



*OSC RULE 91-506 PRODUCT
DETERMINATION
and
OSC RULE 91-507 TRADE
REPOSITORIES AND
DERIVATIVES DATA REPORTING*

Frequently Asked Questions

September 15, 2014

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ONTARIO
SECURITIES
COMMISSION

OSC Rule 91-506 Derivatives: Product Determination and OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting

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To assist derivatives market participants in complying with Ontario derivatives trade reporting requirements, we have compiled a list of frequently asked questions (FAQs) and OSC staff's responses to those questions. This list of FAQs is not exhaustive, but broadly reflects the types of inquiries we have received.

Q 1: What types of transactions need to be reported?

A: All derivatives transactions involving a “local counterparty”, as defined in OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (91-507)

(http://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20140915_91-507_unofficial-consolidation-derivatives-data-reporting.htm) must be reported to an Ontario-designated trade repository (TR). For reporting purposes, the scope of the term “derivatives”, as defined in the *Securities Act* (Ontario), is modified by OSC Rule 91-506 *Derivatives: Product Determination* (91-506)

(http://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20140915_91-506_unofficial-consolidation-derivatives.htm).

Q 2: What data needs to be reported?

A: For each reportable transaction, a reporting counterparty must report (i) creation data, (ii) life-cycle event data, and (iii) valuation data. Appendix A of 91-507 provides the minimum information that is required to be reported as creation data for a transaction. Appendix A also outlines reporting requirements for pre-existing transactions and data which will be made publicly available.

Q 3: When are reporting counterparties that are not dealers or clearing agencies required to report pre-existing transactions?

A: Where a reporting counterparty is not a derivatives dealer or a clearing agency (an “end-user”), pre-existing transactions are those entered into before June 30, 2015 with outstanding obligations as of December 31, 2015 (see subsections 34(1.1) and 43(6) of 91-507). These transactions must be reported by end-users to a TR no later than December 31, 2015.

Q 4: How are hybrid instruments treated under 91-506?

A: Generally, instruments that fall within both the definition of “derivatives” and “securities” are treated as securities and not derivatives for the purposes of 91-506 and not required to be reported to a TR. However, there are exceptions (e.g. investment contracts and options: see section 3 of 91-506).

Q 5: When does the data need to be reported?

A: The timing deadlines depend on whether the counterparty is a clearing agency, derivatives dealer or end-user.

	Clearing Agencies	Derivatives Dealers	End-Users
Creation Data	Real-time but no later than end of next business day		
Life-Cycle Event Data	Day of event but no later than end of next business day		
Valuation Data	Daily (no later than end of next business day)		Quarterly (no later than 30 days after end of calendar quarter)
Errors & Omissions	Real-time but no later than end of next business day		

Q 6: Can I be subject to a reporting obligation even if I am not registered as a dealer in Ontario?

A: Yes, the reporting obligation applies to any person or company that is a reporting counterparty as determined under section 25 of 91-507, regardless of the person’s or company’s registration status.

Q 7: Who qualifies as a derivatives dealer in determining the reporting counterparty pursuant to section 25?

A: 91-507 defines a “derivatives dealer” as a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives in Ontario as principal or agent. The definition of reporting counterparty does not depend on whether the person or company is registered as a derivatives dealer. For further guidance, see CSA Consultation Paper 91-407 - *Derivatives: Registration* (91-407) (http://www.osc.gov.on.ca/en/SecuritiesLaw_91-407.htm).

Q 8: If I am a foreign counterparty not registered as a derivatives dealer in Ontario, and I am transacting with a local counterparty, am I required to report?

A: Yes, a counterparty’s status as a “derivatives dealer” is based on a business trigger and does not depend on registration. For example, a person engaged in the business of trading derivatives in Ontario would be a derivatives dealer for the purposes of the reporting counterparty determination in 91-507, regardless of whether the person is registered in Ontario. For further guidance regarding the indicia of the business of trading derivatives, see 91-407.

Q 9: Can I be a local counterparty in more than one province?

A: Yes, the definition of “local counterparty” in subsection 1(1) of 91-507 sets out different criteria for determining whether or not a counterparty to a derivative is a local counterparty. Please consult the securities legislation in other Canadian provinces to see if you qualify as a local counterparty for purposes of their legislation. Note that when reporting a transaction, the reporting counterparty must list all of the provincial jurisdictions in which counterparties to the transaction are local counterparties.

Q 10: Under what circumstances can there be a single reporting counterparty for a reportable transaction?

A: There are several situations where there will only be one reporting counterparty responsible for reporting a transaction to a designated TR.

First, where a derivatives transaction is cleared, the clearing agency is the sole reporting counterparty with the obligation to report (see paragraph 15(1)(a) of 91-507). Second, where the transaction is not cleared and is between an end-user and a derivatives dealer, the derivatives dealer is the sole reporting counterparty in respect of that transaction (see paragraph 25(1)(d) of 91-507). Finally, where the transaction is between two derivatives dealers or between two end-users, the counterparties may agree to use the ISDA Canadian Transaction Reporting Party Requirements methodology (ISDA Methodology) to determine a single reporting counterparty to the transaction (see paragraphs 25(1)(b) and (e)).

Parties are not required to use the ISDA Methodology. However, if the parties choose to use the ISDA Methodology, they must execute and deliver the ISDA Representation Letter, agree to use the ISDA Methodology for the particular derivatives transaction being reported and agree to disclosure of their use of the ISDA Methodology by ISDA (see subsection 25(2)). Details of the ISDA Methodology can be found at www.isda.org.

Q 11: Under what circumstances are both counterparties to a reportable transaction obligated to report?

A: There are situations in which both counterparties to a reportable transaction are “reporting counterparties” required to report derivatives data. Where a reportable transaction is between two derivatives dealers (under paragraph 25(1)(c) of 91-507), or between two local end-users (under paragraph 25(1)(f) of 91-507), and the counterparties are not using the ISDA Methodology (see Question 10 above), each local counterparty has a reporting obligation. However, subsection 26(3) of 91-507 permits reporting counterparties to delegate this obligation so as to avoid double reporting. If delegated, only one of the two counterparties (or a third party) may report the transaction. Note that despite delegating the reporting function to the other counterparty or to a third party, both reporting counterparties remain ultimately responsible for the reporting obligations under 91-507.

Where a reportable transaction is between a derivatives dealer and an end-user, the derivatives dealer is the reporting counterparty (see subsection 25(1)(d) of 91-507). However, the derivatives dealer may also delegate the reporting obligation to the end-

user. Similar as in the situations above, despite the delegation, the derivatives dealer remains ultimately responsible for the reporting obligations under 91-507.

Q 12: Can I only delegate the reporting of the initial transaction (creation data) or can I also delegate other ongoing obligations?

A: Reporting obligations include the obligation to report creation data, life cycle-event data and valuation data. A reporting counterparty may delegate all or any part of its reporting obligations under 91-507, but remains responsible for ensuring the timely and accurate reporting of all derivatives data required to be reported.

Q 13: How are customer cleared transactions reported under 91-507?

A: Under 91-507, the clearing agency is required to report customer cleared transactions. When reporting a customer cleared transaction to a TR, the clearing agency must identify the customer and clearing agency (each as a counterparty) and the clearing member in a single report using a single unique transaction identifier. This reporting methodology applies regardless of the clearing model used. A customer cleared transaction is reportable under 91-507 where it involves a local counterparty; accordingly a customer cleared transaction cleared through a clearing member which is a local counterparty must be reported under 91-507 using this methodology.

Q 14: Do inter-affiliate transactions have to be reported?

A: Yes.

Q 15: Am I required to report if I am transacting with a counterparty that is a guaranteed affiliate of an Ontario corporation?

A: Yes, 91-507 imposes a reporting obligation on all transactions involving a “local counterparty” as defined in the rule. A local counterparty includes a person or company, other than an individual, located in Ontario and a guaranteed affiliate of such person or company. Where a foreign derivatives dealer enters into a transaction with the guaranteed affiliate of an Ontario corporation that is not a derivatives dealer, the foreign derivatives dealer is required to report the transaction to a TR pursuant to 91-507.

Q 16: How does the subsection 26(5) deemed compliance provision work?

A: There is deemed compliance with the reporting obligation when all of the following conditions are met:

- a. you are dealing with a person that is a local counterparty under paragraph (b) or (c) of the definition of “local counterparty” in subsection 1(1) of 91-507;
- b. the transaction is reported to an Ontario-designated TR;
- c. the transaction is reported pursuant to the law of a province other than Ontario or the law of a foreign jurisdiction listed in Appendix B of the 91-507; and,
- d. you have instructed the Ontario-designated TR to grant the Commission access to the derivatives data that would otherwise be required to be reported under the 91-507.

Note that the deemed compliance provision applies only where the reporting counterparty reports to a "designated" trade repository. This means that a foreign trade repository has to apply for designation in Ontario in order to qualify.

Deemed compliance is not available to a person or company that is a local counterparty by virtue of paragraph (a) of the local counterparty definition.

The only non-Canadian trade reporting regimes eligible for deemed compliance are those listed in Appendix B of the 91-507. When substituted compliance analysis is concluded and a foreign rule is found to be equivalent, the Commission will amend the 91-507 and list the foreign jurisdiction and its reporting obligations in Appendix B. Currently, the U.S. Commodity Futures Trading Commission (CFTC) trade reporting rules are eligible for substituted compliance.

Q 17: If I am a foreign counterparty that is a “derivatives dealer” under 91-507 (by virtue of the business trigger in the definition of derivatives dealer) , but the transaction in question does not involve a “local counterparty” as defined in subsection 1(1) of 91-507, am I required to report this transaction?

A: No, only transactions involving a local counterparty are required to be reported under 91-507. For example, a foreign derivatives dealer that enters into a transaction with a counterparty that is not a local counterparty is not required to report that transaction because neither of the counterparties is a local counterparty. Note that, following implementation of a derivatives dealer registration regime in Ontario, foreign counterparties that become derivatives registrants will be local counterparties pursuant to paragraph (b) of the local counterparty definition.

Q 18: What is a Legal Entity Identifier (“LEI”)?

A: The LEI is a 20-character code used to uniquely identify entities that enter into financial transactions. It adheres to the International Organization for Standardization (ISO) standard 17442 and is administered by the Global LEI System, a G-20 endorsed initiative sponsored by the Financial Stability Board.

Q 19: How can I get a Legal Entity Identifier?

A: LEIs can be obtained by submitting an application to an endorsed Local Operating Unit (LOU). LOUs are endorsed by the Regulatory Oversight Committee (ROC) and are organizations that issue, store, maintain and validate individual LEIs within the Global LEI System. A list of endorsed LOUs is available at the LEI ROC website (www.leiroc.org).

Q 20: Who is eligible to receive an LEI?

A: Most entities are eligible to receive an LEI with the exception of natural persons and branches of entities. Organizations that are not “legal entities” by definition in their jurisdiction (trusts, partnerships, etc.) are still eligible to receive an LEI if they are legally responsible for the performance of financial transactions or have the legal right in their jurisdiction to enter independently into legal contracts.¹

Q 21: Many buy-side/end-user counterparties do not have an LEI. What kind of transitional relief is being considered?

A: All counterparties are expected to acquire and report their LEI in time to meet their obligations under 91-507 and no transitional relief is being considered.

Q 22: What data will be published?

A: Appendix A of 91-507 has a column indicating which fields will be made available for public dissemination and which will not. The identity of the counterparties, for example, will not be publicly disclosed under 91-507.

Q 23: What to do when errors or omissions are discovered?

A: Upon discovery of an error or omission in reported derivatives data:

- a. a reporting counterparty must notify the TR; and,
- b. a local counterparty other than the reporting counterparty must notify the reporting counterparty, as soon as technologically practicable and no later than the next business day.

Q 24: Who creates a Unique Transaction Identifier (UTI)?

A: 91-507 specifies that a designated TR must assign a UTI to a transaction using either its own methodology or a UTI previously assigned to the transaction. The UTI should be created and communicated at the earliest possible point in the trade flow.

Q 25: Can I use the same UTI used to report in another jurisdiction?

A: Yes, UTIs such as the Unique Swap Identifier required by the CFTC can be used. The only condition is that there can only be one UTI per transaction.

Q 26: Who creates a Unique Product Identifier (UPI)?

A: 91-507 specifies that a reporting counterparty must identify each transaction with a UPI assigned in accordance with international or industry standards where available. The International Swaps and Derivatives Association (ISDA) has created high level UPI taxonomies for all asset classes that can be found on its website (www.isda.org).

Q 27: What if a TR does not accept a certain type of transaction?

A: The TR should accept reports of all derivatives transactions for the asset classes it offers. If no designated TR will accept a certain transaction, 91-507 provides that the reporting counterparty must electronically report the data directly to the Commission (see ss. 14 and 26(4) of 91-507).

¹ “A Global Legal Entity Identifier for Financial Markets”. Financial Stability Board, June 8 2012.

Q 28: Are derivatives executed on an exchange required to be reported under 91-507? Are derivatives executed on Swap Execution Facilities (SEFs) required to be reported under 91-507?

A: 91-506 provides that a contract or an instrument is not a “derivative” for purposes of reporting under 91-507 if it is traded on an exchange (e.g. futures traded on the Montreal Exchange). However, derivatives trading facilities such as SEFs are excluded from the definition of “exchange” for the purposes of 91-507; therefore, derivatives traded on SEFs are required to be reported (see ss. 2(1)(g) and 2(2) of 91-506 and the accompanying Companion Policy).