**PROPOSED COMPANION POLICY 96-101**
*TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING*

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# PART 1
# GENERAL COMMENTS

## Introduction

This companion policy (the "Policy") provides guidance on how those members ("participating jurisdictions" or "we") of the Canadian Securities Administrators participating in Multilateral Instrument 91-601 *Trade Repositories and Derivatives Data Reporting* (the "Instrument") interpret various matters in the Instrument.

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

Unless defined in the Instrument or this Policy, terms used in the Instrument and in this Policy have the meaning given to them in securities legislation, including in National Instrument 14-101 *Definitions*.

## Definitions and interpretation of terms in this Policy and in the Instrument

**1. (1)** In this Policy

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

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

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

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

"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;

"LEI" means a legal entity identifier;

"LEI ROC" means the LEI Regulatory Oversight Committee;

"PFMI Report" means the April 2012 final report entitled *Principles for financial market infrastructures* published by CPMI (formerly CPSS) and IOSCO, as amended from time to time;[2]

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

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

**(2)** A "life-cycle event" is defined in the Instrument as an event that results in a change to derivatives data previously reported to a recognized trade repository. Examples of a life-cycle event with respect to a transaction would include:

- a change to the termination date for the transaction:

- a change in the cash flows, payment frequency, currency, numbering convention, spread, benchmark, reference entity or rates originally reported;

- the availability of a LEI for a counterparty previously identified by name or by some other identifier;

- a corporate action affecting a security or securities on which the transaction is based (e.g., a merger, dividend, stock split, or bankruptcy);

- a change to the notional amount of a transaction including contractually agreed upon changes (e.g., amortization schedule);

- the exercise of a right or option that is an element of the transaction; and

- the satisfaction of a level, event, barrier or other condition contained in the contract for the transaction.

**(3)** Paragraph (b) of the definition of "local counterparty" captures entities affiliated with a person or company referred to in paragraph (a) of the definition, provided that such person or company is responsible for the liabilities of the affiliated entity. The participating jurisdictions are of the view that this responsibility must be for all or substantially all of the affiliated entity's liabilities.

While the definition of local counterparty captures an individual resident in the local jurisdiction, paragraph 25(e) of the Instrument excludes individuals from having to report a transaction.

**(4)** The term "transaction" is used in the Instrument instead of the statutorily defined term "trade", in order to reflect that certain types of activities or events relating to a derivative transaction require the modification of an existing transaction report while others require a unique transaction report. The primary differences between the two definitions are that (i) the term "trade" as defined in the securities legislation includes material amendments and terminations, whereas "transaction" as defined in the Instrument does not, and (ii) the term "transaction", as defined in the Instrument, includes a novation to a clearing agency, whereas "trade" as defined in the securities legislation does not.

A material amendment is not referred to in the definition of "transaction", as a material amendment to an existing transaction is required to be reported as a life-cycle event under section 32. Similarly, a termination is not referred to in the definition of "transaction", as the

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

expiry or termination of a transaction is required to be reported as a life-cycle event under section 32 and would not trigger the requirement for a new transaction report.

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

**(5)** The term "valuation data" is defined in the Instrument as data that reflects the current value of a transaction. We are of the view that valuation data can be calculated based upon the use of an industry-accepted methodology such as mark-to-market or mark-to-model, or another valuation method that is in accordance with accounting principles and will result in a reasonable valuation of a transaction.[3] We expect that the methodology used to calculate valuation data that is reported with respect to a transaction would be consistent over the entire life of the transaction.

# PART 2
## TRADE REPOSITORY RECOGNITION AND ONGOING REQUIREMENTS

Part 2 sets out rules relating to the recognition of a trade repository by the local securities authority and establishes ongoing requirements for a recognized trade repository. To obtain and maintain recognition as a trade repository, a person or entity must comply with these rules and requirements in addition to all of the terms and conditions in the recognition order made by the securities regulatory authority.

In order to comply with the reporting obligations contained in Part 3, a reporting counterparty to a transaction involving a local counterparty must report the transaction to a recognized trade repository. Except in Alberta, there is no prohibition on an unrecognized trade repository operating in a local jurisdiction; however, a reporting counterparty that reports a transaction to an unrecognized trade repository would not be in compliance with its reporting obligations under this Instrument with respect to that transaction. In Alberta, securities legislation prohibits a person or company from carrying on business as a trade repository in the province unless recognized as a trade repository by the securities regulatory authority.

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

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[3] For example, see International Financial Reporting Standard 13, *Fair Value Measurement*.

**Filing of initial information on application for recognition as a trade repository**

**2.** In determining whether to recognize an applicant as a trade repository under securities legislation, we anticipate that the securities regulatory authority will consider a number of factors, including the following:

- whether it is in the public interest to recognize the trade repository;

- the manner in which the trade repository proposes to comply with the Instrument;

- whether the trade repository has meaningful representation on its governing body;

- whether the trade repository has sufficient financial and operational resources for the proper performance of its functions;

- whether the rules and procedures of the trade repository ensure that its business is conducted in an orderly manner that fosters both fair and efficient capital markets, and improves transparency in the derivatives market;

- whether the trade repository has policies and procedures to effectively identify and manage conflicts of interest arising from its operation or the services it provides;

- whether the requirements of the trade repository relating to access to its services are fair and reasonable;

- whether the trade repository's process for setting fees is fair, transparent and appropriate;

- whether the trade repository's fees are inequitably allocated among the participants, have the effect of creating barriers to access or place an undue burden on any participant or class of participants;

- the manner and process for the securities regulatory authority and other applicable regulatory agencies to receive or access derivatives data, including the timing, type of reports, and any confidentiality restrictions;

- whether the trade repository has robust and comprehensive policies, procedures, processes and systems to ensure the security and confidentiality of derivatives data;

- for trade repositories that are not resident in the local jurisdiction, whether the securities regulatory authority has entered into a memorandum of understanding with the relevant regulatory authority in the trade repository's local jurisdiction; and

- whether the trade repository has been, or will be, in compliance with securities legislation, including compliance with the Instrument and any terms and conditions attached to the recognition order in respect of the trade repository.

A trade repository that is applying for recognition must demonstrate that it has established, implemented, maintained and enforced appropriate written rules, policies and procedures that are in accordance with standards applicable to trade repositories. We anticipate that these rules, policies and procedures will include, but will not necessarily be limited to, the principles and key considerations and explanatory notes applicable to trade repositories in the PFMI Report. These principles are set out in the following chart, along with the corresponding sections of the Instrument the interpretation of which we consider ought to be consistent with the principles:

| *Principle in the PFMI Report applicable to a trade repository* | *Relevant section(s) of the Instrument* |
|---|---|
| Principle 1: Legal basis | Section 7 – Legal framework<br><br>Section 17 – Rules, policies, and procedures (in part) |
| Principle 2: Governance | Section 8 – Governance<br><br>Section 9 – Board of directors<br><br>Section 10 – Management |
| Principle 3: Framework for the comprehensive management of risks | Section 19 – Comprehensive risk-management framework<br><br>Section 20 – General business risk (in part) |
| Principle 15: General business risk | Section 20 – General business risk |
| Principle 17: Operational risk | Section 21 – System and other operational risk requirements<br><br>Section 22 – Data security and confidentiality<br><br>Section 24 – Outsourcing |
| Principle 18: Access and participation requirements | Section 13 – Access to recognized trade repository services<br><br>Section 16 – Due process (in part)<br><br>Section 17 – Rules, policies, and procedures (in part) |
| Principle 19: Tiered participation arrangements | No equivalent provisions in the Instrument; however, the trade repository may be expected to observe or broadly observe the principle, where applicable. |

| Principle in the PFMI Report applicable to a trade repository | Relevant section(s) of the Instrument |
|---|---|
| Principle 20: FMI links | No equivalent provisions in the Instrument; however, the trade repository may be expected to observe or broadly observe the principle, where applicable. |
| Principle 21: Efficiency and effectiveness | No equivalent provisions in the Instrument; however, the trade repository may be expected to observe or broadly observe the principle, where applicable. |
| Principle 22: Communication procedures and standards | Section 15 – Communication policies, procedures and standards |
| Principle 23: Disclosure of rules, key procedures, and market data | Section 17 – Rules, policies, and procedures (in part) |
| Principle 24: Disclosure of market data by trade repositories | Sections in Part 4 – Data Dissemination and Access to Data |

We anticipate that each of the securities regulatory authorities will apply the principles in its oversight activities of a recognized trade repository. Accordingly, in complying with the Instrument, recognized trade repositories will be expected to observe the principles.

We anticipate that the forms filed by an applicant or recognized trade repository under the Instrument will be kept confidential to the extent permitted in the local jurisdiction. We are of the view that the forms generally contain proprietary financial, commercial and technical information, and that the cost and potential risks to the filers of disclosure outweigh the benefit of the principle requiring that forms be made available for public inspection. However, we would expect a recognized trade repository to publicly disclose its responses to the CPSS-IOSCO consultative report entitled *Disclosure framework for financial market infrastructures*, which is a supplement to the PFMI Report.[4] In addition, much of the information that will be included in the filed forms will be required to be made publicly available by a recognized trade repository in accordance with the Instrument or the terms and conditions of the recognition order imposed by a securities regulatory authority.

While we generally expect to keep the information contained in a filed Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* and any amendments to such information confidential, if a securities regulatory authority considers that it is in the public interest to do so, it may require the applicant or recognized trade repository to publicly disclose a summary of the information contained in the form, or in any amendments to the information in the Form.

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

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

**Change in information by a recognized trade repository**

**3.** The participating jurisdiction with which an amendment to the information provided in Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* is filed will endeavour to review such amendment in accordance with subsections 3(1) and 3(2) before the proposed implementation date for the change.  However, where the changes are complex, raise regulatory concerns, or when additional information is required, this review may exceed these timeframes.

**(1)** We would consider a change to be significant when it could impact a recognized trade repository, its users, participants, market participants, investors, or the capital markets (including derivatives markets and the markets for assets underlying a derivative).  We would generally consider a significant change to include, but not be limited to, the following:

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

- a change to the services provided by the recognized trade repository, or a change that affects the services provided, including the hours of operation, that has or may have a direct impact on users in a local jurisdiction;

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

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

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

- a change to the governance of the recognized trade repository, including changes to the structure of its board of directors or board committees and their related mandates;

- a change in control of the recognized trade repository;

- a change in entities that provide key services or systems to, or on behalf of, the recognized trade repository;

- a change to outsourcing arrangements for key services or systems of the recognized trade repository;

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

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

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

- a change in the location of the recognized trade repository's head office or primary place of business or the location where the main data servers or contingency sites are housed.

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

**(3)** Subsection 3(3) sets out the filing requirements for changes to information provided in a filed Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* other than those described in subsections 3(1) or (2). Such changes to information are not considered significant and include the following:

- changes that would not have an impact on the recognized trade repository's structure or participants, or more broadly on market participants, investors or the capital markets;

- changes in the routine processes, policies, practices, or administration of the recognized trade repository that would not impact participants;

- changes due to standardization of terminology;

- corrections of spelling or typographical errors;

- changes to the types of participants of a recognized trade repository that are in a local jurisdiction;

- necessary changes to conform to applicable regulatory or other legal requirements of a jurisdiction in Canada; and

- minor system or technology changes that would not significantly impact the system or its capacity.

The participating jurisdictions may review filings under subsection 3(3) to ascertain whether the changes have been categorized appropriately. If the securities regulatory authority disagrees with the categorization, the recognized trade repository will be notified in writing. Where the securities regulatory authority determines that changes reported under subsection 3(3) are in fact significant changes under subsection 3(1), the recognized trade repository will be required to file an amendment to Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* that will be subject to review by the securities regulatory authority.

**Ceasing to carry on business**

**6. (1)** In addition to filing a completed Form 96-101F3 *Cessation of Operations Report for Recognized Trade Repository*, a recognized trade repository that intends to cease carrying on business in the local jurisdiction as a recognized trade repository must make an application to voluntarily surrender its recognition to the securities regulatory authority pursuant to securities legislation. The securities regulatory authority may accept the voluntary surrender subject to terms and conditions.[5]

**Legal framework**

**7. (1)** A recognized trade repository is required to have rules, policies, and procedures in place that provide a legal basis for their activities in all relevant jurisdictions where they have activities, whether within Canada or any foreign jurisdiction.

**Governance**

**8.** A recognized trade repository is required to have in place governance arrangements that meet the minimum requirements and policy objectives set out in subsections 8(1) and 8(2).

**(3)** We expect that interested parties will be able to locate the governance information required by subsections 8(1) and 8(2) through a web search or through clearly identified links on the recognized trade repository's website.

**Board of directors**

**9.** The board of directors of a recognized trade repository is subject to various requirements, such as requirements pertaining to board composition and conflicts of interest. To the extent that a recognized trade repository is not organized as a corporation, the requirements relating to the

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[5] This will apply in those jurisdictions where securities legislation provides the securities regulatory authority with the power to impose terms and conditions on an application for voluntary surrender. The transfer of derivatives data/information can be addressed through the terms and conditions imposed by the securities regulatory authority on such application.

board of directors may be fulfilled by a body that performs functions that are equivalent to the functions of a board of directors.

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

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

**Chief compliance officer**

**11. (1)** Subsection 11(1) is not intended to prevent management from hiring the chief compliance officer, but instead requires the Board to approve the appointment.

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

**Fees**

**12.** In assessing whether a recognized trade repository's fees and costs are fairly and equitably allocated among participants as required under paragraph 12(a), we anticipate that the relevant securities regulatory authority will consider a number of factors, including the following:

- the number and complexity of the transactions being reported;

- the amount of the fee or cost imposed relative to the cost of providing the services;

- the amount of fees or costs charged by other comparable trade repositories, where relevant, to report similar transactions in the market;

- with respect to market data fees and costs, the amount of market data fees charged relative to the market share of the recognized trade repository; and

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

A recognized trade repository should provide clear descriptions of priced services for comparability purposes. Other than fees for individual services, a recognized trade repository should also disclose other fees and costs related to connecting to or accessing the trade

repository. For example, a recognized trade repository should disclose information on the system design, as well as technology and communication procedures, that influence the costs of using the recognized trade repository. A recognized trade repository is also expected to provide timely notice to participants and the public of any changes to services and fees.

**Access to recognized trade repository services**

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

**Acceptance of reporting**

**14.** Section 14 requires that a recognized trade repository accept derivatives data for all derivatives of the asset class or classes set out in its recognition order. For example, if the recognition order of a recognized trade repository includes interest rate derivatives, the recognized trade repository is required to accept transaction data for all types of interest rate derivatives that are entered into by a local counterparty. It is possible that a recognized trade repository may accept derivatives data for only a subset of a class of derivatives if this is indicated in its recognition order. For example, there may be recognized trade repositories that accept derivatives data for only certain types of commodity derivatives, such as energy derivatives.

**Communication policies, procedures and standards**

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

**Rules, policies and procedures**

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

**(3)** Subsection 17(3) requires that a recognized trade repository monitor compliance with its rules, policies, and procedures. The methodology of monitoring such compliance should be fully documented.

**(4)** The processes implemented by a recognized trade repository for dealing with non-compliance with its rules and procedures do not preclude enforcement action by any other person or company, including a securities regulatory authority or other regulatory body.

**(6)** A participating jurisdiction may develop and implement a protocol with the recognized trade repository that will set out the procedures to be followed with respect to the review and approval of rules, policies, and procedures and any amendments thereto. Such a protocol may be appended to and form part of the recognition order. Depending on the nature of the changes to the recognized trade repository's rules, policies, and procedures, such changes may also impact the information contained in Form 96-101F1 *Application for Recognition – Trade Repository Information Statement*. In such cases, the recognized trade repository will be required to file an amendment to Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* with the securities regulatory authority. See section 3 of this Policy for a discussion of filing requirements.

**Records of data reported**

**18.** A recognized trade repository may be subject to record-keeping requirements under securities legislation that are in addition to those under section 18 of the Instrument.

**(2)** The requirement to maintain records for 7 years after the expiration or termination of a transaction, rather than from the date the transaction was entered into, reflects the fact that transactions create on-going obligations and information is subject to change throughout the life of a transaction.

**Comprehensive risk-management framework**

**19.** Section 19 sets out requirements for a comprehensive risk-management framework of a recognized trade repository. Set out below are some of our expectations for a recognized trade repository to be able to demonstrate that it meets that requirement.

*Features of the framework*

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

*Establishing a framework*

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

*Maintaining a framework*

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

**General business risk**

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

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

**(4)** The scenarios identified under subsection 20(4) should take into account the various independent and related risks to which the recognized trade repository is exposed.

**(5)** Plans for the recovery or orderly wind-down of a recognized trade repository should contain, among other elements, a substantive summary of the key recovery or orderly wind-down strategies, the identification of the recognized trade repository's critical operations and services, and a description of the measures needed to implement the key strategies. The recognized trade repository should maintain the plan on an ongoing basis, to achieve recovery and orderly wind-down, and should hold sufficient liquid net assets funded by equity to implement this plan. A recognized trade repository should also take into consideration the operational, technological, and legal requirements for participants to establish and move to an alternative arrangement in the event of an orderly wind-down.

**Systems and other operational risk requirements**

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

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

- A recognized trade repository should review, audit, and test systems, operational policies, procedures, and controls, periodically and after any significant changes.

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

**(2)** The board of directors of a recognized trade repository should clearly define the roles and responsibilities for addressing operational risk.

**(3)** An adequate system of internal control over systems as well as adequate general information-technology controls are to be implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, and security. Recommended Canadian guides as to what constitutes adequate information technology controls include '*Information Technology Control Guidelines*' from the Canadian Institute of Chartered Accountants and '*COBIT*' from the IT Governance Institute. A recognized trade repository should ensure that its information-technology controls address the integrity of the data that it maintains, by protecting all derivatives data submitted from corruption, loss, improper disclosure, unauthorized access and other processing risks.

Paragraph 21(3)(b) requires a recognized trade repository to thoroughly assess future needs and make systems capacity and performance estimates in a method consistent with prudent business practice at least once a year. This paragraph also imposes an annual requirement for recognized trade repositories to conduct periodic capacity stress tests. Continual changes in technology, risk management requirements and competitive pressures will often result in these activities or tests being carried out more frequently.

Paragraph 21(3)(c) requires a recognized trade repository to notify the securities regulatory authority of any material systems failure. A failure, malfunction, delay or other disruptive incident would be considered "material" if the recognized trade repository would in the normal course of its operations escalate the incident to, or inform, its senior management that is responsible for technology, or if the incident would have an impact on participants. We also expect that, as part of this notification, the recognized trade repository will provide updates on the status of the failure, the resumption of service, and the results of its internal review of the failure.

**(4)** We are generally of the view that disaster recovery plans should allow the recognized trade repository to provide continuous and undisrupted service, as back-up systems ideally should commence processing immediately. Where a disruption is unavoidable, a recognized trade

repository is expected to provide prompt recovery of operations, meaning that it resumes operations within 2 hours following the disruptive event. Under paragraph 21(4)(c), an emergency event could include any external sources of operational risk, such as the failure of critical service providers or utilities or events affecting a wide metropolitan area, such as natural disasters, terrorism, and pandemics. Business continuity planning should encompass all policies and procedures to ensure uninterrupted provision of key services regardless of the cause of potential disruption.

**(5)** We expect that a recognized trade repository will engage relevant industry participants, as necessary, in tests of its business continuity plans, including testing of back-up facilities for both the recognized trade repository and its participants.

**(6)** For the purpose of subsection 21(6), a qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment, such as external auditors or third party information system consultants. We would generally consider that this obligation could be satisfied by an independent assessment by an internal audit department that is compliant with the International Standards for the Professional Practice of Internal Auditing published by the Institute of Internal Audit. Before engaging a qualified party, the recognized trade repository should notify each relevant securities regulatory authority.

**(8)** In determining what a reasonable period is to allow participants to make system modifications and test their modified systems, a recognized trade repository should consult with its participants and allow all participants a reasonable opportunity to develop, implement and test systems changes. We expect that the needs of all types of participants would be considered, including those of smaller and less sophisticated participants.

**(9)** In determining what a reasonable period is to allow participants to test their modified systems and interfaces with the recognized trade repository, we would generally expect a recognized trade repository to consult with its participants. We consider a reasonable period to be a period that would provide all participants a reasonable opportunity to develop, implement and test systems changes. We expect that the needs of all types of participants would be considered, including those of smaller and less sophisticated participants.

## Data security and confidentiality

**22**. **(1)** Rules, policies and procedures to ensure the safety, privacy and confidentiality of derivatives data must include limitations on access to confidential trade repository data and safeguards to protect against persons and companies affiliated with a recognized trade repository from using trade repository data for their personal benefit or the benefit of others.

**(2)** The purpose of subsection 22(2) is to ensure that users of a recognized trade repository have some measure of control over their derivatives data.

**Confirmation of data and information**

**23.** The purpose of the confirmation requirement in subsection 23(1) is to ensure that the reported information accurately describes the transaction as agreed to by both counterparties.

In cases where the non-reporting counterparty to a transaction is not a participant of the recognized trade repository to which the transaction is reported, the recognized trade repository would not be in a position to confirm the accuracy of the derivatives data with such counterparty. As such, subsection 23(2) provides that a recognized trade repository is not obligated to confirm the accuracy of derivatives data with respect to a transaction with a counterparty to the transaction that is not a participant of the recognized trade repository.

A recognized trade repository may satisfy its obligation under section 23 to confirm the derivatives data reported with respect to a transaction by notice to each counterparty to the transaction that is a participant of the recognized trade repository, or its delegated third-party representative where applicable, that a report has been made naming the participant as a counterparty to a transaction, accompanied by a means of accessing a report of the derivatives data submitted. The policies and procedures of the recognized trade repository may provide that if the recognized trade repository does not receive a response from a counterparty within 48 hours, the counterparty is deemed to confirm the derivatives data as reported.

**Outsourcing**

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

## PART 3
## DATA REPORTING

Part 3 deals with reporting obligations for a transaction that involves a local counterparty and includes a determination of which counterparty to the transaction will be subject to the duty to report, requirements as to the timing of reports and a description of the data that is required to be reported.

**Reporting counterparty**

**25.** Section 25 sets out a process for determining which counterparty to a transaction is the reporting counterparty and is therefore required to fulfil the reporting obligations under the Instrument.

**(1)** The hierarchy outlined in subsection 25(1) for determining which counterparty to a transaction will be the reporting counterparty is intended to reflect the counterparty to the transaction that is best suited to fulfill the reporting obligation. For example, for a transaction that is cleared through a clearing agency, the clearing agency is best positioned to report derivatives data and is therefore determined to be the reporting counterparty.

The definition of "derivatives dealer" in the Instrument does not require that a person or company be registered with the local securities regulatory authority in order to meet the definition. Accordingly, where the reporting counterparty to a transaction is a derivatives dealer, as defined in the Instrument, the reporting obligations with respect to the transaction apply irrespective of whether the derivatives dealer is a registrant in the local jurisdiction. Where a person or company that meets the definition of "derivatives dealer" is also a Canadian financial institution, its status as a derivatives dealer prevails for the purposes of section 25.

Paragraph 25(1)(c) reflects our view that a Canadian financial institution, regardless of whether it considers itself derivatives dealer, would be better suited to report a transaction between the Canadian financial institution and a counterparty that is neither a derivatives dealer nor a Canadian financial institution.

For a transaction that is not cleared and is between two derivatives dealers, two Canadian financial institutions or two end-users – that is, a transaction to which none of paragraphs 25(1)(a), (b), or (c) apply – paragraph 25(1)(d) allows the counterparties to agree, in writing, at or before the time the transaction occurs, which counterparty will act as the reporting counterparty for the transaction. The intention of paragraph 25(1)(d) is to facilitate one counterparty reporting while requiring both counterparties to have procedures or contractual arrangements in place to ensure that reporting occurs.

One example of a type of agreement the counterparties may use to determine the reporting counterparty to a transaction is the ISDA methodology, publicly available at www.isda.org, developed for Canada in order to facilitate one-sided transaction reporting and provide a consistent method for determining the party required to act as reporting counterparty.

There is no requirement for counterparties to a transaction to use the ISDA methodology. However, in order for the counterparties to rely on paragraph 25(1)(d), the agreement must meet the conditions in paragraph 25(1)(d). Namely, the agreement must be in written form, have been made at the time of the transaction, and determine the reporting counterparty with respect to the transaction.

**(2)** Each local counterparty that relies on paragraph 25(1)(d) must fulfil the record-keeping obligations set out in subsection 25(2).

**(4)** The reporting requirement in subsection 25(4) is designed to be an incentive for the counterparties to come to an agreement to avoid dual reporting. Dual reporting – where both counterparties independently report the transaction – skews the TR data for the overall market, drastically diminishing the value of the TR data in identifying systemically important entities and informing policy development.

Reporting unique transaction identifiers to the securities regulatory authority will enable the securities regulatory authority to match the two derivatives data reports relating to the single dual-reported transaction. Without the UTI for each transaction, these reports cannot be matched.

We are of the view that the reporting requirement in subsection 25(4) may be satisfied by submitting a facsimile or email containing the required unique transaction identifiers to the securities regulatory authority. No special systems or reporting infrastructure are anticipated to be required to satisfy this requirement.

**Duty to report**

**26.** Section 26 outlines the duty to report derivatives data.

**(2)** Under subsection 26(2), the reporting counterparty for a transaction must ensure that all reporting obligations are fulfilled. This includes reporting of creation data and ongoing requirements such as the reporting of life-cycle event data and valuation data.

**(3)** Subsection 26(3) permits the delegation of all reporting obligations of a reporting counterparty. This includes reporting of initial creation data, life-cycle event data and valuation data. For example, some or all of the reporting obligations may be delegated to a third-party service provider.

**(4)** With respect to subsection 26(4), prior to the reporting requirements in Part 3 coming into force, the participating jurisdictions will provide public guidance on how reports for transactions that are not accepted for reporting by any recognized trade repository should be electronically submitted to the local securities regulatory authority.

**(5)** Subsection 26(5) provides for limited substituted compliance with this Instrument where a transaction has been reported to a recognized trade repository pursuant to the laws of a province of Canada other than the local jurisdiction or of a foreign jurisdiction listed in Appendix B, provided that the additional conditions set out in paragraphs 26(5)(a) and (c) are satisfied.

**(6)** Subsection 26(6) requires that all derivatives data reported for a given transaction be reported to the same recognized trade repository to which the initial report is submitted or, with respect to transactions reported under subsection 26(4), to the local securities regulatory authority.

For a bi-lateral transaction that is assumed by a clearing agency (novation), the recognized trade repository to which all derivatives data for the assumed transactions must be reported is the recognized trade repository to which the original bi-lateral transaction was reported.

The purpose of this requirement is to ensure the securities regulatory authority has access to all reported derivatives data for a particular transaction from the same entity. It is not intended to restrict counterparties' ability to report to multiple trade repositories.

**(7)** We interpret the requirement in subsection 26(7), to report errors or omissions in derivatives data "as soon as technologically practicable" after it is discovered, to mean upon discovery and in any case no later than the end of the business day on which the error or omission is discovered.

**(8)** Under subsection 26(8), where a local counterparty that is not a reporting counterparty discovers an error or omission in respect of derivatives data that is reported to a recognized trade repository, such local counterparty has an obligation to report the error or omission to the reporting counterparty for the transaction. Once an error or omission is reported by the local counterparty to the reporting counterparty, the reporting counterparty then has an obligation under subsection 26(7) to report the error or omission to the recognized trade repository or to the securities regulatory authority in accordance with subsection 26(6). We interpret the requirement in subsection 26(8) to notify the reporting counterparty of errors or omissions in derivatives data to mean upon discovery and in any case no later than the end of the business day on which the error or omission is discovered.

**Legal entity identifiers**

**28.** The Global LEI System is a G20 endorsed initiative[6] for uniquely identifying parties to transactions, designed and implemented under the direction of the LEI ROC, a governance body endorsed by the G20. The Global LEI System serves as a public-good utility responsible for overseeing the issuance of legal entity identifiers globally to counterparties who enter into transactions.

**(3)** If the Global LEI System is not available at the time a reporting counterparty is required under the Instrument to report derivatives data, including the LEI for each counterparty, with respect to a transaction, a counterparty must use a substitute legal entity identifier. The substitute legal entity identifier must be set in accordance with the standards established by the LEI ROC for pre-LEI identifiers. At the time the Global LEI System is operational, counterparties must cease using their substitute LEI and commence reporting their LEI. The substitute LEI and LEI could be identical.

**Unique transaction identifiers**

**29.** A transaction in the context of assigning a unique transaction identifier means a transaction from the perspective of all counterparties to the transaction. For example, both counterparties to a single swap transaction would identify the transaction by the same single identifier. For a bi-

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[6] See http://www.financialstabilityboard.org/list/fsb_publications/tid_156/index.htm for more information.

lateral transaction that is novated to a clearing agency, the reporting of the novated transactions should reference the unique transaction identifier of the original bi-lateral transaction.

## Unique product identifiers

**30.** Section 30 requires that a reporting counterparty identify each transaction that is subject to the reporting obligation under the Instrument by means of a unique product identifier. There is currently a system of product taxonomy that may be used for this purpose.[7] To the extent that a unique product identifier is not available for a particular transaction type, a reporting counterparty would be required to create one using an alternative methodology.

## Creation data

**31. (2)** Subsection 31(2) requires that reporting of creation data be made in real time, which means that creation data should be reported as soon as technologically practicable after the execution of a transaction. In evaluating what will be considered to be "technological practicable", we will take into account the prevalence of implementation and use of technology by comparable counterparties located in Canada and in foreign jurisdictions. The participating jurisdictions may also conduct independent reviews to determine the state of reporting technology.

**(3)** Subsection 31(3) is intended to take into account the fact that not all counterparties will have the same technological capabilities. For example, counterparties that do not regularly engage in transactions would, at least in the near term, likely not be as well situated to achieve real-time reporting. Further, for certain post-transaction operations that result in reportable transactions, such as trade compressions involving numerous transactions, real time reporting may not currently be practicable. In all cases, the outside limit for reporting is the end of the business day following execution of the transaction.

## Life-cycle event data

**32. (1)** When reporting a life-cycle event, there is no obligation to re-report derivatives data that has not changed – only new data and changes to previously reported data need to be reported. Life-cycle event data is not required to be reported in real time but rather at the end of the business day on which the lifecycle event occurs. The end of business day report may include multiple life-cycle events that occurred on that day.

## Valuation data

**33. (1)** Subsection 33(1) provides for differing frequency of valuation data reporting based on the type of entity that is the reporting counterparty.

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[7] See http://www2.isda.org/identifiers-and-otc-taxonomies/ for more information.

**Pre-existing transactions**

**34.** Section 34 outlines reporting obligations in relation to transactions that were entered into prior to the commencement of the reporting obligations.  Some pre-existing transactions are exempted from the reporting obligations in the Instrument, to relieve some of the reporting burden for counterparties and because derivatives data relating to such pre-existing transactions would provide marginal utility to the securities regulatory authority due to the imminent termination or expiry of the transaction.

The derivatives data required to be reported for pre-existing transactions under section 34 is substantively the same as the requirement under CFTC Rule 17 CFR Part 46 *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*.  Therefore, to the extent that a reporting counterparty has reported pre-existing transaction derivatives data as required by the CFTC rule, this would meet the derivatives data reporting requirements under section 34.  This interpretation applies only to pre-existing transactions.

Only the data indicated in the column entitled "Required for Pre-existing Transactions" in Appendix A is required to be reported for pre-existing transactions.


# PART 4
# DATA DISSEMINATION AND ACCESS TO DATA

**Data available to regulators**

**37.** The derivatives data covered by this section is data necessary to carry out the securities regulatory authority's mandate to protect against unfair, improper or fraudulent practices, to foster fair and efficient capital markets, to promote confidence in the capital markets, and to address systemic risk.   This includes derivatives data with respect to any transaction or transactions that may impact capital markets in Canada.

Transactions that reference an underlying asset or class of assets with a nexus to a jurisdiction in Canada can impact capital markets in Canada even if the counterparties to the transaction are not local counterparties.  Therefore, the participating jurisdictions have a regulatory interest in transactions involving such underlying interests even if such data is not submitted pursuant to the reporting obligations in the Instrument, but is held by a recognized trade repository.

**(1)** For the purpose of subsection 37(1) electronic access includes the ability of the securities regulatory authority to access, download, or receive a direct real-time feed of derivatives data maintained by the recognized trade repository.

**(2)** It is expected that all recognized trade repositories will comply with the access standards and recommendations developed by CPMI (formerly CPSS) and IOSCO and contained in the CPSS-IOSCO final report entitled *Authorities' access to trade repository data*.[8]

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

**(3)** We interpret the requirement for a reporting counterparty to use best efforts to provide the securities regulatory authority with access to derivatives data to mean, at a minimum, instructing the recognized trade repository to release derivative data to the securities regulatory authority.

**Data available to counterparties**

**38.** Section 38 is intended to ensure that each counterparty, and any person acting on behalf of a counterparty, has access to all derivatives data relating to its transaction(s) in a timely manner. The participating jurisdictions are of the view that where a counterparty has provided consent to a recognized trade repository to grant access to data to a third-party service provider, the recognized trade repository will grant such access on the terms consented to.

**Data available to public**

**39. (1)** Subsection 39(1) requires a recognized trade repository to make available to the public, free of charge, certain aggregate data for all transactions reported to it under the Instrument (including open positions, volume, number of transactions, and price). It is expected that a recognized trade repository will provide aggregate data by notional amounts outstanding and level of activity. Such aggregate data is expected to be available at no cost on the recognized trade repository's website.

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

- currency of denomination (the currency in which the derivative is denominated);
- geographic location of the underlying reference entity (e.g., "Canada" for derivatives which reference the TSX60 index);
- asset class of reference entity (e.g., fixed income, credit, or equity);
- product type (e.g., options, forwards, or swaps);
- cleared or uncleared; and
- maturity (broken down into maturity ranges, such as less than one year, 1-2 years, 2-3 years).

**(3)** The purpose of the public reporting delays is to ensure that counterparties have adequate time to enter into any offsetting transaction that may be necessary to hedge their positions. These time delays apply to all transactions, regardless of transaction size.

**(4)** Published data must be anonymized and the names or legal entity identifiers of counterparties must not be published. This provision is not intended to create a requirement for a recognized trade repository to determine whether anonymized published data could reveal the identity of a counterparty based on the terms of the transaction.

**PART 5**
**EXCLUSIONS**

**[Option #1] 40.** Section 40 provides that the reporting obligations under the Instrument do not apply with respect to a commodity derivatives transaction between two end-users in certain limited circumstances. The exclusion in this section applies only to a transaction relating to a derivative the asset class of which is a commodity other than cash or currency.

The objective of the exclusion is to reduce the reporting burden with respect to commodity derivatives transactions on end-users that may not be systemically important. As such, the exclusion applies only to a transaction where each counterparty is neither a derivatives dealer nor a Canadian financial institution. In accordance with the reporting counterparty waterfall in subsection 25(1), for a transaction with an end-user counterparty, a derivatives dealer or Canadian financial institution would be the reporting counterparty and would therefore have the obligation to report the transaction.

In order for this exclusion to apply, paragraph 40(c) requires that each counterparty to the transaction have less than $250,000,000 aggregate notional value under all outstanding commodity derivatives transactions, including the additional notional value related to that transaction. In calculating this exposure, the notional value of all outstanding transactions relating to a commodity other than cash or currency, with all counterparties, domestic and foreign, should be included. The notional value of a commodity derivatives transaction would be calculated by multiplying the quantity of the commodity by the price for that commodity.

**[Option #2] 40.** Section 40 provides that the reporting obligations do not apply in certain limited circumstances with respect to a commodity derivatives transaction between two entities that are not derivatives dealers. The exclusion in this section applies only to a transaction relating to a derivative the asset class of which is a commodity other than cash or currency.

This exclusion only applies if a local counterparty that is determined to be the reporting counterparty to a transaction has less than $500,000 aggregate notional value under all outstanding derivatives transactions, including the additional notional value related to that transaction. In calculating this exposure, the notional value of all outstanding transactions, including transactions from all asset classes and with all counterparties, domestic and foreign, should be included. The notional value of a commodity transaction would be calculated by multiplying the quantity of the commodity by the price for that commodity. For a transaction between two local counterparties that are not derivatives dealers, if the reporting counterparty as determined under subsection 25(1) is below the $500,000 threshold and is relying on the section 40 exclusion and the other local counterparty is above the $500,000 threshold, that other local counterparty is required to act as the reporting counterparty for the transaction.

## PART 7
## TRANSITION PERIOD AND EFFECTIVE DATE

**Effective date**

**44. (2)** The requirement under subsection 39(3) for a recognized trade repository to make transaction level data reports available to the public does not apply until **[date TBD plus [6] months]**.