

Canadian Securities Administrators  
CSA Consultation Paper 91-402  
Derivatives: Trade Repositories

Canadian Securities Administrators Derivatives Committee  
June 23<sup>rd</sup>, 2011

## CSA Consultation Paper 91-402 – Derivatives: *Trade Repositories*

On November 2, 2010 the Canadian Securities Administrators Derivatives Committee (the “Committee”) published *Consultation Paper 91-401 on Over-the-Counter Derivatives Regulation in Canada* (“Consultation Paper 91-401”).<sup>1</sup> This public consultation paper addressed regulation of the over-the-counter (“OTC”) derivatives market and presented high level proposals for the regulation of OTC derivatives. The Committee sought input from the public with respect to the proposals and eighteen comment letters were received from interested parties.<sup>2</sup> The Committee has continued to contribute to and follow international regulatory proposals and legislative developments, and collaborate with other Canadian regulators<sup>3</sup>, the central bank and market participants. This public consultation paper, one in a series of eight papers that build on the regulatory proposals contained in Consultation Paper 91-401, provides a framework for proposed rules for the reporting of OTC derivatives transactions and the operation of trade repositories.

OTC derivatives are traded in a truly global marketplace and effective regulation can only be achieved through an internationally coordinated and comprehensive regulatory effort. The Committee is committed to working with foreign regulators to develop rules that adhere to internationally accepted standards. As there are currently no mandatory requirements for Canadian market participants to report their OTC derivative transactions and positions, Canadian regulators and the central bank do not have access to a range of relevant data regarding the size and composition of the Canadian OTC derivatives market, the activities of Canadian market participants and “Canadian referenced derivatives”<sup>4</sup> entered into by foreign participants.

The Canadian OTC derivatives market comprises a relatively small share of the global market with the majority of transactions involving Canadian market participants being entered into with foreign counterparties.<sup>5</sup> It is therefore crucial that rules developed for the Canadian market accord with international practice to ensure that Canadian market participants have full access to the international market and are regulated in accordance with international principles. The Committee will continue to monitor and contribute to the development of international standards and specifically review proposals on industry standards relating to trade repositories to harmonize the Canadian approach with international efforts.

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<sup>1</sup> Report available at [http://www.osc.gov.on.ca/en/NewsEvents\\_nr\\_20101102\\_csa-rfc-derivatives.htm](http://www.osc.gov.on.ca/en/NewsEvents_nr_20101102_csa-rfc-derivatives.htm) (“Consultation Paper 91-401”).

<sup>2</sup> Comment letters publicly available at <http://www.osc.gov.on.ca/en/30430.htm> and <http://www.lautorite.qc.ca/en/regulation-derivatives-markets-qc.html>.

<sup>3</sup> When referred to in this Consultation Paper, Canadian regulators include market and prudential regulators.

<sup>4</sup> “Canadian referenced derivatives” include derivatives transactions that reference a Canadian underlying asset (e.g. equity, bond or commodity) or market variable (e.g. interest rate, credit risk, exchange rate or stock index) and transactions that are denominated in Canadian dollars.

<sup>5</sup> As of December 2009, the outstanding notional value of the OTC Derivative activities by the six major Canadian banks, based on an informal survey they conducted through the Industry Advisory Group (“IAG”), was US \$10.1 Trillion which is less than 2% of all OTC transactions. 78% of the counterparties that the six major Canadian banks transacted with were non-Canadian. Industry Advisory Group for OTC Derivatives, “Policy Paper: Developments in the Canadian Over-the Counter Derivatives Markets” at 7 and 8.

## Executive Summary

The reporting of OTC derivative transaction data to trade repositories will greatly improve market transparency and is one of the most important components of derivative market reform. The following is a summary of the Committee's key recommendations for trade repositories contained in this consultation report:

### 1. Trade Repository Requirements

- a) In order to operate in Canada, trade repositories should be required to meet the internationally accepted governance and operational standards recommended by the Committee on Payment and Settlement Systems ("CPSS") and the Technical Committee of the International Organization of Securities Commissions ("IOSCO") including standards relating to legal framework, governance, market transparency and data availability, operational reliability, access and participation, safeguarding of data, timely recordkeeping and communication procedures and standards.
- b) The boards of directors of trade repositories should be composed of individuals with an appropriate diversity of relevant skills and experience and include appropriate independent representation.
- c) All trade repositories should appoint a chief compliance officer responsible for reviewing compliance with applicable legislation, identifying and resolving conflicts of interest and completing and certifying an annual compliance report.
- d) Trade repositories should have robust operational risk management capabilities including back-up systems that can resume operations within two hours of any disruption.
- e) Trade repositories should provide fair and open access to market participants and be required to accept all trades for each asset class for which the trade repository accepts data.
- f) Trade repositories should safeguard confidential data and prevent any data use that could represent a conflict of interest.
- g) Canadian provincial securities and derivatives laws should, where necessary, be amended to include approved trade repositories in the definition of *market participant*.

### 2. Reporting Requirements

#### a) *Transactions Required to be Reported*

- i) Canadian provincial securities and derivatives laws should, where necessary, be amended to permit mandating the reporting of all OTC derivatives transactions to an approved trade repository and provincial market regulators should mandate such reporting.

ii) Pre-existing OTC derivative transactions should be reported to an approved trade repository within 180 days from the effective date of the new reporting rules.

- Pre-existing transactions terminating or expiring within one year of the effective date of the new reporting rules should be exempted from reporting requirements.

iii) Records for all OTC derivative transactions should be retained by each counterparty and the relevant trade repository for a period of seven years from the date the transaction terminates or expires.

***b) Reporting Obligations***

i) One counterparty to each OTC derivative transaction should be required to report the transaction and any related post execution events to an approved trade repository.

ii) Transaction reporting obligations should be determined based on counterparty type, and delegation of reporting to a third-party service provider including a central counterparty clearing house should be permitted.

- Financial intermediaries should bear the reporting onus in transactions with end users.
- Transaction counterparties should be permitted to elect the reporting party for transactions between two financial intermediaries or two end users.
- A foreign counterparty may assume reporting obligations provided that the transaction is reported to a trade repository approved in Canada.

***c) Reporting to Approved Trade Repository***

i) All OTC derivative transactions entered into by a Canadian counterparty should be reported to an approved trade repository.

ii) Any trade repository that intends to carry on business in one or more Canadian province should be approved by the applicable provincial market regulator through a recognition or designation process.

iii) Canadian provincial securities and derivative laws should be amended, where necessary, to create an approval process for the recognition or designation of trade repositories and to facilitate the development of rules for their operation.

***d) Mandating a Canadian Trade Repository***

i) Mandating the use of a Canadian-based (or domiciled) trade repository by Canadian OTC derivative transaction counterparties should be studied. The Committee will investigate the feasibility of adopting a mandate and options for developing a Canadian trade repository.

ii) Reporting to a foreign-based trade repository that has been approved by provincial market regulators and meets all the requirements applicable to a Canadian trade repository should be acceptable until a Canadian trade repository is operational or if the mandating of such a repository is rejected by market regulators.

***e) Information Required to be Reported***

i) OTC derivative transaction data should be reported in accordance with international standards for data reporting.

ii) Unique identifiers for legal entities, transactions, product types as well as country specific identifiers should be developed in accordance with international standards and reported for each OTC derivative transaction.

iii) Initial transaction data including the principle economic terms and the full executed legal agreement entered into between the counterparties should be reported for all OTC derivative transactions.

iv) Continuation data should be reported throughout life of an OTC derivative transaction including valuation data and snapshot or lifecycle data depending on the class of OTC derivative.

***f) Availability of Information to Regulators***

i) Trade repositories should provide transaction level, position level and aggregated data to Canadian and acceptable foreign regulators and central banks in accordance with their regulatory duties.

ii) A data aggregator should be developed to assist Canadian regulators and the central bank in the collection and aggregation of trade data from multiple trade repositories (located domestically or internationally) if a Canadian trade repository with aggregation functionality is not developed.

***g) Availability of Information to Public***

Trade repositories should make available to the public aggregate data, including information on positions, transaction volumes and average prices. Anonymous post-trade transaction level data should also be made public provided that it would not be detrimental to market liquidity or function.

***h) Timing of Reporting***

i) Transaction reporting to trade repositories should be done in real time once feasible for Canadian market participants and within one business day until real time reporting is implemented.

ii) Once real time reporting is implemented, large trades meeting a to-be-determined block trade threshold should be subject to a delayed reporting requirement in order to preserve the anonymity of market participants and ensure that there is no detrimental impact on market liquidity or function.

### **3. Access to Confidential Trade Repository Information**

a) Provincial market regulators from each jurisdiction should consider whether it is necessary to enact legislation that expressly permits the disclosure of confidential information to and by trade repositories.

b) Amendments to legislation should be enacted to ensure that confidential trade repository data is not made publicly available pursuant to public disclosure laws.

c) Canadian regulators and the central bank should establish cooperation agreements with foreign jurisdictions that have equivalent legal and supervisory frameworks to facilitate cross border access to trade repository data. Canadian regulators and the central bank should have access to all trade repository data regarding Canadian counterparties or Canadian referenced derivatives.

### **Comments and Submissions**

The Committee invites participants to provide input on the issues outlined in this public consultation paper. You may provide written comments in hard copy or electronic form. The comment period expires September 12<sup>th</sup>, 2011.

The Committee will publish all responses received on the websites of the Autorité des marchés financiers ([www.lautorite.qc.ca](http://www.lautorite.qc.ca)) and the Ontario Securities Commission ([www.osc.gov.on.ca](http://www.osc.gov.on.ca)).

Please address your comments to each of the following:

Alberta Securities Commission  
Autorité des marchés financiers  
British Columbia Securities Commission  
Manitoba Securities Commission  
New Brunswick Securities Commission  
Ontario Securities Commission  
Saskatchewan Financial Services Commission

Please send your comments only to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

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## 1. Introduction

Trade repositories, and the related availability and transparency of transaction and aggregate market data information for market and prudential regulators, central banks and the public, are one of the most important components of OTC derivatives regulatory reform.

The recent financial crisis highlighted a severe lack of price transparency and aggregate market data in OTC derivatives markets. This lack of transparency made it difficult for regulators around the globe to oversee these markets. The opaque nature of the global OTC derivatives market contributed to the loss of market confidence during the financial crisis. The lack of transparency also allowed certain market participants to build up extremely large OTC derivative exposures and created a systemic crisis requiring foreign governments to intervene with public resources. Although OTC derivatives did not have as large an impact on the Canadian market during the global financial crisis as they did on some other G-20 nations, Canadian institutions were not isolated due to the global nature of the financial markets. Canada's compliance with its G-20 commitments will require the development of a comprehensive framework for regulation of the OTC derivatives market.<sup>6</sup> This new framework will improve upon Canada's ability to fairly and efficiently regulate its derivatives markets.

The G-20 has made transparency of the OTC derivatives market one of the central pillars of reform and agreed that all OTC derivative transactions should be reported to trade repositories.<sup>7</sup> A trade repository is a centralized facility where OTC derivative transaction data is collected and stored electronically, providing regulators and, for some of this information, the public with a central source of transaction and position data for a given OTC derivatives market. It collects data, derived from centrally cleared or bilateral transactions as reported by parties to a transaction.

Trade repositories support transparency by making transactional and aggregated data available to relevant regulatory authorities on a routine basis and by request. In order to assess potential risks in the Canadian derivatives market, regulators must have access to aggregate and transaction level data for all Canadian entities participating in derivatives transactions and on Canadian referenced derivatives. Timely access to data collected by trade repositories will enable Canadian regulators and the central bank to monitor systemic risk exposures of market participants, detect market abuse, and assist in the performance of systemic risk analysis on these markets. It will also increase transparency of the OTC derivatives market, reducing information imbalances through the public dissemination of appropriate data including aggregate data on open positions and trading volumes on a periodic basis.

The internationally coordinated effort to have OTC derivatives transactions reported to trade repositories is key to ensuring that regulators are in possession of the information

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<sup>6</sup> "Leaders' Statement: The Pittsburgh Summit" (September 24-25, 2009) and "The G-20 Toronto Summit Declaration" (June 26-27, 2010) available at [http://www.g20.org/pub\\_communiques.aspx](http://www.g20.org/pub_communiques.aspx)

<sup>7</sup> *Ibid.*

necessary to effectively monitor the OTC derivatives market. This consultation paper will describe the framework of rules and policies recommended by the Committee to govern reporting of OTC derivatives transactions and the operation of trade repositories. Each proposed rule is intended to strengthen the Canadian and international OTC derivative market through increased transparency without unduly burdening market participants.

The Committee encourages market participants and the public to submit comment letters addressing any issues or questions raised by this consultation paper.

## 2. Trade Repository Governance and Operational Guidelines

Trade repositories will provide a vital source of transparency in the OTC derivatives market to regulators and, in a more limited way, to the public. Regulators will rely on accurate and timely information to monitor systemic risk and market abuse. In order to fulfill this crucial role, trade repositories will need to possess sound operational capacity and effective governance. Therefore, robust initial and ongoing standards for trade repositories are necessary, including rules that establish the criteria and procedures for regulatory approval, governance, record keeping requirements, and privacy and confidentiality requirements. A consultative report outlining guidelines for such rules was published in May 2010 by a working group jointly established by CPSS and the Technical Committee of IOSCO entitled *Considerations for trade repositories*.<sup>8</sup> This working group also recently published another report that is applicable to trade repositories entitled *Principles for financial market infrastructures*.<sup>9</sup> This report contains a comprehensive set of principles for financial market infrastructures and those that apply to trade repositories have been included in Appendix A to this consultation paper. The CPSS IOSCO working group intends to publish a final report on the topic in early 2012. The Committee supports the recommendations contained in these two reports and will rely on them (as well as the final CPSS IOSCO report) in developing rules for the Canadian market. In order for an OTC derivatives trade repository to be approved<sup>10</sup> by provincial market regulators, the Committee recommends that the following standards be met and serve as ongoing requirements:

### (a) Legal Framework<sup>11</sup>

Trade repositories should be required to possess a clearly defined legal framework and their rules, procedures and contractual arrangements should be supported by the laws and regulations applicable to them. The rights of all participants, owners and regulators that

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<sup>8</sup> The Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions' consultative report entitled *Considerations for trade repositories in OTC derivatives markets* (May 2010) ("CPSS IOSCO #1") available at <http://www.bis.org/publ/cpss90.pdf>.

<sup>9</sup> The Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions' consultative report entitled *Principles for financial market infrastructures* (March 2011) ("CPSS IOSCO #2") available at <http://www.bis.org/publ/cpss94.htm>.

<sup>10</sup> Approvals will be determined, depending on the province through designation or recognition. For example see the Ontario Securities Act, *Securities Act*, R.S.O. 1990, c.S.5. ("OSA") at S. 21.2.2.

<sup>11</sup> The standards outlined in the following sections are based on those in the two CPSS IOSCO reports referenced above. Each subsection will include a footnote identifying the related sections from the reports. The recommended standards for trade repository legal frameworks can be found at CPSS IOSCO #1, *supra* note 8, at 7 and CPSS IOSCO #2, *supra* note 9, at 19-23.

use the information of a trade repository should be clearly stated and its governing rules and procedures made public. Those rules and procedures and related contractual requirements should provide certainty on service levels, rights to access, protection of confidential information and intellectual property rights and operational reliability. The status of the records in the repository, and whether they are the legal contracts of record, should also be clearly established.

### *(b) Governance<sup>12</sup>*

Due to the central transparency role of trade repositories, good governance that promotes the interests of stakeholders and the public will be essential. Each trade repository must establish a robust governance regime that will ensure effective risk management and provide adequate internal controls over the confidentiality of information held by the repository. Trade repository governance frameworks and operating procedures should outline lines of responsibility and accountability and be made available to stakeholders and regulators, and at a more general level to the public. Trade repositories must effectively balance their commercial interests with their public role as a central storage facility of secure data. It is crucial that each trade repository adopt procedures to identify and prevent potential conflicts of interest particularly in cases where derivative market participants will have ownership interests in a trade repository.

Furthermore, policies should be implemented to ensure commercial end-users are represented in the governance arrangements. The Committee believes that trade repository boards of directors should be composed of individuals with an appropriate diversity of relevant skills and experience and that the board of directors include appropriate independent representation.

The Committee recommends that all trade repositories be required to appoint a chief compliance officer with responsibilities including reviewing compliance with applicable legislation or rules, identifying and resolving conflicts of interest and completing and certifying an annual compliance report.<sup>13</sup> These rules are intended to ensure that trade repositories have a dedicated individual or department charged with maintaining compliance.<sup>14</sup>

### *(c) Market Transparency and Data Availability<sup>15</sup>*

Trade repositories should provide effective and appropriate disclosure of data to regulators and the public. Regulators will need to have the ability in a timely manner to access information electronically on individual transactions and market participants once such data is submitted to the trade repositories. The repository should also have

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<sup>12</sup> CPSS IOSCO #1, *supra* note 8, at 9-10 and CPSS IOSCO #2, *supra* note 9, at 23-27.

<sup>13</sup> This is consistent with Commodity Futures Trading Commission (“CFTC”) and Securities and Exchange Commission (“SEC”) proposed rules. See Proposed Rule – Swap Data Repositories, 75 Fed. Reg. 80898, 75-246, (Dec. 8, 2010) (“CFTC #1”) at 80912 and Proposed Rule – Security-Based Swap Data Repository Registration, Duties, and Core Principles, 75 Fed. Reg. 77306, 75-237 (Dec. 10, 2010) (“SEC #1”) at 77341.

<sup>14</sup> Chief compliance officer requirements and application will require further ongoing development.

<sup>15</sup> CPSS IOSCO #1, *supra* note 8, at 7-8 and CPSS IOSCO #2, *supra* note 9, at 81-84, 98-100 and 107.

processes in place to deal with information sharing requests from Canadian and international market and prudential regulators and central banks.

Trade repositories should require that transaction information be reported in an accessible format that conforms to regulatory expectations and international standards or have the capability to convert submitted data into such a format. Trade repositories should also make public, aggregate transaction data on positions and volumes on a periodic basis with additional subset information breakdowns where appropriate. However, information made public by trade repositories should not identify counterparties to specific transactions or otherwise indirectly disclose to the public confidential data regarding derivative counterparties or their positions. Furthermore, to ensure a level playing field for all market participants, it is essential that information not be provided to any market participants on a preferential basis.

#### **(d) Operational Reliability<sup>16</sup>**

The failure of a trade repository to perform as expected could have a significant disruptive effect on the OTC derivatives markets for which it is a source of information. Trade repositories should take steps to manage operational risks including risks to data integrity, data security, business continuity and capacity and performance management. Operational risks should be minimized through approved risk management policies, procedures and control systems that identify and manage risks, including regular independent reviews of system integrity<sup>17</sup> and vulnerability assessment focusing on security and confidentiality issues. Business continuity plans, including clear emergency procedures and comprehensive backup facilities and recovery plans, will need to be developed to allow for the timely recovery of information in the event of a disruption. Procedures should include regular testing of backup resources to ensure they are sufficient to facilitate continuity in the event of a disruption and back-up systems that have the capability to resume operations within two hours of any disruptions.<sup>18</sup> In the event of an emergency disruption relevant domestic regulators should receive prompt notification and be debriefed on the resolution of the disruption. It is crucial that trade repositories adopt sustainable business models to make certain that no disruptions to information flows are caused by financial difficulties or a disorderly wind down. General business risks should be monitored and addressed to ensure that each trade repository is in a stable and solvent financial position.

#### **(e) Access and Participation<sup>19</sup>**

Repositories should be required to adopt publicly disclosed requirements for access and participation. The legal requirement that all OTC derivative transactions be reported to trade repositories creates a situation whereby a repository may be in a position to influence a party's ability to participate in the OTC derivatives market. Trade

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<sup>16</sup> CPSS IOSCO #1, *supra* note 8, at 8 and CPSS IOSCO #2, *supra* note 9, at 70-81.

<sup>17</sup> For an example of a system review requirement see National Instrument 21-101, *Marketplace Operation* (November 2, 2001, as amended)- at Section 12.2.

<sup>18</sup> This is consistent with CPSS IOSCO recommendations, see CPSS IOSCO #2, *supra* note 9, at p. 76.

<sup>19</sup> CPSS IOSCO #1, *supra* note 8, at 9-10 and CPSS IOSCO #2, *supra* note 9, at 81-84.

repositories should not adopt any policies or take any actions that constitute an unreasonable restraint on trade, impose material anticompetitive burdens on any market participants or unreasonably prohibit, condition or limit access to its services. Examples of prohibited practices include product or service tying, employing contracts with non-compete and exclusivity clauses, overly restrictive terms of use, or anticompetitive price discrimination. Trade repositories should be required to provide broad access to market participants and ensure that all market participants in a given asset class have access to a trade repository. Therefore, trade repositories that accept derivative data for a particular asset class will be required to accept data for all OTC derivative transactions of that class. Access to a trade repository should only be denied if accepting data from a party would create risks to the security or functioning of the repository.

In addition trade repositories should be cost effective and efficient in the provision of services and provide market participants with information to enable them to assess the risks and costs associated with using a trade repository.

#### *(f) Safeguarding of data<sup>20</sup>*

As a result of the universal reporting of OTC derivatives transactions, trade repositories will be in possession of large amounts of confidential data. All transaction data submitted to trade repositories should be protected from corruption, loss, leakage, unauthorized access and other processing risks. To ensure the safety and confidentiality of transaction information, trade repositories will require highly secure systems and controls regarding the communication and storing of data. Trade repositories will be required to implement and enforce strict policies and procedures to protect privacy and confidentiality of trade data and will be required to conduct periodic independent reviews of system security, to ensure that no breaches have occurred and no vulnerabilities exist, with copies of the review reports being provided to regulators.

Trade repositories should have robust risk mitigation policies regarding links of their data to third parties in order to ensure that no leaks occur during data transfer. A framework for coordination between the regulators of the repository and the linked entities should also be established.

Trade repositories will receive certain data that will be required to be disseminated to the public and other data intended only for use by regulators. Non-public data intended for use only by regulators should be held strictly confidential and not be accessed or disclosed except as required by regulators. Market participants will be prohibited from accessing a trade repository's data unless the data was originally submitted by the accessing party or the accessing party is the non-reporting counterparty to the submitted trade. Information sharing by trade repositories with affiliated entities will be strictly prohibited and confidentiality policies should include limitations to access of confidential trade repository data, and standards pertaining to persons associated with the trade repository trading for their personal benefit or the benefit of others.<sup>21</sup>

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<sup>20</sup> CPSS IOSCO #1, *supra* note 8, at 10-11 and CPSS IOSCO #2, *supra* note 9, at 18, 78-79 and 92.

<sup>21</sup> SEC #1, *supra* note 13, at 77339 and CFTC #1, *supra* note 13, at 80909.

The Committee is concerned with potential conflicts of interest with respect to trade repositories' data and will only permit its use for commercial or business purposes in limited circumstance such as providing aggregate non-confidential data analysis or confidential analysis of a participant's submitted data for that participant.

#### *(g) Timely Recordkeeping<sup>22</sup>*

Trade repositories should employ timely and accurate record keeping procedures ideally in real time, that adhere to timeliness standards which are currently being developed at the international level. Trade repositories should maintain reported derivative data throughout the life of each reported transaction and for seven years from the date that the transaction expires or terminates in a safe location and durable form and in a manner that permits it to be provided to regulators in a reasonable period of time.

#### *(h) Communication procedures and standards<sup>23</sup>*

Consistent communication standards should be developed among trade repositories to enable efficient interoperability with regulators and other trade repositories and market infrastructure entities. This will assist in the goal of consistent regulatory reporting and publication of derivative transaction information. Reporting and communication standards are being developed at the international level and will be discussed in greater detail in Section 3.5 below.

### **2.1 Trade Repositories as Market Participants**

Market participants, as defined in each province's securities or derivatives legislation, are subject to a range of standards and market regulator oversight under provincial securities and derivatives laws that accord with and promote the trade repository guidelines described above. For example, provincial market regulators are granted powers to investigate and examine the records of or perform compliance reviews of market participants and prescribe record keeping requirements. These powers would allow provincial market regulators to ensure that approved trade repositories are compliant with the rules governing their operation and therefore the Committee recommends that, where necessary, provincial securities or derivatives legislation be amended to include approved trade repositories in the definition of market participant.<sup>24</sup> This would be in addition to the specific rules for trade repositories.

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<sup>22</sup> CPSS IOSCO #1, *supra* note 8, at 11.

<sup>23</sup> *Ibid.*

<sup>24</sup> Recent amendments to the *Ontario Securities Act* amended the definition of market participant to include designated trade repositories. OSA, *supra* note 10, at 1(1)(k).

### 3. Reporting Requirements

#### 3.1 What Transactions Must Be Reported?

The Committee recommends that, where necessary, legislative changes be enacted to enable provincial market regulators to require the reporting of all OTC derivative transactions to an approved trade repository and for provincial market regulators to then enact such a rule.<sup>25</sup> This requirement includes all newly executed derivatives as well as post execution events such as, but not limited to, full or partial novations or unwinds. This requirement will address the goal that regulators, at all times, have access to information that provides a complete and comprehensive understanding of the OTC derivatives market. The comment letters to Consultation Paper 91-401 received generally endorsed the reporting of all OTC derivative transactions. However, one comment letter suggested that transactions among non-financial intermediaries below a certain threshold should not be required to be reported.<sup>26</sup> It is the view of the Committee that threshold exemptions do not accord with the stated goal of full transparency and that an aggregation of smaller transactions is relevant to the oversight role of regulators. It is recommended that the provincial market regulators provide sufficient time when introducing these rules for market participants to prepare system changes to meet reporting requirements.

##### *(a) Pre-Existing Transaction Reporting*

OTC derivative transactions entered into prior to the date the new reporting rules become effective that have outstanding contractual obligations, (“Pre-existing Transactions”) will, subject to the exemption described below, also be required to be reported to an approved trade repository. Pre-existing Transactions may have lengthy durations and any contracts that continue to be in effect after the reporting rules become effective are as relevant to market transparency and regulatory oversight as new contracts. The notional amount of OTC derivative transactions currently outstanding globally is extremely large, systemically important and represents an important motivation to the development of OTC derivatives regulation. Without the reporting of Pre-existing Transactions it would not be possible for regulators to ascertain the OTC derivatives market as a whole and the current positions of market participants. However, the Committee recognizes that many market participants are party to a large number of transactions, the reporting of which could require significant resources. Therefore, the Committee recommends that a period of 180 days from the effective date of the reporting rules be granted to allow market participants to comply with this requirement.<sup>27</sup> The information reported on Pre-existing Transactions should contain the principal economic terms<sup>28</sup> of each reportable

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<sup>25</sup> Recent amendments to the *Ontario Securities Act* provide the Ontario Securities Commission (“OSC”) with the power to require all OTC derivatives transactions be reported to an approved trade repository. OSA, *supra* note 10, at 143(1)11.

<sup>26</sup> See Invesco Trimark comment letter to the CSA, January 14, 2011 (“Invesco”).

<sup>27</sup> This is consistent with the reporting timeframe for pre-existing derivatives proposed by the SEC. Proposed Rule – Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. 75208, 75-239 (Dec. 2, 2010) (“SEC #2”) at 75209. The CFTC has proposed a shorter reporting timeframe requiring that pre-existing derivatives be reported within 60 days of the publication of a final rule or regulation or 360 days after the enactment of Dodd-Frank. Interim Final Rule for Reporting Pre-Enactment Swap Transactions, 75 Fed. Reg. 63080, 75-198, (Oct. 14, 2010) at 63084.

<sup>28</sup> Principal economic terms data represent the basic contractual terms and conditions of an OTC derivative transaction. Principle economic terms may vary based on class of derivative and whether the derivative is standardized but in all cases would include the

transaction, including the relevant date of the transaction and the identity of the parties to the contract. The trade confirmation will not be required to be reported for these Pre-existing Transactions. In addition, any other information requested by the relevant provincial market regulator will be required to be reported.

#### *(i) Pre-Existing Transaction Reporting Exemption*

The Committee recommends one exception to the mandatory reporting of all existing and new OTC derivative transactions. Pre-existing Transactions that expire within one year from the date that the new reporting rules become effective will not be required to be reported. This exemption will provide relief for transactions that are about to expire allowing market participants to focus their efforts on the reporting of transactions that will represent their exposures going forward. The reporting gap created by this exemption will lapse within one year from the effective date of the new reporting rules at which point regulators will have a fully comprehensive view of all market positions.

#### *(b) Record Retention Requirements*

The Committee recommends that records for all OTC derivative transactions be retained by counterparties for seven years from the date that the transaction expires or terminates. They should be retained in a safe location and in electronic form in a manner that permits them to be provided to regulators in a reasonable period of time.<sup>29</sup> The information retained must include all documentation relating to the terms of the transaction. This includes the final form of confirmation and all amendments to the terms of the transaction as well as any data necessary to identify and value the transaction. Records pertaining to the date and time of execution, information relevant to the price of the transaction and details regarding whether and with whom the transaction was cleared will also be required to be retained. Regarding record retention requirements for reported transactions, CPSS IOSCO has noted:

[I]t should be clear that the data recorded in a TR [trade repository] cannot be a substitute for the records of transactions at original counterparties. Therefore, it is important that even where TRs have been established and used, market participants maintain their own records of the transactions that they are a counterparty to and reconcile them with their counterparties or TRs on an ongoing basis (including for their own risk management purposes).<sup>30</sup>

The Committee agrees that counterparties should maintain their own records separately and in addition to the information submitted to a trade repository.

### **3.2 Who is Required to Report?**

One of the counterparties to each OTC derivative transaction will be legally required to report the transaction and any post execution events related to this transaction to an

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counterparties to a trade, type of trade, underlying reference, notional amounts, execution and termination date as well as a range of other trade details. Principal economic terms will be discussed in greater detail in Section 3.4.

<sup>29</sup> In Ontario, designated trade repositories are required to provide records at such time as the OSC or any member, employee or agent of the OSC may require. OSA at 19(3).

<sup>30</sup> CPSS IOSCO #1, *supra* note 8, at 1.

approved trade repository. The rules assigning responsibility for transaction reporting will vary based on the counterparties to a particular transaction. In general, parties acting as financial intermediaries<sup>31</sup> will bear the reporting onus for transactions to which they are a party because of their level of expertise and the automated reporting systems and infrastructure they will have in place as regular participants in the OTC derivatives market. The reporting rules described below will apply to both Pre-existing Transactions that are not exempt from reporting requirements and those entered into after the reporting rules become effective.

*(a) Transactions between Financial Intermediaries and Non-Financial Intermediaries*

For OTC derivatives transactions between financial intermediaries and non-financial intermediaries, the financial intermediary will be required to report the relevant transaction to an approved trade repository. This reporting obligation may be delegated to a third party, including a recognized central counterparty clearing house (“CCP”) for cleared transactions; however the financial intermediary retains responsibility for timely and accurate reporting.

*(b) Transactions between financial intermediaries*

For derivative transactions between financial intermediaries, the parties must select one counterparty to the transaction to be responsible for reporting. This reporting obligation may be delegated to a third party, including a recognized CCP for cleared transactions; however the selected financial intermediary retains responsibility for timely and accurate reporting.

*(c) Transactions between Non-Financial Intermediaries*

For derivative transactions between non-financial intermediaries, the parties must select one of the counterparties to the transaction to be the reporting party and report the derivatives transaction to an approved trade repository. This reporting obligation may be delegated to a third party, including a recognized CCP for cleared transactions, however the selected counterparty retains responsibility for timely and accurate reporting.

*(d) Transactions between Canadian and Foreign Counterparties*

For derivatives transactions between Canadian and foreign counterparties, the foreign counterparty may assume the reporting obligation provided that the transaction is reported to a trade repository approved in Canada, or if developed, a mandatory Canadian trade repository as described in Section 3.3(b) below. If the foreign counterparty will not agree to report to such a Canadian trade repository then the Canadian counterparty must report it directly or request the non-Canadian trade repository provide an electronic copy of the report to the Canadian trade repository.

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<sup>31</sup> Activities that constitute financial intermediary behaviour will be discussed in the upcoming CSA consultation paper focusing on registration.

### 3.3 Where must transactions be reported?

All OTC derivatives transactions entered into by a Canadian counterparty will be required to be reported to an approved trade repository that meets the standards described in Section 2 of this report. To prevent the fragmentation of data, once transaction data is submitted to a trade repository, the same repository must be used for the life of the transaction.<sup>32</sup>

#### *(a) Approved Trade Repositories*

The Committee recommends that any trade repository that intends to carry on business as a trade repository in one or more provinces of Canada<sup>33</sup> be approved by the applicable provincial market regulators either through a recognition or designation process. Where necessary, legislative changes should be enacted to enable provincial market regulators to either recognize or designate trade repositories and develop rules governing their processes and operations. Ontario has adopted such changes to its securities legislation.<sup>34</sup>

Provincial market regulators will develop and provide further guidance on the specific approval process to be implemented in each Canadian jurisdiction through legislative amendments and/or the implementation of rules, policies or notices.

#### *(b) Mandating a Canadian Solution*

The global nature of the OTC derivatives market is such that counterparties from different jurisdictions regularly engage in OTC derivative transactions. Trade repositories have previously been and are being developed based on asset classes as opposed to jurisdiction. International trade repositories currently exist for interest rate, equity and credit default derivatives and work is under way to create the same for commodities and foreign exchange.<sup>35</sup> However, recently, a number of jurisdictions have announced plans to develop domestic multi asset class trade repositories to serve their local markets.<sup>36</sup> The comments received to Consultation Paper 91-401 on this topic were split between supporting the development of a Canadian based trade repository<sup>37</sup> and endorsing a global approach.<sup>38</sup>

After due consideration the Committee believes that there are serious concerns with not having a central collector and aggregator of Canadian derivatives data in Canada. The Committee's concerns are the following:

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<sup>32</sup> In the event that a trade repository ceases operations during the life of a transaction the parties to that transaction would be permitted to transfer all transaction data stored to a new trade repository.

<sup>33</sup> Any trade repository that offers to provide its data reporting services including aggregation to a person or company residing or registered in a Canadian province would be considered to be carrying on business in that province.

<sup>34</sup> OSA, *supra* note 10, at S. 21.2.2

<sup>35</sup> However, these repositories do not currently provide the requisite data necessary for regulators and will need changes to their operations and governance before they will meet approval requirements.

<sup>36</sup> Jurisdictions planning to develop local trade repositories include Hong Kong, Spain, Mexico, India and possibly South Korea. Please note that some of these local trade repositories may provide services to multiple jurisdictions.

<sup>37</sup> See for example comment letter to the CSA from Fidelity Investments, January 17, 2011 ("Fidelity").

<sup>38</sup> See for example comment letters to the CSA from Canadian Life and Health Insurance Association Inc., January 11, 2011 ("CLHIA"), Desjardin, January 2011 and ISDA, January 14, 2011.

- It is possible that no suitable trade repository will be developed for certain derivative transactions entered into by Canadian counterparties.<sup>39</sup>
- Canadian regulators and the central bank may not be granted satisfactory access to a foreign trade repository that holds transaction data regarding Canadian entities.
- Confidentiality and legal barriers may exist in certain jurisdictions thereby restricting the ability of a foreign repository to provide Canadian regulators and the central bank with data.
- Requests for indemnification from foreign trade repositories may prevent relevant information from being shared with Canadian regulators and the central bank.
- Canadian regulators and the central bank may not be able to effectively participate in cooperative oversight over a foreign regulated trade repository.
- Canadian regulators and the central bank will unlikely be able to influence the operations of a foreign trade repository.
- Canadian enforcement authorities may encounter reduced informational access and cooperation if a trade repository is located in a foreign jurisdiction.
- Legal uncertainty with respect to trade repository data in the event of a trade repository insolvency due to the complexity of national and international resolution and insolvency law and potential conflicts of law issues.
- Standards for international cooperative oversight arrangements regarding trade repositories are not yet well defined.
- Data aggregation challenges may arise if Canadian regulators and the central bank rely on multiple trade repositories with inconsistent reporting standards or technological platforms.

Therefore, the Committee feels that mandating the use of a Canadian trade repository to accept OTC derivative trade reporting from Canadian counterparties should be studied.<sup>40</sup> This would potentially involve mandating that all OTC derivative transactions involving at least one Canadian counterparty be reported to a single Canadian based trade repository. The Committee will study the feasibility of adopting this mandate and will also study the different options for such a Canadian based trade repository that would also act as a data aggregator.<sup>41</sup> These options include an industry developed, owned and operated trade repository and one that is a utility model designed for and operated by provincial market regulators through a request for proposals or similar process. If the Committee determines that mandating the use of a Canadian trade repository is appropriate it would be required to meet the standards and adhere to the rules described in this consultation paper. If this approach is not taken, the Committee expects that reporting would continue to be done to multiple trade repositories located internationally or domestically and provincial market regulators would need to develop a data aggregator to consolidate reported information as discussed in Section 3.4(c) below.

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<sup>39</sup> For example, some Canadian dollar denominated or bespoke, novel or highly specialized transactions may not be accepted by all trade repositories.

<sup>40</sup> As discussed in Section 3.3(c) below, the Committee believes that Canadian regulators and the central bank will still require access to foreign trade repositories.

<sup>41</sup> Data aggregation is described in more detail in Section 3.4(c).

### *(c) Approval of Foreign-Based Trade Repositories*

If the Committee determines that reporting to a Canadian trade repository should not be mandated the Committee recommends permitting the reporting of transactions to trade repositories located in a foreign jurisdictions provided that they have been approved by the relevant provincial market regulators and meet all requirements applicable to a Canadian trade repository. If the use of a Canadian trade repository is mandated, but its development has not been completed when the new reporting rules become effective, reporting to approved foreign trade repositories should be permitted as an interim measure. The Committee recognizes that some foreign-based trade repositories may be subject to a comparable regulatory regime in their home jurisdiction and therefore full provincial regulation may be duplicative. In an effort to achieve international harmonization, the Committee is monitoring international policies for recognition of foreign trade repositories. For example, the European Commission has proposed that foreign trade repositories be recognized provided they are subject to equivalent supervision standards and are accessible to foreign regulators.<sup>42</sup> The Committee recommends a substantively similar approach requiring that foreign trade repositories satisfy the following conditions, on an initial and ongoing basis for provincial market regulator approval:

1. The trade repository is authorised and subject to effective supervision in a foreign country;
2. The applicable provincial market regulator has determined the foreign country regime to be acceptable;
3. All applicable regulators requiring access have entered into an international agreement with that foreign country regarding the mutual access and exchange of information that is relevant for the exercise of the duties of competent authorities;
4. Cooperation arrangements between the appropriate regulatory authorities in Canada and the relevant competent authorities in the third countries have been established to ensure immediate and continuous access to the relevant information by regulatory authorities in Canada (including their agents) and to specify the mechanism for exchanging information and the procedure for coordinating the supervisory activities; and
5. The trade repository meets all requirements applicable to a Canadian trade repository.

If the Committee determines that trade reporting to a Canadian trade repository should be mandated, Canadian regulators and the central bank will still need to access and aggregate certain Canadian referenced derivative transactions between foreign counterparties that cannot be required to be reported to a Canadian trade repository. Therefore, the Committee recommends that Canadian regulators and the central bank make arrangements with relevant foreign trade repositories and, if necessary, foreign regulators to ensure that this data is accessible.

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<sup>42</sup> *Proposal for a Regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories*, Brussels, COM(2010) 484/5 – 2010/0250 (COD), (“EU”) at Article 63.

**Question #1: If the use of a Canadian trade repository were to be mandated, should it be privately developed and operated for profit, privately developed and operated on a not-for-profit basis or should provincial market regulators perform this function directly?**

### 3.4 What Information must be Reported?

The information reported by participants to trade repositories will allow regulators to assess systemic risk and financial stability, conduct market surveillance and supervise market participants.<sup>43</sup> In order to satisfy these broad objectives, trade repositories will need to collect detailed data relating to the initial terms of each OTC derivatives transaction (including any subsequent corrections of errors or omissions), as well as ongoing data to determine the market value of transactions over time.

As discussed above, the Committee expects that multiple international trade repositories will continue to exist. Therefore, regulators will need to review data aggregated from several sources. In order for data to be effectively aggregated it will need to be reported and recorded in a uniform manner that is consistent across jurisdictions and trade repositories. The Committee believes that it is necessary to ensure that the information that must be provided to a repository approved in Canada be consistent with information that is reported under international standards. This will allow for the necessary exchange of information across borders as well as ensure that trade repositories are able to meet the necessary criteria for recognition or designation across jurisdictions.

At the international level, CPSS and IOSCO, which are recognized as the international standard setting bodies for securities and derivatives markets, will be producing a report prescribing international standards for data reporting. This report will consider recommendations from the Financial Stability Board Data Gaps and Systemic Linkages Group and consult with the Committee on the Global Financial System, the BIS and the OTC Derivatives Supervisors Group and OTC Derivatives Regulators' Forum in order to identify the data that should be reported to trade repositories to enable authorities to carry out their respective regulatory tasks. The report is scheduled for release in July 2011 and according to IOSCO, it:

sets out, both for market participants reporting to trade repositories and for trade repositories reporting to the public and to regulators for the purpose of macro- and micro-surveillance: (1) Minimum data reporting requirements and standardised formats; and (2) the methodology and mechanism for the aggregation of data on a global basis.<sup>44</sup>

Canadian regulators and the central bank participate in these international forums and policy setting. This effort is crucial to achieving cross-border uniformity and the Committee recommends that Canadian reporting requirements conform to these international standards.

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<sup>43</sup> Financial Stability Board, *Implementing OTC Derivatives Market Reforms: Report of the OTC Derivatives Working Group*, October 20, 2010, ("FSB") at 47.

<sup>44</sup> IOSCO Technical Committee Task Force On OTC Derivatives Regulation, Terms of Reference, at 1–2.

### (a) *Unique Identifiers*

The development of universal, accurate, and trusted methods of identifying particular market participants, derivative transactions, and product types will provide regulators with the ability to monitor entity wide exposures and trading activity, follow transactions throughout their lifespan, and determine product concentrations. The Committee supports the development of international standards for unique identifiers to assist in the management of information relating to OTC derivatives trading.

In order to provide Canadian market participants with some information as to the types of rules they can expect to be developed internationally and implemented in Canada, the following section outlines some characteristics of uniform data requirements modelled on rules developed in the U.S. under the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the “*Dodd-Frank Act*”).<sup>45</sup> The Committee believes that an internationally agreed to version of these types of identifiers should be included in the forthcoming international standards.

#### (i) *Legal Entity Identifier*<sup>46</sup>

Each derivative market participant should be assigned a unique legal entity identifier based on universal internationally accepted standards. The importance of this type of identifier was recently explained by Daniel K. Tarullo, member of the Board of Governors of the Federal Reserve System, in testimony before the U.S. Senate:

Clearly, the [recent financial] crisis exposed the need for a regulatory mechanism that will provide real time analysis across multiple financial markets to identify systemic risk and stresses in market conditions before they occur. A unique entity identifier for data sharing and use in data collections between the Federal financial regulatory agencies is the critical missing component for this analysis.<sup>47</sup>

The development of a universally accepted legal entity identifier is an important challenge for international regulators and the derivatives industry and will represent a vital first step to establishing a comprehensive internationally harmonized system of regulation. Industry representatives have begun an international consultation process to create legal entity identifiers for OTC derivative counterparties.<sup>48</sup>

Regulators will also need to be able to examine transaction report information on a consolidated basis for institutions composed of multiple business entities and therefore should have the capability to link affiliated entity transactions. The Commodity Futures Trading Commission (“CFTC”) recommends establishing a confidential “corporate

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<sup>45</sup> *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Pub.L.III-203, H.R. 4173, sec. 721(a)(47), online: U.S. Government Printing Office <[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h4173enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf)> (“*Dodd-Frank Act*”).

<sup>46</sup> See Proposed Rule –Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. 76574, 75-235 (Dec. 8, 2010) (“CFTC #2”) at 76589 and SEC #2, *supra* note 27, at 75221.

<sup>47</sup> Daniel K. Tarullo, Member, Board of Governors of the Federal Reserve System, *Equipping Financial Regulators With the Tools Necessary to Monitor Systemic Risk*, before the Subcommittee on Security and International Trade and Finance, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC, February 12, 2010.

<sup>48</sup> The process is being led for the industry by the Association for Financial Markets in Europe (AFME) and the Securities Industry and Financial Markets Association (SIFMA).

affiliations reference database” available only to domestic and international regulators.<sup>49</sup> The Committee recommends that all Canadian market participants be required to adopt any such universal identification system that identifies corporate or entity affiliations once it has been developed.

### *(ii) Derivative Identifier<sup>50</sup>*

A unique identifier should be assigned to all individual derivative transactions at the time of execution and then used to identify that transaction throughout its life in all recordkeeping and data reporting. The task of creating and assigning the transaction identifier could be undertaken by a service provider, a trading venue recognized or registered in Canada, a financial intermediary counterparty or a trade repository.

In order to ensure continuity, the trade repository first receiving the report of a derivative transaction should be used as the trade repository for the life of that transaction including any assignments. Regardless of whether the trade repository is assigned the responsibility of creating the unique identifier it should send a notice of its identity and the derivative identifier for that transaction to each counterparty and any trading venue or CCP (if applicable for that transaction).

### *(iii) Product Identifier<sup>51</sup>*

In order to facilitate data aggregation by product, unique product identifiers should be implemented for OTC derivatives and determined based on the underlying instrument, index, asset or entity that the derivative references. These product identifiers could be structured with unique identifiers for the general derivative type and unique identifiers for sub-classes within each class. The development of such identifiers will also require an international classification scheme.

### *(iv) Country Specific Identifier*

The Committee believes that Canadian referenced derivative transaction identifiers should also be required and will monitor and comment on international developments to propose that country specific identifiers be a part of any uniform standards developed. If they are not, the Committee will consider whether these identifiers can be mandated for the Canadian market.

## *(b) Reporting Data*

Regulators must have access to transaction data at different levels of granularity, from aggregate statistics to transaction level information. This spectrum of data will facilitate the measuring of counterparty risk concentrations both for individual risk categories as well as the overall market and will facilitate regulation of market integrity.<sup>52</sup> In order to

<sup>49</sup> CFTC #2, *supra* note 46, at 76591 and SEC #2, *supra* note 27, at 75222.

<sup>50</sup> CFTC #2, *supra* note 46, at 76587 and SEC #2, *supra* note 27, at 75221.

<sup>51</sup> CFTC #2, *supra* note 46, at 76592.

<sup>52</sup> FSB, *supra* note 43, at 48.

achieve this, market participants will be required to submit three categories of information to trade repositories: transaction data that contains the initial terms of an OTC derivative transaction (creation data), transaction data that reflects changes in contract terms or counterparty positions (continuation data) and valuation data disclosing updated market values of transactions and positions. These categories are discussed below.

### (i) *Creation Data*

The Committee recommends that two types of information be reported for new derivatives transactions at the time of execution. The first is the principal economic terms of the derivatives transaction. Principal economic terms data may vary based on the class of derivative and whether the derivative is standardized, but in all cases would include the counterparties to the transaction, type of transaction, underlying reference, notional amounts, price, execution and termination date and a range of other transaction details.<sup>53</sup> The second type of data that should be submitted is the full signed legal agreement of the counterparties including all the terms of the transaction (ie. the legal confirmation). The confirmation data should be matched by the trade repository or a related third-party matching service through affirmation by the counterparties. As discussed above minimum reporting requirements and forms will be developed at the international level to ensure reporting uniformity and these will include the recommended components of principle economic terms data. This information will be used for a wide variety of purposes including data aggregation for real time reporting of derivative transactions.

### (ii) *Continuation Data*

The nature of many OTC derivatives contracts is such that their value and the position of counterparties thereto fluctuate over time. A particular counterparty's risk exposure may increase significantly over time and it is therefore crucial for regulators to understand positions as they evolve. In order to maintain an accurate view of market positions, regulators will require information throughout the life of each derivatives transaction. The most appropriate form and content for such information varies, based on the type of derivatives transaction. The CFTC has identified this issue and classified continuation data reporting into what it describes as the life cycle and snapshot approaches.<sup>54</sup>

Life cycle data involves all of the data necessary to fully report any event that would result in a change to the data previously submitted to a trade repository regarding the derivatives transaction. This approach is recommended for credit derivatives and may also be appropriate for equity derivatives as these types of derivatives tend to be modified based on events that happen during their existence. This approach is already used by the

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<sup>53</sup> For example the SEC estimates that between 50 and 100 or more data elements could be used to express a typical credit default swap. SEC #2, *supra* note 27, at 75213. See Proposed Rule – Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. 76140, 75-234 (Dec. 7, 2010) (“CFTC #3”), at 76176 (“Appendix A”) for examples of principle economic term reporting data for various derivative types.

<sup>54</sup> CFTC #2, *supra* note 46, at 76577.

Depository Trust & Clearing Corporation's Trade Information Warehouse<sup>55</sup> the existing international trade repository for credit derivatives. Reporting for these types of derivatives should also include all data elements necessary to fully report a scheduled or anticipated event occurring during the lifetime of the derivative that does not result in a change to the contractual terms of the derivative. Therefore, the life cycle data approach does not result in daily reporting of this information.

By contrast, snapshot data includes all data elements necessary to provide a snapshot view on a daily basis of all the principal economic terms of the derivative including any changes from the previous day. The snapshot approach is recommended for all other derivatives including interest rate, commodity and currency derivatives. This approach is preferable for these types of derivatives as it would be more difficult to prescribe the specific events required to be reported because of the wide range and variation of derivative types that make up these classes.<sup>56</sup> The snapshot approach allows the trade repository to maintain complete up-to-date records for these classes of derivatives and avoids requiring counterparties to make determinations of what events are or are not required to be reported. This approach is currently used by TriOptima,<sup>57</sup> the existing international trade repository for interest rate derivatives.

An international standard with respect to the most suitable form of continuation data reporting for each class of derivatives is still under development and the Committee recommends adhering to internationally accepted practice once it has been established.

### (iii) *Valuation Data*

The Committee also recommends that valuation data elements necessary to determine the current market value of a derivative be reported by the reporting party on a daily basis. This includes mark-to-market values and any available collateral information for all transactions as well as margin values for all centrally cleared transactions. The Financial Stability Board explained and recommended the reporting of valuation data in the following passage:

TRs should collect data to enable monitoring of gross and net counterparty exposures, wherever possible, not only on notional volumes for each contract but also market values, exposures before collateral, and exposure value net of collateral with a full counterparty breakdown. This would allow for the calculation of measures that capture counterparty risk concentrations both for individual risk categories as well as for the overall market.<sup>58</sup>

Valuation data will allow regulators to monitor up to date information regarding the assets and liabilities of market participants and will also facilitate timely resolution in the case of a counterparty default. The Committee recommends that the reporting of

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<sup>55</sup> The trade repository is operated by a Depository Trust & Clearing Corporation (“DTCC”) subsidiary, The Warehouse Trust Company, LLC, which is registered as a bank and regulated as a member of the U.S. Federal Reserve System and by the New York State Banking Department. In August 2010, DTCC established a trade repository for equity derivative named the Equity Derivatives Reporting Repository.

<sup>56</sup> CFTC #2, *supra* note 46, at 76578 citing TriOptima Letter to the Commodity Futures Trading Commission, October 26, 2010.

<sup>57</sup> TriOptima’s Global OTC Derivatives Interest Rate Trade Reporting Repository was established in January 2010 and is regulated by the Swedish Financial Supervisory Authority.

<sup>58</sup> FSB, *Supra* note 43, at 48.

valuation data follows the same guidelines for determining which participant reports an OTC derivative transaction as outlined in Section 3.2.

### *(c) Position Level and Aggregate Data to be Available to Regulators*

The detailed and on-going derivative transaction data required to be reported and maintained in trade repositories will allow regulators to monitor aggregated market data and cumulative exposure of market participants. Provided that reported data is sufficiently uniform and complete, each individual transaction may be aggregated so that regulators can monitor the state of the OTC derivative market on the micro and macro level. OTC derivative market data will be an essential tool for market, and prudential regulators and central banks. Market regulators will require up to date transaction and position level data for counterparties and intermediaries as well as derivatives referencing entities, industries or regions that are related to the market regulator's jurisdiction.<sup>59</sup> Aggregation of this data will provide market regulators with the ability to monitor market participants, detect market irregularities and a wide range of other responsibilities. Prudential regulators and central banks will also require aggregate and certain position level data relevant to the overall Canadian derivatives market as well as data on the OTC derivative activities of Canadian financial and other institutions referenced or with large positions in the market. An example of the types of aggregated data that will allow for more effective oversight of the OTC derivative markets is illustrated by the following sample data sets<sup>60</sup>:

- Aggregate notional data for all contracts traded or settled in Canadian dollars, including a breakdown by reference entity and/or sector.
- A list of the top counterparties trading Canadian dollar denominated contracts with each counterparty's aggregate notional position and aggregate position by contract type.
- A list of the top counterparty positions for each of the largest financial groups in Canada.
- Aggregate notional data for contracts written on Canadian-domiciled corporations (reference entities), including a list of the top aggregate notional counterparty positions for contracts written on each firm.
- A list of the top counterparties' aggregate notional positions where the contract references the debt of the government of Canada.
- A list of top counterparties' aggregate notional positions where the contract references a specific commodity.
- A list of the top counterparties' aggregate notional positions where contracts reference the debt of one of the ten largest Canadian financial groups.
- Data on the overall level of activity of each of the Canadian banks in each asset class.

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<sup>59</sup> OTC Derivatives Regulators' Forum, *Range of Access to Information stored in The Warehouse Trust LLC*, (June 2010) [http://www.dtcc.com/downloads/products/derivserv/ODRF\\_guidelines.pdf](http://www.dtcc.com/downloads/products/derivserv/ODRF_guidelines.pdf) at 2.

<sup>60</sup> *Adapted and amended from* guidance to The Warehouse Trust; however, the underlying principles could also be used to inform guidance for other global trade repositories.

- Each of the Canadian bank's overall positions in specific products within an asset class.

These data sets illustrate the types of macro level information that should be available to market regulators, prudential regulators and central banks and greatly enhance their ability to supervise the OTC derivatives market. Clearly, the drastically improved transparency resulting from detailed universal trade reporting of OTC derivative transactions will provide immense supervisory benefits.

While trade repositories will be expected to aggregate the transaction data in their possession, it is likely that Canadian regulators and the central bank will require data from multiple trade repositories to be aggregated in order to have an accurate view of market participant positions and the market as a whole. As discussed in Section 3.3(a) the Committee intends to study the use of a Canadian trade repository that performs an aggregation function. If developed, this repository would accept and aggregate data for all transactions entered into by Canadian counterparties and could also assume responsibility for aggregating any relevant data maintained at foreign trade repositories. If the use of a single Canadian trade repository is not mandated, then as discussed in Consultation Paper 91-401, the Committee believes that a request for proposal is appropriate to encourage the development of a data aggregator to assist in the collection of trade data from multiple trade repositories for Canadian regulators and the central bank.<sup>61</sup>

#### **(d) Data to be made available to Public**

The transaction data received by trade repositories will include confidential data, which should only be available to approved regulators, and data that should be publically disseminated. The information that trade repositories are required to make public should at a minimum include aggregate data on positions, transaction volumes and average prices. Trade repositories should also provide more detailed and regularly updated periodic information categorizing data by market characteristic, trading counterparties and trading venue.<sup>62</sup>

The Committee believes that anonymous post-trade transaction level data should also be made publicly available. This post-trade transparency has the potential to benefit the derivatives market in a number of ways including reducing transaction costs, increasing liquidity and improving confidence in the market.<sup>63</sup> A number of comment letters to Consultation Paper 91-401 stressed, and the Committee agrees, that publicly available information should not disclose the identity of counterparties to any transactions or

<sup>61</sup> Consultation Paper 91-401, *supra* note 1, at 33.

<sup>62</sup> Examples of categorized data include aggregated breakdowns by (a) market characteristic - currency and location of reference entity; (b) counterparty - location of counterparty (jurisdiction of incorporation) and type of participant (eg. financial intermediary); (c) trading venue - electronic vs. non-electronic trading platform, electronic vs. manual matching and confirmation, centrally vs., bilaterally cleared. See for example The Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions' *Consultative Report - Principles for financial market infrastructures*, (March 2011), available at <http://www.bis.org/publ/cpss94.htm>.

<sup>63</sup> SEC #2, *supra* note 27, at 75224.

positions of market participants<sup>64</sup>. Under the rules proposed by the CFTC and Securities and Exchange Commission (“SEC”), transaction, volume, and pricing information for all derivative transactions<sup>65</sup> would be required to be publically disseminated provided that the data made available to the public does not disclose the transactions or positions of any market participants nor any information that would compromise trade secrets. As described in the following section, under the CFTC and SEC rules public reporting would be required to be done in real time where appropriate. The Committee recommends that anonymous transaction level data also be made available in Canada within a timeframe that is appropriate for the Canadian market.

### 3.5 When are transactions required to be reported?

Prompt reporting of OTC derivatives transactions is essential to effective oversight of the market. Positions in the OTC derivative market change regularly and risk can accumulate rapidly. To prevent market abuse regulators need to have the ability to monitor market activity as close to real time as possible. The Committee believes that real time reporting would provide regulators with the greatest source of transparency and should ultimately be required in Canada. Real time reporting to trade repositories would be accompanied by public dissemination of appropriate reported data provided that it would not be detrimental to market liquidity or function.

In the U.S., the *Dodd-Frank Act* requires real-time reporting for transactions that are deemed appropriate for real time reporting in all classes of derivative transactions.<sup>66</sup> Actual timing requirements developed under the *Dodd-Frank Act* vary based on the type of data being submitted and how the transaction is executed but in almost all cases reporting is required to be submitted within a maximum of thirty minutes from the execution of the transaction with most reporting required to be done in real time. The CFTC and SEC have published detailed timing proposals for the reporting of confirmation data,<sup>67</sup> principle economic term data<sup>68</sup> and valuation data<sup>69</sup>. Canadian market participants entering into OTC derivative transactions with U.S. counterparties will be required to comply with these rules once they are finalized and enacted in the U.S. later this year.

Timelines initially developed by the European Commission require that the details of any OTC derivative contract be reported no later than the working day following the execution, clearing or modification of the contract.<sup>70</sup> However, a more recent public consultation paper published by the European Commission with respect to the *Markets*

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<sup>64</sup> See for example comment letters to the CSA from Fidelity, Global FX Division of AFME, SIFMA and ASIFMA, January 14, 2011 (“GFXD”), Portfolio Management Association of Canada, January 14, 2011 (“PMAC”), Canadian Bankers Association, January 14, 2011, (“CBA”), TD Asset Management Inc. (“TDAM”) and Mouvement des caisses Desjardins

<sup>65</sup> See CFTC #3, *supra* note 53, at 76157 for examples of the required fields and a possible public reporting format.

<sup>66</sup> Commodity Exchange Act (U.S.) S. 2(a)(13)(C). The draft US rules go on to define real time public reporting as data including price and volume as soon as technologically practicable after the derivative has been executed. As soon as technologically practicable is defined as meaning as soon as possible taking into consideration the prevalence of technology, implementation and use of technology by comparable market participants.

<sup>67</sup> CFTC #2, *Supra* note 46, at 76583 and SEC #1, *supra* note 13, at 75219.

<sup>68</sup> CFTC #2, *Supra* note 46, at 76582 and SEC #1, *supra* note 13, at 75219.

<sup>69</sup> CFTC #2, *supra* note 46, at 76585 and SEC # 2, *supra* note 27, at 77329.

<sup>70</sup> EU, *supra* note 42, at Article 6, paragraph 1.

*and Financial Instruments Directive (MiFID)* indicates that many types of derivatives reporting will be required to be done as promptly and precisely as possible.<sup>71</sup>

It is the view of the Committee that real time reporting should be pursued, provided that market participants will be in a position to adopt technology that would permit such disclosure. However, a number of comment letters received in response to Consultation Paper 91-401 have explained that market participants may currently lack the capability to report in real time.<sup>72</sup> The Committee is requesting further comments on the capacity of Canadian market participants to meet a real time reporting standard. In the interim, the Committee recommends that reporting be required to be submitted by the end of business on the next working day after a transaction is executed until real time reporting can be implemented. The Committee believes that the reporting requirements described in this section will greatly increase market transparency allowing regulators to efficiently monitor market participants and systemic risk.

**Question #2: What is required to enable Canadian derivative market participants to be able to report derivatives transaction information in real time and how long will it take to achieve this functionality?**

#### *Block Trades: Exception to Real Time Reporting*

The Committee appreciates the importance of maintaining the anonymity of OTC derivative transaction counterparties. When real time reporting is mandated in Canada, anonymous public reporting of certain large OTC derivatives transactions, commonly referred to as block trades, could have the potential to allow market participants to determine the identity of one or both of the counterparties. This identification could make hedging the risks of a large transaction more difficult and expensive as market participants anticipate the necessary hedging requirements and adjust pricing in anticipation of the derivative counterparties' immediate hedging needs.<sup>73</sup>

Three commentators on Consultation Paper 91-401 expressed concern that real-time reporting of block trades could discourage parties from providing liquidity and increase costs of hedging risks to end-users.<sup>74</sup> The Committee agrees that publicly reported derivatives trading information should not identify the parties to the transactions and seeks to balance the benefits of post-trade transparency against the harm that may be caused to market participants' ability to hedge risk based on this disclosure. Therefore, large transactions may require publication delays to avoid signalling the market. It is important to note that the full details of block trades would still be required to be reported to a trade repository without delay and only publicly disseminated data may be postponed for a designated period. The Montréal Exchange currently prescribes a maximum time delay of 15 minutes for block trades of certain listed derivative instruments.<sup>75</sup>

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<sup>71</sup> European Commission, *Review of the Market in Financial Instruments Directive (MiFID)*, December 8, 2010, at 28.

<sup>72</sup> See for example comment letters to the CSA from Fidelity, GFXD, PMAC and Hunton & Williams LLP, January 14, 2011.

<sup>73</sup> SEC #1, *supra* note 13, at 75225.

<sup>74</sup> See for comment letters to the CSA from CLHIA, ISDA, and Fidelity.

<sup>75</sup> TMX/Montreal Exchange, "Procedures For The Execution Of Block Trades", available at [www.m-x.ca/f\\_en/proce\\_block\\_trading\\_en.pdf](http://www.m-x.ca/f_en/proce_block_trading_en.pdf).

Further study will be required to determine what constitutes a block trade for various categories of derivatives in the Canadian market. The factors to be considered in making this determination could include the type of asset underlying the derivative, the size of a transaction relative to other similar transactions or the size of the transaction relative to the overall volume for a particular class or instrument. The Committee requests market participant guidance as to the appropriate block size thresholds and publication delays.

By example, the SEC has identified the following criteria by which block trades could be determined for credit default swaps (“CDS”):

1. Fixed minimum notional size thresholds.
2. Dynamic volume-based thresholds based on the aggregate notional amount of all executions in a CDS instrument over the past 30 calendar days.
3. A combination of dynamic volume-based thresholds and fixed minimum thresholds.<sup>76</sup>

The CFTC has proposed two tests to determine the appropriate minimum block size threshold for other classes of derivatives. A distribution test would be used to determine what notional swap values have the most and least liquidity. Under the proposed rules a transaction with a notional amount that is greater than 95% of transaction sizes for a particular category of swap over the prior calendar year would constitute a block trade. The second test, referred to as the social size multiple test, would be used to address any distortions to the distribution of transactions because of a lack of volume in a particular derivative type. The test result that generates the higher block trade threshold would be determinative.<sup>77</sup>

Under the CFTC proposed rules, transactions that qualify as block trades would be permitted to delay all reporting for 15 minutes. The SEC has proposed that all public data regarding a block trade except the notional amount be disseminated to the public according to the normal rules with the full notional size to be publicly disseminated after a delay.<sup>78</sup> The Committee will consider these approaches and consult with market participants to determine the appropriate treatment for block trades in Canada.

For the reasons described above the Committee is also considering limiting the information required to be disseminated to the market regarding large transactions by creating a maximum threshold amount for reporting. The CFTC has proposed that contracts which exceed the notional principal amount of a specified threshold only identify that they exceed the threshold but not the exact amount.<sup>79</sup> The SEC rule would require the notional amount to be disclosed after a delay of between eight and 26 hours.<sup>80</sup>

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<sup>76</sup> SEC #2, *supra* note 27, at 75229.

<sup>77</sup> CFTC #3, *supra* note 53, at 76162-3.

<sup>78</sup> SEC #2, *supra* note 27, at 75233.

<sup>79</sup> The CFTC has proposed a threshold of \$250 million for some transactions. Under the proposed rules all transactions over \$250 Million would be listed as \$250+. CFTC #3, *supra* note 53 at 76152

<sup>80</sup> SEC #2, *supra* note 27, at 75233.

As the Committee is recommending that, at the present time, trade reporting within one business day of the execution of a transaction be acceptable, a further delay for block trades is not necessary. Once a real time transaction reporting requirement is implemented in Canada the Committee recommends reporting delays for block trades.

**Question #3: What is the appropriate block trade threshold for the Canadian market?**

**Question #4: What is the appropriate publication delay for block trades?**

**Question #5: Would a uniform block trade threshold across asset classes be acceptable or should thresholds be determined based on asset class? If block trade thresholds should be determined based on asset class, what thresholds would be suitable for specific asset classes?**

**Question #6: If block trade thresholds are determined by asset class and given the changes inherent in liquidity conditions, how often should these be assessed? (As per the CFTC's two tests proposal for example?)**

#### **4. Access to Confidential Trade Repository Information**

In order to fulfill their OTC derivative transaction reporting requirements, market participants will be required to provide transaction information to trade repositories. Some of this information will be confidential and will not be made public by the trade repositories. The Committee believes that data maintained by trade repositories, including confidential data, should be made available to domestic prudential and market regulatory authorities as well as appropriate foreign regulators in accordance with their regulatory responsibilities.

##### **4.1 Privacy and Confidentiality Issues**

The OTC derivative reporting rules to be enacted will require reporting of confidential information to trade repositories by one party to each transaction. In some jurisdictions, this could represent a breach of confidentiality obligations if the non-reporting counterparty has not consented to such disclosure. Further, the terms of derivative transactions often include confidentiality provisions which could be breached by the reporting of data to trade repositories.<sup>81</sup> However, due to the mandatory nature of transaction reporting, a counterparty that reports transaction data to a trade repository on behalf of itself and its trading partner pursuant to reporting rules should not be considered to be in breach of any restrictions on disclosure. Any party entering into an OTC derivative transaction should be aware that the transaction must be reported and provide their consent to reporting if necessary.

This issue is also relevant to trade repositories in receipt of confidential transaction data as they will be required to disclose transaction information to domestic and international

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<sup>81</sup> However, there is a common exception to this confidentiality provision which permits disclosures required by law.

regulators and potentially be required to publically disclose anonymous transaction data. In some jurisdictions this also could be viewed as a breach of confidentiality obligations owed to their clients.

The purpose of the universal reporting of OTC derivative transactions to trade repositories is to enable regulators to monitor and analyse trade repository data and to provide greater pricing transparency to the public. Therefore, there should be no legal or contractual duties that prevent a trade repository from disclosing any information pursuant to the new reporting rules. Derivatives participants reporting data to the repository will not have proprietary rights, including any intellectual property rights, in relation to data maintained by the repository, however the repository will be subject to the confidentiality restrictions discussed above and will be required to provide them with access to such data without unreasonable limitations.

#### *(a) Canadian Amendments to Permit Reporting*

Confidentiality obligations between participants in the OTC derivative markets may not contemplate the mandatory reporting regime that will be required for OTC derivatives. However, disclosure of confidential information is permissible in Canada if required by the law applicable to the parties to a transaction. Although the reporting rules to be enacted will create a legal reporting requirement, the Committee recommends that each Canadian jurisdiction consider whether it is necessary enact legislation explicitly permitting the disclosure of confidential information to and by trade repositories.

For example, in Ontario, amendments to the OSA address this issue by including the following provision to the Act:

154. The disclosure of information to the Commission or a trade repository that is made in good faith by a person or company in compliance or attempted compliance with Ontario securities law,
- (a) does not constitute a breach of any contractual provision to which the person or company or any other person or company is subject; and
  - (b) does not constitute any other basis of liability against the person or company or any other person or company. 2010, c. 26, Sched. 18, s. 46.<sup>82</sup>

This applies to disclosures of confidential information by reporting counterparties and disclosure by trade repositories to regulatory authorities. Each provincial jurisdiction will need to determine if similar legislative amendments regarding the reporting of transactions between counterparties and by trade repositories will be required.

#### *(b) Foreign Counterparty Issues*

Reporting of transactions involving a foreign counterparty may result in a breach of privacy or confidentiality laws in that counterparty's home jurisdiction. This issue is being reviewed at the international level by market participants, foreign regulators and

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<sup>82</sup> OSA ,*supra* note 10, at Section 154.

the International Swaps and Derivatives Association. For situations where a foreign counterparty's home jurisdiction laws prohibit one party disclosure without explicit consent it is possible that an industry driven solution may be required to be developed.

*(c) Confidential Information not to be Publically Disclosed*

As discussed throughout this paper the Committee believes that market participants should be entitled to maintain their anonymity vis-à-vis the public in order to protect their trading strategies and other proprietary information. Therefore, the Committee recommends that information received by trade repositories pursuant to reporting rules and provided to regulators should not be required to be made publicly available in any way, including pursuant to public disclosure laws. In this regard the Committee recommends that amendments to provincial legislation be enacted in a similar manner to the following recent amendment to the OSA:

153. Despite the *Freedom of Information and Protection of Privacy Act*, the Commission may provide information to and receive information from the following entities, both in Canada and elsewhere, and the information received by the Commission is exempt from disclosure under that Act if the Commission determines that the information should be maintained in confidence:

1. Other securities, derivatives or financial regulatory authorities.
2. Exchanges.
  - 2.1 Trade repositories.
  - 2.2 Clearing agencies.
  - 2.3 Alternative trading systems.
3. Self-regulatory bodies or organizations.
4. Law enforcement agencies.
5. Governmental or regulatory authorities not mentioned in paragraphs 1 to 4.
6. Any person or entity, other than an employee of the Commission, who provides services to the Commission. 2002, c. 18, Sched. H, s. 14; 2010, c. 26, Sched. 18, s. 45.<sup>83</sup>

Amendments of this nature will ensure that public disclosure laws do not force regulators to reveal confidential market participant information.

In order to achieve the transparency objectives of the new reporting rules certain domestic confidentiality obligations and public disclosure laws and duties will need to be adjusted to reflect the mandatory reporting of OTC derivative transactions. The reporting of transaction data to repositories and disclosure of information to regulatory authorities is a central tenet of the new OTC derivatives regime and the Committee recommends that any necessary amendments are enacted in order to achieve this objective.

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<sup>83</sup> OSA, *supra* note 10, at Section 153.

## 4.2 Canadian Regulators

The Committee recommends that trade repositories located in Canada and foreign jurisdictions provide regulators access to all data regarding Canadian counterparties, transactions entered into by Canadian market participants or Canadian referenced derivatives. This unfettered access should be made available to provincial market regulators that have jurisdiction over the counterparty or reference entity and Canadian prudential regulators in accordance with their prudential objectives.

## 4.3 Cooperation with Foreign Regulators

In accordance with Canada's G-20 commitments, Canadian regulators and the central bank have an obligation to support foreign regulator access to Canadian trade repository data to assist them in achieving their regulatory, supervisory, and oversight responsibilities.<sup>84</sup> The Committee recommends that provincial market regulators coordinate with foreign jurisdictions to ensure timely and effective cross-border access to relevant market data. Foreign regulators will be approved for access to a Canadian trade repository provided that they are party to an international agreement such as an information sharing memorandum of understanding with the appropriate Canadian regulator or if they have been otherwise approved for access based on statutory authority in the regulators home jurisdiction and have appropriate policies for maintaining data confidentiality. The Committee recommends establishing cooperation agreements with regulators of foreign countries whose legal and supervisory frameworks for trade repositories are equivalent to those in operation in Canada.<sup>85</sup>

## 5. Conclusion

The mandatory reporting of OTC derivative transactions to an approved trade repository will bring transparency to the market and greatly enhance regulators' oversight and ability to respond to market risks or manipulations. At the systemic level, regulators and central banks will have the ability to take pre-emptive steps to reduce risk in the marketplace by having access to sufficient information across a wide scope of instruments, including OTC derivatives. Provincial market regulators will be able to effectively monitor trading and detect market abuse and enforce rules and regulations. The Committee believes that the proposals outlined in this report will not only increase stability in the OTC market but will also increase market efficiency.

The Committee welcomes public comment on any proposal in this report and requests that comments be submitted by September 12, 2011. Once public comments have been received and considered the Committee will finalize rule making guidelines and each province will begin the rule making process.

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<sup>84</sup> CPSS IOSCO #2, *supra* note 9, at 10.

<sup>85</sup> EU, *supra* note 42, at Article 62.

## 6. Summary of Questions:

Question #1: If a Canadian trade repository is mandated, should it be privately developed and operated for profit, privately developed and operated on a not-for-profit basis or should provincial market regulators perform this function directly?

Question #2: What is required to enable Canadian derivatives market participants to be able to report derivatives transaction information in real time and how long will it take to achieve this functionality?

Question #3: What is the appropriate block trade threshold for the Canadian market?

Question #4: What is the appropriate publication delay for block trades?

Question #5: Would a uniform block trade threshold across asset classes be acceptable or should thresholds be determined based on asset class? If block trade thresholds should be determined based on asset class, what thresholds would be suitable for specific asset classes?

Question #6: If block trade thresholds are determined by asset class and given the changes inherent in liquidity conditions, how often should these be assessed? (As per the CFTC's two tests proposal for example?)

## Appendix A

### CPSS IOSCO Principles for Financial Market Infrastructures Consultative Report (March 2011)

#### Principles applicable to trade repositories

##### **General organisation**

###### *Principle 1: Legal basis*

A Financial Market Infrastructure (“FMI”) should have a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.

###### *Principle 2: Governance*

An FMI should have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.

###### *Principle 3: Framework for the comprehensive management of risks*

An FMI should have a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational, and other risks.

##### **General business and operational risk management**

###### *Principle 15: General business risk*

An FMI should identify, monitor, and manage its general business risk and hold sufficiently liquid net assets funded by equity to cover potential general business losses so that it can continue providing services as a going concern. This amount should at all times be sufficient to ensure an orderly wind-down or reorganisation of the FMI’s critical operations and services over an appropriate time period.

###### *Principle 17: Operational risk*

An FMI should identify all plausible sources of operational risk, both internal and external, and minimise their impact through the deployment of appropriate systems, controls, and procedures. Systems should ensure a high degree of security and operational reliability, and have adequate, scalable capacity. Business continuity plans should aim for timely recovery of operations and fulfilment of the FMI’s obligations, including in the event of a wide-scale disruption.

## **Access**

### *Principle 18: Access and participation requirements*

An FMI should have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.

### *Principle 19: Tiered participation arrangements*

An FMI should, to the extent practicable, identify, understand, and manage the risks to it arising from tiered participation arrangements.

### *Principle 20: FMI links*

An FMI that establishes a link with one or more FMIs should identify, monitor, and manage link-related risks.

## **Efficiency**

### *Principle 21: Efficiency and effectiveness*

An FMI should be efficient and effective in meeting the requirements of its participants and the markets it serves.

### *Principle 22: Communication procedures and standards*

An FMI should use or accommodate the relevant internationally accepted communication procedures and standards in order to facilitate efficient recording, payment, clearing, and settlement across systems.

## **Transparency**

### *Principle 23: Disclosure of rules and procedures*

An FMI should have clear and comprehensive rules and procedures and should provide sufficient information to enable participants to have an accurate understanding of the risks they incur by participating in the FMI. All relevant rules and key procedures should be publicly disclosed.

### *Principle 24: Disclosure of market data*

A trade repository should provide timely and accurate data to relevant authorities and the public in line with their respective needs.