities and which are contemplated as falling within this section include structured notes, asset-backed securities, exchange-traded notes, capital trust units, exchangeable securities, income trust units, securities of investment funds and warrants. This section ensures that such instruments will continue to be subject to applicable prospectus disclosure and continuous disclosure requirements in securities legislation as well as applicable registration requirements for dealers and advisers. The Commission anticipates that it will again review the categorization of instruments as securities and derivatives once the comprehensive derivatives regime has been implemented.

**Derivatives prescribed to be securities**

5. Section 5 of the Rule prescribes a security-based derivative that is used by an issuer or its affiliate to compensate an officer, director, employee or service provider, or as a financing instrument, not to be a derivative. Examples of the compensation instruments that are contemplated as falling within section 5 include stock options, phantom stock units, restricted share units, deferred share units, restricted share awards, performance share units, stock appreciation rights and compensation instruments provided to service providers, such as broker options. Securities treatment would also apply to the aforementioned instruments when used as a financing instrument, for example, rights, warrants and special warrants, or subscription rights/receipts or convertible instruments issued to raise capital for any purpose. The Commission takes the view that an instrument would only be considered a financing instrument if it is used for capital-raising purposes. An equity swap, for example, would generally not be considered a financing instrument. The classes of derivatives referred to in section 5 can have similar or the same economic effect as a securities issuance and are therefore subject to requirements generally applicable to securities. As they are prescribed not to be derivatives they are not subject to the derivatives reporting requirements.