

SENT BY ELECTRONIC MAIL

October 7, 2022

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

c/o

Janice Cherniak, Senior Legal Counsel
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Email: Janice.cherniak@asc.ca

Michael Brady, Deputy Director,
Capital Markets Regulation
British Columbia Securities
Commission
P.O. Box 10142 Pacific Centre
701 West George Street
Vancouver, British Columbia
V7Y 1L2
Email : mbrady@bcsc.bc.ca

Ontario Securities Commission

c/o

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Email: comments@osc.gov.on.ca

Autorité des marchés financiers

c/o

Me Philippe Lebel, Corporate Secretary and
Executive Director, Legal affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Email : consultation-en-cours@lautorite.qc.ca

Manitoba Securities Commission

c/o

Paula White, Deputy Director, Compliance and
Oversight
The Manitoba Securities Commission
500 – 400 St. Mary Avenue
Winnipeg, MB R3C 4K5
Email: Paula.white@gov.mb.ca

Chris Besko, Director and General Counsel
The Manitoba Securities Commission
500 – 400 St. Mary Avenue
Winnipeg, MB R3C 4K5
Email: Chris.besko@gov.mb.ca

Dear Sirs/Mesdames:

**Re: Canadian Securities Administrators Multilateral Notice and Request for
Comment – Proposed Amendments to Multilateral Instrument 96-101 *Trade
Repositories and Derivatives Data Reporting* and Proposed Changes to Companion
Policy 96-101 *Trade Repositories and Derivatives Data Reporting***

And Re: Ontario Securities Commission Notice and Request for Comment – Proposed Amendments to OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, Proposed Changes to OSC Companion Policy 91-507CP, Proposed Changes to OSC Companion Policy 91-506CP; and OSC Staff Notice 91-705 *Draft OSC Derivatives Data Technical Manual*

And Re: Autorité des marchés financiers *Regulation to amend Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* and proposed changes to *Policy Statement to Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* and to *Policy Statement to Regulation 91-506 respecting derivatives determination*

And Re: Manitoba Securities Commission Notice and Request for Comment – Notice of proposed amendments to Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* and proposed changes to Companion Policy 91-507CP *Trade Repositories and Derivatives Data Reporting* and proposed changes to MSC Companion Policy 91-506CP *Product Determination*, and MSC Staff Notice 91-701 *Draft MSC Derivatives Data Technical Manual*

The International Swaps and Derivatives Association, Inc. (“ISDA”)¹ has been actively engaged for many years with providing input on regulatory reforms impacting derivatives in major jurisdictions globally, including Canada. ISDA appreciates the opportunity to provide comments to the Canadian Securities Administrators (“CSA”) in response to the notices and requests for comments (the “Notices”) regarding the above-noted proposed amendments (the “Proposed Amendments”) to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (“MI 96-101”) and Companion Policy (“MI CP” and, together with MI 96-101, the “MI Trade Reporting Rule”), OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (“OSC Rule 91-507”) and Companion Policy (“Ontario CP” and, together with OSC Rule 91-507, the “ON Trade Reporting Rule”), Autorité des marchés financiers *Regulation to amend Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* (“QC Regulation 91-507”) and Policy Statement (“QC CP” and, together with QC Regulation 91-507, the “QC Trade Reporting Rule”) and Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (“MSC Rule 91-507”) and Companion Policy (“MB CP” and, together with MSC Rule 91-507, the “MB Trade Reporting Rule”). The MI Trade

¹ Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 78 countries. These members comprise a broad range of 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, such as exchanges, intermediaries, clearing houses 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 website: www.isda.org.

Reporting Rule, the ON Trade Reporting Rule, the QC Trade Reporting Rule and the MB Trade Reporting Rule are sometimes collectively referred to in this letter as the “**Trade Reporting Rule**”. In this letter, ISDA wishes to outline areas that we believe require further scrutiny and revision, in addition to our responses to the specific questions posed by the CSA in the Notices, which are included in Schedule A.

1. General Observations

ISDA commends the CSA for proposing the Proposed Amendments to the Trade Reporting Rule with a view towards streamlining and harmonizing Canadian derivatives data reporting standards with international data reporting standards. In ISDA’s view, such harmonization will assist market participants in complying with derivatives data reporting obligations across various jurisdictions. As a general comment, ISDA encourages the CSA to harmonize the Multilateral Trade Reporting Rule, the ON Trade Reporting Rule, the QC Trade Reporting Rule and the MB Trade Reporting Rule to the greatest extent possible to minimize regulatory burden for market participants subject to certain or all of such rules. In ISDA’s view, the most efficient manner of harmonizing trade reporting rules across Canada would be to replace the current four separate rules with one national instrument. ISDA recommends that the CSA take this opportunity to introduce such a national instrument so as to minimize regulatory compliance burden for market participants and further the CSA’s stated goal of harmonization with respect to derivatives trade reporting.

However, ISDA believes that the following issues, if unaddressed, could result in regulatory burden due to unduly onerous compliance requirements and asymmetrical interjurisdictional rules and/or require further clarification by the CSA to provide market participants with clarity as to certain obligations under the Trade Reporting Rule.

2. Errors or Omissions (Section 26.1)

Errors or Omissions: Notification, Timing and Rectification Requirements

Subsections 26.1(2) and (3) of the proposed amended Trade Reporting Rule would require a reporting counterparty or local counterparty (other than the reporting counterparty) to report to the applicable recognized trade repository (or applicable securities regulatory authority) or notify the reporting counterparty of, respectively, an error or omission in derivatives data “as soon as technologically practicable after discovery of the error or omission and, in any event, no later than the end of the business day following the day of discovery of the error or omission” (the “**Canadian E&O Reporting Deadline**”).

In ISDA’s view, based on feedback from its members, this timeframe is too short to be feasible or practicable for market participants. We also note that the corresponding Commodity Futures Trading Commission’s (“**CFTC**”) trade reporting “re-write” rules provides market participants with substantially longer ultimate deadlines for correcting (or otherwise reporting) errors or omissions.² Market participants have found even such longer periods to be impractical given that an internal investigation of the potential error or

² See 17 CFR §43.3(e)(1)(i) and §45.14(a)(1)(i).

omissions is required to determine whether an error or omission exists and the required steps to correct such error or omission. ISDA therefore recommends that the Canadian E&O Reporting Deadline be extended to include an ultimate deadline of 10 business days after discovery of the error or omission. We submit that such period is significantly more feasible for market participants to correct or alternatively report errors or omissions. Allowing market participants such additional time will also enhance the accuracy of such reporting.

In ISDA's view, such extended Canadian E&O Reporting Deadline should also apply to a reporting counterparty's obligation under Section 26.1(4) of the proposed amended Trade Reporting Rule to notify the applicable securities regulatory authority of a significant error or omission.

Additionally, ISDA recommends that Subsection 26.1 (4) of the proposed amended Trade Reporting Rule be revised to clarify that if the "significant" error or omission has been rectified within the Canadian E&O Reporting Deadline, the reporting counterparty need not notify the applicable securities regulatory authority of such error or omission, consistent with the CFTC rules. In ISDA's view, there is no policy rationale for requiring notification to the securities regulatory authorities if the error or omission has been rectified. Under Part 4 of the Trade Reporting Rule, the securities regulatory authorities will have access to the corrected derivatives data that would have been reported to the applicable recognized trade repository. Requiring additional notification to the applicable securities regulatory authority will impose undue regulatory burden on reporting counterparties.

Definition of "Significant" Errors or Omissions in Derivatives Data

In addition to the issues discussion in the foregoing section with respect to the timing of reporting of "significant" errors or omissions in derivatives data, ISDA recommends that the CSA include an express definition of "significant error or omission" in the Trade Reporting Rule and revise companion policy guidance accordingly. Under the Proposed Amendments,³ a reporting counterparty must notify the applicable securities regulatory authority of a "significant" error or omission that has occurred as soon as practicable upon discovery of the error omission. Clearer guidance should be provided by the CSA as to which errors or omissions should be considered significant by reporting counterparties so as to require such notification. Accordingly, ISDA recommends that the following definition be included in the Trade Reporting Rule (and related companion guidance be updated as necessary):

"significant error or omission" means, with respect to any reported derivatives data, an error or omission that in the reporting counterparty's reasonable determination exceeds the following threshold:

³ See Section 26.1(4) of each of the MI Trade Reporting Rule, the ON Trade Reporting Rule, the QC Trade Reporting Rule and the MB Trade Reporting Rule.

Number of affected reports / average monthly number of reports > Y% and number of affected reports > X

where X and Y are calibration constants specified in the table below and average monthly number of reports is the average monthly number of reports made by the reporting counterparty calculated on the day of assessment as:

(Aggregate number of reports in each of the twelve most recently completed calendar months) / 12 = Number of reports in the last 365 days / 12

using the actual number of reports submitted during the last twelve months.

	<i>Average monthly number of submissions (A)</i>		
	<i>$0 \leq A < 100,000$</i>	<i>$100,000 \leq A < 1,000,000$</i>	<i>$1,000,000 \leq A$</i>
<i>X</i>	100	20,000	150,000
<i>Y%</i>	20%	15%	10%

The foregoing proposed definition is consistent with “Alternative A” for ESMA’s proposed definition of significant reporting issues under the European Securities and Markets Authority’s (“ESMA”) proposed amendments under the European Market Infrastructure Regulation (“EMIR”) trade reporting rules.⁴

3. Notification Requirements for Termination of “Alpha” Transactions (Subsection 32(3))

The Proposed Amendments would require a reporting clearing agency through which a transaction is cleared to report the termination of the original transaction (also referred to as the “alpha” transaction) to the applicable recognized trade repository by the end of the business day on which the original transaction was terminated. ISDA submits that such proposed deadline is impractical given the existing lifecycle event data reporting obligations. Pursuant to Section 31 of the Trade Reporting Rule, a reporting counterparty to an alpha trade (or a derivatives trading facility, as the case may be) must report creation data relating to an alpha transaction generally immediately following the transaction or, if not technologically practicable, as soon as technologically practicable and in no event later than the end of the business day following the day on which the creation data would otherwise be required to be reported. Therefore, ISDA submits that the sequencing of reporting the termination of the alpha transaction should account for the reporting

⁴ For further details on the European Union proposals, see European Securities and Markets Authority’s *Consultation paper – Draft Guidelines for reporting under EMIR* available at <https://www.esma.europa.eu/press-news/consultations/consultation-draft-guidelines-reporting-under-emir> at page 95.

counterparty with respect to the alpha transaction having reported the alpha trade before the reporting clearing agency is required to report the termination. Accordingly, ISDA recommends that proposed Subsection 32(3) of the Trade Reporting Rule be amended as follows:⁵

(3) Despite subsections (1) and (2), the recognized or exempt clearing agency through which a transaction is cleared must report the termination of the original transaction to the designated trade repository to which derivatives data in respect of that original transaction was reported by the end of the business day ~~on which the original transaction is terminated~~ following the day on which the reporting counterparty to the original transaction has reported the creation data with respect to such original transaction pursuant to section 31.

Additionally, ISDA notes that under the current Trade Reporting Rule, the reporting counterparty to an alpha transaction that is cleared is responsible for reporting termination of the alpha transaction. For greater certainty, ISDA respectfully recommends that proposed Subsection 32(3) of the Trade Reporting Rule and related companion policy guidance be amended to clarify that it is *only* the reporting clearing agency that is required to report the termination of the original transaction, and not either of the counterparties to the original transaction or the derivatives trading facility, as the case may be, who is responsible for reporting the creation data of the alpha transaction.

Finally, ISDA notes that Paragraph 36.1(b) of the proposed Amended Trade Reporting Rule should include a reference to Section 31.

4. Derivatives Trading Facilities' Obligation to Report Anonymous Transactions (Section 36.1)

The CSA propose a new Section 36.1 of the Trade Reporting Rule that would require a transaction involving a local counterparty that is executed anonymously on a derivatives trading facility and intended to be cleared to be reported by the derivatives trading facility. ISDA appreciates the rationale for imposing such obligation on the derivatives trading facility given the anonymous nature of the transaction and the reporting difficulties this poses for the parties to the transaction. However, ISDA notes that under the CFTC swap data reporting rules, swap execution facilities are responsible for reporting all trades executed on their facility, not only the anonymously executed transactions that are intended to be cleared. ISDA views the swap execution facilities as best positioned to report all such transactions (not only anonymous alpha transactions) and that it would be preferable for the CSA to be aligned with the CFTC on this reporting party determination. Also in the interest of harmonization, ISDA recommends that this reporting requirement (as extended by the proposed amendments to the Trade Reporting Rule) should apply only to swap execution facilities (as defined under CFTC rules) and not to other derivatives trading facilities.

⁵ Note the proposed amendments are with provided with respect to the proposed amended ON Trade Reporting Rule and are applicable, with such necessary changes, to each of the MI Trade Reporting Rule, the QC Trade Reporting Rule and the MB Trade Reporting Rule as well.

ISDA encourages the CSA to engage closely with derivatives trading facilities (or swap execution facilities more specifically) who may be subject to the new Section 36.1 of the Trade Reporting Rule to ensure they are aware of and have had sufficient opportunity to raise any operational or other concerns regarding the new obligations that may be imposed upon them under this proposed new Section 36.1.

5. Position Level Data Reporting (Section 32.1)

ISDA appreciates that the CSA have proposed permitting the reporting of aggregate position level data under new Section 31.1 of the proposed amended Trade Reporting Rule as an optional alternative in certain circumstances to reporting lifecycle events. ISDA supports position level data reporting as an option but would not support requiring position level data reporting to be mandatory for applicable reporting counterparties.

6. Data Fields Required to be Reported and Technical Manuals Comments

While the CSA appreciate that the Proposed Amendments are intended to harmonize derivatives data with international standards, ISDA notes that the Proposed Amendments include several data elements that are not contained in the CFTC swap data reporting rules⁶ and/or not already reported pursuant to the existing Trade Reporting Rule. Prior to publishing the technical specifications concurrent with the final swap data reporting rules in November 2020, the CFTC worked with the industry, as it finalized data element validations, definitions, allowable values, and other aspects of its technical specifications. ISDA and its members continue to review the proposed data elements and technical manuals and would look forward to providing further comments to the CSA in due course. We would also suggest that a revised version of the data elements and technical manuals be provided for further comment in advance of the CSA finalizing same.

As general preliminary comments, ISDA notes the following:

- a) We recommend that the CSA take into account changes made by other regulators to the validation of common fields.
- b) ISDA and its members would like to re-raise several points regarding custom basket reporting made by market participants to the Committee on Payments and Market Infrastructures (CPMI) and International Organization of Securities Commissions (IOSCO) during the 2017 consultation and workshops regarding custom baskets.

Custom baskets are, by design, bespoke and customized to the requirements and objectives of a specific client. As such, a custom basket is normally one-of-a-kind. For this reason, we have and continue to urge regulators and global authorities to carefully consider trade reporting requirements for custom basket data elements, particularly for transparency reporting mandates.

For example, since custom baskets are typically one of a kind, a “custom basket code” such as #120 in all the proposed technical manuals would not produce any

⁶ 17 C.F.R. Parts 43, 45 and 49.

meaningful results in data aggregation. In addition, requiring the legal entity identifier (“LEI”) of the structurer as part of the allowable value of a custom basket code could cause the structurer to be exposed.

Furthermore, underlier information for a derivative is typically included in a set of reportable economic fields which might be made public under various transparency reporting regimes. Underlier information may also be held in instrument static data systems for reference data purposes. Therefore, there are potential risks for unintended identification of the parties to the custom basket trade via the underlier due to custom basket code, since it can be associated with the underlier containing the party’s identity.

- c) ISDA and its members would welcome the opportunity to work with the CSA as well as other regulators to further refine the definition of derivatives based on cryptoassets.
- d) We would like to clarify whether the format/allowable value for #87 Variation margin collateral portfolio code is intended to be Varchar(52)/Up to 52 alphanumeric characters, similar to what is drafted for #88 Initial margin collateral portfolio code and consistent with the format/allowable value CFTC #124 for Variation margin collateral portfolio code.
- e) We recommend that the same terminology be used where possible in the Trade Reporting Rule and/or technical manuals to reduce confusion and improve the consistency of reporting. For example, the definition for “Transfer” is provided in the #98 Event Type for transferring SDRs, but the allowable value PTNG that we believe to be relevant uses “porting” (i.e. PTNG = Porting).
- f) #36 and #40 seem to be identical⁷ to each other in the Ontario Securities Commission’s, Autorité des marchés financiers’, Manitoba Securities Commission’s, and multilateral technical manuals⁸, but in Annex A of the respective proposed amended Trade Reporting Rule, #36 refers to "Notional amount in effect on associated effective date" while #40 refers to "Notional amount schedule – notional amount in effect on associated effective date.
- g) Revive is included in the #97 Action type definition of all the draft technical manuals but does not have an allowable value.

7. “Porting” between Designated Trade Repositories (Section 26(6))

ISDA notes that the CSA propose to retain the current Section 26(6) of the Trade Reporting Rule which requires a reporting counterparty to ensure that all reported derivatives data relating to a transaction is reported to the same designated trade repository or, if reported to the applicable securities regulatory authority, to such securities regulatory authority.

⁷ Both are “Notional amount schedule - notional amount in effect on associated effective date.”

⁸ Except for the use of date versus dates in the definition.

However, this appears to be inconsistent with, for example, the draft Ontario technical manual which references for data element #96 that an event type may be a “transfer” which is indicated as the process by which a derivative is transferred to another trade repository that has the effect of the closing of the derivative transaction at one trade repository or opening of the same derivative transaction using the same Unique Transaction Identifier (“UTI”) in a different trade repository. In light of such inconsistency, ISDA recommends that Section 26(6) be revised to expressly incorporate the ability for reporting counterparties to “port” to another designated trade repository. We note that other jurisdictions, including the United States and the European Union permit reporting counterparties to change the trade repository to which data is reported. For example, the CFTC’s swap data reporting rules permit a reporting counterparty to change the swap data repository to which data is reported subject to providing five business days’ advance notice to the other counterparty and both swap data repositories and procedural requirements to report the change of swap data repository (including a new data element for the new swap data repository identifier⁹).¹⁰ ISDA’s members have advised that they desire the flexibility to “port” between trade repositories as is permitted under the United States and European Union trade reporting rules. Furthermore, there are no policy concerns with permitting “porting” since the CSA can aggregate derivatives data reported across the designated trade repositories. ISDA therefore recommends that the CSA revise the proposed amended Trade Reporting Rule to expressly permit reporting counterparties to change the designated trade repository to which derivatives data for a transaction is reported subject to compliance with conditions equivalent to those found in 17 C.F.R. 45.10(d) in the United States.

8. UTI Generation Hierarchy (Section 29)

Please see our comments in response to question #4 in Schedule A under the heading “MI Trade Reporting Rule” for ISDA’s comments on the proposed UTI generation hierarchy in the MI Trade Reporting Rule. With respect to the ON Trade Reporting Rule, the QC Trade Reporting Rule and the MB Trade Reporting Rule, ISDA also respectfully requests that, for consistency across the CSA jurisdictions, new Section 29 of each such rule be revised so as to be drafted substantially equivalent to the UTI generation hierarchy in the MI Trade Reporting Rule (including the proposed revisions suggested in Schedule A). As proposed, there are differences in the UTI generation hierarchy between the MI Trade Reporting Rule and the other jurisdictions’ rules. In ISDA’s view, the hierarchy should be harmonized across Canada and that the proposed hierarchy in the MI Trade Reporting Rule will be the most straightforward hierarchy for counterparties to apply when determining which party is required to generate a UTI.

* * * *

⁹ Such new data element is #105 (New SDR Identifier) in 17 C.F.R. Part 45, Appendix 1.

¹⁰ 17 C.F.R. 45.10(d).

ISDA and its members would like to reiterate our appreciation to the CSA for the opportunity to provide feedback on the Proposed Amendments. We are happy to discuss our responses and to provide any additional information that may be helpful.

Thank you for your consideration of these important issues to market participants. Please contact the undersigned if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "E Hsu", with a long, sweeping underline that extends to the left.

Eleanor Hsu
Director, Data and Reporting
International Swaps and Derivatives Association, Inc. (ISDA)

Schedule A:

Specific requests for comment from the CSA

Comments

1. MI Trade Reporting Rule

In addition to your comments on all aspects of the Proposed Amendments, we also seek specific feedback on the following questions:

1) Reporting deadline for “end-users”

The deadline of the next business day for reporting derivatives data to a trade repository applies to reporting counterparties whether they are derivatives dealers or end-users. In contrast, we note that the finalized amendments to CFTC Regulation Part 45 allow for reporting by end-users by T + 2 following the execution date. Do market participants anticipate compliance issues regarding the proposed shorter time frame? Please provide reasons.

In general, ISDA supports harmonization of the Trade Reporting Rule in Canada with equivalent CFTC requirements and therefore recommends that the reporting deadlines for “end-users” be harmonized with the CFTC rules.

2) Framework for validation, verification and correction of derivatives data

We have set out a new framework for validation, verification and correction of derivatives data. Please provide any comments regarding the proposed requirements. Is it necessary for a trade repository to implement policies and procedures to enable reporting counterparties to ensure that reported derivatives data is accurate and contains no misrepresentation, or is providing data access to such counterparties sufficient to enable them to fulfill this requirement?

In ISDA’s view, it is not necessary for a trade repository to implement policies and procedures to enable reporting counterparties to ensure that reported derivatives data is accurate and contains misrepresentation. Rather, providing data access to such counterparties is sufficient to enable reporting counterparties to fulfill this requirement. This is the approach taken for the CFTC swap data reporting rule amendments as well.

3) Timing of implementation

We anticipate that the implementation date for the Proposed Instrument will be in 2024. Does the proposed implementation timing pose any particular problems for market participants, particularly with regard to implementation of other global trade reporting changes?

Two large bodies of work (the Unique Product Identifier (“UPI”) and ISO 20022) are still in progress at the global level. If the implementation date of the Proposed Amendments is not aligned with the UPI and ISO 20022 date, market participants will be forced to undertake two separate implementations for each of these substantive changes. Streamlining compliance to a single

implementation date for the Proposed Amendments, UPI, and ISO 20022 would reduce the industry burden of implementation.

There are a number of data elements within the Proposed Amendments which have a dependency on what would be required by the UPI. Since the global UPI system is still in development, industry participants are not able to (a) adequately analyze whether they have the data internally, (b) determine whether any data they have is needed or sufficient, or (c) build the related data elements effectively, until the UPI is available. If the proposed Trade Reporting Rule is implemented first, industry participants would be required to build to the product-related messaging fields related to the Proposed Amendments specific to each of the designated trade repositories for an interim period. When the global UPI is ready, the previous logic and work is discarded and reporting parties will need to build the reporting logic to implement the global UPI requirement under the Proposed Amendments. Validations for current product-related reporting will have to be reworked and new validations built for the global UPI.

There currently are no ISO 20022 reporting messages for the Proposed Amendments. While we recognize that the Proposed Amendments' technical manuals align closely with the Technical Specifications of the amended CFTC swap data reporting rules, the process to include the CFTC and EMIR data elements into the reporting ISO 20022 schema is still ongoing at the global level. If the proposed Trade Reporting Rule is implemented prior to the completion and requirement of the relevant ISO 20022 reporting schema, the industry would need to undertake a second phase for the implementation of the amended Canadian rules. It is currently unclear what impact the Canadian regulators' ISO 20022 requirements will have on the Proposed Amendments' definitions, allowable values, or form and manner specifications.

ISDA therefore requests that the CSA allow the industry to continue to comply with the current Trade Reporting Rule, and provide for a single implementation date for the Proposed Amendments, UPI, and ISO 20022. Other trade reporting regulators are looking to adopt the approach of a single compliance date, including ESMA, who we understand intends a single compliance date for the EMIR Refit rule amendments, UPI¹¹, and ISO 20022. ISDA recommends that such implementation date for the Proposed Instrument be no earlier than the second half of 2024.

4) Reporting hierarchy and potential issues with reporting hierarchy under OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting (the Ontario TR Rule)

Does the hierarchy enunciated in section 25 for determining the reporting counterparty achieve efficiency in reporting and place the reporting obligations on the entities that are practically able and best situated to do the reporting? We invite comments on the differences in the reporting counterparty hierarchy among the various CSA jurisdictions and how these differences affect market participants.

We note that section 25 of the Ontario TR Rule does not include a provision similar to paragraph 25(2)(c) of the Trade Reporting Rule. Paragraph 25(2)(c) provides that counterparties to a derivative that are either both derivatives dealers or both not derivatives dealers can agree, in

¹¹ For off-venue reporting.

writing, about which counterparty will be the reporting counterparty. Under the Ontario TR Rule, if each counterparty to a derivative is a derivatives dealer and one counterparty to a derivative is not a party to the “ISDA Multilateral” each counterparty would be required to be a reporting counterparty.

The OSC has developed a potential alternative reporting hierarchy, set out in Annex E to the *OSC Notice and Request for Comment* dated June 9, 2022, which reduces the need for delegated reporting between derivatives dealers. Please provide any comments on whether you consider the alternative hierarchy to function better for local market participants trading with Ontario counterparties, particularly in comparison with the functioning of the MI 96-101 hierarchy.

Please see our comments under the heading “General Observations”. ISDA encourages the CSA to harmonize the Multilateral Trade Reporting Rule, the ON Trade Reporting Rule, the QC Trade Reporting Rule and the MB Trade Reporting Rule to the greatest extent possible to minimize regulatory burden for market participants subject to certain or all of such rules and to take this opportunity to replace the current four separate rules with one national instrument.

5) Reporting collateral and margin data

The new requirement to report collateral and margin data is consistent with the current ESMA requirements and the new CFTC rules. Are the collateral and margin data reporting requirements and elements capable of being complied with in an efficient manner?

As noted in our comments under the heading “Data Fields Required to be Reported and Technical Manuals Comments”, ISDA continues to review the proposed data elements and technical manuals and anticipates providing further comments to the CSA which may address the collateral and margin data reporting requirements and elements.

6) Hierarchy for generating UTIs

Under new subsection 29(1), a new hierarchy has been set out for responsibility for generating UTIs. Does the proposed hierarchy match the practicalities of UTI generation? We have included a new provision for cross-jurisdictional derivatives, such that if a derivative is also reportable to one or more other jurisdictions with a regulatory reporting deadline earlier than under the Instrument, the derivative should be identified in all reporting with the same UTI that was generated according to the rules of the jurisdiction with the earliest regulatory reporting deadline. Please provide any comments on the practicality of this cross-jurisdictional provision.

ISDA recommends that the new hierarchy in subsection 29(1) be revised to permit counterparties to delegate responsibility for generation of UTIs by way of a bilateral agreement. Accordingly, ISDA suggests that subsection 29(1) be revised as follows (with deletions in ~~striketrough~~ and additions in **double underline**):

29. (1) The following person or company must assign a single unique transaction identifier for each transaction relating to a derivative that is required to be reported under this Instrument:

(a) if the derivative is cleared through a reporting clearing agency, the reporting clearing agency;

(b) if paragraph (a) does not apply and the transaction relating to the derivative is executed on a facility or platform for trading derivatives that has assigned a unique transaction identifier to the transaction, the facility or platform;

(c) if paragraphs (a) and (b) do not apply and the counterparties to the transaction have agreed in writing that one of them will be the person or company responsible for assigning the single unique transaction identifier for such transaction, the counterparty that is so responsible under the terms of that agreement;

(ed) if paragraphs (a) ~~and to~~ **(bc)** do not apply, the reporting counterparty that is a derivatives dealer;

(de) if paragraphs (a) to **(ed)** do not apply, the recognized trade repository.

(2) Despite subsection (1), if paragraphs (1)(a) and (b) do not apply and the derivative is also required to be reported under the securities legislation of a jurisdiction of Canada, other than the local jurisdiction, or under the laws of a foreign jurisdiction, with a reporting deadline earlier than under this Instrument, the person or company required to assign the unique transaction identifier is the person or company required to assign the unique transaction identifier under the laws of that jurisdiction of Canada or foreign jurisdiction.

(3) The single unique transaction identifier must be assigned as soon as technologically practicable after execution of the transaction that relates to the derivative, and in any event not later than the time that the derivative is required to be reported to a recognized trade repository under this Instrument.

7) Harmonization with global standards

In order to harmonize with global standards, we have updated the required data elements for reporting counterparties, as set out in Appendix A to the Trade Reporting Rule. To provide further detail regarding formats for the data elements, we have created a new Manual, as set out in Appendix A to the Trade Reporting CP. Please provide any comments regarding the data elements, the Manual and whether the updates would reduce regulatory burden. We also invite comments on the data elements pertaining to commodity derivatives, while noting that international guidance on such data elements is still being developed.

ISDA and its members support the addition of enumerated and detailed requirements using the Technical Manual and Appendix A to the MI Trade Reporting Rule.

There are a number of data elements within the Proposed Amendments which have a dependency on what would be required by the UPI, including many related to commodity derivatives. Please refer to our response to question #3 above for ISDA's comments related to the ongoing development and lack of clarity around the UPI and resulting recommendation to allow the

industry to continue to comply with the current Trade Reporting Rule, and permit a single implementation date for the Proposed Amendments, UPI, and ISO 20022.

8) Requirement to correct errors relating to closed derivatives

The requirement to correct errors applies to derivatives that are no longer open, as long as the record retention period for the derivative has not expired at the time the error is discovered, while the verification requirements only apply to open derivatives. Please provide any comments regarding the practicability of these proposed requirements, which are consistent with the analogous requirements in the finalized amendments to CFTC Regulation Part 45.

Under the CFTC rules, 17 C.F.R. § 45.14 and § 43.3(e) require that when a reporting party becomes aware of an error or omission, the reporting counterparty must submit the corrected or omitted data for the swap, *regardless of the state of the swap* including swaps that have matured, terminated or otherwise closed (i.e., “dead trades”). Reporting errors or omissions for dead trades could create a number of significant operational and infrastructure build issues for market participants.

The proposed requirement that any dead trade needs to be corrected or submitted due to omission may no longer be able to be submitted to the designated trade repository using the pre-compliance date validation parameters. As a result, reporting counterparties would be compelled to revise builds to be able to report errors and omissions for dead trades with post-compliance date validation parameters. This would be an additional implementation burden to the industry.

Correcting errors for dead trades increases the cost and complexity of compliance without any seeming added benefits to regulatory oversight. As such transactions no longer pose risks to the Canadian markets, it is unclear how correcting any errors would enhance the CSA’s ability to monitor risk. Accordingly, we believe the requirement with regard to dead trades should be eliminated in the final rules.

9) Maintenance and renewal of LEIs

The Proposed Amendments require a local counterparty under section 28 [*Legal entity identifiers*] to maintain and renew its LEI. However, we have identified instances where non-reporting local counterparties are not maintaining and renewing their LEIs, as required. As a result, the LEIs lapse and the information associated with them is no longer current, which reduces the efficiency of the LEI system. While we do not currently expect reporting counterparties to verify the maintenance and renewal of LEIs of their counterparties, we invite comments from market participants regarding any potential steps that could be taken to improve the maintenance and renewal of LEIs of non-reporting counterparties.

ISDA supports that reporting counterparties are not required to verify the maintenance and renewal of LEIs of their counterparties. We understand that certain trade repositories have Global Legal Entity Identifier Foundation (GLEIF) connectivity and therefore suggest that the trade repositories could potentially furnish the CSA with a report of live positions that have lapsed LEI’s for their information.

2. ON Trade Reporting Rule

In addition to your comments on all aspects of the Proposed Trade Reporting Amendments, the Commission also seek specific feedback on the following questions:

1) Harmonization with global standards

We have updated the required data fields for reporting market participants as set out in Appendix A of the Trade Reporting Rule with the goal of harmonizing with global standards and accordingly, reducing regulatory burden. As well, we created a new OSC Derivatives Data Technical Manual to inform reporting market participants on administrative matters for reporting in accordance with the Trade Reporting Rule.

Please provide your comments on whether you anticipate that the changes to the data field requirements and the corresponding OSC Derivatives Data Technical Manual will reduce regulatory burden and increase efficiency and clarity when meeting trade reporting requirements.

Please see our response to question #7 above under the heading “MI Trade Reporting Rule.”

2) Reporting hierarchy

We have developed a potential alternative to the reporting hierarchy, which we have set out in Annex E to the Notice. This alternative hierarchy is an effort by us to provide increased flexibility and reduce the need for delegated reporting where feasible. The alternative hierarchy still maintains a static approach in relation to transactions involving derivatives dealers that are financial entities but provides greater flexibility in relation to transactions between two derivatives dealers that are both non-financial entities. The increase in flexibility may, however, result in increased complexity to the reporting hierarchy as well as possible technological and operational changes for derivatives dealers.

Do you support adopting the hierarchy in the Proposed Trade Reporting Amendments (as set out in Annexes A and B) or the alternative hierarchy as set out in Annex E?

Please see our response to question #4 above under the heading “MI Trade Reporting Rule.”

3) Data accuracy

We have proposed replacing the current concept of confirmation of data accuracy with a requirement under paragraph 26.1(1)(a) for all reporting counterparties to ensure that all reported derivatives data is accurate and contains no misrepresentation and a requirement under paragraph 26.1(1)(b) for reporting counterparties that are derivatives dealers and recognized or exempt clearing agencies to verify the accuracy of data every 30 days. A designated trade repository must establish written policies and procedures to enable the reporting counterparty to carry out its verification obligations under paragraph 26.1(1)(b); however, while a designated trade repository must provide counterparties to a transaction with access to derivatives data, we have not contemplated a specific requirement for policies and procedures designed to enable the requirement under paragraph 26.1(1)(a).

Is it necessary for a trade repository to implement policies and procedures to enable all reporting counterparties to ensure that all reported derivatives data is accurate and contains no misrepresentation, or is providing access to such counterparties sufficient to enable them to fulfill this requirement?

Please see our response to question #2 above under the heading “MI Trade Reporting Rule.”

4) Maintenance and renewal of LEIs

The Trade Reporting Rule requires a local counterparty under section 28.1 [*Maintenance and renewal of legal entity identifiers*] to maintain and renew its LEI. However, we have identified instances where non-reporting local counterparties are not maintaining and renewing their LEIs, as required. As a result, the LEIs lapse and the information associated with them is no longer current. This reduces the benefits associated with LEIs. While we do not currently expect reporting counterparties to verify the maintenance and renewal of LEIs of their counterparties, we are interested to receive comments from market participants regarding any potential steps that could be taken to improve the maintenance and renewal of LEIs of non-reporting counterparties.

Please see our response to question #9 above under the heading “MI Trade Reporting Rule.”

3. QC Trade Reporting Rule

In addition to your comments on all aspects of the proposed trade reporting amendments, the Authority also seeks specific feedback on the following questions:

1) Harmonization with global standards

The Authority has updated the required data elements for reporting market participants as set out in Appendix A of Regulation 91-507 with the goal of harmonizing with global standards and accordingly, reducing regulatory burden. As well, the Authority created a new AMF Derivatives Data Technical Manual to inform reporting market participants on administrative matters for reporting in accordance with Regulation 91-507.

Please provide your comments on whether you anticipate that the changes to the data elements requirements and the corresponding AMF Derivatives Data Technical Manual will reduce regulatory burden and increase efficiency and clarity when meeting trade reporting requirements.

Please see our response to question #7 above under the heading “MI Trade Reporting Rule.”

2) Data accuracy

The Authority has proposed replacing the current concept of confirmation of data accuracy with a requirement under paragraph 26.1(1)(a) for all reporting counterparties to ensure that all reported derivatives data is accurate and contains no misrepresentation and a requirement under paragraph 26.1(1)(b) for reporting counterparties that are persons subject to the registration requirement as a dealer under the Act, Canadian financial institutions and reporting clearing houses to verify the accuracy of data every 30 days. A recognized trade repository must establish written policies and procedures to enable the reporting counterparty to carry out its verification obligations under paragraph 26.1(1)(b); however, while a recognized trade repository must provide counterparties to a transaction with access to derivatives data, the Authority has not contemplated a specific requirement for policies and procedures designed to enable the requirement under paragraph 26.1(1)(a).

Is it necessary for a recognized trade repository to implement policies and procedures to enable all reporting counterparties to ensure that all reported derivatives data is accurate and contains no misrepresentation, or is providing access to such counterparties sufficient to enable them to fulfill this requirement?

Please see our response to question #2 above under the heading “MI Trade Reporting Rule.”

3) Maintenance and renewal of LEIs

The Regulation to amend Regulation 91-507 requires a local counterparty under section 28.1 to maintain and renew its LEI. However, the Authority has identified instances where non-reporting local counterparties are not maintaining and renewing their LEIs, as required. As a result, the LEIs lapse and the information associated with them is no longer current. This reduces the benefits associated with LEIs. While the Authority does not currently expect reporting counterparties to verify the maintenance and renewal of LEIs of their counterparties, the Authority is interested to receive comments from market participants regarding any potential steps that could be taken to improve the maintenance and renewal of LEIs of non-reporting counterparties.

Please see our response to question #9 above under the heading “MI Trade Reporting Rule.”

4. MB Trade Reporting Rule

In addition to your comments on all aspects of the Proposed Trade Reporting Amendments, the Commission also seeks specific feedback on the following questions:

1) Harmonization with global standards

We have updated the required data fields for reporting market participants as set out in Appendix A of the Trade Reporting Rule with the goal of harmonizing with global standards and accordingly, reducing regulatory burden. As well, we created a new MSC Derivatives Data Technical Manual to inform reporting market participants on administrative matters for reporting in accordance with the Trade Reporting Rule.

Please provide your comments on whether you anticipate that the changes to the data field requirements and the corresponding MSC Derivatives Data Technical Manual will reduce regulatory burden and increase efficiency and clarity when meeting trade reporting requirements.

Please see our response to question #7 above under the heading “MI Trade Reporting Rule.”

2) Reporting hierarchy

We invite comments on the differences in the reporting counterparty hierarchy among the various CSA jurisdictions and how these differences affect market participants. We note that the Ontario Securities Commission has developed a potential alternative reporting hierarchy, set out in Annex E to the OSC Noticed dated June 9, 2022, which reduces the need for delegated reporting.

Please see our response to question #4 above under the heading “MI Trade Reporting Rule.”

3) Data accuracy

We have proposed replacing the current concept of confirmation of data accuracy with a requirement under paragraph 26.1(1)(a) for all reporting counterparties to ensure that all reported derivatives data is accurate and contains no misrepresentation and a requirement under paragraph 26.1(1)(b) for reporting counterparties that are derivatives dealers and recognized or exempt clearing agencies to verify the accuracy of data every 30 days. A designated trade repository must establish written policies and procedures to enable the reporting counterparty to carry out its verification obligations under paragraph 26.1(1)(b); however, while a designated trade repository must provide counterparties to a transaction with access to derivatives data, we have not contemplated a specific requirement for policies and procedures designed to enable the requirement under paragraph 26.1(1)(a).

Is it necessary for a trade repository to implement policies and procedures to enable all reporting counterparties to ensure that all reported derivatives data is accurate and contains no misrepresentation, or is providing access to such counterparties sufficient to enable them to fulfill this requirement?

Please see our response to question #2 above under the heading “MI Trade Reporting Rule.”

4) Maintenance and renewal of LEIs

The Trade Reporting Rule requires a local counterparty under section 28.1 [*Maintenance and renewal of legal entity identifiers*] to maintain and renew its LEI. However, we have identified instances where non-reporting local counterparties are not maintaining and renewing their LEIs, as required. As a result, the LEIs lapse and the information associated with them is no longer current. This reduces the benefits associated with LEIs. While we do not currently expect reporting counterparties to verify the maintenance and renewal of LEIs of their counterparties, we are interested to receive comments from market participants regarding any potential steps that could be taken to improve the maintenance and renewal of LEIs of non-reporting counterparties.

Please see our response to question #9 above under the heading “MI Trade Reporting Rule.”