



Safe,
Efficient
Markets

**ISDA Data & Reporting Canadian
Working Group**

For discussion purposes only

A Summary of Canadian Trade Reporting Requirements

Version 8, September 11, 2014

Tara Kruse, Director
Data & Reporting, ISDA

Table of Contents

<u>Topic</u>	<u>Page</u>
• Introduction	3
• Final rules	5
• Product scope	7
• Reporting rules	9
• Local counterparty	10
• Reporting counterparty	11
• Delegated reporting	16
• Derivatives dealer	17
• Reported data	18
• Historic data	19
• Identifiers	20
• Trade Repository	21
• Public dissemination	23
• Recordkeeping	25
• Substituted compliance	26
• Compliance dates	27

Introduction

- 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

On November 14, 2013, final versions of 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 (the “rules”) are the finalization of 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.

The rules came into force on December 31, 2013.

Final rules

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
- 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
- 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

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
- 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

Final rules

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
(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>

Product scope

Product Determination – Rule 91-506

Broadly, products defined as derivatives by the provinces are in scope.

- Ontario Securities Act and Manitoba Securities Act:

An option, swap, futures contract, forward contract or other financial or commodity contract or instrument whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest (including a value, price, rate, variable, index, event, probability or thing), but does not include,...a commodity futures contract...., a commodity futures option...., [or] a contract or instrument [ordered]... by the Commission...or prescribed by the regulations...not to be a derivative.

- Quebec Derivatives Act:

An option, a swap, a futures contract, a contract for difference or any other contract or instrument whose market price, value, or delivery or payment obligations are derived from, referenced to or based on an underlying interest, or any other contract or instrument designated by regulation or considered equivalent to a derivative on the basis of criteria determined by regulation.

Product scope

For the purposes of reporting, contracts or instruments related to the following are excluded from the definition of a “derivative”:

- Regulated gaming
- Insurance and annuities
- The purchase and sale of currency
- The delivery of a commodity other than cash or currency
- Evidence of a deposit
- Derivatives traded on an exchange (ETDs)

A derivative traded on a multi-to-multi execution platform (e.g. a SEF or an MTF) is not eligible for the ETD exclusion.

Reporting rules

Trade Repository and Data Reporting – Rule 91-507 covers:

- Regulation of Trade Repositories, including:
 - Designation of trade repositories
 - Filing of initial, annual and interim audited financial statements
 - Governance requirements
- Data Reporting and Dissemination, including:
 - Jurisdictional coverage – “local counterparty”
 - Reporting by a “reporting counterparty” and delegated reporting
 - Creation, lifecycle and valuation data
 - Pre-existing transactions
 - Identifiers (LEI, UTI, UPI)
 - Public Dissemination

Local counterparty

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) an affiliate of (a) if responsible for its liabilities
- (c) parties required to registered under provincial securities law as a derivatives dealer

Aside from a limited registration requirement in Quebec, dealer registration in the provinces is not expected to begin until 2015, so until then parties that fall under the definition of derivatives dealer in the securities laws will only have to report if they are a local counterparty or they face a local counterparty.

Reporting counterparty

Per amended OSC and MSC rules (in force as of September 9, 2014), 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 agency, the recognized or exempt clearing agency,
- (b) if the transaction is not cleared through a recognized or exempt clearing agency and is between two derivatives dealers, the derivatives dealer determined to be the reporting counterparty under the ISDA methodology,
- (c) if paragraphs (a) and (b) do not apply to the transaction and the transaction is between two derivatives dealers, each derivatives dealer,
- (d) if the transaction is not cleared through a recognized or exempt clearing agency and is between a derivatives dealer and a counterparty that is not a derivatives dealer, the derivatives dealer,
- (e) if paragraphs (a) to (d) do not apply to the transaction, the counterparty determined to be the reporting counterparty under the ISDA methodology, and
- (f) in any other case, each local counterparty to the transaction.

Reporting counterparty

In order to reduce duplicative reporting and allow for a single, multi-jurisdictional report, ISDA worked with the regulators to amend their originally published rules to allow for a single reporting party that aligns with the industry standard established for reporting to the CFTC.

The “ISDA Methodology” referenced in the amendments is the ISDA Canadian Transaction Reporting Party Requirements:

http://www2.isda.org/attachment/NjQxOQ==/Reporting%20Party%20Requirements_Canada_4Apr14_FINAL.pdf

The ISDA Methodology would apply in cases where both parties are dealers (regardless of whether one or both are local counterparties) or when both are non-dealer local counterparties.

Reporting counterparty

Reporting Party Multilateral Agreement

As a condition of the amended rules, in order to apply the single reporting party standard and eliminate any residual obligation for the non-reporting counterparty, the parties must adhere to a relevant multilateral agreement administered by ISDA that sets out the parties' agreement to follow the ISDA Methodology.

ISDA intends to publish the ISDA 2014 Multilateral Canadian Reporting Party Agreement (Deemed Dealer Version). A non-dealer version will be published as well.

A schedule of adherents to the Multilateral Agreement is required to be released to the regulators.

Reporting counterparty - AMF

On July 3, 2014, the AMF issued draft amendments to 91-507 that amend their reporting party hierarchy to include distinct layers for (i) Canadian financial institutions and (ii) persons subject to their dealer registration requirement.

On July 31, 2014, the AMF issued a blanket decision that that allows single sided reporting via the ISDA Methodology.

Concerns have been raised to the AMF that the draft regulation may result in a different reporting party determination in Quebec, despite the blanket decision.

The AMF fully intends to be harmonized with OSC and MSC, so are currently considering whether to issue guidance and/or changes to their draft rules or blanket decision.

Reporting counterparty

Local counterparty fallback

On April 17, 2014, amendments were published by OSC and MSC to revoke original subsection 25(2) of the reporting rules which required the local counterparty to report in the absence of a report by a foreign dealer. The change came into force on July 2, 2014.

The AMF includes a corresponding change in their blanket decision issued July 31, 2014.

Delegated reporting

Despite the dual reporting obligation in some cases, a reporting party can delegate its reporting obligations.

Although the delegation does not have to be via formal delegation agreement, the party with the reporting obligation remains responsible for timely and accurate reporting.

For this reason, the regulators agreed to include the standard for single reporting party determination as part of the reporting party rules, rather than as a method of delegated reporting.

Derivatives dealer

Who is a “dealer” or “derivatives dealer”?

- Under OSC and MSC, a derivatives dealer is “a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives in Ontario (Manitoba) as principal or agent”
- Under AMF’s Quebec Derivatives Act, a “dealer” means 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”

Reported data

A reporting party to a transaction involving a local counterparty must report, or cause to be reported, to a designated or recognized trade repository (“TR”):

- Creation data
 - Reportable in “real-time” or as soon as technologically practicable but no later than the end of T+1 business day
- Lifecycle event data
 - Reportable by COB on the day the life-cycle event occurs, but no later than end of T+1 business day
- Valuation data
 - Based on industry accepted valuation standards
 - Derivatives dealer or clearing agency reports daily
 - Non-dealer reports quarterly

Historic data

For “pre-existing transactions” a reporting party must report to a TR:

- a more limited subset of creation data (Appendix A of the Rules)
- life-cycle data and valuation data beginning *after* creation data has been reported

If the reporting counterparty is a clearing agency or dealer:

- transactions with outstanding contractual obligations on October 31, 2014 are reportable to a TR no later than April 30, 2015

If the reporting counterparty is a non-dealer:

- transactions with outstanding contractual obligations on June 30, 2015 are reportable to a TR no later than December 31, 2015

Please note that trades that are no longer live on the applicable reporting deadline are not required to be reported.

Identifiers

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:
http://www2.isda.org/attachment/NjgzOA==/2014%20Aug%2015%20UTI%20Whitepaper%20v10.6_final.pdf
- 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 the ISDA OTC Taxonomy:
<http://www2.isda.org/attachment/NTQzOQ==/ISDA%20OTC%20Derivatives%20Taxonomies%20-%20version%202012-10-22.xls>

Trade repository

- The Trade Repository is selected by the reporting party and all life cycle and valuation data must be reported to the same TR.
- The recognized or exempt clearing agency must report derivatives data to the designated or recognized TR specified by the local counterparty.
- If no designated or recognized TR can accept the data the counterparty must electronically report directly to the OSC, MSC or AMF.

Trade repository

Under Rule 91-507, a Trade Repository must:

- Obtain and maintain “designation” in Ontario or Manitoba and “recognition” in Quebec
- Provide the regulator with access to reported data
- Provide counterparties with access to data relevant to their transactions
- Aggregate data on open positions, volumes and prices to be reported publicly

Public dissemination

Aggregate data

A designated trade repository must, on a periodic basis create and make available to the public, at no cost, aggregate data on open positions, volume, number and price of transactions reported.

Aggregate data must include breakdowns by:

- Currency of denomination
- Asset class
- Contract type
- Maturity
- Clearing status

Public dissemination

Transaction level data

A designated trade repository must make certain anonymized transaction level data (per fields in Appendix A of rules) available:

- at no cost to the public via website or other publicly accessible technology
- by the end of T+1 from receipt of data if reporting counterparty is a dealer; otherwise by end of T+2

Inter-affiliate transactions are excluded from this requirement.

Recordkeeping

- What: transaction data
- Who: a reporting party
- How: a safe location in a durable form
- When:
 - life of the transaction
 - 7 years after expiration or termination

Substituted compliance

A reporting counterparty satisfies its reporting obligation if the transaction is reported to a trade repository pursuant to:

- the securities legislation of another Canadian province
- the laws of a foreign jurisdiction listed in Appendix B of Rule 91-507

The CFTC is recognized as a foreign jurisdiction for substituted compliance. Regulators are currently reviewing other jurisdictions.

Substituted compliance will only be relevant for foreign dealers once they are registered as derivatives dealers, as trades facing a local counterparty are not eligible for substituted compliance.

Compliance dates

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