

CANADIAN REGULATORS RESPOND TO CONCERNS OF OTC DERIVATIVES MARKET PARTICIPANTS: OSC MAKES AMENDMENTS TO TRADE REPORTING RULES

Posted on April 24, 2014

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On November 14, 2013, the Ontario Securities Commission (the **OSC**) published the final version of the first set of harmonized rules aimed solely at the regulation of over-the-counter (**OTC**) derivatives in Ontario. OSC Rule 91-506 Derivatives: Product Determination (the Scope Rule) and OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting (the **TR Rule**) together with their respective companion policies (collectively, the **Rules**), which came into force on December 31, 2013, are aimed at increasing transparency in the OTC derivatives market.^[1]

On April 17, 2014, the OSC published amendments to the TR Rule (the **TR Rule Amendments**) and to OSC Companion Policy 91-507CP Trade Repositories and Derivatives Date Reporting (the **TR CP Amendments**). The TR Rule Amendments and TR CP Amendments were based on the feedback that the OSC received from various market participants.

The TR Rule Amendments delay the effective date of reporting obligations, due to the unavailability of the necessary market infrastructure, and lessen the burden of reporting obligations on local end-user counterparties by repealing the local counterparty fall-back rule that imposed report monitoring obligations when dealing with foreign dealer reporting counterparties.

In Force Date

The TR Rule Amendments were provided to the Minister of Finance (the **Minister**) for approval on April 17, 2014. Should the Minister approve the TR Rule Amendments, or take no further action by June 16, 2014, the TR Rule Amendments will come into force on July 2, 2014. The TR CP Amendments become effective on the coming into force date of the TR Rule Amendments.

Other Jurisdictions

On April 17, 2014, the Autorité des marchés financiers (the **AMF**) announced that it also intends to formalize the delay to the effective date of reporting obligations by publishing a blanket exemption to be effective as of July

2, 2014. In addition, the AMF is also contemplating the possibility of proposing several amendments to Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting in order to maintain a harmonized national reporting regime for OTC derivatives markets. The proposed amendments are expected to be published for comment soon.

On April 17, 2014 the Manitoba Securities Commission (the **MSC**) published a notice of amendments to Rule 91-507 Trade Repositories and Derivatives Data Reporting which would come into effect on July 2, 2014.^[2] The amendments published by the MSC match those proposed by the OSC.

Amendments

1) Delay to the effective date of reporting obligations

The TR Rule Amendments will amend the effective date of reporting obligations for all reporting counterparties. For derivatives dealers and recognized or exempt clearing agencies, the effective date of the reporting obligation will change from July 2, 2014 to **October 31, 2014**. For all other reporting counterparties, the effective date of the reporting obligation will change from September 30, 2014 to **June 30, 2015**.

These amendments were largely driven by practical difficulties in establishing the necessary systems infrastructure. The OSC learned that no trade repository that accepts all OTC derivative asset classes would have been in a position to be designated within the required timeframe outlined under the original TR Rule.

The TR Rule Amendments also delay the public dissemination of transaction-level data from December 31, 2014 to April 30, 2015.

2) Reporting of Pre-Existing Transaction

As a result of the amendments to the effective date of the general reporting obligations, the OSC proposed accompanying amendments to the timing of reporting obligations of pre-existing transactions. Where the reporting counterparty is a derivatives dealer or a recognized or exempt clearing agency, a pre-existing transaction is a transaction that has outstanding contractual obligations as of October 31, 2014. In these circumstances, the derivatives dealer or recognized or exempt clearing agency must report the pre-existing transaction to a designated trade repository by no later than April 30, 2015. Where the reporting counterparty is neither a derivatives dealer nor a recognized or exempt clearing agency, a pre-existing transaction is a transaction that has outstanding contractual obligations as of June 30, 2015. In these circumstances, the reporting counterparty, who is neither a derivatives dealer nor a recognized or exempt clearing agency, must report the pre-existing transaction to a designated trade repository no later than December 31, 2015. However, pre-existing transactions are not required to be reported by the reporting counterparty if the transaction expires or terminates prior to the applicable effective date of the reporting obligation.

3) *Repeal of the Local Counterparty Fall-Back Rule*

The TR Rule Amendments will repeal subsections 25(2) and 31(4) of the TR Rule, thereby removing the transaction report monitoring obligations on non-dealer local counterparties. These subsections establish a fall-back mechanism that places a burden on Ontario non-dealer counterparties to monitor and ensure that foreign dealer reporting counterparties report transactions within the allotted time. A failure of the foreign dealer reporting counterparty to report would place the onus on the non-dealer counterparty to report. Consultations with market participants revealed that the non-dealer counterparties may lack the resources and technological systems to fulfil the obligations imposed by the fall-back mechanism.

by Shahen Mirakian, Student at Law

[1] See McMillan LLP Derivatives Law Bulletin "[The last word on reporting: final Ontario rules with respect to trade reporting released](#)" (November 2013). Obviously we were too optimistic in our choice of title.

[2] Unlike Ontario, no ministerial approval is required in Manitoba.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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