

May 23, 2014

Important Changes in Canadian Law Affecting the Trading and Reporting of Derivatives

There have been some important changes in the Canadian laws governing the trading and reporting of over-the-counter (**OTC**) derivatives, which will affect your derivatives trading relationships. Parties must prepare as soon as possible to be ready to comply when reporting obligations begin on **October 31, 2014**. If your counterparties do not receive certain information and agreements from you that they require in order to comply, they may no longer be able to trade with you. In certain cases you may also have the obligation to report.

What are we being asked to do?

You are being requested to obtain a Legal Entity Identifier (explained below) and make representations to and certain agreements with your dealer counterparties. Representations can be made either through delivery of the Canadian Representation Letter (attached) completed by you or through an on-line service provided jointly by the International Swaps and Derivatives Association, Inc. and Markit® known as ISDA Amend, which allows representations to be made to multiple counterparties at once. ISDA Amend is available free to buy-side parties.

What are the changes in law affecting OTC derivatives?

Each of the provinces of Quebec, Ontario and Manitoba has adopted regulations (the **Canadian Reporting Requirements**) that will require the reporting of OTC derivative transaction data (**Data**) by market participants. Harmonized rules are expected to be adopted by the other provinces in the near future. A federal rule might also be adopted.

This information is intended to provide a brief overview for you as a customer of an OTC derivatives dealer of the key regulatory requirements as they relate to the reporting of derivatives transaction data, of issues you should be aware of as an OTC derivatives market participant and of the processes that the derivatives industry has developed to facilitate dealer and end-user compliance with these new requirements.

The important part of the Canadian Reporting Requirements for end-users to understand is that they require the “reporting counterparty” to report Data involving a “local counterparty” to a “designated trade repository” (DTR).

As a derivatives end-user will these new rules affect us?

Yes, you may be affected in a number of ways.

First, obligations to report are imposed on dealers and as a result they may not be able to continue to do derivatives business with you unless they are able to confirm certain information about you that they need to comply with the new rules.

Second, you may have to report unless you have effectively delegated reporting responsibility to your counterparty.

Third, you will also want to understand how trade data is being disclosed to the DTR and by the DTR to you, your counterparty and the public.

Why are these Canadian Reporting Requirements being implemented?

These developments are the first phase of a Canadian initiative resulting from decisions made by leaders of the G20 (including Canada) in September 2009. In response to the financial crisis, commitments were made to increase post-trade transparency of OTC derivatives markets. The implementation of a mandatory derivatives reporting framework is intended to provide Canadian regulators with the data they need to provide greater oversight of the OTC derivatives markets and to promote a fair and efficient market for participants.

What types of derivatives are covered by the Canadian Reporting Requirements?

The Canadian Reporting Requirements apply to a wide variety of over-the-counter derivatives, such as interest rate swaps, foreign exchange contracts, commodity contracts that hedge price risk, weather derivatives and other hedging contracts. Unless specifically excluded or otherwise exempted under the Canadian Reporting Requirements, all OTC derivatives are subject to the reporting requirements summarized in this letter.

The Canadian Reporting Requirements apply to both derivatives that are cleared through a clearing agency and those that are not cleared.

What types of derivatives are excluded from reporting?

The Canadian Reporting Requirements do not apply to most futures or options on futures, and other exchange traded derivatives. They do apply to derivatives executed over a derivatives execution facility.

Examples of OTC derivatives specifically excluded or otherwise exempted under the Canadian Reporting Requirements include, but are not limited to, **spot** foreign exchange contracts and commodities transactions that can only be settled by **physical delivery** of the commodity.

Why are we being asked to provide specific data regarding our jurisdictional connections within Canada?

The obligation to report Data under the Canadian Reporting Requirements of a particular Canadian jurisdiction and to allow access to that Data by a particular Canadian regulatory authority depends on whether there is a “local counterparty” in the regulator’s jurisdiction. Your dealers need to know in which, if any, Canadian jurisdictions you are a local counterparty. They will be asking you to provide representations that will determine the Canadian jurisdictions in which they will report Data regarding your transactions.

Your Data will also be accessible to regulators in any Canadian jurisdiction in which your counterparty is a local counterparty.

How do we determine if we are a local counterparty?

You will be considered a “local counterparty” in a Canadian jurisdiction if one or more of the following conditions is fulfilled at the time of the transaction:

- You are organized under the laws of that jurisdiction
- Your head office is in that jurisdiction
- Your principal place of business¹ is in that jurisdiction
- You are an affiliate of a company that has its head office or principal place of business in that jurisdiction or that is organized under the laws of that jurisdiction and that affiliate is responsible for all or substantially all of your liabilities as a whole and not only your derivatives liabilities.

¹ “Principal place of business” refers to your business as a whole, not just your derivatives business.

Please note that it is possible for an entity to be a “local counterparty” in more than one jurisdiction and in that case the Canadian Reporting Requirements of more than one jurisdiction will apply.

Which counterparty reports the Data?

The Canadian Reporting Requirements impose reporting requirements on parties to OTC derivative transactions involving a Canadian counterparty and implement a form of hierarchy to determine which party is obligated to report (the **Reporting Counterparty**). In certain cases both parties are obligated to report. The hierarchy is (1) clearing agency (if the transaction is cleared), (2) dealer (if the transaction is not cleared) and (3) local counterparty (if (1) and (2) do not apply).

For trades that are not cleared and that are between a party that is in the business of entering into derivatives transactions in the province (a **Dealer**) and an entity that is not a dealer in derivatives in the province (**Non-Dealer**), the Dealer is the party obligated to report the Data. Accordingly, the Dealer is required to ensure that a specific transaction data report is filed in a timely and accurate manner with a DTR when trading in OTC derivatives. In this regard, the Dealer will require confirmation of your local counterparty status and your LEI before **October 31, 2014** when mandatory reporting begins, in order to determine whether to report in Canada and in which Canadian jurisdictions.

As a Non-Dealer would I ever have the responsibility to report?

You might. If you have entered into transactions with other Non-Dealers, you will either both have an obligation to report or you might be the only reporting counterparty if you are the local counterparty and your counterparty is not a local counterparty. You may want to consult with your legal counsel to fully understand your reporting obligations in that situation. Non-Dealers are not required to begin reporting until **June 30, 2015**.

What is a “designated trade repository”?

A designated trade repository or DTR is an entity that will receive, aggregate and disseminate OTC derivatives Data. A DTR will be selected by the Reporting Counterparty.

What is a Legal Entity Identifier?

The LEI is a 20-character code used to identify entities that enter into OTC derivatives transactions. It is an initiative endorsed by the Group of 20 Finance Ministers and

Central Bank Governors and administered by the Global LEI System (a group of global regulators). LEIs can only be obtained from entities endorsed by the Global LEI System. Each entity may only receive one LEI and this identifier must be used for all derivatives reporting in each jurisdiction where the LEI is required.

The LEI is also a required field for reporting obligations in some jurisdictions such as the United States and Europe.

Why do we need an LEI?

The Canadian Reporting Requirements (and indeed similar rules in other jurisdictions) require the Reporting Counterparty to include the LEI of its counterparty and its own LEI in its reported trade data. The integrity of the data depends on the use of this and other standard identifiers.

As well, the reporting agent, the clearing house that cleared the trade, the clearing member and dealers involved in a transaction but not being a counterparty to the transaction, and the electronic trading platform where the transaction was executed must each have an LEI.

You must have the same LEI for all trade reporting under the Canadian Reporting Requirements.

Branches and divisions will use the same LEI as the immediate parent. Each fund in a fund family requires its own LEI. Natural persons cannot receive an LEI.

How do we get an LEI?

The Global LEI system is not yet operational. In the meantime, you can request a pre-LEI. Your LEI will be identical to your pre-LEI code once the Global LEI system is operational.

To obtain a pre-LEI, you must apply to an approved Local Operating Unit (**LOU**).

Consult the list of approved LOUs at www.leiroc.org.

Once the system is operation the LEI portal will be at www.p-lei.org and in the meantime you can find a consolidated list of all pre-LEIs on this website. This website is among a number of portals where you can currently get a consolidated list of pre-

LEIs, including, for example, Legal Entity Search (ET Logic) available at www.lei-lookup.com.

You must submit a completed application to the selected LOU in order to obtain your pre-LEI. The information that you will need to provide to the LOU includes the official name of the entity, the address of its head office, the address of incorporation, the name of the business registry where the entity was formed (where available) as well as the business registry ID. The issuance of a LEI will take several days and cost approximately \$200 to \$300. Annual maintenance of your LEI will also be required at a reduced cost.

Does Data for transactions entered into before October 31, 2014 have to be reported?

The Canadian Reporting Requirements require market participants to report information in respect of pre-existing transactions. OTC derivative trades you have entered into before **October 31, 2014** with a Dealer (or which are cleared), but are still outstanding as of that date must be reported on or before **April 30, 2015**, unless they have expired or been terminated by then. So even if you are not intending to enter into any new transactions, it is still necessary to prepare for reporting. A more limited set of reporting data applies with respect to these transactions.

If you are in one of those less common situations where both you and your counterparty are Non-Dealers, then the reportable pre-existing transactions are those you entered into before **June 30, 2015** (that are still outstanding on that date) and they must be reported by **December 31, 2015** unless they have expired or been terminated by then.

Will our Data be accessible to regulators in jurisdictions in which we are not a local counterparty?

Your Data may be accessible to a regulator in a jurisdiction in which you are not a local counterparty if your counterparty is itself subject to a reporting obligation under the laws of that jurisdiction with respect to its transactions with you. For example, if your counterparty is registered as a derivatives dealer in Quebec or is a local counterparty in Quebec it will report its trades to a DTR that will provide access to the Autorité des marchés financiers. Your data may also be available to non-Canadian regulators if your counterparty has a reporting obligation in other global jurisdictions.

Who else has access to our Data?

DTRs must provide **the relevant regulators** with electronic access to the Data they require and DTRs must create aggregate data and make it available to the regulators as they require.

DTRs must provide the **properly authorized representatives of counterparties** with access to all the Data relevant to their own transactions. The Canadian Reporting Requirements deem each counterparty to consent to that disclosure and the consent applies despite any agreement to the contrary.

The DTR must make the derivatives Data accessible via a website by the end of the day following the day on which the DTR receives the Data from the Reporting Counterparty.

What data is made available to the public?

The Canadian Reporting Requirements require a DTR to periodically make available to the public (at no cost), **aggregate data** on open positions, volume, number and price of transactions reported with breakdowns by currency, location of reference entities or assets, asset class, type of contract, maturity and whether or not it is cleared.

The DTR must also make available to the public **transaction level data**, and this must be made available at the end of the day following the day on which it is received (if a Dealer is involved) or the end of the second day following the day on which it is received (if it is a Non-Dealer). The transaction level data that is to be made available to the public will not, however, include the identities of the counterparties. Not all data fields are required to be reported publically either.

A DTR is not required to publicize any data for transactions between affiliated companies (“affiliated companies” is defined in the Securities Acts).

Public reporting of aggregate and transaction level data does not begin until April 30, 2015.

How can we obtain further information on the Canadian Reporting Requirements?

If you have any general questions regarding the contents of this summary or the Canadian Reporting Requirements, please contact your Dealer relationship manager or please refer to the currently available rules and other resources listed below.

Quebec:

<http://www.lautorite.qc.ca/en/regulation-derivatives-pro.html>

Ontario:

http://www.osc.gov.on.ca/en/Derivatives_index.htm

Manitoba:

MSC Rule 91-506:

http://www.msc.gov.mb.ca/legal_docs/legislation/rules/91_506_msc_2013_36.pdf

MSC Rule 91-507:

http://www.msc.gov.mb.ca/legal_docs/legislation/rules/91_507_msc_2013_37.pdf

Notice of rule implementation delay:

http://www.msc.gov.mb.ca/legal_docs/legislation/notices/2013_49_package.pdf

LEIs:

More information on LEIs can be obtained at www.p-lei.org

ISDA Resources, with links to Webinar, the Representation Letter and other resources

Canada Page - <http://www2.isda.org/regions/canada/>

ISDA Amend

<https://www.markit.com/Product/ISDA-Amend>

Next Steps

Your Dealers will likely be contacting you in the near future to obtain your LEI and other factual information pertaining to you. They may ask you to fill out and execute the Canadian Representation Letter that was prepared by ISDA (in consultation with market participants) for use by Canadian parties or may in certain cases provide you with an electronic means of providing the same information and agreements.

ISDA in conjunction with Markit® has also developed an on-line facility called ISDA Amend service that allows you to provide the representations to multiple counterparties and to make the agreements with multiple counterparties that facilitate reporting.

This information may be required to avoid any disruption to your trading relationship with your counterparties and to comply with the **October 31, 2014** OTC derivatives trade data reporting start date and the Canadian Reporting Requirements.

We have attached separate Additional Instructions to assist you in further understanding the Canadian Representation Letter.

Canadian Reporting Letter
Additional Instructions

DEFINITIONS

The defined terms at the front of the letter are used in the representations that you will make in delivering the letter and should be reviewed in the context of the particular representations you are asked to make.

Part I – Local Counterparty Representations

The questions in Part I solicit the information required in order to determine if you are a *local counterparty* based on certain of the criteria in the local counterparty definition and in which jurisdictions in Canada you are a local counterparty. See the answers above to ***Why are we being asked to provide specific data regarding our jurisdictional connections within Canada?*** and ***How do we determine if we are a local counterparty?*** for further information.

The representations in Part I apply to any present or future Canadian rules to which the “local counterparty” concept is relevant. These will include Canadian Reporting Requirements in jurisdictions in Canada that adopt such rules and rules adopted in other areas of derivatives reform as they come into effect. Please refer to the definitions of Canadian Person, Canadian Regulatory Requirements, Canadian Reporting Requirements and Other Derivatives Rules in the Letter.

Question 1

Question 1 solicits information to determine whether you are a Canadian Person or not. Canadian Person is not a term in the Canadian Regulatory Requirements but is one adopted in the Letter to refer to specific parts of the local counterparty definition.

Here are a few examples of how the Canadian Person representation operates with respect to Question 1:

- You are incorporated under the Quebec *Business Corporations Act*, but your principal place of business is in Ontario. You select Quebec and Ontario in answer to Question 1(A). You do not select the Not a Canadian

Person representation in Question 1(B). You are a local counterparty in both Quebec and Ontario.

- You are incorporated under the *Canada Business Corporations Act* and have your head office and principal place of business in Alberta. You select both Canada and Alberta in answer to Question 1(A). You will be a local counterparty in Alberta once it adopts rules to which that determination is relevant.
- You are a partnership formed under Manitoba law, but have your primary place of business in Ontario. You select both Ontario and Manitoba in answer to Question 1(A). You are a local counterparty in Ontario and Manitoba.
- You have a branch office in Toronto, but are not formed under the law of any Canadian jurisdiction, and do not have a head office or your entity's principal place of business in any province or territory of Canada. You select the Not a Canadian Person representation in answer to Question 1(B) and do not make any selection in answer to Question 1(A).

Question 2

Under the current law, end-users of derivatives and most dealers will select (A) in answer to Question 2. (B) applies only to those registered as “derivatives dealers” and, to date, only Quebec law provides for derivatives dealer registration. In future (B) will become more significant for dealers and certain end-users because:

- derivatives dealer registration rules will come into effect (expected in 2015), and
- there will likely be an alternative registration category - “large derivatives participant”- for end-users that trade derivatives in significant volumes.

Part II – Additional Representations for Local Counterparty Determination

Your Data will be reported as required by the laws of the selected jurisdictions in answer to (B), if any.

There may be situations where you would not select a particular jurisdiction in answer to Question 1(A), but an affiliate² that guarantees all of your liabilities would meet one or more of the criteria in Question 1(A). If you have no affiliates, or no affiliates that could make the representation in Question 1(A), then you would select (A) in answer to Part II. Here are some examples where you would select one or more of the jurisdictions in (B), and not select (A).

- You are a Mexican corporation that has entered into a transaction with an Australian bank. Your parent company has its head office in Ontario and has guaranteed substantially all of your liabilities.³ You would select Ontario in answer to Part II(B).
- You are an entity incorporated under B.C. law and you selected only British Columbia in answer to Question 1(A). A sister company has its head office in Manitoba and has guaranteed all of your liabilities. You would select Manitoba in answer to Part II(B).
- You are a Nova Scotia unlimited liability company and your parent company is incorporated under the laws of Ontario. You would select Nova Scotia and Ontario in answer to Part II(B).

Part III – Consent to Disclosure

By executing the Letter you will automatically consent to your counterparty's right to disclose any Data it is required to report in accordance with the Canadian Reporting Requirements and within our organizations or to agents we use in connection with the Canadian Reporting Requirements.

You also have the option to select the All Reporting Requirements option. Your counterparties are or may become subject to reporting requirements in other jurisdictions that require them to report transactions with you in jurisdictions outside of Canada. If you have not already provided that consent to them in another context, then in order to avoid returning to you to obtain a separate consent for that disclosure you may wish to consent to disclosure with respect to Non-Canadian Reporting Requirements as well by selecting the "All Reporting Requirements" box.

² "Affiliate" takes its meaning from the Securities Act of the relevant jurisdiction.

³ This means substantially all the liabilities of the company as a whole, not just its derivatives transactions. You may want to consult with your Canadian counsel to assist in making the determination as to whether a local counterparty has guaranteed all or substantially all of your liabilities.

Part IV – Additional Covenant re Reporting Responsibility

Skip Part IV if you are not a Dealer in derivatives and you do not wish to be a reporting party under the Canadian Reporting Requirements.

If you are in the business of trading in derivatives and, therefore, potentially a Dealer in Canadian jurisdictions in which you have counterparties, you should consider Part IV.

Part V – Agreements Regarding Reporting Party Rules

If you are a Non-Dealer you should consider whether to select (B). Normally your Dealer counterparty will be the party obligated to report. However, if you enter into transactions with persons that are not Dealers, or not Dealers in a particular jurisdiction, you may as the “local counterparty” in that jurisdiction have the reporting obligation. By selecting (B) you will agree to the ISDA developed Reporting Party Rules. The Reporting Party Rules will determine which of the two parties reports in situations where both parties have a reporting obligation. See the link to ISDA’s Canada page provided above for additional information. If your counterparty is not a Dealer in the jurisdiction in which you are a local counterparty, but has agreed to be a deemed dealer under Part V(A), then you will be able to rely on reporting by your counterparty, **but only** if you have selected (B).

You should become familiar with the Canadian Reporting Rules as they apply to Non-Dealers before making this selection.

This FAQ document is general background information on the Canadian Reporting Requirements. Should you have specific questions relating to them and their application to you, you should consider obtaining your own legal advice. Information provided in this document is prepared as of May 20, 2014 and may change as a result of subsequently released regulations, interpretations or relief by the applicable regulator(s).