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**ISDA Webinar**  
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# Canadian Representation Letter

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# Introduction

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- Under the Canadian Constitution, the 10 provinces and 3 territories in Canada are all separately responsible for securities regulation in their respective provinces.
- Each has its own securities regulator responsible for administering the province's securities act and issuing rules and regulations.
- In order for Canada to meet its G20 commitments, there has been an ongoing coordination of efforts to implement the reform of Canada's OTC derivatives market under the Canadian Securities Administrators (CSA).

# Introduction

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On November 14, 2013, harmonized derivatives 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)
- Autorité des marchés financiers (AMF) [Quebec]

The harmonized rules finalized draft rules proposed and updated by several Canadian provincial securities regulators under the CSA's OTC Derivatives Committee in response to Canada's G20 commitments.

Subsequently amended (or in amendments announced) to accommodate ISDA Methodology for reporting and other amendments

Not quite final but will be by October 31 when reporting begins

# Final rules

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## OSC

- OSC Rule 91-506 Derivatives: Product Determination
- OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting
- [http://www.osc.gov.on.ca/documents/en/Securities-Category9/rule\\_20131114\\_91-506\\_91-507\\_derivatives.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category9/rule_20131114_91-506_91-507_derivatives.pdf)
- Amendments to 91-507 which came into force on July 2, 2014:  
[http://www.osc.gov.on.ca/en/SecuritiesLaw\\_rule\\_20140703\\_91-507\\_amendments.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20140703_91-507_amendments.htm)
- Amendments to 91-507 which came into force on September 9, 2014:  
[http://www.osc.gov.on.ca/en/SecuritiesLaw\\_rule\\_20140814\\_91-507\\_amendments.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20140814_91-507_amendments.htm)

## MSC

- MSC Rule 91-506 Derivatives: Product Determination
- MSC Rule 91-507 Trade Repositories and Derivatives Data Reporting
- [http://www.msc.gov.mb.ca/legal\\_docs/legislation/notices/91\\_506\\_507\\_notice\\_package.pdf](http://www.msc.gov.mb.ca/legal_docs/legislation/notices/91_506_507_notice_package.pdf)
- Amendments to 91-507 which came into force on September 9, 2014:  
[http://www.msc.gov.mb.ca/legal\\_docs/legislation/notices/91\\_507\\_notice\\_am\\_package.pdf](http://www.msc.gov.mb.ca/legal_docs/legislation/notices/91_507_notice_am_package.pdf)

# Final rules (Cont'd)

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## AMF

- Regulation 91-506 respecting Derivatives Determination
- Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting
- <http://www.lautorite.qc.ca/files/pdf/reglementation/instruments-derives/reglements/91-507/2013nov14-91-507-avis-publ-en.pdf>
- [http://www.lautorite.qc.ca/files/pdf/bulletin/2013/vol10no45/vol10no45\\_6-2.pdf](http://www.lautorite.qc.ca/files/pdf/bulletin/2013/vol10no45/vol10no45_6-2.pdf)  
(English version starts on page 207)
- Draft amendments to 91-507 which may come into force on October 30, 2014:
- <http://lautorite.qc.ca/files/pdf/reglementation/instruments-derives/reglements/91-507/2014-07-03/2014juil03-91-507-cons-en.pdf>
- Blanket Decision re: exemption from reporting obligation under 91-507 (English Translation): <http://www.lautorite.qc.ca/files/pdf/reglementation/instruments-derives/reglements/91-507/2014-07-03/2014juil31-91-507-avis-prolongement-dispense-en.pdf>

# Local counterparty

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

- (a) a person or company organized under the laws of, or having its head office or principal place of business in the province
- (b) parties required to register under provincial securities law as a derivatives dealer
- (c) an affiliate of (a) if responsible for its liabilities

Dealer registration in the provinces outside of Quebec is not expected to begin until 2015, so until then parties that fall under the definition of derivatives dealer under provincial securities law will only have to report if they are a local counterparty under (a) or (c) or face a local counterparty.

# Reporting counterparty - Background

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In certain cases both parties have reporting obligations, but such obligation can be met by a single reporting party, as follows:

- If cleared: the recognized or exempt clearing agency
- If uncleared, and between:
  - Two derivatives dealers:
    - If they have executed the ISDA Multilateral dealer agreement, the dealer determined under the ISDA Methodology
    - Otherwise, both report
  - A derivatives dealer and a non-dealer: the dealer
  - Two local counterparties that are non-dealers:
    - If they have executed the ISDA Multilateral non-dealer agreement, the local counterparty determined under the ISDA Methodology
    - Otherwise, both report
  - A non-dealer local counterparty and a non-dealer that is not a local counterparty, the local counterparty

# Identifiers - Background

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A reporting party must include the following in every report:

- LEI: the legal entity identifier of each counterparty
  - A “substitute” LEI (“pre-LEI”) may be used in the interim
- UTI: unique transaction identifier
  - Rules provide for the trade repository to generate a UTI unless provided by the reporting party. We expect the industry agreed approach to global UTI to be followed.
- UPI: unique product identifier
  - Use of an “international or industry standard”, and otherwise a reporting counterparty must assign via its own methodology
  - Provincial regulators have recognized use of ISDA OTC Taxonomy (<http://www2.isda.org/attachment/NTQzOQ==/ISDA%20OTC%20Derivatives%20Taxonomies%20-%20version%202012-10-22.xls>)



# Purposes of the Letter

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- To obtain information to determine if counterparty is a local counterparty in a Canadian province
- To achieve some certainty between parties as to which of them is a dealer for reporting purposes
- To obtain consents to disclosure of the data that might otherwise be subject to confidentiality requirements
- To facilitate the Canadian reporting hierarchy
- Available at <http://www2.isda.org/regions/canada/>
- FAQ for non-dealers also available

# Definitions

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- The defined terms are used in the representations that you will make in delivering the letter.
- Should be reviewed in the context of the particular representations you are asked to make.

# Part I – Local Counterparty Reps

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- **Question 1 – Canadian Person Representation**
  - Solicits the information required to determine if a *local counterparty* and in which jurisdictions in Canada party is a local counterparty.
  - Relevant to:
    - existing TR rules
    - TR rules as adopted in other provinces
    - other derivatives rules that use the local counterparty concept
  - Repeated when each transaction entered into.
    - parties need to know if information changes

# Part I- Local Counterparty Reps

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## Why is Question 1 being asked?

- Obligation to report and to allow access to that Data by a particular Canadian regulatory authority depends on whether there is a “local counterparty” in the regulator’s jurisdiction.
- Reporter must know in which, if any, Canadian jurisdictions parties are a local counterparty.
- Data will be accessible to regulators in any Canadian jurisdiction in which counterparty is a local counterparty.
- Local counterparty status determined by the information solicited in question 1 (and 2 and Part II).

# Part I – Local Counterparty Reps

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“Canadian person” definition relevant to part of “local counterparty” definition

“Local counterparty” in a Canadian jurisdiction if one of these conditions is fulfilled at the time of the transaction:

- organized under the laws of that jurisdiction
- head office is in that jurisdiction.
- principal place of business is in that jurisdiction
- refers to the overall business of the entity, not just its derivatives business

Possible for an entity to be a “local counterparty” in more than one jurisdiction.

- Consequently Q1(A) provides option to select more than one jurisdiction
- Can’t have a “head office” or “principal place of business” in “Canada” but could be incorporated under federal law and if federal rules come into place it might be relevant.

# Part I – Local Counterparty Reps

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## Examples:

- Incorporated under the Quebec *Business Corporations Act*, but principal place of business is in Ontario = local counterparty in both Quebec and Ontario.
- Incorporated under the *Canada Business Corporations Act* and head office and principal place of business in Alberta = local counterparty in Alberta and Canada.
  - if and when they adopt rules to which that determination is relevant
- Partnership formed under Manitoba law, but primary place of business in Ontario = local counterparty in Ontario and Manitoba.

# Part I – Local Counterparty Reps

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## Question 2 – Registered To Trade Derivatives

“Local counterparty” if registered as a derivatives dealer in the local jurisdiction.

Non-dealers select Not Registered to Trade.

Currently very narrow category even for dealers

- Only Quebec has a derivatives dealer registration regime and it has broad exemptions
- That’s why only Quebec in bold in the letter and only available choice on ISDA Amend
- Others will be added in 2015

Will become more relevant when registration regime in place in 2015.

- Regime will apply to dealers and to large derivatives participants (or capital markets intermediaries under CPMA) (hence reference to “alternative category”)

## Part II – Additional Representations for Local Counterparty Determination

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### Affiliate of a Responsible Canadian Person or Not

“Local counterparty” if:

- an affiliate of a person that has its head office or principal place of business in Canadian jurisdiction or that is organized under the laws of Canadian jurisdiction and
- that affiliate is responsible for your liabilities

Means substantially all the liabilities of the company as a whole, not just its derivatives transactions.

May need legal assistance with applying this test.

- e.g., unlimited liability company, multiple blanket guarantees

Vagueness of test explains the “reasonably believe” language in the representation.



## Part II – Additional Representations for Local Counterparty Determination

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### Affiliate of a Responsible Canadian Person or Not

#### Ex. 1. Transaction between Australian Bank and Mexican corporation

- Parent company with head office in Ontario has guaranteed substantially all of Mexican corp's liabilities.
- Mexican corp. = local counterparty in Ontario.
- Australian Bank must consider reporting obligations under Ontario law.

## Part II – Additional Representations for Local Counterparty Determination

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### Affiliate of a Responsible Canadian Person or Not

#### Ex. 2. Transaction between U.S. Bank and Nova Scotia corporation

- Parent company with head office in Ontario has guaranteed substantially all of Nova Scotia corp.'s liabilities.
- Nova Scotia corp. = local counterparty in Nova Scotia and Ontario.
- U.S. Bank must consider reporting obligations under Ontario law and Nova Scotia law (when TR Rules adopted).

# Part III – Consent to Disclosure to Regulators and Trade Repositories

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## Canadian Reporting and Global Reporting

- Mandatory consent to disclosure re Canadian Regulations
- Option to consent to broader disclosure – select “All Reporting Requirements”
- Based on the ISDA 2013 Reporting Protocol language
  - limited to
    - what is “required” to comply (not just “permitted”)
    - and to intergroup disclosure
    - and to service providers in connection with compliance

# Part IV- Additional Covenant Re Reporting Responsibility

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## Deemed Dealer for Canadian Reporting Purposes

- Relevant to derivatives dealers only
  - not just registered ones
- Restricted to the jurisdictions that have a reporting regime in place
- Deemed to be “dealer” for reporting purposes only without admitting to being one
- Entities that agree that they are “dealers” in the listed jurisdictions will select those jurisdictions

# Part IV- Additional Covenant Re Reporting Responsibility

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## Deemed Dealer for Canadian Reporting Purposes (cont'd.)

Why?

- If entity selects IV, but not V, then:
  - If it does carry on business as a dealer in the jurisdiction, doesn't change anything legally – would have a reporting obligation.
  - If it is not actually a dealer in the jurisdiction, then it:
    - gives counterparty receiving the letter that is also not a dealer a means of delegating the reporting obligation to the deemed dealer
    - has no effect if the counterparty receiving the letter is also a dealer or deemed dealer because, in the absence of agreement to V, both would report.

# Part IV- Additional Covenant Re Reporting Responsibility

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## Deemed Dealer for Canadian Reporting Purposes (cont'd.)

### Option (A) Deemed Dealer for and Agreement to Reporting Party Rules

Has two effects:

- Agree to be Dealer for purposes of the Reporting Party Rules
  - ISDA tie breaker logic tied to status as a Dealer (different from Swap Dealer under DF)
- Agree to process set out in the Reporting Party Rules
  - Rule requires more in order to rely on it to relieve from residual responsibility
  - Need to agree to ISDA Multi-lateral agreement
  - Rep letter prepared before that was a condition, so overlaps the Multi-lateral
  - Should answer consistently

## Part IV- Additional Covenant Re Reporting Responsibility

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### Deemed Dealer for Canadian Reporting Purposes (cont'd)

#### Option (B) Agreement to Reporting Party Rules

Has one effect

- Agree to process set out in the Reporting Party Rules
  - Non-dealers may want to agree to the rules as they apply in end-user to end-user situations
  - Acts as delegation and will have legal effect if end-user multilateral agreement is signed (in progress)
  - Parties that are not Dealers under Canadian law but are registered as Swap dealers may agree to the rules
- For both A and B parties free to make other arrangements, but only Reporting Party Rules will have legal effect

# Execution

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## Signing Details

- Will need to have the LEI or pre-LEI in order to deliver the letter or access ISDA Amend
- If agents executing will need to schedule with the LEIs of each fund or other principal or do a separate letter for each fund



# ISDA Amend

Basic Information   **Regulatory Information**   Additional Information   Address Information   Documentation   Counterparty Relationships

True/Legal Name:

Pre-LEI / LEI:  Instruction : Please only enter the Pre-LEI / LEI {( 20 Alphanumeric characters (A-Z,0-9))} which corresponds directly to the True legal Name on this form.

Select the regulatory action that you wish to perform

DF Protocol 1    DF Protocol 2    Cross Border Representation    EMIR    Canadian Representation Letter 1

**Canadian Representation Letter 1**

*In addition to the instructions provided below, please review the more detailed instructions that are available [here](#). Capitalized terms used in this "Canadian Representation Letter 1" section, including the text that is viewable when you click on blue underlined text in this section, are defined [here](#).*

**Local Counterparty Representations**

**Canadian Person Representation**   Canadian Person

Please select each of the jurisdictions below in respect of which you are a Canadian Person.

<input checked="" type="checkbox"/> Canada	<input type="checkbox"/> Ontario
<input type="checkbox"/> Alberta	<input type="checkbox"/> Prince Edward Island
<input checked="" type="checkbox"/> British Columbia	<input type="checkbox"/> Quebec
<input type="checkbox"/> Manitoba	<input type="checkbox"/> Saskatchewan
<input type="checkbox"/> New Brunswick	<input type="checkbox"/> Yukon
<input type="checkbox"/> Newfoundland and Labrador	<input type="checkbox"/> Northwest Territories
<input type="checkbox"/> Nova Scotia	<input type="checkbox"/> Nunavut

**Registered to Trade Derivatives Representation**   Registered to Trade

Please select each of the jurisdictions below in respect of which you are a Registered Derivatives Dealer:

Quebec

**Additional Representations for Local Counterparty Determinations**

**Affiliate of a Responsible Canadian Person Representation**   Affiliate of a Responsible Canadian Person

Please select each of the jurisdictions below in respect of which an affiliate who is responsible for your liabilities is a Canadian Person

<input checked="" type="checkbox"/> Canada	<input type="checkbox"/> Ontario
<input type="checkbox"/> Alberta	<input type="checkbox"/> Prince Edward Island
<input checked="" type="checkbox"/> British Columbia	<input type="checkbox"/> Quebec

# Compliance Dates

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The effective dates for reporting are as follows:

- Cleared swaps: October 31, 2014
- Uncleared swaps:
  - At least one counterparty is a dealer: October 31, 2014
  - Both parties are non-dealers: June 30, 2015
- Public dissemination of transaction level data: April 30, 2015
- Pre-existing transactions:
  - Reporting counterparty is a clearing agency or dealer: April 30, 2015
  - Both parties are non-dealers: December 31, 2015

# Contact us

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For more information, contact:

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