

BY E-MAIL

August 14, 2014

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Dear Sirs / Mesdames:

**Re: Notice and Request for Comments: Draft Regulation to amend Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting and Blanket decision regarding exemption from reporting obligation under Draft Regulation to amend Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting**

This comment letter is submitted in response to the *Notice and Request for Comments: Draft Regulation to amend Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* (respectively, the “**Notice to the Draft Amendment**” and the “**Draft Amendment**”) published for comments by the Autorité des marchés financiers (the “AMF”) on July 3, 2014 (the “**Request for Comments**”). We also refer to *Blanket decision No. 2014-PDG-0084 regarding exemption from reporting obligation under Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* issued by the AMF on July 31, 2014 (the “**Blanket Decision**”) and the notice thereto (the “**Notice to the Blanket Decision**”). We note that the Notice to the Blanket Decision extends the comment period for the Draft Amendment from August 2, 2014 to August 21, 2014 to enable interested persons to consider the Draft Amendment in light of the Blanket Decision. The International Swaps and Derivatives Association,

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Inc. (“ISDA”) welcomes the opportunity to respond to the Request for Comments and would be happy to discuss the views expressed in this response as the AMF deems appropriate.<sup>1</sup> We submit the following comments on the Draft Amendment and the Blanket Decision in respect of *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* (“**Regulation 91-507**”).

Reference is also made to our letters dated September 12, 2011 to the Canadian Securities Administrators’ (“CSA”) OTC Derivatives Committee (the “**CSA Committee**”) regarding Consultation Paper 91-402 on Derivatives: Trade Repositories and September 6, 2013 on Multilateral CSA Staff Notice 91-302 *Updated Model Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting* (the “**TR Comment Letters**”).

ISDA is actively engaged with providing input on regulatory proposals in the United States, the United Kingdom, Europe and Asia. ISDA is leading industry efforts to enhance trade reporting of OTC derivatives data. Our comments on the Draft Amendment and Blanket Decision (the “**AMF Amending Documents**”) are derived in part from these efforts and this experience and from consultation with ISDA members operating in Canada and globally. They build upon our comments in the TR Comment Letters.

We have organized our comments as follows: I. General Comments, II. Comments on the Draft Amendment and III. Comments on the Blanket Decision.

## **I. General Comments**

We note that, as stated in the Notice to the Draft Amendment, the publication of the Draft Amendment and the issuance of the Blanket Decision by the AMF follow:

- (a) the issuance by the CSA of their April 10, 2014 press release stating their intention to extend the date for the commencement of over-the-counter (OTC) derivatives trade reporting until October 31, 2014 for clearing agencies and dealers, and until June 30, 2015 for all other OTC derivatives market participants, and reiterating “their commitment to a harmonized oversight and reporting regime for OTC derivatives markets”;

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<sup>1</sup> Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 64 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: [www.isda.org](http://www.isda.org).

- (b) the publication by the Ontario Securities Commission (“**OSC**”) on April 17, 2014 of amendments effective July 2, 2014 to OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (the “**OSC Rule**”) to delay the effective date of reporting obligations and reduce the burden of reporting obligations on local end-user counterparties under the OSC Rule;
- (c) the issuance by the AMF on April 17, 2014 of a notice “reiterating its intention to maintain a harmonized national oversight and reporting regime for OTC derivatives markets”;
- (d) the issuance by the AMF on May 15, 2014 of its blanket exemption decision No. 2014-PDG-0051 (in French only) to extend the date for the commencement of over-the-counter (OTC) derivatives trade reporting (the “**May 15, 2014 AMF Blanket Decision**”).

We also note that, as stated in the Notice to the Draft Amendment, the Draft Amendment is intended to form part of the AMF’s “work to establish a harmonized national regulatory framework and ensure the effective implementation of Regulation 91-507” and make amendments to Regulation 91-507 to “address the operational constraints raised by market participants”.

We again commend the AMF and the rest of the CSA Committee for working cooperatively with each other and with other regulators to reduce inconsistencies and conflicts between the various regulatory regimes in Canada and globally. As noted in the TR Comment Letters, inconsistent or duplicative reporting and other requirements resulting from overlapping regulations that can lead to regulatory uncertainty, excessive costs and compliance errors should be avoided. Even minor differences in rules could provide a disincentive for dealers to transact with counterparties from Canadian jurisdictions with less significant derivatives activity and thereby decrease liquidity in the Canadian market, which could in turn severely impact Quebec and the rest of the Canadian derivatives market, given the size of the domestic market relative to other international markets. We believe that minimizing and, if at all possible, eliminating any technical divergence in the rules from one Canadian jurisdiction to the next will further the CSA’s goals with respect to derivatives data reporting more than adopting any idiosyncratic requirements in a particular jurisdiction.

Now that industry stakeholders have invested considerable resources in developing functional reporting infrastructure and compliance systems to implement the current product determination, trade repositories and derivatives data reporting requirements under the existing 91-507 instruments (collectively, the “**TR Rules**”) in place in Quebec, Ontario and Manitoba (collectively, the “**Canadian TR Jurisdictions**”), the need to

minimize any technical divergence in the trade reporting rules as between these jurisdictions is all the more critical.

As described below, we believe that certain amendments proposed in the Draft Amendment are problematic and difficult to reconcile with the AMF's stated commitment to maintaining a "harmonized regulatory framework" in relation to derivatives data reporting.

In this respect, we would respectfully note that the introduction of material changes to the TR Rules in one Canadian TR Jurisdiction, but not the others, at this late stage of the legal and operational implementation of the TR Rules by Canadian market participants, is a real issue for the industry. The uncertainty as to whether the Quebec TR Rule will ultimately be harmonized, separate and apart from the compliance and technological issues created by the current lack of harmonization, is equally problematic. Even if Regulation 91-507 is ultimately harmonized with the other TR Rules, the very late introduction of this issue is significantly distracting attention from actual implementation work and is creating material and costly regulatory uncertainty.

We respectfully submit that, for technological, legal and compliance reasons as more fully described below, it is critical that harmonized amendments to Regulation 91-507 be made prior to the October 31, 2014 reporting start date and not at a later date. We would therefore urge the AMF not to proceed with the enactment of sections 1, 3 and 4 of the Proposed Amendments as they relate to "Canadian financial institutions" and to reformulate these provisions on a basis that is harmonized with the other TR Rules, by way of amendment to Regulation 91-507 or by way of an interim blanket decision, with effect as soon as practicable.

## II. Comments on the Draft Amendment

We have the following comments on the Draft Amendment:

### A. **The addition of "Canadian financial institutions" to section 25 of Regulation 91-507 with respect to the determination of the reporting counterparty**

The Draft Amendment would effectively amend the hierarchy for the reporting counterparty under section 25 of Regulation 91-507 as set out in Schedule "A" (attached for reference purposes only). We respectfully note the following:

1. These proposed amendments, if enacted, would constitute a material departure from the harmonized reporting counterparty hierarchy which the CSA Committee developed in the TR Rules on the basis of

detailed consultations with industry stakeholders (the “**TR Reporting Hierarchy**”).

2. Canadian market participants and other industry stakeholders have been building out their reporting infrastructure and compliance systems, and coordinating and communicating with their existing dealer and end-user counterparties in reliance on the TR Reporting Hierarchy as enacted in the TR Jurisdictions on December 31, 2013.
3. Consistent with the practice in other international markets, Canadian market participants have been developing industry solutions to help manage the challenge of providing streamlined, compliant and reliable reporting under the TR Rules. For example, ISDA (in consultation with market participants) has developed for use by Canadian market participants the “Canadian Representation Letter – Trade Reporting and Other Obligations” published on April 23, 2014 (the “**ISDA Canadian Representation Letter**”) (and available in English and French versions). ISDA, in conjunction with Markit®, has also developed an on-line facility called the “ISDA Amend” service (the “**ISDA Amend Service**”) that allows market participants to provide the representations to multiple counterparties and to make the agreements with multiple counterparties that facilitate reporting. ISDA (in consultation with market participants) has also developed the “Canadian Transaction Reporting Party Requirements” (published on April 4, 2014) (and now available in English and French versions) to leverage the existing reporting party standard already in place for reporting to the U.S. Commodity Futures Trading Commission (“**CFTC**”) and to adopt reporting obligation allocation rules, including an asset class specific “tie-breaker” logic, where both counterparties have the same classification in the TR Reporting Hierarchy (the “**ISDA Methodology**”).
4. These and other industry-led solutions have been developed based on ongoing consultations with the CSA Committee and are predicated on the TR Reporting Hierarchy as enacted effective December 31, 2013. The proposed TR amendments, if enacted in Quebec alone, may lead to inconsistent outcomes in the Canadian TR Jurisdictions, may require amendments to these carefully constructed industry protocols and may give rise to material compliance, operational and technological issues for Canadian market participants given the infrastructure and compliance systems and procedures which they

have already developed on the basis of the TR Reporting Hierarchy as at December 31, 2013.

5. The term “Canadian financial institutions” is defined in section 3 of *Regulation 14-101 Respecting Definitions* (Quebec) as “a bank, loan corporation, trust company, insurance company, treasury branch, credit union or caisse populaire that, in each case, is authorized to carry on business in Canada or a jurisdiction, or the Fédération des caisses Desjardins du Québec”. It does not therefore capture foreign (non-Canadian) financial institutions which are major participants in the Canadian derivatives market and effectively treats Canadian financial institutions and non-Canadian financial institutions differently. Non-Canadian financial institutions are not expressly covered by the proposed amendments to the TR Reporting Hierarchy in Quebec and would arguably not be captured as “a person subject to the registration requirement as a dealer under the Act” on the same theory that the AMF is concerned that a “Canadian financial institution” might not be.

6. In the Notice to the Draft Amendment, the AMF states that:

In developing Regulation 91-507, the Committee’s intention was to avoid duplicative reporting by imposing the reporting requirement on the most technologically sophisticated counterparty. Section 25 of Regulation 91-507 therefore imposes the registration requirement on the dealer, as defined under the Act.

However, due to the dealer business triggers developed by the CSA, financial institutions engaging in derivatives trading on their own behalf might not currently be subject to the registration requirement as a dealer under the Act.

To meet the objective of imposing the reporting requirement on the most sophisticated party, section 25 of Regulation 91-507 will be amended to explicitly add Canadian financial institutions to the determination of the reporting counterparty. [emphasis added]

By including “Canadian financial institutions” in the TR Reporting Hierarchy for Quebec purposes, the Draft Amendment may in fact undermine the CSA Committee’s stated policy objective of imposing the reporting requirement on the most “technologically sophisticated counterparty”. In particular, based on our understanding of the market, many of the categories of market participants included in the definition of “Canadian financial institution” in section 3 of *Regulation 14-101 Respecting Definitions* (Quebec) such as insurance companies or

*caisses populaires* would likely view themselves as end-user counterparties. On the basis of the TR Reporting Hierarchy as at December 31, 2013, these market participants may have been assuming that as long as they trade with a bank, they would have no reporting obligations and will likely not have built any reporting infrastructure at all. To abruptly impose reporting obligations on this category of market participants may effectively force them to stop trading since the structure of delegated reporting (with full residual compliance liability) may render third party arrangements for delegated reporting problematic for many of these end-users.

7. Moreover, since non-Canadian financial institutions would not be expressly covered by the amended TR Reporting Hierarchy, they might legitimately view themselves as being at the same reporting level as a local counterparty that is an end-user in Quebec and is not a “Canadian financial institution”. For example, under the Proposed Amendment, if a local end-user such as a Quebec-based pension plan entered into an OTC derivative transaction with a London-based financial institution that is not subject to the dealer registration requirement in Quebec, a strict reading of section 25(1) of Regulation 91-507, as amended by the Draft Amendment, would require that the Quebec-based pension plan also report the details of the trade notwithstanding that the London-based financial institution would have the infrastructure in place to do so and would have to report a similar trade in Ontario. This result would also differ from the result in the other Canadian TR Jurisdictions and put Quebec-based end-users at a material disadvantage in relation to other end-users in the other Canadian Jurisdictions.
8. As a result, this proposed amendment, if enacted, would depart materially from the established TR Reporting Hierarchy with respect to the reporting obligations applicable to end-users. It would also undermine industry-led solutions which have been developed on the basis of the TR Reporting Hierarchy to treat both Canadian and non-financial institutions and other market participants that may be captured by the definitions of “derivatives dealer” in the Canadian TR Jurisdictions at the same level of the TR Reporting Hierarchy and encourage these market participants to assume the responsibility for trade reporting (including, for example, under the ISDA Canadian Representation Letter, the ISDA Amend Service and the ISDA Methodology) because they are in the best technological position to do so and that approach is consistent with the AMF’s stated objectives and reporting practices in other global jurisdictions.



9. The Draft Amendment may also undermine the same-level trade allocation rules and the asset class specific “tie-breaker” logic under the ISDA Methodology as between both Canadian and non-Canadian market participants. Although the Blanket Decision does allow counterparties to agree in advance to rely on the ISDA Methodology, the Draft Amendment would effectively lead to different outcomes under the Regulation 91-507 as compared to the outcomes under the TR Rules in Ontario and Manitoba notwithstanding the terms of the Blanket Decision. For example, a Toronto-based Canadian financial institution that is a local counterparty in both Ontario and Quebec and that enters into a swap with a New York-based financial institution may have to report the transaction in Quebec even though the trade would be reportable by the New York-based financial institution in Ontario based on the ISDA Methodology. This result may again lead to inconsistent and potentially duplicative reporting obligations, which, as a policy matter, the AMF and the other CSA Committee members have been working to avoid.
10. With respect to the statement in the Notice to the Draft Amendment that “financial institutions engaging in derivatives trading on their own behalf might not currently be subject to the registration requirement as a dealer under the Act”, we note that the definition of “dealer” under section 3 of the *Derivatives Act* (Quebec) (the “QDA”) is very broadly framed and currently captures both proprietary and commercial derivatives trading activities by a broad range of market participants: “a person who engages or purports to engage in the business of (1) derivatives trading on the person's own behalf or on behalf of others; or (2) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of an activity described in paragraph 1”.
11. As stated in the AMF’s 2006 and 2007 industry consultations, the QDA was intended to be broadly framed as principles-based “catch and release” legislation that would potentially encompass all OTC derivatives market participants but exempt them under a broad-based exemption, namely section 7 of the QDA (the “**OTC Derivatives Exemption**”).<sup>2</sup> The OTC Derivatives Exemption specifically exempts

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<sup>2</sup> See the AMF May 2006 concept paper entitled *Regulation of Derivatives Markets in Quebec* in which the AMF states that “[a] Derivatives Act should have an extended scope with respect to the instruments that fall under its jurisdiction. It would cover all persons who are the ultimate beneficiaries of derivatives trading, whether over-the-counter or regulated. Where such person is a sophisticated



both registered dealers and financial institutions (broadly interpreted to include both Canadian and non-Canadian financial institutions)<sup>3</sup>. Although at the time, ISDA commented on the broad reach of this approach<sup>4</sup>, the QDA was enacted on that basis and the Canadian derivatives market has adapted to this exemption. Provided that an OTC derivative transaction involves “accredited counterparties only”, it has not been necessary for a financial institution, whether Canadian or foreign, to make a definitive determination as to whether its derivatives activities would be captured by the broad definition of “dealer” under the QDA. Regulation 91-507 refers to “dealer” and not to a “registered dealer” for the purposes of the harmonized TR Reporting Hierarchy under section 25(1). On that basis, the ISDA Canadian Representation Letter allows a counterparty to elect to be treated as a “dealer” in Quebec for the limited purpose of facilitating compliance with the reporting obligations under Regulation 91-507 as the party in the best technological position to do so.

12. The derivatives dealer registration requirement is not yet enacted under the *Securities Act* (Ontario) and the *Securities Act* (Manitoba), the only two other CSA jurisdictions which to date have enacted TR Rules. We understand that the CSA expect to publish harmonized derivatives registration rules in the course of 2015. As consistently noted in our comment letters, the CSA Committee should differentiate “financial institutions” from conventional “registered” dealers that are subject to full derivatives dealer registration in Quebec and membership with the Investment Industry Regulatory Organization of Canada (IIROC).
13. We respectfully submit, however, that, at this late stage of the market’s efforts to comply with the TR Rules, the time for making this distinction is at the time that consequential amendments will be made concurrently to derivatives/securities legislation in the Canadian TR Jurisdictions to implement the new harmonized derivatives registration rules. To introduce the concept of “Canadian financial institution” and materially change the TR Reporting Hierarchy in Quebec only is counterproductive, highly burdensome and unfair to both “buy-side” end-users that are “Canadian financial institutions”

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investor, legal provisions would not apply.”

<sup>3</sup> See the AMF’s Policy Statement Respecting Accredited Counterparties (Derivatives Act).

<sup>4</sup> See IDA comment letter of July 26, 2006 <http://www.lautorite.qc.ca/files/pdf/professionnels/marches-derives/2006/ISDA.pdf>.

and “sell side” market participants, coming as it does at the tail-end of the efforts by the Canadian derivatives industry to develop harmonized market solutions to support reporting by market participants which have the infrastructure to do so.

14. Because of the operational complexity and large transaction volumes involved, reporting must be done on an automated basis and that requires very significant systems development work, which in turn may require several months of prior development work. As a result, by the time these issues are resolved, the reporting market participants will already have had to commit to their build schedules. The only reasonable basis will be to assume harmonization of these requirements – which, as a practical matter, means that these issues must be fixed at the outset and not addressed at a later date through subsequent harmonization.
15. As illustrated in our examples above, the introduction of a modified TR Reporting Hierarchy in Quebec only risks undermining the very legitimate policy objective that the AMF articulated as the basis of this amendment (“imposing the reporting requirement on the most technologically sophisticated counterparty”) and the AMF’s equally important goal of maintaining “a harmonized national oversight and reporting regime for OTC derivatives markets”.

For the reasons noted above, we respectfully submit that the enactment of the proposed amendments to section 25 of Regulation 91-507 would be highly problematic for the Canadian derivatives industry as a whole and may produce unintended effects that would be even more burdensome to local counterparty end-users in Quebec than any unintended effects of the current TR Reporting Hierarchy under section 25 of Regulation 91-507.

We would therefore respectfully urge the AMF not to proceed with the proposed amendments to subsection 25(1) of Regulation 91-507 and to reformulate section 25 (including the repeal of subsection (2)) and the other provisions noted below on a basis that is fully harmonized with the other TR Rules, either by way of amendment to Regulation 91-507 or, if this is not possible, by way of an interim blanket decision, with effect as soon as practicable and prior to the October 31, 2014 reporting start date.

**B. Amendment to section 42 of Regulation 91-507 to extend the commencement date of the reporting requirement**

The Draft Amendment would amend section 42 of Regulation 91-507 to extend to June 30, 2015 the commencement date of the reporting requirement in the case of “[a] reporting counterparty that is neither a recognized or exempt clearing house, nor [a] Canadian financial institution, nor a person subject to the registration requirement as a dealer under the Act”. The Notice to the Draft Amendment states that this amendment is intended to “reflect the extension of the commencement date of the reporting requirement by operation of blanket exemption decision 2014-PDF-0051 dated May 15, 2014”. The May 15, 2014 AMF Blanket Decision provides an exemption effective July 2, 2014 that “shall cease to be effective on October 31, 2014 for a reporting counterparty that is a dealer, a clearing house or a Canadian financial institution”[unofficial translation; emphasis added].<sup>5</sup> The differential treatment of “Canadian financial institutions” and “dealers” for the purposes of Regulation 91-507 was introduced for the first time under this blanket decision.

The effect of both the proposed amendment to section 42 of Regulation 91-507 and the May 15, 2014 AMF Blanket Decision is to delay the start date for non-Canadian “financial institutions” in Quebec which are otherwise subject to the October 31, 2014 start date for “derivatives dealers” and clearing agencies in the other Canadian TR Jurisdictions. For compliance, governance and a range of other legitimate reasons, most market participants will not voluntarily submit to a regulatory deadline in the absence of a specific requirement to do so. For example, there may be data protection/privacy issues in reporting certain data in the absence of a clear legal obligation to report.

As a result, we would respectfully submit that this amendment, if formally enacted, would undermine the AMF’s stated policy objective of maintaining “a harmonized national oversight and reporting regime for OTC derivatives markets”. The proposed amendment would also contradict the timeline established under the industry-led reporting framework (e.g., the ISDA Canadian Representation Letter, the ISDA Amend Service and the ISDA Methodology) which contemplates that both Canadian and non-Canadian financial institutions would commence reporting on October 31, 2014. For these reasons, we would respectfully urge the AMF to align the commencement date under section 42 of Regulation 91-507 so that it applies to reporting counterparties that are not dealers or recognized or exempt clearing houses, consistent with the reporting start date in the other Canadian TR Jurisdictions for these categories of reporting counterparties.

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<sup>5</sup> The decision does not distinguish between “dealers” that are “subject to the registration requirement” and those that may be captured by the definition of “dealer” under the QDA but may be exempted under the OTC derivatives Exemption.

**C. Amendment to section 34 of Regulation 91-507 to extend the commencement date for the reporting of pre-existing transactions**

The issues noted in paragraph B above resulting from the reference to “Canadian financial institution” in the proposed amendment to section 42 of Regulation 91-507 are also raised by the reference to “Canadian financial institution” in the proposed amendments to section 34 of Regulation 91-507 extending the start date for the reporting of pre-existing transactions.

**III. Comments on the Blanket Decision**

We have the following comments on the Blanket Decision:

1. The language of the Blanket Decision is not entirely consistent with the language of the amendments to section 25(2) of the OSC Rule (published by the OSC on June 26, 2014) which will come into force on September 9, 2014 (the “**OSC Amendments**”). For example, unlike the Blanket Decision, the OSC Amendments expressly permit a counterparty that is not the reporting counterparty under the ISDA Methodology to rely on the allocation of reporting responsibility under the ISDA Methodology. The OSC Amendments include a requirement that each party consent to the release to the OSC by ISDA of information relevant in determining whether (a) each party has agreed to the ISDA Methodology and (b) the ISDA Methodology has been followed. The consent requirement under the Blanket Decision is more broadly framed as a requirement that each counterparty has “consented in advance to the release to the Authority by ISDA of the information provided to ISDA in connection with the use of the ISDA methodology”. Again, we would respectfully urge the AMF and the other members of the CSA Committee to minimize any discrepancies of language in the operating provisions of the TR Rules since even small differences of language may give rise to unnecessary issues of interpretation and undermine the objective of harmonization.
1. We understand that the amendments to the TR Reporting Hierarchy to permit counterparties to agree to the ISDA methodology as an alternate reporting option in Quebec were adopted by the AMF in the form of the Blanket Decision given the constraints relating to the timeline for effecting the amendment and the fact that, at the time of the issuance of the Blanket Decision, the ISDA Methodology was published in English only. We acknowledge these constraints and, on August 5, 2014, ISDA released a French version of the ISDA

Methodology.<sup>6</sup> We would urge the AMF to incorporate these amendments (including the “reliance” language referred to in paragraph 1 above) into future amendments to Regulation 91-507 and to leave the Blanket Decision in place until these amendments have been made.

2. We note that paragraph 1 of the Blanket Decision also exempts a local counterparty from the local counterparty fallback obligations under section 25(2) of Regulation 91-507 when the conditions of that subsection are met. Consistent with the AMF’s stated policy objective of harmonization, we would respectfully request that section 25(2) be formally repealed in future amendments to Regulation 91-507, consistent with the repeal of the equivalent provisions in the other TR Rules.
3. To further the AMF’s stated policy objective of harmonization, we would also urge the AMF to make future amendments to Regulation 91-507 on a basis that is consistent to the greatest possible extent with the common language and rulemaking approach concurrently developed with the other Canadian TR Jurisdictions. In particular, the use by the AMF of blanket decisions (which are generally published by the AMF in French only) and the resulting multiple sources to which market participants must refer to comply with the Quebec requirements can be a significant compliance challenge, especially for non-Canadian market participants who may assume that the reporting requirements are fully harmonized and consistently reflected in the TR Rules in effect in each Canadian TR Jurisdiction.

As previously submitted in the TR Comment Letters, technical and substantive consistency in the rulemaking across all Canadian TR Jurisdictions is the best means of achieving a harmonized reporting regime. Technical and substantive differences as between the TR Rules may increase the exposure of non-reporting local counterparties to material compliance issues by reporting counterparties and ultimately undermine the quality of the reported data. Such differences may also create a disincentive for counterparties outside Quebec to transact with Quebec-based counterparties and, as noted above, may negatively impact the liquidity of the Quebec and Canadian derivatives markets.

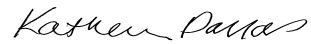
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<sup>6</sup> See <http://www2.isda.org/attachment/Njc0Nw==/%2311116389-v3-traF-Canadian%20Transaction%20Reporting%20Party%20Requirements-2014%20%20%20.pdf>

ISDA appreciates the opportunity to provide its input on the Request for Comments and would be pleased to work further with the AMF in considering the Draft Amendment and the Blanket Exemption or on any other matter relating to the Request for Comments. Please feel free to contact the undersigned or ISDA staff at your convenience.

Yours truly,



Katherine Darras  
General Counsel, Americas  
International Swaps and Derivatives Association, Inc.

## Schedule "A"

**Blackline showing amendments to the Reporting Counterparty Hierarchy under section 25 of Regulation 91-507, as proposed by the AMF under the Proposed Amendments**

**[This schedule is provided for reference purposes only. For greater certainty, the changes below are not endorsed by ISDA]**

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 house, the recognized or exempt clearing house,
  - (b) if the transaction is not cleared through a recognized or exempt clearing house ~~and is between 2 dealers~~, each ~~dealer~~ counterparty,
  - (c) ~~despite paragraph (b), if the transaction is not cleared through a recognized or exempt clearing house and is between a dealer~~ between a Canadian financial institution and a counterparty that is not a ~~dealer, the dealer~~ Canadian financial institution, the Canadian financial institution, and
  - (d) ~~in any other case, each local counterparty to the transaction, despite paragraph (b) and subject to paragraph (c), if the transaction is between a person subject to the registration requirement as a dealer under the Act and a counterparty that is not subject to such registration requirement, the person subject to the registration requirement.~~
- (2) A local counterparty to a transaction must act as the reporting counterparty to the transaction for the purposes of this Regulation if
- (a) the reporting counterparty to the transaction as determined under paragraph (1) ~~(c)~~ or (d) is not a local counterparty, and
  - (b) by the end of the second business day following the day on which a derivatives data is required to be reported under this Chapter, the local counterparty has not received confirmation that the derivatives data for the transaction has been reported by the reporting counterparty.