Canadian Transaction Reporting Party Requirements

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1. Background to This Document

On November 14, 2013, final versions of harmonized derivatives rules (the "reporting rules") in respect of product determination, trade repositories and derivatives data reporting were simultaneously published by:

- The Ontario Securities Commission ("OSC")

- Manitoba Securities Commission ("MSC") and

- Autorité des marchés financiers ("AMF") [Quebec]

Other provincial regulators in Canada are expected to publish similar reporting rules in due course.

Although the reporting rules require that in certain circumstances, both parties to a trade report, provincial regulators have advised they are willing to accept a report from a single reporting party ("RP") that is agreed by means of an industry standard. For purposes of consistency and efficiency of implementation, the ISDA Data & Reporting Canadian Working Group leveraged the reporting party standard already established for reporting to the U.S. Commodity Futures Trading Commission ("CFTC") to agree an appropriate standard for determining a RP for reporting under the reporting rules and those anticipated to be published by other provincial regulators. Leveraging the existing standard means that, in most cases, a single RP can submit a multi-jurisdictional report to meet the reporting requirements of both the CFTC and provincial regulators in Canada.

2. Reporting Party Requirements

According to the reporting rules, a reporting party to a transaction involving a local counterparty, as defined below, must report, or cause to be reported, to a designated or recognized trade repository ("TR"):

1. Creation data

2. Life-cycle event data

3. Valuation data

<u>Local counterparty</u>

Derivatives transactions involving at least one local counterparty are subject to reporting. A local counterparty is, at the time of the transaction, one or more of the following:

a) a person or company, other than an individual, organized under the laws of, or having its head office or principal place of business in the province

b) a counterparty registered under provincial securities law as a dealer or derivatives dealer

c) 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

<u>Dealer status</u>

A party is considered to be a dealer for the purposes of Reporting Counterparty determination if it meets the definition of "dealer" as defined under the *Derivatives Act* (Quebec), or "derivatives dealer" as defined under the reporting rules (as applicable), or has deemed itself to be a "dealer" for purposes of these Canadian Transaction Reporting Party Requirements by making that covenant in the Canadian Representation Letter[1] (or has otherwise communicated such intent to its counterparty).

An unregistered dealer only has an obligation to report if it is a local counterparty or it faces a local counterparty in the relevant province(s).

Dealer registration is already in effect in Quebec (subject to exemptions, including for trades between accredited counterparties), but however is not expected to be required until 2015 in other provinces.

<u>Platform executed trades</u>

Contrary to reporting requirements under the CFTC, the Canadian reporting rules do not assign a reporting obligation to an execution venue or platform utilized by the parties (e.g., a SEF or DCM). If offered, a RP could elect to have the execution venue perform delegated reporting on its behalf.

3. Reporting Counterparty Responsibility

The RP is the party with the responsibility to report a derivatives transaction to a TR as soon as technologically practicable after execution in accordance with the applicable provincial reporting rules. Under the reporting rules, one or both parties must bear responsibility to ensure that the trade is reported. To reduce the reporting burden, the provincial regulators

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[1] http://www2.isda.org/attachment/NjM5MA==/SETOR1-%236216374-v3-ISDA_Canadian_Representation_Letter_Final_Version.doc

have published a hierarchy whereby in certain cases one party is the designated reporting counterparty party, as follows:

1. If cleared: the recognized or exempt clearing agency

2. If uncleared, and between:

   - Two derivatives dealers: both report

   - A derivative dealer and a non-dealer: the dealer

   - Otherwise, each local counterparty

In addition, a local counterparty must act as a reporting party if:

1. The reporting counterparty in a dealer to non-dealer trade is not a local counterparty; *and*

2. By the end of the second business day following the day on which derivatives data is required to be reported, the local counterparty has not received confirmation that the transaction has been reported.

Please note: The Canadian Securities Administrators (CSA) OTC Derivatives Committee is currently considering amendments to §25 (Reporting Counterparty) of the reporting rules to accept use of the reporting party determination standard defined in § 5 and 6 of this document, provided certain conditions are met. This document will be updated if and when any amendments to the reporting rules are approved.

4. Designation of Reporting Responsibilities:

A party required to report pursuant to the reporting rules may delegate its reporting responsibilities to the other counterparty to the transaction or to a third party service provider. However, the party that is required to report remains responsible for timely and accurate reporting under the reporting rules.

Delegation for dual reporting

Provincial regulators have confirmed that for uncleared swaps where the parties are either both derivatives dealers or both non-dealer local counterparties, delegation to one of the parties to report is both acceptable and preferred.

5. Same Level Determination of the Reporting Party

In situations where both counterparties to a transaction are dealers, or neither counterparty is a dealer, and consequently both counterparties would have reporting obligations, it is useful to adopt reporting obligation allocation rules to be followed in choosing the RP.

Therefore RPs are establishing a set of rules ("Reporting Party Rules") for each derivative transaction to determine which counterparty has the RP responsibility for creation, life-cycle event and valuation data.

The remainder of this document sets out the Reporting Party Rules that will apply between counterparties to a transaction that have agreed to comply with these rules, including by elections made in Part V of ISDA Canadian Representation Letters exchanged between the counterparties or via a multilateral agreement (administered by and delivered to ISDA).

"Dealer" means each counterparty to the transaction that has elected in the ISDA Canadian Representation Letter delivered to the other party to be deemed a Dealer (or has otherwise agreed with the other party to be treated as a Dealer) for the purpose of these Reporting Party Rules.

For purposes of consistency and efficiency of implementation, these Reporting Party Rules leverage the hierarchy established for CFTC reporting, including taking into consideration the registration of both U.S. and non-U.S. parties with the CFTC as Swap Dealers and Major Swap Participants[2].

Reporting Party hierarchy

For transactions involving at least one local counterparty, if only one party to a transaction is a Dealer, then such party shall be the RP in respect of the transaction.

If both parties to the transaction are Dealers or neither party to the transaction is a Dealer, then the Reporting Party hierarchy is as follows:

1. Swap Dealer ("SD")
2. Major Swap Participant ("MSP")
3. Dealer which is neither a SD or MSP
4. Local counterparty which is neither a SD, MSP, nor a Dealer

In cases where the parties do not both have the same classification in the hierarchy above, the party which has the classification that appears higher in the above hierarchy will be the RP for the transaction.

In cases where both parties have the same classification in the hierarchy above (e.g. two SDs, two MSPs, or two Dealers which are neither SDs or MSPs), RP shall be determined based on asset class specific "tie-breaker" logic set out in Section 6 "Reporting Party Rule Determination by Asset Class" below.

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[2] SD/MSP registry: http://www.nfa.futures.org/NFA-swaps-information/regulatory-info-sd-and-msp/SD-MSP-registry.HTML

Prime Brokerage Intermediation

Notwithstanding the reporting party hierarchy provided above, an alternative approach to reporting party determination applies to transactions intermediated by a Prime Broker ("PB"). In brief and in very general terms, under customary PB arrangements, a client of a PB agrees on the terms of a PB intermediated trade with an Executing Broker ("EB") and then the client and/or the EB gives up the trade to a PB for its acceptance. If the trade terms are within certain pre-agreed parameters and the PB thus accepts the trade, the result is two off-setting transactions, one between the EB and PB and the second between the PB and the client. In these cases, reporting responsibilities are as follows:

- EB is the RP for the EB-PB trade
- PB is the RP for the PB-Client trade

For the avoidance of doubt, there is no separate transaction between the EB and client to report.

6. Reporting Party Rule Determination by Asset Class

Because of the different characteristics and workflows of the various asset classes: Rates, Credit, Equity, Commodity and FX, each asset class ISDA Steering Committee and associated working groups analyzed in detail the specific trade workflows in formulating a "Reporting Party Rule" convention appropriate to that asset class.

The following rules for determining the RP in respect of a transaction will apply if tie-breaker logic is specified pursuant to Section 5 to apply.

1. Credit

Where both parties are the same hierarchy level, the RP is the Floating Rate Payer (a/k/a 'seller'). For Swaptions, the RP is the Floating Rate Payer of the underlying swap.

2. Rates

Product Attribute Determination

RP Tiebreaker Logic - Rates		
Trade Type	**Explanation**	**Reporting Party**
Cap/Floor	When a single Fixed Rates Payer exists	Fixed Rate Payer. Otherwise Reverse ASCII sort, first LEI/pre-LEI
Debt Option	All	Option Buyer
Exotic	All	Reverse ASCII sort, first LEI/pre-LEI
FRA	All	Fixed Rate Payer
IRS Basis	All	Reverse ASCII sort, first LEI/pre-LEI
IRS Fix-Fix	All	Reverse ASCII sort, first LEI/pre-LEI
IRS Fix-Float	All	Fixed Rate Payer
IRSwap: Inflation	When a single Fixed Rates Payer exists	Fixed Rate Payer. Otherwise Reverse ASCII sort, first LEI/pre-LEI
IRSwap: OIS	All	Fixed Rate Payer
Swaption	All	Option Buyer
XCCY Basis	All	Reverse ASCII sort, first LEI/pre-LEI
XCCY Fix-Fix	All	Reverse ASCII sort, first LEI/pre-LEI
XCCY Fix-Float	All	Fixed Rate Payer

Tiebreaker Logic

When the Legal Entity Identifier ("LEI")/pre-LEI tiebreaker is invoked the following processes will be used:

1. Identifier Tiebreaker Logic Scenarios

    i.   When only one firm has an LEI/pre-LEI then the party with the LEI/pre-LEI is the RP.

    ii. When both firms have an LEI/pre-LEI then determine based on comparison of the two LEI/pre-LEIs in accordance with the below.

2. Determining sort order of identifiers

    - LEI/pre-LEI are comprised of characters from the following set {0-9, A-Z}.

    - For avoidance of doubt, before comparing LEIs convert all LEIs to UPPER CASE only.

    - For comparison basis the sort order will be reverse ASCII sort order. For avoidance of doubt the following are sort order of precedence:

        o Z, Y, X, W, V, U, T, S, R, Q, P, O, N, M, L, K, J, I, H, G, F, E, D, C, B, A, 9, 8, 7, 6, 5, 4, 3, 2, 1, 0.

3. When comparing two LEIs the RP will be the firm with the first ID in the list when sorted in reverse ASCII sort order.

3. Equity

When both parties are of the same hierarchy level, the RP will be the:

- Seller of performance on any product in the taxonomy.[3]

- Seller of product on all other (exotic) products in the taxonomy.

- If seller cannot be identified the fall back would be for the parties to agree amongst themselves.

- For Portfolio Swaps Agreements (PSA's) the seller will remain the seller regardless of the underlying's performance.

For the avoidance of doubt, if the trade is confirmed via negative affirmation, the provider of the negative affirmation agreement is the RP.

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[3] http://www2.isda.org/otc-taxonomies-and-upi/

4. Commodities

A seller convention applies if the executed trade is one of the trade types enumerated in the table below. Otherwise, the LEIs of the parties should be compared in standard ASCII order and the party with the first ID in the list will be the RP.

RP Tiebreaker Logic - Commodities		
Trade Type	Explanation	Reporting Party
Fixed Floating Swap	Seller of the Fixed leg = Reporting Party	Fixed leg seller (Receiver of Cash on the fixed leg)
Option	Receiver of premium payment or Option writer	Seller
Swaption	Receiver of premium payment or Swaption writer	Seller
Option Strategies (Collars, Corridors, Multi-leg)	Premium receiver is the Seller = Reporting Party	Premium Receiver
	If no premium, go to alpha convention	Go to alpha convention
For trade types not listed above		
Seller convention with Alpha	Any trade that falls outside of that list will have the alphanumeric ASCII convention applied based on the LEI/pre-LEI. The LEI/pre-LEI selected as the RP will be the LEI/pre-LEI at the top of that sort order. As an example, ASCII is the same sort logic that MS Excel applies.	

5. FX

When asset class tie-breaker logic needs to be applied:

- For Cash trades: The RP is the counterparty selling the currency that occurs first in the 26-letter English alphabet.
- For Options: The RP is the seller of the option.

RP Tie Breaker Logic - FX		
Taxonomy	Rule	Comment
Forward	FX Cash Rule	For FX Swaps, the Reporting Party of both legs of the swap would be determined by applying the Cash Rule to the far-leg of the Swap
NDF	FX Cash Rule	n/a
Option	Option Seller Rule	n/a
NDO	Option Seller Rule	n/a
Simple Exotic	Option Seller Rule	n/a
Complex Exotic	See comment	For a complex exotic product where there is an unambiguous seller of the product, then Option Seller Rule would apply. The seller determination would be driven by the seller as agreed in the standard FpML representation of the product. IF there is no clear seller, then the FX Cash Rule would apply.

For more information see:

http://www.gfma.org/uploadedfiles/initiatives/foreign_exchange_(fx)/determiningreportingpartyunderdoddfrank.pdf

7. Change in Registration Status or Classification

Once determined in accordance with the Reporting Party Rules, the RP determination for a particular reported transaction remains unchanged through the remaining life of the Unique Transaction Identifier ("UTI") until the derivative transaction is matured / terminated / novated away / compressed into a new transaction. The RP is reassessed only when a new UTI is created. (In summary if an event does not result in a new UTI, the RP remains unchanged. If the event results in a new UTI, the RP is calculated afresh for the new UTI using the status or classification of the parties effective at that date).

To be clear, the following events would not change the RP determination for previously reported transactions: a SD or MSP registration, a SD or MSP deregistration, a SD Limited Designation, a provincial Derivatives Dealer registration. For purposes of the reporting party hierarchy, these changes to party classification should only be applied to determination of a RP for transactions entered into after the relevant change.

The following table indicates which life-cycle events would result in a new UTI (and therefore a reassessment of the RP):

Event Type		New UTI Generated?
New Trade		Y
Amendment (correction to the trade for any trade attribute or fee)		N
Cancel (trade booked in error)		N
Trade Allocated	Original Unallocated "Block" Trade	N
	Allocated Trades	Y (each allocation)
Cleared Positions	Original Bilateral Trade (alpha)	N
	Cleared Positions (beta and gamma)	Y
Termination / Unwind		N
Partial Termination / Partial Unwind / Partial Decrease		N

Increase / Decrease		N
Full Novation – for the transaction between Remaining Party and the Transferee		Y
Full Novation – 4 way		Y
Partial Novation – Partial Remaining Party	Original Trade	N
	New Trade	Y
Partial Novation – Partial 4 way	Original Trade	N
	New Trade	Y
Exercise	Original Option	N
Exercise (New Swap - Physically Settled)		Y
Prime Brokerage		Y
Succession Events	Rename	N
	Reorganizations	Y
Credit Events	Bankruptcy / Failure to Pay	N
	Restructuring	Y[4]
Compression Events	Original Trade - Terminated	N
	Original Trade – Amendment	N
	New Trade	Y
CCP: Position Transfer (i.e. transfer of a trade between Clearing Members)		Y
CCP: Declear then Reclear		Y
CCP: Compression		Y

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[4] Depending on product type and triggering activity

8. Reporting Pre-existing Transactions

The reporting rules require that a reporting party must report a subset of creation data for "pre-existing transactions" to a TR. (See Appendix A of the reporting rules for the required data fields.)

With respect to OSC, MSC and AMF, "pre-existing transactions" includes transactions entered into before July 2, 2014 that had outstanding contractual obligations on that day and which continue beyond the December 31, 2014 deadline for reporting the pre-existing transaction. In addition, the RP must commence reporting lifecycle data and valuation data after creation data has been reported.

In order to avoid duplicate reporting, the Reporting Party Rules should be followed with respect to determining which party will report each pre-existing transaction (or, if so agreed between the parties to the trade, the RP shall be the party to the trade which has previously reported the trade in accordance with foreign laws).