

BY E-MAIL

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Dear Sirs/Mesdames:

Re: The Manitoba Securities Commission (“MSC”) Rule No. 2014-19 – Amendments to MSC Rule 91-507 Trade Repositories and Derivatives Data Reporting

The International Swaps and Derivatives Association, Inc. (“ISDA”)¹ appreciates the opportunity to comment on MSC Rule No. 2014-19 which amends MSC Rule 91-507 (the “Amendments”)². ISDA and its members strongly support initiatives to increase regulatory transparency, and therefore recognize the importance of MSC Rule 91-507. However, concerns exist regarding the Amendments, and therefore, on behalf of our members that are reporting counterparties and local counterparties under MSC Rule 91-507, ISDA is submitting our comments for consideration by the MSC.

First, ISDA would like to lend its support to the response letter regarding the Amendments submitted to the MSC by the Canadian Market Infrastructure Committee (“CMIC”) on December 4, 2014. We strongly agree with the view expressed by CMIC that the goal of provincial harmonization is of utmost importance and that new rules governing derivatives across Canada should be harmonized. Therefore, we have copied the other members of the Canadian Securities Administrators OTC Derivatives Committee (the “Committee”) on this letter.

Section 25(1) of MSC Rule 91-507 pertaining to reporting counterparty determination and obligations used to align with section 25(1) of the Ontario Securities Commission (“OSC”) Rule 91-507. Based on

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 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.

² http://www.msc.gov.mb.ca/legal_docs/legislation/notices/91_507_am_notice_package.pdf

the Amendments, it now more closely aligns with the reporting counterparty hierarchy in the Autorité des marchés financiers (“AMF”) amended Regulation 91-507. In an August 14, 2014 letter³, ISDA raised concerns to the AMF regarding their revised approach to reporting counterparty hierarchy which includes the added complexity of Canadian financial institutions when in practice the reporting counterparty is being determined primarily based on whether or not the parties are “derivatives dealers”⁴. As currently written, section 25(1) of the OSC, MSC and AMF rules could lead to different reporting counterparty(ies) depending on which rule(s) apply⁵, adding unnecessary complexity for reporting parties to follow and regulators to monitor compliance. If this distinction is only theoretical, as a Canadian financial institution trading with a party that is not a derivatives dealer would always be considered the derivatives dealer based on their role in the trading relationship, then the reporting party hierarchy is unnecessarily complicated by a layer that would not be applied and which market participants cannot support.⁶ We concur with CMIC’s view that the reporting counterparty hierarchy should be the same for Ontario, Manitoba and Quebec as well as for other provinces for which trade reporting rules may become effective.

ISDA also agrees with CMIC’s concerns that the new requirements in section 25(4) of the Amendments (i) put an undue burden on non-dealer local counterparties that are not Canadian financial institutions and (ii) further disharmonize the provincial trade reporting requirements. Although we can understand the regulatory need to identify duplicates when both parties report, ISDA feels strongly that by definition a Unique Transaction Identifier (“UTI”) is a value that is known and used by both parties to the transaction⁷ in the event each reports in Canada and in the event either one or both parties reports in other global jurisdiction(s). Absent use of an agreed UTI, parties could simply report using their internal reference numbers; an approach that does not support the ability of individual regulators or the global regulatory community to meaningfully and accurately aggregate data. Use of a single, agreed UTI negates the need for parties to separately obtain, retain and report the UTI used by their counterparty. Rather than adding exceptional processing that is a burden for both local counterparties and the MSC as its recipient, the MSC should encourage use of a single UTI in accordance with the recommendations of the Financial Stability Board⁸.

Lastly, we appreciate the addition of the concept of a “reporting clearing agency” which addresses concerns raised by ISDA pertaining to potential gaps in reporting of cleared transactions. However, even though clearing agencies which are neither recognized or exempt have already informally assumed the reporting counterparty obligation under this definition, the MSC has yet to provide clarity on what constitutes the requisite “written undertaking to the regulator or securities regulatory authority”⁹. Public transparency regarding which clearing agencies have assumed these obligations will provide more certainty to local counterparties that their transactions are being reported in compliance with MSC Rule 91-507.

³ http://www2.isda.org/attachment/NjgzOQ==/2014%20Aug%2014%20#11120964-v3B-ISDA_Comment_Letter_AMF_Amendments_to_Regulation_91-507_E....pdf

⁴ Using static data based on *deemed* dealer representations provided via the ISDA Canadian Representation Letter #1, <http://www2.isda.org/attachment/NjQ3Mg==/Cdn%20repletter2final.doc>, or other similar representations.

⁵ We refer to the example in footnote 4 of CMIC’s letter.

⁶ We note that the ISDA Canadian Representation Letter #1 (*Id.*) does not include a representation for Canadian financial institution as at the time of publication there was no regulatory requirement for this party classification. Further, reporting counterparties did not build their static data or reporting counterparty logic to accommodate this additional layer.

⁷ See ISDA’s *Unique Trade Identifier (UTI): Generation, Communication and Matching* for further information: (http://www2.isda.org/attachment/NzAxOQ==/2014%20Oct%2014%20UTI%20Whitepaper%20v10.7_Final.pdf)

⁸ September 19, 2014, *Feasibility study on approaches to aggregate OTC derivatives data*: http://www.financialstabilityboard.org/wp-content/uploads/r_140919.pdf

⁹ Section 1(1), (b) of “*reporting clearing agency*” definition.

ISDA and its members thank the MSC and the Committee for its consideration of the comments provided herein. We are happy to discuss our concerns and any potential solutions at your convenience.

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

Sincerely,



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