

Canadian Reporting Guidance and Definitions



Introduction

The Ontario Securities Commission (**OSC**), the Manitoba Securities Commission (**MSC**) and the Autorité des marchés financiers (**AMF**), respectively, published Rule 91-507 requiring “reporting counterparties” to report certain derivatives data to “designated” or “recognized” trade repositories¹ with respect to transactions involving “local counterparties”. The OSC, MSC and AMF have also published companion policies. In these three jurisdictions, for trades involving a “clearing agency” or a Dealer, trade reporting commenced on October 31, 2014 and, for trades that do not involve such entities, on June 30, 2015. The securities regulatory authorities in certain of the remaining provinces of Canada have introduced substantially identical rules by way of MI 96-101 in 2016. Canadian federally regulated financial institutions may also be subject to similar federal or national rules, orders or directives issued by the Office of the Superintendent of Financial Institutions or other federal authorities.

Consistent with the Canadian Securities Administrators’ approach to harmonisation, other Canadian derivatives rules and instruments generally use a definition of “local counterparty” that is substantially equivalent to that set out in the TR Rules.

This letter allows you to provide information needed to assess how Canadian Regulatory Requirements do or may apply to Transactions between us.

Terms we use in this letter

Canadian Person, with respect to a jurisdiction in Canada, means a person or company, that is not an individual, that is organized under the laws of, has its head office in or has its principal place of business in the jurisdiction. For this purpose, “**person**” includes unincorporated organizations such as partnerships, associations, syndicates and trusts, “**company**” includes any incorporated entity, and “**jurisdiction**” means a province or territory of Canada or, with respect to jurisdiction of organization only, the federal jurisdiction of Canada.

Canadian Regulator means a Canadian provincial, territorial, federal or national regulatory authority, body or agency with jurisdiction to regulate derivatives activities or to regulate persons with respect to their derivatives activities, including the Office of the Superintendent of Financial Institutions with respect to the activities of federally regulated financial institutions.

Canadian Regulatory Requirements means Canadian Reporting Requirements and Other Derivatives Rules.

Canadian Reporting Requirements means any applicable laws, rules, regulations, instruments, orders or directives that mandate reporting and/or retention of transaction and similar information issued by any Canadian Regulator, including the TR Rules.

Dealer means a “dealer” as defined under the *Derivatives Act* (Québec) or a “derivatives dealer” as defined under the TR Rules.

Derivative means a derivative as defined in the securities or derivatives legislation, rules or regulations of a relevant Canadian jurisdiction,² that is not excluded from the definition by reason of any rule or order of the relevant Canadian Regulator.

Non-Canadian Regulator means any regulatory authority, body or agency with jurisdiction to regulate trade reporting with respect to derivatives activities or to regulate persons with respect to trade reporting in connection with their derivatives activities (including without limitation, the U.S. Commodity Futures Trading Commission or other U.S. regulators in the case of trade reporting under applicable U.S. laws, and the European Securities and Markets Authority and national regulators in the E.U. under the E.U. Regulation No. 648/2012 on OTC derivatives, central counterparties and trade repositories in the case of trade reporting under applicable E.U. laws).

Non-Canadian Reporting Requirements means any applicable laws, rules, regulations, instruments, orders or directives that mandate reporting and/or retention of transaction and similar information issued by any Non-Canadian Regulator.

MI 96-101 means Multilateral Instrument 96-101: *Trade Repositories and Derivatives Data Reporting*.

Other Derivatives Rules means laws, rules, regulations and instruments of Canadian Regulators with respect to Derivatives that include a substantially similar definition of “local counterparty” to that in the TR Rules or other definitions to which the representations or covenants made in this letter would be directly relevant.

Reporting Party Rules means the Canadian Transaction Reporting Party Requirements published by ISDA as they may be replaced, amended or supplemented from time to time.

Rule 91-507 means OSC and MSC Rule 91-507: *Trade Repositories and Derivatives Data Reporting* and AMF Regulation 91-507 respecting *Trade Repositories and Derivatives Data Reporting*.

TR Rules means Rule 91-507 and equivalent rules, regulations, instruments, directives or orders when finalized by any Canadian Regulator.

Transaction means the entering into, assigning, selling or otherwise acquiring or disposing of a Derivative or the novation of a Derivative.

¹ The terminology in Québec is “recognized” and in Ontario and Manitoba is “designated”.

² At the date of publication of this form of representation letter, the following provinces have adopted a definition of “derivative” – Ontario (*Securities Act*, s.1(1)), Manitoba (*Securities Act*, s.1(1)), and Québec (*Derivatives Act*, s.3). The meaning of the term “derivative” under the Ontario and Manitoba Securities Acts is “an option, swap, futures contract, forward contract or other financial or commodity contract or instrument whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, reference to or based on an underlying interest (including a value, price, rate, variable, index, event, probability or thing)”. The meaning of derivative under the Québec Derivatives Act is “an option, a swap, a futures contract, a contract for difference or any other contract or instrument whose market price, value, or delivery or payment obligations are derived from, referenced to or based on an underlying interest, or any other contract or instrument designated by regulation or considered equivalent to a derivative on the basis of criteria determined by regulation”. Although the definition is contained in different statutes, the remaining Canadian provinces adopt definitions of “derivative” that are substantively aligned with those in Ontario, Manitoba and Québec.