Derivatives Trade Reporting

In a Nutshell

October 2014

On December 31, 2013, OSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting* (the TR Rule) became effective. The TR Rule requires that all over-the-counter (OTC) derivative transactions involving a local counterparty (described below) be reported to a designated trade repository[1] in Ontario. The TR Rule was first amended on April 17, 2014, and these amendments became effective on June 16, 2014. The TR Rule was further amended on July 2, 2014, and these amendments came into force on September 9, 2014. Key provisions are summarized below.

What are the effective dates for reporting derivative transactions?

The reporting obligations for trades in derivatives are effective for dealers and clearing agencies as of October 31, 2014 and all other counterparties as of June 30, 2015.

Certain reporting obligations under the TR Rule may not be triggered with respect to a derivative transaction if:

- the reporting counterparty is a derivatives dealer[2] or a clearing agency, the transaction was entered into before October 31, 2014, and the transaction will expire or terminate on or before April 30, 2015
- the reporting counterparty is neither a derivatives dealer nor a clearing agency, the transaction was entered into before June 30, 2015, and the transaction will expire or terminate on or before December 31, 2015

Which derivative transactions are reportable?

A derivatives transaction includes entering into, assigning, novating, selling or otherwise acquiring or disposing of a *derivative*. Whether an instrument is a *derivative* and is reportable under the TR Rule requires consideration of OSC Rule 91-506 – *Derivatives: Product Determination* (the Scope Rule).

A local counterparty that is not a derivatives dealer may be exempt from the reporting obligations if certain conditions are met.

Who is a local counterparty?

A counterparty is a local counterparty if, at the time of the transaction, one or more of the following apply:

(a) the counterparty is a person or company, other than an individual, organized in Ontario or with a head office or principal place of business in Ontario
(b) the counterparty is an affiliate of a person or company described in (a) that guarantees all or substantially all of the liabilities of the affiliated entity
(c) the counterparty is registered as a derivatives dealer in Ontario or in an alternate category as a consequence of trading in derivatives

Who is the reporting counterparty?

The reporting counterparty is determined by the reporting hierarchy under the TR Rule. The TR Rule contemplates that if the reporting obligation falls on both counterparties, then the counterparties may agree to the International Swaps and Derivatives Association's (ISDA) Canadian Transaction Reporting Party Requirements dated April 4, 2014 (the ISDA Rules) to determine which counterparty will report the derivatives transaction. The reporting hierarchy under the TR Rule is as follows:

- when the transaction is cleared through a recognized or exempt clearing agency, the reporting counterparty is that agency
- when the transaction is not cleared through a recognized or exempt clearing agency, and is between:
  - two derivatives dealers, the derivatives dealer determined to be the reporting counterparty under the ISDA Rules
  - two derivatives dealers who have chosen not to adopt the ISDA Rules, the reporting counterparty is each such dealer
  - a derivatives dealer and a counterparty that is not a derivatives dealer, the reporting counterparty is the derivatives dealer
- if the above does not apply to the derivatives transaction, each local counterparty is a reporting counterparty unless they have agreed to determine the reporting counterparty based on the ISDA Rules or the counterparties have agreed to delegate the reporting obligation to one counterparty

The reporting hierarchy under the ISDA Rules is as follows:

- swap dealer
- major swap participant
- dealer[3] that is neither a swap dealer or major swap participant
- local counterparty that is neither a swap dealer, major swap participant or dealer

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[1] The Chicago Mercantile Exchange Inc., DTCC Data Repository (U.S.) LLC and ICE Trade Vault, LLC are designated trade repositories in Ontario.
[2] A derivatives dealer is a person engaging in or holding itself out as engaging in the business of trading in derivatives in Ontario as principal or agent.
[3] "Dealer" as used in the ISDA Rules includes any counterparty that has agreed to deem itself as a dealer under such rules.

If both counterparties have the same classification under the ISDA Rules, the reporting counterparty is determined based on the asset class determination criteria under the ISDA Rules. Parties that choose to adopt the ISDA Rules must agree to the terms of an ISDA multilateral agreement and execute ISDA's Canadian Representation Letter #1.

When are the reporting obligations triggered?

The timing of reporting obligations may differ in certain circumstances contemplated by the TR Rule. Generally, the timing of reporting obligations is as follows.

	Clearing Agencies	Derivatives Dealers	Local Counterparty
Creation Data †	Real-time, as soon as technologically possible, but no later than the end of the next business day*		
Life-Cycle Event Data ‡	By the end of the event day, but no later than the end of the next business day*		
Valuation Data ‡‡	Daily, but no later than the end of the next business day		Quarterly (within 30 days of the end of the calendar quarter)
Errors & Omissions	As soon as the error or omission is discovered, but no later than the end of the next business day		

† Creation Data refers to the initial transaction data as required pursuant to Appendix A of the TR Rule.
‡ Life-Cycle Event Data refers to changes to the reported Creation Data.
‡‡ Valuation Data is data that reflects the current value of the transaction, which may include mark-to-market value.
* The definition of business day for purposes of the TR Rule means a business day in the reporting counterparty's jurisdiction.

What data is required for a reportable derivatives transaction?

The data required to be reported is set out in Appendix A to the TR Rule, and includes the following identifiers:

- a legal entity identifier (LEI) of each counterparty to a transaction
- unique transaction identifier (UTI) for the transaction
- unique product identifier (UPI) for the transaction

An LEI is a 20-character code that will be used to identify entities that enter into derivatives transactions. *All reporting and non-reporting counterparties (including buy-side/end user counterparties) to OTC derivative transactions must have an LEI to meet their obligations under the TR Rule*. For example, each investment fund and managed account that is a counterparty to a reportable derivatives transaction must have its own LEI. Applications for LEIs can be made to endorsed Local Operating Units[4] which are listed at www.leiroc.org. Other than natural persons and branches of entities, most entities are eligible to receive an LEI. The LEI will cost approximately US$220.

A UTI uniquely identifies each transaction that is required to be reported and is assigned by a designated trade repository using its own methodology or incorporating a UTI previously assigned to the transaction.

A UPI is a code that uniquely identifies the derivative's asset class, sub-type, and the underlying asset. It is assigned in accordance with international or industry standards, or in the absence of a standard for a particular derivative, a reporting counterparty must assign a UPI using its own methodology. ISDA's UPI taxonomies can be found at www.isda.org.

What data will be made publicly available?

A designated trade repository must make transaction-level data publicly available effective on April 30, 2015. The data will be made anonymous, but will include information on open positions, transaction volume and price.

Québec

The trade reporting requirements under Québec Regulation 91-507 are similar to the TR Rule subject to certain differences of form, which are not significant. The amendments to the Québec Regulation have not yet been adopted, but it is expected that the amendments will be harmonized with the OSC's amendments to the TR Rule.

Please contact any of the following if you have a question or would like to discuss the TR Rule or other rules that regulate over-the-counter derivatives in Ontario or Québec:

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[4] For more information about the LEI and its application process, see the AUM Law Resource Center at www.aumlaw.com.