



BC Notice 2016/05

Notice

Participant obligations under Multilateral Instrument 91-101 *Derivatives: Product Determination* and Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*

On January 22, 2016 the securities regulatory authorities (collectively the **Authorities**) in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon (the **Participating Jurisdictions**) published advance notice of the adoption of Multilateral Instrument 91-101 *Derivatives: Product Determination* (MI 91-101) and Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (MI 96-101) (together MI 91-101 and MI 96-101 are referred to as the TR MIs). Subsequently, the Authorities published amendments to MI 96-101 for comment (see CSA Multilateral Notice and Request for Comments dated February 16, 2016 and BC Notice 2016/01 - Notice and Request for Comments dated March 24, 2016).

In some jurisdictions, government Ministerial approvals are required for the adoption of the final, amended versions of the TR MIs. Subject to obtaining all necessary Ministerial approvals, the TR MIs and the amendments to MI 96-101 are targeted to come into force in each Participating Jurisdiction before July 29, 2016 when mandatory trade reporting begins in the Participating Jurisdictions for clearing agencies and derivatives dealers.

In anticipation of the commencement of trade reporting, three trade repositories that are currently providing trade reporting services in Manitoba, Ontario and Quebec have filed confidential materials seeking recognition in British Columbia. These trade repositories and the contact details for each are as follows:

- 1. DTCC Data Repository (U.S.) LLC**
Contact: ddr-onboarding@dtcc.com
Website: <https://dtcclearning.com/learning/gtr/>
- 2. Chicago Mercantile Exchange Inc.**
Contact: igor.kaplun@cmegroup.com
Website: www.cmegroup.com
- 3. Ice Trade Vault, LLC**
Contact: tradevaultsupport@theice.com / 770.738.2102, option 4
Website: www.icetradevault.com

The onboarding process with trade repositories may take several weeks to complete; market participants that are clearing agencies or derivatives dealers should complete the onboarding process in advance of the commencement of trade reporting on July 29, 2016. For persons needing additional guidance on whether they are derivatives dealers, an excerpt from the companion policy to MI 96-101 that provides guidance on when a person or company is a derivatives dealer is attached to this notice as Appendix A.

In addition, MI 96-101 requires that persons eligible to receive legal entity identifiers, other than an individual, obtain a legal entity identifier before entering into a derivatives transaction that is required to be reported under MI 96-101. Information on how to obtain a legal entity identifier is located on the website of the international Regulatory Oversight Committee for legal entity identifiers at <https://www.leiroc.org/lei/how.htm>.

For more information:

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Appendix A

The definition of derivatives dealer in the instrument only applies in relation to the Instrument. A person or company that is a derivatives dealer for the purpose of the Instrument will not necessarily need to register as a dealer (or in any other registration category) and will not necessarily be subject to regulatory requirements applicable to derivatives dealers in other Instruments.

We consider the factors listed below to be relevant in determining whether a person or company is a derivatives dealer for the purpose of the Instrument:

- *intermediating transactions* – the person or company provides services relating to the intermediation of transactions between third-party counterparties to derivative contracts. This typically takes the form of the business commonly referred to as a broker;
- *acting as a market maker* – the person or company makes a market in a derivative or derivatives. The person or company routinely makes a two-way market in a derivative or category of derivatives or publishes quotes to buy and quotes to sell a derivatives position at the same time;
- *transacting with the intention of being compensated* – the person or company receives, or expects to receive, any form of compensation for carrying on derivatives transaction activity including compensation that is transaction or value based and including from spreads or built-in fees. It does not matter if the person or company actually receives compensation or what form the compensation takes. However, a person or company would not be considered to be a derivatives dealer solely by reason that it realizes a profit from changes in the market price for the derivative (or its underlying), regardless of whether the derivative was intended for the purpose of hedging or speculating;
- *directly or indirectly soliciting in relation to derivatives transactions* – the person or company contacts others to solicit derivatives transactions. Solicitation includes contacting someone by any means, including advertising that offers (i) derivatives transactions, (ii) participation in derivatives transactions or (iii) services relating to derivatives transactions. This includes advertising on the internet with the intention of encouraging transacting in derivatives by local persons or companies. A person or company might not be considered to be soliciting solely because it contacts a potential counterparty or a potential counterparty contacts them to inquire about a transaction in a derivative unless it is the person or company's intention or expectation to be compensated from the transaction. For example, a person or company that wishes to hedge a specific risk might not be considered to be soliciting for the purpose of the Instrument if they contacted multiple potential counterparties to inquire about potential derivatives transactions to hedge the risk;

- *transacting derivatives with individuals or small business* – the person or company transacts with or on behalf of persons or companies that are neither “permitted clients” as that term is defined in section 1.1 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registration Obligations nor “qualified parties” as that term may be defined in applicable rules or orders in the securities legislation of the local jurisdiction, except where those persons or companies are represented by a registered dealer or adviser;
- *providing derivatives clearing services* – the person or company provides services to allow third parties, including counterparties to trades involving the person or company, to clear derivatives through a clearing agency. While these services do not directly relate to the execution of a transaction they are actions in furtherance of a trade conducted by a person or company that would typically be familiar with the derivatives market and would possess the necessary expertise to allow them to conduct trade reporting;
- *engaging in activities similar to a derivatives dealer* – the person or company sets up a business to carry out any activities related to transactions involving derivatives that would reasonably appear, to a third party, to be similar to the activities discussed above. This would not include the operator of a trading platform that is not registered or exempted from registration as a dealer, such as an exchange, or the operator of a clearing agency.

In determining whether or not they are a derivatives dealer for the purpose of the Instrument a person or company should consider their activities holistically. Generally, we would consider a person or company that engages in the activities referenced above in an organized and repetitive manner to be a derivatives dealer. Ad hoc or isolated activities may not necessarily result in a person or company being a derivatives dealer. For example if a person or company makes an effort to take a long and short position at the same time to manage business risk, it does not necessarily mean that the person or company is making a market. Similarly, organized and repetitive proprietary trading, in and of itself, absent other factors described above, may not result in a person or company being a derivatives dealer for the purpose of the Instrument.

To be a derivatives dealer in a jurisdiction a person or company must conduct the activities described above in that jurisdiction. Activities are considered to be conducted in a jurisdiction if the counterparty to the derivative is a local counterparty in the jurisdiction. A person or company does not need to have a physical location, staff or other presence in the local jurisdiction to be a derivatives dealer.

A person or company’s primary business activity does not need to include the activities described above for the person or company to be a derivatives dealer for the purpose of the Instrument. Its primary business activity could be unrelated to any of the factors

described above; however if it does meet any of these factors, it may be a derivatives dealer in the jurisdiction in which it engages in those activities.

A person or company is not a dealer for the purpose of the Instrument if they would be a dealer solely as a result of derivatives involving affiliated entities.