

April 15, 2016

**BY EMAIL**

Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Financial and Consumer Services Commission (New Brunswick)  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

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Dear Sirs/Mesdames:

**Re: *Proposed Amendments to Multilateral Instrument 96-101 Trade Repositories and Derivatives Data Reporting (the “Proposed Amendments”)***

The Canadian Advocacy Council<sup>1</sup> for Canadian CFA Institute<sup>2</sup> Societies (the CAC) appreciates the opportunity to respond to the specific questions set out below with respect to the Proposed Amendments.

1. *The corresponding provision in the Proposed Local TR Rule Amendments would make the proposed substituted compliance for inter-affiliate derivatives available to an affiliate of a derivatives dealer or of a clearing agency. Is it appropriate to permit an affiliate of a derivatives dealer or of a clearing agency to avail itself of the proposed substituted compliance for inter-affiliate derivatives?*

We would not have concerns if the proposed substituted compliance was available to affiliates of derivatives dealers or of a clearing agency.

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<sup>1</sup>The CAC represents more than 15,000 Canadian members of the CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at <http://www.cfainstitute.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

<sup>2</sup> CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 135,000 members in 151 countries and territories, including 128,000 CFA charterholders, and 145 member societies. For more information, visit [www.cfainstitute.org](http://www.cfainstitute.org).

2. *Proposed subsection 28(2) excludes an individual from the requirement to obtain an LEI. Is it appropriate to exclude individuals from the requirement to obtain an LEI? Please identify and discuss any specific privacy law related concerns.*

In our view, it is appropriate to exclude individuals from the requirement to obtain an LEI. It is unlikely that individuals would themselves be trading in OTC derivatives and thus subject to the reporting rules. In any event, it is currently not possible via the LEI/GMEI initiative to identify individuals with beneficial ownership of entities such as holding corporations and partnerships that have an LEI, and thus it would be unequitable to require individuals who do choose to trade as individuals to obtain an identifier. Individuals would still have the option to obtain a LEI if they so chose.

6. *Do the Proposed TR Rule Amendments relating to public dissemination of transaction level data appropriately balance (i) the protection of counterparty anonymity, and (ii) the benefits to the market of useful and timely transaction-level public transparency?*

In general, the Proposed Amendments strike the right balance between the protection of counterparty anonymity and the benefits of public transparency of transaction level data. We are for the most part and in principle in favour of additional transparency. However, as noted in our comments below, we are doubtful that some of the information that is proposed to be released will be helpful to end users and may not be required.

The narrow scope of the rule as well as the reporting timing will have a large impact on the use of the data. The most liquid OTC derivatives, particularly interest rate swaps, will be subject to mandatory reporting while less liquid derivatives such as F/X contracts or single name equity or credit derivatives will not. The facts that only the most liquid derivatives will be reported, together with, in many cases, the suggested rounding will limit the data available.

We query whether the suggested rounding intervals are sufficient to provide anonymity for certain derivative trades, if the derivatives are less liquid than others and in the context of the relatively small Canadian OTC derivative market when compared to the US or Europe. The rounding appears to be quite granular. While the proposed caps help ameliorate some of these concerns, there may not be sufficient difference between some of the rounding categories to provide the requisite level of anonymity.

The protection of data is not only to protect against the identification of end users, but to avoid parties being able to discern the intentions of other parties placing a hedge (for example, if a counterparty sought to hedge with multiple other parties). For example, in a multi-dealer request for quotes, other dealers could be able to determine intentions based on the net rounding information, particularly below the net \$500 million level. In addition, even when it is not possible to identify the counterparties, it would be possible, for example in an interest rate swap transaction, to determine that a counterparty is not hedging but is taking a position on the direction of rates. Thus, if end users are simply looking to hedge, the current rounding brackets may not be useful; the amount of the trade could be irrelevant and thus the bands between the categories could be much larger (e.g. to the nearest \$100 million). The current table of granular rounding categories

could increase the overall cost of trades on end users, which will ultimately impact all market participants and could lead to inefficiencies in the market.

We understand that public dissemination of derivatives data is intended to facilitate price discovery. However, it would be helpful to have additional statistics with respect to tangible benefits to the general public of public dissemination of the proposed transaction level data, particularly as the information in Canada will be released later than in other jurisdictions such as the United States. Other than entities that either look to profit from the trading patterns of end users and dealers, or who are paid from making trading recommendations based on such data, it is difficult to pinpoint who will benefit from the information. Prior to implementing additional costly reporting requirements, it is important to confirm that there will be appreciable benefits for the market, particularly if the regulators will themselves be receiving the information regardless of the success of the proposals, and have total transparency with respect to the trading activity.

If public dissemination of data is deemed important and proceeds, we agree with moving up the date the requirement will take effect to harmonize it with other jurisdictions, however, as noted above, it might be prudent for regulators across Canada to consider further study of specific aspects of the proposal prior to implementation.

### **Concluding Remarks**

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have or to meet with you to discuss these and related issues in greater detail. We appreciate the time you are taking to consider our points of view. Please feel free to contact us at [chair@cfaadvocacy.ca](mailto:chair@cfaadvocacy.ca) on this or any other issue in future.

(Signed) *Michael Thom*

**Michael Thom, CFA**  
**Chair, Canadian Advocacy Council**