Canada Further Harmonizes Derivatives Trade Reporting Rules

March 16, 2016

On February 16, 2016, the Canadian Securities Administrators announced proposed changes (the "Proposed Amendments") to Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* and the related Companion Policy 96-101CP (together, the "TR Rule") published earlier this year by the securities regulatory authorities in Alberta, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon (collectively, the "Participating Jurisdictions"). Similar derivative trade reporting rules are already in effect in Manitoba, Ontario and Quebec (the "Existing Rules"). For information on the TR Rule in the Participating Jurisdictions. Derivatives trade reporting in the Participating Jurisdictions begins on July 29, 2016 for clearing agencies and derivatives dealers and on November 1, 2016 for other reporting parties. The comment period for the Proposed Amendments ends on April 17, 2016. The Proposed Amendments are substantively harmonized with the proposed amendments to the Existing Rules. In respect of British Columbia, we expect similar amendments to the TR Rule to be announced shortly.

Protecting the Anonymity of Publicly Disseminated Data

Recognizing that the publication of anonymized transaction-level data by designated trade repositories could allow market participants to determine the identity of counterparties to specific over-the-counter ("OTC") derivative transactions, the Participating Jurisdictions propose to limit the trade reporting disseminated publicly under the TR Rule to certain asset classes and underlying benchmarks that exhibit sufficient market activity so that it would be difficult to identify a specific counterparty. Additional anonymising measures (rounding, caps) are prescribed with respect to transaction details. The Proposed Amendments introduce Appendix C to the TR Rule, which sets out the types of OTC transactions subject to public dissemination, the data required to be disseminated and certain exclusions from the dissemination requirement. Appendix C also sets out certain other mechanisms for protecting anonymity, including the requirement for a designated trade repository to round the notional amount of a transaction and the reporting of a prescribed capped rounded notional amount in place of the rounded notional amount in certain circumstances.

The effective date of the requirement for the trade repository to publicly disseminate transaction-level data for certain derivatives reported to it is harmonized across Canada to July 29, 2016 instead of January 1, 2017.

Relief from Reporting Transactions Between Affiliates

The Proposed Amendments provide relief from reporting transactions between affiliated end-user counterparties. In order to make use of this exclusion, neither counterparty can be a derivatives dealer, a recognized or exempt clearing agency or an affiliate of such an entity. In addition, either each affiliate must be a local counterparty in a province or territory of Canada or trade reporting must be done in compliance with equivalent trade reporting laws of those foreign jurisdictions listed in Appendix B (currently, the United States and the European Union) or under the laws of another province or territory of Canada.

Obligation to Obtain a Legal Entity Identifier ("LEI")

The Proposed Amendments introduce a new requirement that each eligible local counterparty to a reportable transaction obtain a LEI in accordance with the standards set by the Global Legal Entity Identifier System. In addition, for transactions with counterparties that are not eligible to receive a LEI, such as an individual, the reporting counterparty and the designated trade repository are required to identify a non-eligible counterparty using the same alternative identifier.

Trade Reporting for End-Users That were Previously Excluded

The Proposed Amendments provide for a transition period of 180 days for end-user counterparties that cease to qualify for an exclusion from the reporting requirements.

Contact Us

If you have any questions about the Proposed Amendments or the TR Rule, please contact the authors of this alert or any other member of the BLG Derivatives Group. BLG is ranked as the Number One Law firm in Canada for Derivatives by *Derivatives Weekly* and was named Canada Law Firm of the Year at Global Capital's 2014 and 2015 Americas Derivatives Awards. BLG's Derivatives Group is a multi-disciplinary team of lawyers that cuts across several of our practice groups. The team is experienced in negotiating derivatives documentation with sell-side and buy-side market participants around the world. Our clients include financial institutions, investment dealers, futures commission merchants, market intermediaries, securitization conduits and a wide variety of derivative end-users, such as mutual funds, hedge funds, pension funds, other investment vehicles, commodity producers, real estate firms, insurance companies, risk management firms and other corporate end-users. Our advice covers derivative structuring and document negotiation, regulatory compliance, tri-party collateral control practices and close-out issues. We also advise on compliance and registration requirements relating to derivatives in Canada.

By

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