

BY E-MAIL

January 16, 2015

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumers Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission

Dear Sirs/Mesdames:

Re: Public Dissemination Requirements of Commission Rules 91-507 *Trade Repositories and Derivatives Data Reporting*

The International Swaps and Derivatives Association, Inc. (“ISDA”)¹ appreciates the opportunity to provide the Canadian Securities Administrators (the “CSA”) with comments regarding subsection 39(3)-(6) regarding *Data available to public* (the “Public Dissemination Requirements”) in the Autorité des marchés financiers (“AMF”) *Regulation 91-507 Respecting Trade Repositories and Derivatives Data Reporting*, the Manitoba Securities Commission (“MSC”) *Rule 91-507 Trade Repositories and Derivatives Data Reporting*, and the Ontario Securities Commission (“OSC”) *Rule 91-507 Trade Repositories and Derivatives Data Reporting* (collectively, “91-507”). Although our comments pertain directly to the Public Dissemination Requirements promulgated by the AMF, MSC and OSC, for the sake of cross-provincial harmonization we provide them to the CSA for additional consideration with respect to similar regulations that may be issued by other provincial regulators. ISDA and its members support initiatives to increase transparency, and therefore recognize the importance of the Public Dissemination Requirements of each 91-507. However, concerns exist regarding these requirements, and therefore, on behalf of our members that are reporting counterparties, local counterparties and designated trade repositories under 91-507, ISDA would like to submit our comments and suggestions for the CSA’s consideration.

I. Introduction

On April 30, 2015 (the “Effective Date”), the Public Dissemination Requirements come into effect, requiring designated trade repositories (“TRs”) to make transaction level derivatives data available to the public. These requirements are intended to enhance public transparency with respect to derivatives pricing and activity for the benefit of market participants. However, public transparency can result in

¹ 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 66 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.

unintended consequences that negatively impact the market by impeding the ability of parties to effectively hedge transactions and compromising their anonymity. Subsection 39(4) of the Public Dissemination Requirements prohibits a TR from disclosing the identity of either counterparty to the transaction. However, in making the transaction data available to the public within the time limits specified, we believe it is also important to ensure that not only the specific identities of the counterparties are protected but that their positions should not be capable of being ascertained or derived on the basis of the terms disclosed. Such disclosure may hinder a counterparty's ability to hedge its position, impacting liquidity and increasing transaction costs to compensate for increased risk.

The dissemination of transaction level derivative data is valuable to enhancing price discovery provided it does not compromise market integrity. We believe the current Public Dissemination Requirements do not adequately protect market participants in Canada in all instances, as further explained below.

As a general matter, global harmonization of derivatives regulation minimizes cross-border regulatory differences which can impact trading relationships and impair liquidity in markets with requirements which are considered less favorable by derivatives consumers. Global harmonization of the transaction level public reporting requirement will create the desired global transparency, help the public and global regulators with data analysis and data aggregation, avoid regulatory arbitrage, and will help prevent disclosure of trade participant identities to the public.

We note that the Public Dissemination Requirements do not align with the more comprehensive protections afforded to market participants under the Part 43 regulation ("Part 43") of the Commodity Futures Trading Commission ("CFTC") regarding swaps² nor do they establish strong enough protections for other products, most of which would be classified as security-based swaps³ ("SBS") under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). It would be beneficial for the CSA to take into consideration, and align with the public dissemination requirements established, or intended to be established, and as may be further enhanced under Dodd-Frank and other global jurisdictions, including the European Union, in order to provide participants in the Canadian derivatives market with equal protections from the potentially negative impact of public transparency. To the extent that a review of data reported under 91-507 since October 31, 2014 reveals that there are specific limited areas where the reporting of a trade will reveal the identity of a counterparty, safeguards (in addition to those used under Dodd-Frank) may be warranted. A thorough data analysis by the CSA should establish whether such special cases exist and warrant additional parameters for the Public Dissemination Requirements.

Our specific comments and suggestions regarding the Public Dissemination Requirements are detailed below. We include our rationale and preferences regarding the use of a variety of methods to help prevent potentially negative effects of public transparency, including limiting public dissemination to transactions and activity that enhance price discovery, notional caps, notional rounding and data masking. These comments are based on the assumption that there will be a single public report in Canada by each TR that does not include any provincial identification that might compromise the anonymity of parties in provinces with fewer market participants. Lastly, although we provide a number of observations in this letter regarding markets that may be sensitive to public dissemination, our response should not be considered an exhaustive representation of all potential sensitivities, and we encourage the CSA to conduct its own analysis to supplement and support our suggestions.

² As defined by the Commodity Exchange Act and 17CFR Part 1 (<http://www.gpo.gov/fdsys/pkg/FR-2012-08-13/pdf/2012-18003.pdf> at 48349)

³ As defined by the Commodity Exchange Act and 17CFR Parts 230, 240 and 241 (*Ibid.* at 48356)

II. Comments

A. Excluded transactions and activity

Certain derivatives transactions and activities do not result in a corresponding change in the market risk position between two parties and therefore do not enhance price discovery. Subsection 39(6) of 91-507 recognizes this by excluding transactions entered into between affiliated companies from the scope of public reporting. But in addition to inter-affiliate trades, there are other types of transactions and trade activity that do not enhance price discovery, including trades resulting from portfolio compression exercises, trades resulting from prime broker (“PB”) intermediated transactions (other than the trade between the executing dealer (“ED”) and the PB, or an equivalent transaction) and any activity on a derivative transaction that does not affect the price of such transaction (e.g. contract intrinsic events, swaption exercises, credit events on credit default swaps, etc.). Only lifecycle events that result in a change to the price of the reported transaction should be subject to public dissemination, otherwise such activity will misrepresent the level of market activity and the cost of the activity relative to current market pricing.

With respect to derivatives entered into via prime brokerage arrangements, only the commitment to economic terms reflected in the ED-PB trade (or equivalent transaction) serves price discovery function but not any of the other trades (e.g. the PB to PB client trade).

ISDA believes that public dissemination of these types of transactions and trade activities does not increase price transparency. Public display of such activities may actually confuse the market and undermine the value of the data provided for public transparency since it would artificially inflate the amount of activity that is deemed to have been “executed” and offset the reporting of activity that reflects market risk. It would also increase costs and complexity to implement public reporting in Canada since this activity is not currently reported for public dissemination under Part 43.

In addition to the fact that such transactions and activities do not enhance price discovery, the public dissemination of such information may also increase the likelihood of disclosing information that allows a counterparty’s identity, their business transactions or market positions to be deduced. For the preceding reasons, ISDA has requested⁴ that the Securities and Exchange Commission (“SEC”) exclude such activity from the public dissemination requirement in the final version of its Regulation SBSR – Regulatory Reporting and Public Dissemination of Security-Based Swap Information (“SBSR”)⁵. In accordance, we respectfully request that the CSA exclude derivatives transactions and activity from the Public Dissemination Requirement that do not result in a corresponding change in the market risk position between two parties.

FX Swaps and Forwards

The U.S. Department of Treasury excluded⁶ physically settled foreign exchange swaps and foreign exchange (“FX”) forwards from the definition of a swap, and thereby concluded they are not subject to public dissemination under Dodd-Frank despite a requirement to report to a TR for regulatory analysis. This determination was based on the distinctive characteristics of these instruments, including their fixed payment obligations, settlement by exchange of actual currency, and their predominantly short

⁴ http://www2.isda.org/attachment/NzEwMg==/ISDA_SBSR_CommentLetter_14Nov14_FINAL.pdf, page 13

⁵ Based on the results of the Open Meeting held by the SEC on January 14, 2015, a substantive portion of SBSR has been finalized and amendments and further related rules will be proposed. The text of such rules had not been made available as of the date of this letter.

⁶ <http://www.gpo.gov/fdsys/pkg/FR-2012-11-20/pdf/2012-28319.pdf>

tenure, which translate to low counterparty credit risk. Also relevant was the nature of these FX markets, which are highly liquid, efficient and transparent. Since there is readily available pre- and post-trade transparency on electronic trading platforms, the public dissemination of these transactions would not meaningfully enhance price discovery.

A portion of FX swaps and forwards reportable under 91-507 are also subject to the reporting requirements of the CFTC due to the overlap in the Canadian and U.S. markets. This applies significantly to the non-Canadian parties that have assumed the reporting counterparty obligations of a dealer in Canada and which are also CFTC registered Swap Dealers.² Under the Public Dissemination Requirements, data of an FX swap or forward may be publicly disseminated in Canada while subject to an exemption in the U.S. It is expected that FX swaps and forwards will be subject to public dissemination under the European Union's regulation on markets in financial instruments and amending Regulation (EU) No 648/2012 ("MiFIR")⁷ beginning in January of 2017. Due to its relative size, we do not believe that the Canadian market should be the first to publicly disseminate transaction level data pertaining to any product. Rather, we believe it prudent to allow a larger market to lead in order to avoid any unforeseeable consequences to the Canadian market that may result from the public dissemination of FX swaps and forwards.

We further note that public dissemination of data for FX swaps and forwards in Canada would add to the cost and complexity for reporting counterparties and TRs to implement the Public Dissemination Requirements. Reporting counterparties are not sending messaging for public reporting under Part 43 for these transactions, and therefore would have to build out this messaging specific to Canada. In cases where parties are reporting an FX swap or forward using a single multi-jurisdictional report, they may need to alter their reporting architectures to send separate messages for each jurisdiction. In addition, the TRs may be forced to implement exceptional rules to bifurcate the approach to public dissemination for multi-jurisdiction reports of FX swaps and forwards.

For the reasons provided above, we request that FX swaps and forwards be excluded from the Public Dissemination Requirements at the on-set, and instead be considered for phasing in at a later time once they are reportable under MiFIR.

B. Facilitating Hedging

Derivatives dealers manage risk by hedging their transactions with an offsetting position(s). Hedging positions for liquid products that are frequently traded generally occurs shortly after execution of the related transaction. However, if a trade is done in a less liquid product that is infrequently traded or a very large transaction is done in either a liquid or an illiquid product, it can take longer for the dealer to procure a hedge. If public dissemination of the data pertaining to the original transaction occurs before the hedge is completed, the ability to achieve a full hedge at a fair price can be compromised since market participants know that a large or illiquid trade has been done and may begin to trade against the position, thus increasing the price at which a hedge can be executed. An increased cost to hedge impacts the price at which a client can execute derivatives transactions since the dealer will need to be compensated for the cost of hedging, and the potential inability to fully hedge, as part of its price for executing the original transaction. It may also limit a client's ability to find dealers willing to trade in impacted products and large notional transactions.

⁷ <http://www.esma.europa.eu/consultation/Consultation-MiFID-II-MiFIR>

The timelines for public dissemination of transaction level data in subsection 39(3)(a) and (b) of 91-507⁸, provide for sufficient time to hedge in most circumstances. For a limited set of illiquid products and large notional transactions, the timeframe to hedge may exceed the current deadlines for public dissemination, thus potentially increasing both the time and cost of completing the hedge. Due to the timeframe to fully hedge these transactions, a greater delay in public dissemination may be warranted to preserve the ability to obtain a fair hedge and maintain market access and liquidity. In addition, applying notional caps will help preserve the ability to hedge transactions for which the notional exceeds the caps and protect anonymity. To establish whether there are reportable trades which require additional protections, the CSA should conduct an analysis of at least six months of reported data in order to assess whether an additional time delay or calibrated notional caps are required to ensure that counterparty identifying information is not disclosed for such trades.

C. Large notional transactions

Public disclosure of large notional transactions may materially reduce market liquidity and compromise the identities of the parties to the transactions, thereby revealing their business transactions and market positions. In order to address these risks, the CFTC included as part of its Part 43 requirements procedures that establish minimum block sizes for large notional transactions (the “Block Trade Rules”),⁹ corresponding phased-in delays in public dissemination and caps to the notional size that may be disseminated by the TR.

Since the timeframes for public reports of transaction level data¹⁰ under 91-507 are either commensurate or greater than the time delays under the last phase of §43.5 of the CFTC regulations, we believe it is not necessary for the CSA to establish a framework for block trade determination. However, understanding the objective to balance the goal of post-trade transparency by also ensuring the anonymity of the parties to large transaction and maintaining the confidentiality of business transactions and market positions, we recommend the use of notional cap(s) in each asset class. Notional caps are an important tool to conceal the exact size of a large transaction. The use of such caps will also help to protect against the public dissemination of information that could reveal the identities, business transactions and market positions of market participants.

Determination of appropriate notional caps requires analysis of relevant market data and can be aided by industry input for each asset class and various products or sub-products. The CFTC has employed an iterative process to establish the appropriate values that considers both. Currently, notional caps apply to public dissemination under Part 43 based on the value that is the greater of the applicable cap established for the “interim period”¹¹ and the corresponding block threshold established for the “initial period”¹², if any, in the Block Trade Rules. In order to determine the notional caps for the interim period, the CFTC considered feedback from market participants on their originally proposed universal cap of \$250MM USD and instead established interim notional caps more appropriate for each asset class, including a tiered approach for interest rates based on tenor. Then to propose the thresholds for the initial period for interest rates and credit, the CFTC analyzed three months of anonymized non-public market data¹³ from Markitwire and the DTCC Trade Information Warehouse, respectively. For the other asset classes for

⁸ ...the end of the day following the day on which [the TR] receives the data from the reporting counterparty to the transaction, if one of the counterparties...is a derivatives dealer, or the end of the second day following the day on which it receives the data from the reporting counterparty to the transaction in all other circumstances.

⁹ <http://www.cftc.gov/ucm/groups/public/@Irfederalregister/documents/file/2013-12133a.pdf>

¹⁰ *Id.*

¹¹ See Appendix A.

¹² Per Appendix F of the Block Trade Rules

¹³ Associated with 14 dealers that granted their permission for release and use of the data for this purpose.

which relevant market data was not available, the CFTC proposed a methodology based on whether swaps are economically related to futures contracts. A public comment period followed the proposed initial period thresholds. The CFTC established the initial period to be a minimum of one year in order to allow time for swap data repositories (“SDRs”) to collect data that could be used to determine the thresholds for the “post-initial period”. After April 10, 2014, the CFTC can produce cap sizes based on a newer 75% methodology (roughly 75% of the total notional amount of swaps in that category that were transacted over a designated period) using a minimum of a one year of reliable¹⁴ SDR data (and, once possible, using a rolling three-year window of data). Thereafter the cap sizes can be reassessed at least annually based on a rolling three-year window of data, beginning with a minimum of one year’s transaction data. ISDA has suggested that the SEC should follow a similar framework in SBSR,¹⁵ and during the Open Meeting held by the SEC on January 14, 2015, the SEC advised it will apply a uniform delay in the trade reporting deadline for an interim period during which SBS data will be gathered and analyzed to determine appropriate block treatment.

As evidenced by the preceding paragraph, determining appropriate notional caps that balance the need for transparency while protecting the integrity of the market is not an easy task. For the sake of efficiency and consistency, we suggest that for purposes of the Public Dissemination Requirements, TRs be allowed to apply the notional caps established by the CFTC, and those which may be to be established by the SEC. To establish whether there are reportable trades which require additional protections, we recommend that, prior to the commencement of the Public Dissemination Requirements, the CSA conduct an analysis of six to twelve months of reliable¹⁶ Canadian TR data in order to assess the liquidity profile of the Canadian market, including participant concentrations. Additionally, delaying the effective date for public dissemination of SBS would allow additional time for the CSA to consider the final SBSR rules and take into consideration the relative liquidity of the SBS market and the Canadian market, as further discussed below.

D. Illiquid markets

The CFTC has recognized that the public dissemination of data in illiquid products could disclose the business transactions and market positions of a counterparty. The CFTC acknowledged that swaps in less liquid markets may be subject to a longer reporting time, noting that “there are bespoke, off-facility transactions in which the underlying asset is a physical commodity; these transactions carry a significantly increased likelihood that the public dissemination of the underlying asset may disclose the identity, business transactions or market positions of a counterparty.”¹⁷ More recently, the CFTC granted no-action relief from Part 43 for certain illiquid swaps¹⁸. We believe that the public reporting of illiquid SBS yields the same concerns relating to disclosure of identities, business transactions and market positions.

As the SEC has just finalized SBSR, there are currently no transaction level public dissemination requirements for SBS. Based on the current Effective Date, Canada would be the first region to publicly disseminate transaction level SBS data. As the SBS market is generally considered less liquid than the swaps market, the conditions for public dissemination of SBS data must be carefully considered to prevent market disruption via unintended disclosure or impeded liquidity. We ask that the CSA consider

¹⁴ Data was considered “reliable” from the point that all market participants were subject to reporting requirements for all asset classes. So, in comparing to 91-507, a year’s worth of reliable data would be available June 30, 2016.

¹⁵ We note that TRACE also uses caps based on volume with respect to information that is publicly disseminated.

¹⁶ *Id.*, fn. 13

¹⁷ 77 Fed. Reg. at 1210

¹⁸ See CFTC Letter No. 14-134 (Nov. 6, 2014).

delaying the effective date for public dissemination of SBS to either follow or align with the effective date of such requirements under SBSR. Further, a phased approach to public dissemination based on product liquidity would align with the recommendations made by the International Organization of Securities Commissions (“IOSCO”) in its November 2014 Consultation Report¹⁹ on Post-Trade Transparency in the Credit Default Swaps Market (the “IOSCO Report”).

The IOSCO Report makes the following recommendations:

“To deliver anticipated benefits of post-trade transparency and to minimize potential costs, IOSCO jurisdictions may wish to consider the following:

- **The maximum permissible delay** between time of execution and time of public dissemination of the price and volume of an individual CDS transaction;
- **“capping” or “bucketing” the true notional size of the transaction, particularly in small or illiquid markets** in which trading is concentrated in one or two key market participants;
- **Implementing post-trade transparency in phases**, focusing on the most frequently traded standardized products and/or the largest or most frequent market participants in earlier phases and on less frequently traded products and/or the smaller or less frequent market participants in later phases; and

Thus, a jurisdiction might consider, for example, introducing post-trade transparency for more liquid index CDS instruments initially, and expanding a post-trade transparency regime to more illiquid index products and single-name CDS at a later stage. A jurisdiction also might wish to consider lengthier delays in either reporting or public dissemination in earlier stages, and lowering these time frames in later stages.”

Following is some additional analysis that supports the importance of applying the recommendations from the IOSCO Report to publicly disseminated transaction level data more broadly in Canada.

The Fed Report

The Federal Reserve Bank of New York published *An Analysis of CDS Transactions: Implications for Public Reporting* (the “Fed Report”) in 2011. The Fed Report characterized only 48 of the 1,554 corporate reference entities studied as ‘actively traded’ – these entities traded an average of 10 times per day (with a maximum of 22). The Fed Report characterized roughly 200 entities as ‘less actively traded’ which traded approximately 4 times per day. *The approximately 1,200 remaining credits traded less frequently than once per day.*²⁰ They note that “the combination of low and variable trading frequency with large and homogenous notional trade size...seem to highlight the importance of market makers...Hence any public reporting rules should take into account the impact of enhanced trade reporting on the current activity of market makers.”²¹

ISDA believes that the institutional and illiquid nature of the SBS market requires a somewhat different approach to post-trade price transparency than has been applied to other markets with higher trade counts and broader participation. Most institutional investors today already have significant pre- and post-trade

¹⁹ <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD465.pdf>

²⁰ Katherine Chen et. al.. *An Analysis of CDS Transactions: Implications for Public Reporting*. Federal Reserve Bank of New York Staff Reports no. 517. September 2011, p. 10

²¹ *Ibid*; p. 12.

transparency in the form of direct communication from dealers. General market practice is for dealers to broadly disseminate indicative pricing on a range of reference entities, including those that have not traded recently, in the form of electronic messages called “runs”. A brief survey of buy-side users of SBS indicates that a typical buy-side institution gets thousands of runs from their trading counterparties with pre-trade price information on single name credit default swaps (“CDS”) daily. The combination of these name-attributed runs and a rapidly disseminated set of post-trade information would make it relatively easy for many participants to reconstruct the identity of parties to a particular transaction. This may reduce dealer willingness to disseminate pre-trade price information in the form of runs, thereby reducing pre-trade price transparency for recently traded as well as not traded reference entities.

Conclusions

Based in part on the preceding analysis, ISDA proposed to the SEC that TRs should be allowed to apply a delay to public dissemination of illiquid SBS in their entirety for at least five days and delay dissemination of the full notional indefinitely by use of a notional cap.²² This would allow both for transparency to the public prior to the expected occurrence of the next trade and at least some extended time for the participants in the trade to offset their resulting exposure. These recommendations may equally apply to the Canadian market where liquidity is likely to be impacted as well, as further discussed below. As previously stated, harmonization of the Public Dissemination Requirement with the public reporting approach taken by the SEC for SBS would help prevent disclosure of counterparty identity and their business transactions.

E. Canadian market liquidity

We fully support global harmonization with respect to transaction level public dissemination requirements to the greatest extent possible and practicable. However, as suggested above, we believe that a proper analysis of Canadian transaction data by regulators is essential to determining whether the protections afforded under Dodd-Frank and other global jurisdictions with respect to publicly disseminated transaction level data are sufficient. We offer the following observations for certain asset classes and products for your consideration as part of such analysis.

The equity OTC derivatives market is smaller than the U.S. and in credit, the number of liquidity providers for both index and single name CDS is limited. As a result, there is a greater risk that confidential information could be derived from the publicly disseminated transaction data; the notional cap sizes and public dissemination timelines for these products may need to be calibrated accordingly. For instance, based on their relative liquidity high yield credit products may warrant lower notional caps than investment grade credit products.²³

Because the Public Dissemination Requirements include the underlying asset and option type (put/call), the public reporting of equity options might impact a dealer’s ability to hedge risk and potentially shift the market for the underlier itself. The solution may be to assign cap sizes by product (option vs. swap) and underlier (single stock, index, exotic) in order to scale cap sizes appropriately for the Canadian market. Public dissemination of the Option Type and Option Price may disclose too much information on trade positions, even for small trades. This could be addressed by eliminating these fields from the list of fields which are subject to public dissemination in Appendix A to 91-507.

²² ISDA notes that (i) the CDS market, for example, is significantly less liquid than the underlying bond market (ii) TRACE allows for an eighteen month delay in displaying the full size of large notional trades and (iii) the CFTC’s Part 43 requirements allow for an indefinite delay of the full notional amount.

²³ The rule of thumb for high yield may be approximately one-fifth of the level as would apply to investment grade.

With respect to interest rate swaps and cross-currency swaps (collectively, “IRS”), the CFTC’s interim period caps are tiered based on three tenor buckets while the appropriate minimum block sizes established under the Block Trade Rules for the initial period assign thresholds that are based on nine tenor buckets and three currency groups (“super-major” (e.g. USD), “major” (e.g. CAD) or “non-major” (i.e. all other currencies)). We appreciate the simplicity of the three tenor approach, but believe that, in accordance with the CFTC initial period approach, lower cap sizes for major and non-major currencies allows for dealers to better manage risk in these less liquid markets.

Some participants have suggested that the CSA should assess whether the CFTC’s cap size of \$250MM USD for foreign exchange swaps may be too large and may need to be calibrated accordingly based on proper analysis of the data for the Canadian market. If so, counterparty identity could be inadvertently disclosed on certain transactions and the ability of dealers to manage its risk on large notional transactions may be impaired.

Commodities derivatives play a vital role in the Canadian market, and therefore the notional caps and public dissemination timelines for this asset class require careful consideration. The CFTC currently applies a top notional cap of \$25MM USD. However, since most transactions are denominated in units, reporting parties must translate units to USD for inclusion in their reports so that the TR can determine whether the trade is eligible for a notional cap and disseminate the appropriate scaled unit notional. Although this approach is more complex than direct application of a cap in the applicable unit measure, it would be extremely difficult for regulators to publish and maintain notional caps for every commodities contract and associated unit type, therefore having a fallback threshold may be necessary. Data analysis should help determine whether the unit caps established by the CFTC may be successfully applied in Canada or whether alternative caps may be warranted for certain underliers and whether caps should be established for underliers without a threshold. Consideration should also be given for whether the fallback threshold applied by the CFTC is appropriate.

Since many major participants in the commodity derivatives market in Canada will not commence their reporting obligations until either June 30, 2015 under 91-507 or on a later date commensurate with the corresponding requirements enacted by other provinces, the TR data available for analysis of the commodities market may not accurately represent the liquidity profile of the entire Canadian market. Since it is important that the public dissemination requirements be harmonized across the provinces, we suggest the CSA consider whether the commencement date for public dissemination of commodity derivatives should be subject to an additional delay to allow time for a more representative data set to be collected and analyzed.

Based on the timeframes (i) to collect and analyze transaction data, (ii) to issue guidance, and (iii) for TRs and reporting counterparties to implement in accordance with the guidance, the effective date for the initial phase of the Public Dissemination Requirements would need to be extended until at least October 31, 2015. We believe a phased approach to further delay the effective public dissemination date for less liquid products and for commodity derivatives for at least another six months may be a reasonable approach that would best serve the Canadian market.

F. Preserving Anonymity

A negative consequence of transaction level public dissemination is the potential to reveal the identities of one or both of the parties to the transaction, and as a result, their business transactions, market positions

or hedging strategies²⁴. Although subsection 39(4) of 91-507 explicitly prohibits a TR from disclosing the identity of either counterparty to the transaction, the identity of parties can be derived or assumed from other derivatives data especially in the case of products that are infrequently traded by a limited number of market participants.

Preservation of anonymity can be accomplished by a combination of a number of methods, including greater delays in dissemination of large notional transactions and transactions in illiquid products and notional caps, as addressed above. Notional rounding as well as masking or withholding of certain data (including the spread value for equity swaps, the identification of proprietary basket constituents and the region and pricing for commodity swaps) are also valuable tools to protect anonymity.

Notional rounding

Parties to a transaction with a non-standard notional may be identified by dissemination of the actual notional value. As such, the CFTC established rules for notional rounding, as provided in Appendix B, which work in conjunction with the notional caps to determine the value that is publicly disseminated in place of the actual notional. ISDA has recommended that the SEC adopt the same standard for notional rounding, and we request that the CSA does as well. Harmonization will simplify the public dissemination rules for TRs and provide equal protections for market participants in North America.

Terms of Floating Rate Payments for Equity Swaps

For many SBSs in the equity asset class, the floating rate leg of the SBS is comprised of a benchmark rate plus/minus a spread. In these SBSs, the spread over or under the benchmark contains information about the direction of the customer transaction (positive spreads indicating a customer long swap and negative spreads indicating a customer short SBS). This information (i.e., which side of the market the customer has taken) is not publicly disseminated in other reporting regimes. ISDA believes that this additional disclosure may harm customers as they build their positions by offering other market participants an opportunity to anticipate their execution strategy in a manner that is not available through public disclosure of execution prices. Accordingly, ISDA believes that when disclosing the price or terms of the floating rate payment, the spread value should be masked for SBS in the equity asset class.

Proprietary baskets

Appendix A to 91-507 requires the public reporting of the underlying asset identifier(s) referenced in the transaction. Reportable SBS may include customized narrow-based baskets which a counterparty deems proprietary to their business and for which public disclosure would compromise their anonymity and negatively impact their trading activity. We believe that the individual constituents of proprietary baskets should qualify as non-disseminated information which a reporting counterparty should be allowed to withhold or report a general term (e.g. “bespoke basket”).

Commodities masking

Recognizing that market participants are likely to be identified by the specificity of the underlying asset and the pricing delivery or pricing points of their commodities transactions, the CFTC requires that a TR (i) limit the geographic detail of the underlying asset, and (ii) report a more generic region value²⁵ instead

²⁴ We note, for example, the recent issue that public dissemination led to the identification of the Mexican oil hedging strategy. For more information: <http://www.ft.com/intl/cms/s/0/4d8957a0-4015-11e4-a343-00144feabdc0.html>

²⁵ Each, as prescribed by Appendix E of Part 43.

of the specific delivery or pricing point associated with the underlying asset when publicly disseminating swap transaction and pricing data for certain physical commodity swaps.

We acknowledge that the delivery point is not required for public dissemination under 91-507. However, depending on the specificity of the reported underlying asset identifier, anonymity may still be at risk. In order to protect the Canadian commodities market, it is important that the CSA adopt the same masking mechanism to limit the geographic detail of the underlying asset. Aligning with the CFTC approach will reduce complexity and cost for reporting counterparties and TRs to report and disseminate data for commodities transactions.

G. Recommendations

Based on the comments provided in this letter, the experience of our members to date with transaction level public dissemination and the results of the IOSCO Report, in summary we request that the OSC, MSC and AMF accept the following recommendations with respect to their Public Dissemination Requirements:

1. Allow transactions and activity that do not reflect a change in market risk to be exempted from the Public Dissemination Requirements.
2. Implement the protections provided under the CFTC's Part 43 rules (such as notional rounding, notional cap, and masking for commodity products).
3. Delay the public dissemination of data for products considered SBS under SEC rules until transaction level public dissemination becomes effective under SBSR and align with the related protections provided by the SEC.
4. Delay public dissemination of FX swaps and forwards until after the commencement of corresponding requirements under MIFIR.
5. Delay the public dissemination of commodity derivatives to allow sufficient time to collect transaction data for analysis that accurately reflects the Canadian commodities market.
6. Gather six to twelve months of data to establish whether protections, in addition to those provided under Dodd-Frank, and other global jurisdictions, are required to ensure that counterparty identifying data will not be made public.
7. If justified by the data analysis to protect party identity in the Canadian market, implement additional protections (such as calibrated notional caps or extending timelines for dissemination of trade data).
8. Establish a flexible mechanism to adjust the public dissemination parameters (e.g. change in notional caps) instead of hard-coding into the regulations.

We request that the CSA consider the above recommendations when promulgating the requirements for transaction level public dissemination for other provinces in order to promote harmonization. Any differences in the public dissemination requirements between the provinces may create an opportunity for arbitrage and could negatively impact local counterparties in certain jurisdictions. In addition, any disparities will increase the cost and complexity for reporting parties and TRs to implement the necessary architecture for public reporting in Canada.

III. Conclusion

ISDA and its members thank the CSA for its consideration of the comments regarding the Public Dissemination Requirements provided herein. We welcome any questions you may have with respect to our recommendations and are happy to provide any additional feedback or information as may be helpful to your consideration.

Please contact me or ISDA staff if you have any questions or require further input.

Sincerely,



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

Appendix A

Notional Size Caps

Current CFTC caps

Notional/principal capped at the *greater* of the appropriate minimum block size established for the initial period²⁶ and the following values for interim period:

Asset Type	Tenor* (T in years)	Cap (USD in million)
Interest Rate Swaps	0<T<=2	250
	2<T<=10	100
	T>10	75
Credit Swaps	NA	100
Equity Swaps	NA	250
FX Swaps	NA	250
Other Commodity Swaps	NA	25

Appendix B

Notional Rounding

If Notional/Units => than:	But less than:	Round to nearest:
1	1,000	5
1,000	10,000	100
10,000	100,000	1,000
100,000	1,000,000	10,000
1,000,000	100,000,000	1,000,000
100,000,000	500,000,000	10,000,000
500,000,000	1,000,000,000	50,000,000
1,000,000,000	100,000,000,000	1,000,000,000
100,000,000,000	n/a	50,000,000,000

²⁶ Per Appendix F of Part 43; <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2013-12133a.pdf> at 32942