EXECUTION COPY

Canadian Market
Infrastructure Committee

Via e-mail to: consultation-en-cours@lautorite.qc.ca
comments@osc.gov.on.ca
janice.cherniak@asc.ca
mbrady@bcsc.bc.ca
Paula.white@gov.mb.ca
Chris.besko@gov.mb.ca

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	The Secretary Ontario Securities Commission 20 Queen Street West 22nd Floor Toronto, Ontario M5H 3S8
Janice Cherniak Senior Legal Counsel Alberta Securities Commission Suite 600, 250 – 5th Street SW Calgary, Alberta T2P 0R4	Michael Brady Deputy Director, Capital Markets Regulation British Columbia Securities Commission P.O. Box 10142 Pacific Centre 701 West Georgia Street Vancouver, British Columbia V7Y 1L2
Paula White Deputy Director, Compliance and Oversight The Manitoba Securities Commission 500 – 400 St. Mary Avenue Winnipeg, MB R3C 4K5	Chris Besko Director and General Counsel The Manitoba Securities Commission 500 – 400 St. Mary Avenue Winnipeg, MB R3C 4K5

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

October 7, 2022

Dear Sirs/Mesdames:

Re: Proposed Amendments to Derivative Trade Reporting Rules Published June 9, 2022

INTRODUCTION

Reference is made to the following proposed amendments published for comment on June 9, 2022 (collectively, the "**Proposed Amendments**"):

- Proposed Amendments to OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (the "**Ontario TR Rule**") and to the related Companion Policy (the "**Ontario Amendments**");

- Proposed Regulation to Amend Regulation 91-507 Respecting Trade Repositories and Derivatives Data Reporting (the "**Quebec TR Rule**") under the Quebec Derivatives Act and related Policy Statement (the "**Quebec Amendments**");

- Proposed Amendments to MSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (the "**Manitoba TR Rule**") and to the related Companion Policy (the "**Manitoba Amendments**"); and

- Proposed Amendments to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the "**Multilateral Rule**", and together with the Ontario TR Rule, the Quebec TR Rule and the Manitoba TR Rule, the "**Trade Reporting Rules**") and the related Companion Policy (the "**Multilateral Amendments**").

The Canadian Market Infrastructure Committee ("**CMIC**") is pleased to provide this comment letter on the Proposed Amendments.

CMIC's purpose is to assist regulatory and legislative authorities in Canada by providing the consolidated views of key Canadian market participants on proposed Canadian regulatory and legislative changes having an impact on over-the-counter ("**OTC**") derivatives, with the goal being to ensure that the regulation of the OTC derivatives markets in Canada would not have detrimental effects on the Canadian market. CMIC was formed in 2010 at the request of representatives from the Bank of Canada, Canadian Securities Administrators (the "**CSA**"), and the Federal Department of Finance, and since then, CMIC has been providing commentary on proposed draft rules and consultation papers with respect to the regulation of the OTC derivatives market in Canada. CMIC brings a unique voice to the dialogue regarding the appropriate framework for regulating the Canadian OTC derivatives market as its membership has been intentionally designed to present the views of both the 'buy' side and the 'sell' side of the Canadian OTC derivatives market, including, but not limited to, both domestic and foreign owned banks operating in Canada, as well as major Canadian institutional market participants. A list of the CMIC members who have endorsed this letter appears at the end of this letter.

ENDORSEMENT OF ISDA COMMENT LETTER

We refer to the comment letter date October 7, 2022 submitted by Eleanor Hsu on behalf of the International Swaps and Derivatives Association, Inc. ("**ISDA**"). We endorse all of the comments set out in this ISDA letter.

HARMONIZATION OF RULES

CMIC's comment letters have consistently supported the harmonization of OTC derivatives rules across Canada as well as globally. CMIC recognizes that the changes to the data field requirements under the Proposed Amendments were made with the goal of harmonizing with global standards and accordingly, reducing regulatory burden. We provide further comments on page 4 below in our response to Question #1 with respect to this harmonization with global standards.

We note that there are still differences among the Trade Reporting Rules applicable across Canada. We provide further comments on page 4 below in our response to Question #2 with respect to the differences in the reporting counterparty hierarchy applicable across the Trade Reporting Rules. We note that there are other differences that are not directly related to the reporting counterparty hierarchy and it is not clear to CMIC why these differences exist. While some of these differences

may not appear significant, market participants may spend significant time and resources trying to understand the impact of these differences and internally implementing distinct rules where applicable. We recommend that the CSA take this opportunity to harmonize the Trade Reporting Rules as much as possible, ideally by replacing the four separate Proposed Amendments with one national instrument in order to reduce regulatory burden for market participants. Having multiple trade reporting rules applicable in Canada is inefficient and reduces the competitiveness of the Canadian OTC derivatives market.

To this end, the following are some examples for your consideration. We recommend that a careful comparison be performed by the CSA to identify all the differences and make the necessary changes to harmonize the Trade Reporting Rules.

1. Derivatives Trading Facility: The Ontario Amendments, Quebec Amendments and Manitoba Amendments refer to a "derivatives trading facility" without defining such term, whereas the Multilateral Amendments use the term "facility or platform for trading in derivatives" and provide a very detailed definition. From a trade reporting perspective, CMIC recommends the Ontario, Quebec and Manitoba approach of leaving the term undefined to ensure that *any* platform conducting anonymous trades in OTC derivatives, regardless of how such platform is defined, will have the trade reporting obligation as set out under Section 36.1 of the Proposed Amendments. This approach is far more flexible than the approach taken under the Multilateral Amendments.

2. Local Counterparty Definition: It is unclear why there are different definitions of "local counterparty" across the country for trade reporting purposes. This term is critical to the Trade Reporting Rules and will determine whether an OTC derivative is to be reported, as well as whether a party has certain other obligations (such as the creation and maintenance of an LEI). The Multilateral Rules still include in its definition of "local counterparty" a derivatives dealer in the local jurisdiction, but does not include individuals resident in that local jurisdiction. The Ontario Amendments, Quebec Amendments and Manitoba Amendments include individuals "resident" in that local jurisdiction, and exclude derivatives dealers in that jurisdiction. In CMIC's view, this definition should be harmonized across Canada. The Proposed Amendments, as currently drafted, will require a change to the industry standard "ISDA Canadian Representation Letter #1". If the definition of "local counterparty" were harmonized the changes would be minimized, thus reducing confusion and operational and regulatory burden.

3. UTI Waterfall: This waterfall is also worded differently under the Trade Reporting Rules. Even though the reporting hierarchies are different, in our view the UTI waterfall should be worded in the same way across the country. As noted, harmonization reduces regulatory and operational burden on market participants and increases clarity with respect to the Trade Reporting Rules. See our further commentary on page 7 below on the substance of the UTI waterfalls in response to Question #8.

4. Maintenance/Renewal of LEIs: in Ontario, Quebec and Manitoba, this obligation applies to a reporting counterparty even if it is not a local counterparty. Under the Multilateral Rule, this obligation still only applies to local counterparties. In CMIC's view, this should be harmonized across Canada.

5. Definition of Affiliate: The Ontario Amendments, Quebec Amendments and Manitoba Amendments have added a new definition of "affiliate", which now includes references to clarify how limited partnerships, trusts and investment funds are affiliated with other entities. However, the wording of this definition is different than the definition under the Multilateral Rule. For example, the Ontario Amendments include a condition that (i) a general partner is affiliated with a limited partnership only if the general partner has the power to direct the management and policies of the limited partnership by virtue of being a general partner and

(ii) a trustee is affiliated with a trust only if the trustee has the power to direct the management and policies of the trust by virtue of being a trustee of that trust.[1] The Multilateral Rule does not contain similar wording. In CMIC's view, these definitions should be harmonized across Canada.

6. Affiliated Entities Exemption: We note that under the Ontario TR Rule and the Multilateral Rule, there is an exemption from the trade reporting obligations for transactions between end-user affiliates, whereas under the Quebec TR Rule and the Manitoba TR Rule, this exemption is not included in the rules but is available pursuant to blanket orders[2]. In CMIC's view, this exemption should be integrated into the Quebec TR Rule and the Manitoba TR Rule for continuity.

7. Definition of "valuation data" and "position limits": These are two examples where the definitions across the Trade Reporting Rules are different, though possibly, these are not significant differences. For example, the Ontario TR Rule refers to the "current" value of a transaction under the definition of "valuation data" whereas the Multilateral Rule refers only to "value". If, indeed, this difference does not result in a material distinction, it is CMIC's view that the Trade Reporting Rules should not contain any of these types of differences in wording. Otherwise, market participants will need to devote significant resources to understand the impact of these differences among the different rules.

QUESTIONS FOR SPECIFIC FEEDBACK

The notices accompanying the Proposed Amendments seek specific feedback. We have set out the questions asked by the Canadian Securities Administrators below.

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 Rules with the goal of harmonizing with global standards and accordingly, reducing regulatory burden. As well, we created new technical manuals to provide further detail regarding formats for the data elements and to inform reporting market participants on administrative matters for reporting in accordance with the Trade Reporting Rules.

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

Yes, we anticipate that the changes to the data field requirements to harmonize with global standards and the publication of the corresponding technical manual will reduce regulatory burden and increase efficiency and clarity when meeting trade reporting requirements. Of course, there will be an increase in regulatory burden upfront while firms implement the new standards, including addressing transitional requirements (where rules are implemented in a foreign jurisdiction, such as the new CFTC trade reporting rules ahead of the Proposed Amendments becoming effective). However, harmonization is always preferred and therefore, we anticipate that these changes will ultimately reduce regulatory burden and increase efficiency.

2) Reporting Hierarchy

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

[1] See sections 1(5)(c)(iii) and 1(5)(d)(iii) of the Ontario Amendments

[2] See Manitoba Securities Commission Order No. 7118, available here and AMF Decision 2015-PDG-0089, available here.

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 Multilateral Rule. Paragraph 25(2)(c) of the Multilateral Rule provides that counterparties to a derivative that are either both derivatives dealers or both not derivatives dealers can agree, in 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 the derivative is not a party to the "ISDA Multilateral", each counterparty would be required to be a reporting counterparty.

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 provides increased flexibility and reduces the need for delegated reporting. 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 Ontario Amendments or the alternative hierarchy as set out in Annex E? Please provide any comments on whether you consider the alternative hierarchy to function better for local market participants in the multilateral jurisdictions trading with Ontario counterparties, particularly in comparison with the functioning of the hierarchy under the Multilateral Rule.

The reporting hierarchy under each of the Trade Reporting Rules is worded differently even though, in the majority of the cases, the hierarchy will result in the same party being identified as the reporting counterparty. However, there are circumstances where the differences between the hierarchies will result in a different reporting counterparty, or possibly both parties as the reporting counterparty. In CMIC's view, the reporting hierarchy should be same across the country, and we would support adopting the approach as set out under the Multilateral Rule. It provides the most flexible approach, and is not as complex as the reporting hierarchy under the Ontario TR Rule, the Quebec Rule and the Manitoba TR Rule. The biggest advantage with using the hierarchy under the Multilateral Rule is that parties are free to agree as between themselves which party should be the reporting counterparty, without specifying the form of such agreement (such as the case with the Ontario TR Rule where derivatives dealers must be a party to the ISDA Multilateral in order for the agreement to effectively identify one of the derivatives dealers as the reporting counterparty). The ISDA Multilateral could be used under the Multilateral Rule, but other forms of agreement will also suffice, such as an agreement by way of email. We do recommend that the companion policy to the Multilateral Rule be amended to clarify that this written agreement can also occur by way of a signed representation letter under which the party agrees to follow the ISDA Transaction Reporting Requirements hierarchy if it faces another derivatives dealer (if the person completing the letter is also a derivatives dealer) or another end-user (if the person completing the letter is also an end-user) who also agrees to follow the ISDA Transaction Reporting Requirements hierarchy.

Regarding the potential alternative hierarchy set out in Annex E of the Ontario Amendments, we note that the reason for proposing this alternative hierarchy is to provide increased flexibility and to reduce the need for delegated reporting. However, in CMIC's view these benefits do not outweigh the burden of implementing this alternative hierarchy. If a derivatives dealer is a financial entity, the alternative hierarchy is likely to have minimal operating impact: if its counterparty is a derivatives dealer and a party to the ISDA Multilateral, there is no change from an operational perspective; if its counterparty is a derivatives dealer and not a party to the ISDA Multilateral, the derivatives dealer that is a financial entity will always report the trade. However, derivatives dealers that are not financial entities would need to know whether they were facing a financial entity, which would likely mean that they would have to conduct yet another client outreach to confirm whether a counterparty was a "financial entity" as defined in Annex E, particularly since this definition is broader in scope than what one would normally consider a "financial entity" (for example, an affiliate of a person that is exempt from the requirement to register under securities legislation or commodity futures legislation, other than an exemption pursuant to section 8.4 of NI 31-103). In our view, this additional operational burden is not worth the benefit of this increased flexibility under the alternative hierarchy. We submit that if the goal is increased flexibility and reducing the need for delegated reporting, as discussed above, this can be

achieved by adopting the reporting hierarchy under the Multilateral Rule, which we do not think would require an additional client outreach but could have the effect of reducing delegated reporting.

3) Data Accuracy/Framework for validation, verification and correction of derivatives data

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?

In CMIC's view, it is not necessary for a trade repository to implement policies and procedures to enable reporting counterparties to ensure that all reported derivatives data is accurate and contains no misrepresentation. As long as the trade repository provides access to its reports, that is sufficient to enable reporting counterparties to fulfill this requirement under section 26.1(1)(a) of the Proposed Amendments.

4) Maintenance and Renewal of LEIs

The Trade Reporting Rules require 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

We agree that lapsed LEIs reduce the benefits associated with the LEI system. We have considered the potential steps that could be taken to improve the maintenance and renewal of LEIs of non-reporting counterparties and suggest that the CSA advocate with the Global LEI System's Regulatory Oversight Committee to change the annual renewal process to something not as frequent – perhaps every 2 or 3 years (provided each company with an LEI has the obligation to inform the local operating unit ("**LOU**") of any changes to its status in the interim), and/or tie the renewal process to a company's fiscal year end so that the renewal process can be added to the procedures a company has to take in connection with its year end.

Regulators could also obtain a monthly report of lapsed LEIs from the LOUs, or perhaps from the trade repositories who could validate the LEIs automatically, and the regulators could follow up with the companies whose LEIs have lapsed. This follow-up could be done individually or by way of a public notice. We assume that LOUs are currently following up with companies whose LEIs have lapsed, however, having a notice sent by the regulators may add sufficient weight to the matter to prompt companies to respond.

What we do <u>not</u> recommend is to place this obligation on reporting counterparties. Checking the validity of an LEI and following up on expired LEIs on an individual basis would place an enormous burden on reporting counterparties.

We note that this is one of the areas under the Trade Reporting Rules that is not harmonized across the country, and in our view, should be.

5) 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.

From the perspective of CMIC members, end-users are not reporting counterparties and therefore the difference in reporting deadline under the Trade Reporting Rules of the next business day versus T+2 following the execution date under the CFTC does not currently pose a compliance issue. However, in the event that an end-user would be required to report, it would be helpful to align with CFTC rules from a timing perspective in the event that an end-user local counterparty traded with another end-user that was subject to CFTC rules and that other end-user was the reporting counterparty under the Trade Reporting Rules.

Please see our additional comments regarding end-user trade reporting issues on page 10 of this letter.

6) 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?

Yes, there are anticipated problems with respect to the proposed implementation timing of the Proposed Amendments in light of the timing of implementation of other global trade reporting changes. For example, the first compliance date with respect to the amendments to the CFTC trade reporting rules is December 5, 2022, ahead of the anticipated implementation of the Proposed Amendments in 2024. As the recognized trade repositories are converting their systems to comply with the new CFTC rules, reporting counterparties using those trade repositories to comply with the Trade Reporting Rules need to also convert their systems by December 2022. As a result, specific guidance from the CSA (in respect of all Canadian jurisdictions) is required to specify (1) when reporting a data element under the new CFTC rules will be sufficient to satisfy reporting a data element under existing Trade Reporting Rules, (2) which data elements under CFTC rules constitute optional reporting under the Trade Reporting Rules and therefore, if reported by a reporting counterparty, it would not be considered over-reporting to report these data elements during the transition period, and the Proposed Amendments would not apply to such data elements, and (3) which data elements under the existing Trade Reporting Rules are not data elements required to be reported under the new CFTC rules but are still required to be reported during the transition period. Further, we encourage the CSA to work with all trade repositories recognized or designated in Canada in order to clarify these categories of data elements and publish guidance well in advance of this transition period and indeed, as soon as possible given the December 5, 2022 compliance date of the new CFTC rules.

7) 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?

Reporting counterparties will need to be ready to report under the new CFTC rules by December 2022 for trading relationships in scope for CFTC reporting, and therefore where collateral and margin data requirements under the Proposed Amendments are consistent with the new CFTC rules, these requirements are capable of being complied with in an efficient manner. To the extent the requirements under the Proposed Amendments are not consistent with CFTC rules, these requirements would be burdensome.

8) 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 Trade Reporting Rules, 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.

As noted on page 3, in order to reduce any uncertainty, it is our view that the UTI waterfall should be harmonized across the country. It is imperative that the Trade Reporting Rules identify the same party as the party responsible for determining the UTI, regardless of jurisdiction. Where a trade is between counterparties from two different jurisdictions, if the UTI waterfall is different in those jurisdictions, it is possible that applying the UTI waterfalls could result in a different party generating the UTI.

For example, if an uncleared trade (not traded on a derivatives trading platform) is entered into between two derivatives dealers, one from BC and the other from Ontario, and neither party has signed the ISDA Multilateral nor have they entered into an agreement assigning the reporting party responsibility to one of them, the following will apply:

(a) Reporting counterparty responsibility:

- under the Multilateral Rule, both parties are reporting counterparties since they have not entered into an agreement assigning that responsibility between them;
- under the Ontario TR Rule, the dealer that is a local counterparty in Ontario will be the reporting counterparty pursuant to section 25(1)(f) of the Ontario TR Rule.

(b) UTI responsibility:

- under the Multilateral Amendments, it is not clear whether section 29(1)(c) applies in the case where there is only one reporting counterparty as section 29(1)(c) provides that "the reporting counterparty that is a derivatives dealer" must assign the UTI. If it applies to our example, then both derivatives dealers have the responsibility to assign the UTI; if it does not, then section 29(1)(d) of the Multilateral Amendments applies and the recognized trade repository assigns the UTI;
- under the Ontario Amendments, section 29(1)(e) would apply and the derivatives dealer with the first LEI based on sorting the LEIs alphanumerically with the characters of the LEI reversed will be the party responsible for assigning the UTI.

In the above example, different parties will be assigned the responsibility of generating the UTI due to the application of different UTI waterfalls for BC and Ontario. Therefore, we recommend that the assignment of UTI waterfall be substantively harmonized across Canada in order to ensure the same party has the responsibility for generating the UTI under all the Trade Reporting Rules.

From a practical perspective, it is not clear when or how the designated or recognized trade repository will know it is responsible for generating the UTI. In other words, how will the trade repository know whether or not the parties have a written agreement between themselves for one of them to be the reporting counterparty (and therefore the party that generates the UTI) versus the case where both parties are the reporting party because there is no such written agreement (and therefore the designated or recognized trade repository has the responsibility for generating the UTI). It may be the case that one of parties fails to report the trade when it should have, and therefore the designated or recognized trade repository sees that only one party has reported the trade but cannot assume that the same party is therefore responsible for generating the UTI, since in that example, the party that is responsible for generating the UTI is, in fact, the designated or recognized trade repository.

CMIC supports the current ISDA methodology for assigning the UTI and would strongly recommend that all Canadian jurisdictions follow this same approach. Further, it is CMIC's understanding that

under the ISDA UTI logic, the UTI waterfall is specific to a certain class of derivatives and the default option is to refer to the parties' LEI, but in reverse alphabetical order and not in the reverse order of the LEI characters, as required under section 29(1)(e) of the Ontario Amendments. CMIC supports the ISDA methodology and would not support any method that differs from this market standard approach.

9) 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.

While the requirement to correct errors in trades that are no longer open is analogous to requirements in the revised CFTC rules, there are two main differences under the Trade Reporting Rules which, in CMIC's view, would result in a slightly different requirement in Canada for correcting closed trades.

The first difference is that the record retention period of 7 or 8 years after the termination of a trade under the Trade Reporting Rules is much longer than the 5 year requirement under CFTC rules. Therefore, the volume of trade data that would potentially need correcting is at least 40% higher in Canada than under the CFTC rules. This will make it more difficult to correct errors with respect to closed trades. Further, even though a record is retained for the required period under the rules (whether the Trade Reporting Rules or the CFTC rules), retrieving a record from archives to correct an error is significantly more cumbersome than simply correcting information in an open trade.

The second difference applies to reporting counterparties that are "local counterparties" under the Trade Reporting Rule ("**Canadian Dealers**"). While Canadian Dealers are able to comply with this CFTC requirement, the volume of trades subject to CFTC reporting is significantly lower than the volume of trades subject to reporting under the Trade Reporting Rules where they would be required to report <u>all</u> of their trades.

We therefore recommend that the requirement to correct errors as it relates to closed derivatives only be required if practicable to do so. The companion policies should provide examples as to when it may not be practicable to correct an error in respect of a closed trade, for example, any derivatives closed before the DTCC re-architecture date of November 2020 have been purged and therefore it is not practicable to correct those trades.

ADDITIONAL COMMENTS

<u>Derivatives Dealer commentary in Companion Policy</u>

We note that the CSA has updated the companion policies to the Trade Reporting Rules to include guidance regarding the "business trigger" in the definition of "derivatives dealer," which aligns with the companion policy in the proposed business conduct rule, NI 93-101. CMIC recommends including wording in the companion policies relating to business activity conducted by end-users, to clarify that even where a person or company (such as a pension fund or insurance company) carries on derivatives trading activity with repetition, regularity or continuity, it would not be considered "in the business of trading in derivatives" and thus a "derivatives dealer." Such wording should clarify that a person or company trading in derivatives for hedging purposes or for purposes of gaining market returns, and in each case, doing so with repetition, regularity or continuity may not necessarily be considered to be in the business of trading in derivatives, and thus a derivatives dealer, so long as (i) it trades with a derivatives dealer and (ii) it does not satisfy any of the other "business trigger" factors set out in the companion policy.

Local Counterparty Definition

As noted above, in our view, this definition should be harmonized across Canada. In addition to that comment, we note that the definition of "local counterparty" has changed under the Ontario TR Rule, Quebec TR Rule and Manitoba TR Rule to now include individuals "resident" in the applicable province or an estate of a decedent who was resident in such province at the time of death. In our view, it would be helpful if the companion policies were amended to provide additional information with respect to the term "resident." For example, is this a reference to the principal residence of an individual, or is it referring only to an individual having a residence in that jurisdiction?

We also support the removal of foreign derivatives dealers from this definition of "local counterparty" as we do not think it is necessary to report all the transactions entered into by such dealers to Canadian regulators.

Trade reporting by "end-users"

We note that if the trade reporting hierarchy identifies an end-user as the reporting counterparty, the data elements to be reported, as well as the timing of the reports are the same for end-users as they are for a derivatives dealer, with the exception of the reporting of valuation data which, under the Proposed Amendments, does not apply to end-users. We note that, generally speaking, end-users typically do not trade with other end-users. We understand that there are certain instances where an end-user has had an opportunity arise where it would be in both parties' best interests to trade with another end-user. The parties in those instances did not execute the trade since one of the end-users would be the reporting counterparty and they don't have the infrastructure in place to report. End-user members of CMIC are requesting some flexibility in the Trade Reporting Rules where two end-users enter a trade. Flexibility is being requested with respect to the timing of the reporting as well as the data elements to be reported and the format of reporting. If the Trade Reporting Rules contained this type of flexibility, the trade reporting obligations would not be as burdensome and therefore would not prevent end-users from trading with each other should the opportunity arise. This would allow end-users to take advantage of opportunities that benefit both parties, as well as the derivatives market in general, as such trades would provide additional liquidity.

Provision relating to derivatives trading facilities (DTFs)

CMIC fully supports the addition of the requirement under section 36.1 of the Trade Reporting Rules that a derivatives trading facility has the obligation of a reporting counterparty in respect of trades executed anonymously on such facility and intended to be cleared. However, in CMIC's view, some adjustments would need to be made. This requirement should be extended to all trades executed on a swap execution facility (as defined under CFTC rules[3]) and not just anonymous trades intended to be cleared, in order to be harmonized with CFTC rules where swap execution facilities have the obligation to report all trades executed on their platform. Harmonization with CFTC rules would reduce regulatory burden of reporting counterparties as they would not need special requirements with respect to Canadian rules. That being said, swap execution facilities will need to identify to which Canadian jurisdiction(s) trades need to be reported and there may be certain Canadian specific data elements that they would not have access to (such as master agreement type and version) which should not apply to them. For further clarity, CMIC believes that this extended reporting requirement should apply only to swap execution facilities (as defined under CFTC rules), and not to other trading facilities (as defined under CFTC rules[4]).

[3] https://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=SwapExecutionFacilities

[4] https://www.cftc.gov/International/ForeignMarketsandProducts/ExemptSEFs

Clarification regarding upgrading to new reporting format for existing trades

The Proposed Amendments are silent with respect to what the CSA expects in connection with open trades on the effective date of the Proposed Amendments. As the Trade Reporting Rules are silent on this point, and based on legislative convention that amendments do not take place retroactively unless expressly stated, we expect that trades that are outstanding as of the compliance date of the Proposed Amendments would not need to be upgraded to the new specifications in the technical manual. It would be helpful if the CSA were to confirm this in the companion policies of the Trade Reporting Rules directly. In addition, we note that the Draft Technical Manual includes a UPDT valid value under field #96 but does not provide for it in the definition of the field nor in the Event Types table of the life-cycle event reporting section. If there is no upgrading of open trades expected, the UPDT value should be removed for consistency purposes and to avoid confusion. That being said, it should be noted that the CFTC action type and event type fields (#26 and #27) are expected to be used by Canadian reporting counterparties after December 5, 2022, and the Trade Repository (DTCC) is expecting all open trades (including Canadian trades) to be upgraded to the new reporting specifications at the end of this year, using the MODI/UPDT message type.

CMIC welcomes the opportunity to discuss this response with you.

The views expressed in this letter are the views of the following members of CMIC:

Alberta Investment Management Corporation
Bank of America
Bank of Montreal
Caisse de dépôt et placement du Québec
Canada Pension Plan Investment Board
Canadian Imperial Bank of Commerce
Citigroup Global Markets Inc.
Deutsche Bank A.G., Canada Branch
Fédération des Caisses Desjardins du Québec
Healthcare of Ontario Pension Plan Trust Fund
HSBC Bank Canada
Intact Financial Corporation
JPMorgan Chase Bank, N.A., Toronto Branch
Manulife Financial Corporation
Morgan Stanley
National Bank of Canada
OMERS Administration Corporation
Ontario Teachers' Pension Plan Board
Royal Bank of Canada
Sun Life Financial
The Bank of Nova Scotia
The Toronto-Dominion Bank