ICE TRADE VAULT

March 24, 2015

Via Electronic Submission

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission

c/o Michael Brady
Senior Legal Counsel, Capital Markets
British Columbia Securities Commission
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Re: Proposed Multilateral Instrument 91-101 Derivatives: *Product Determination* (the "Scope Rule"), Proposed Multilateral Instrument 96-101 - *Trade Repositories and Derivatives Data Reporting* (the "TR Rule") and related Companion Policies

Dear Mr. Brady:

ICE Trade Vault, LLC, ("Trade Vault") appreciates the opportunity to comment on the proposed Scope Rule, TR Rule and related companion policies (collectively, "Proposed Instruments") published by the Alberta Securities Commission, the British Columbia Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan, the New Brunswick Financial and Consumer Services Commission and the Nova Scotia Securities Commission (each an "Authority" and collectively, the "Authorities"). As background, ICE Trade Vault is designated as a Trade Repository ("TR") in the provinces of Ontario, Quebec and Manitoba. In the United States, ICE Trade Vault is a provisionally registered Swap Data Repository regulated by the Commodity Futures Trading Commission ("CFTC"). ICE Trade Vault, LLC is organized as a U.S. limited liability company in the State of Delaware and is a wholly owned subsidiary of Intercontinental Exchange Holdings, Inc. ("ICE").

ICE is a leading operator of regulated global markets and clearing houses, including futures exchanges, over-the-counter markets, derivatives clearing houses and post-trade services. ICE is a publicly traded corporation (NYSE: ICE) which is known for increasing transparency in the global energy markets. ICE offers its customers the ability to transact in a

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number of markets such as agriculture, credit, energy, equity indexes, foreign exchange and interest rates. ICE is headquartered in Atlanta, Georgia with several offices globally located in centers of trading. Trade Vault's primary office is located at ICE's headquarters with representation in Chicago, Houston, London, Calgary, Winnipeg, Washington D.C., and Singapore.

Executive Summary

Trade Vault supports derivative data reporting if properly applied. Trade Vault commends the efforts of the Authorities to introduce derivatives trade reporting rules that increase market transparency and help ensure financial stability of the derivatives market. Trade Vault also commends the Authorities for the high degree of harmonization between the Proposed Instruments and existing trade reporting rules in Manitoba, Ontario and Quebec. Trade Vault has prepared this comment letter to highlight and discuss: (a) interpretive issues that impact both the Proposed Instruments and trade reporting rules already adopted and (b) proposals for ensuring the effective and efficient regulation and oversight of TRs by each of the Authorities. In particular, Trade Vault wishes to make the following recommendations:

- Clarify role of the Clearing Agency as the sole reporting party for intended to be cleared swaps;
- Remove Canadian financial institutions from the reporting counterparty waterfall;
- Provide clarification on when a TR should create a UTI for a transaction;
- Promote choice of international or industry product taxonomy for UPIs;
- Allow TRs flexibility in the presentation of trade reporting fields;
- Accept LEI field alternatives upon reporting commencement;
- Clarify reporting of off-facility futures and EFRPs;
- Conduct coordinated review of TR applications;
- Simplify and streamline comment process for TR applications;
- Consider legal opinion requirements for non-local TRs;
- Modify the requirement for a TR to deliver audited financials;
- Streamline process for review and approval of changes to TR rules;
- Remove proposed requirements for communication and standardization between TRs;

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- Remove proposed requirement for TRs to disclose confidential system information and costs to process trades;
- Permit changes to a recognized TR's fee schedule in an expedited manner;
- Consider incremental costs and fees for allowing substituted compliance for trade reporting; and
- Consider TR valuation reporting protocols and form of provincial recognition orders.

This letter is divided into three parts. The first part discusses trade reporting requirements. The second part addresses the Scope Rule. The third part discusses TR recognition and ongoing regulation. Also, included as Annex A to this letter are Trade Vault responses to specific questions from the Authorities.

Part I: Trade Reporting Requirements

Clarify that the Clearing Agency is the sole reporting party for intended to be cleared swaps

A key objective of global financial reforms and subsequent regulatory rulemaking is the reduction of credit risk through central clearing counterparty. To that end, global financial reforms imposed mandatory clearing and trade execution requirements. Derivatives mandated to be cleared must be executed on designated venues of execution. As a result of these mandates, a large percentage of derivatives transactions are now executed on exchanges or designated venues of execution and subsequently submitted for clearing.

Clearing requires the original derivative between the counterparties to the trade (the "alpha derivative") to be instantaneously terminated and replaced by different and unique resulting derivatives (the "beta" and "gamma" derivatives) between counterparties and the Clearing Agency ("CA"). The alpha derivative must be terminated by the CA once accepted for clearing in order for the CA to assume its duties as a central counterparty. Once a derivative is accepted for clearing, the CA must notify the original TR via a termination message that the alpha derivative has been terminated and accepted for clearing. In our view, the CA should have the unambiguous obligation to report the termination and resulting beta and gamma derivatives to the TR of its choosing. This is consistent with all other global regulatory reporting regimes. CFTC regulations impose reporting obligations on Derivative Clearing Organizations ("DCO") and allow the DCO to report derivative data to the SDR of its choice.[1] Recently re-proposed U.S. Securities Exchange Commission ("SEC") regulations requires the CA to report the beta and gamma derivatives and acknowledges that these central market entities are the sole holders of the necessary data for cleared swaps.

[1] *See* CFTC Regulation 40.5 Request for Expedited Approval: Chicago Mercantile Exchange Inc., Submission # 12-391: Adoption of New Chapter 10 ("Regulatory Reporting of Swap Data") and Rule 1001 ("Regulatory Reporting of Swap Data"), dated November 9, 2012; CME submission #12-391R amending CME submission #12-391, dated December 6, 2012; CME submission #12-391RC amending CME submission #12-391R, dated December 14,2012.

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We have observed that generally accepted trade reporting practices in Ontario, Quebec and Manitoba result in cleared derivatives reporting beginning once the derivative is accepted for clearing versus reporting at the time of execution. Therefore, the burden of reporting rests solely with the CA. However, to avoid uncertainty, we believe that Canadian trade reporting rules should specifically require this reporting arrangement, either through amendments to the TR Rule or additional companion policy guidance. Amendments or new companion policy guidance should also expressly recognize that a CA is entitled to report all cleared derivatives to the TR of its choice. The act of submitting an intended to be cleared derivative to a CA for clearing should completely discharge any reporting duty for counterparties. Reporting prior to accepting derivatives for clearing is costly, burdensome and introduces another data reporter (and point of failure) into the reporting chain. There is little if any benefit to requiring any party other than the CA to report the derivative data as the intended to be cleared derivative exist for only a few seconds; the same set of information for these derivatives is simultaneously submitted to a clearinghouse as part of the submission process.

Remove Canadian financial institutions from the reporting party hierarchy

The reporting hierarchy contained in the Ontario trade reporting rule prescribes an order of CAs, derivatives dealers and finally non-dealers. ICE Trade Vault recommends that the Authorities conform to this hierarchy in an effort to simplify the reporting hierarchy by removing the category of Canadian financial institutions and adding these institutions to the non-dealer status. Based on Trade Vault's experience in other reporting jurisdictions, a financial institution category creates confusion and burdensome implementation costs for reporting parties with limited oversight benefits. We think that it is problematic for the TR Rule to require market participants to adopt a reporting party hierarchy that is different from Ontario and other non-Canadian jurisdictions Additionally, Canadian financial institutions should not be required to submit valuation data on a daily basis but should instead submit on a quarterly basis like other non-dealers. If a Canadian financial institution is not a dealer, then it likely will not have the systems or infrastructure to comply with a daily reporting obligation. The Authorities should conform valuation reporting requirements to other final provincial trade reporting rules the US reporting rules and eliminate this unnecessary daily reporting burden on Canadian financial institutions.[2]

Where a CA or trading platform has assigned a UTI to a transaction, TRs should not create a new UTI for that transaction

We are supportive of section 29(2) of the TR Rule, which would allow a TR to incorporate a unique transaction identifier ("UTI") previously assigned to a transaction. CAs assign UTIs to trades upon acceptance of a transaction for clearing or novation. Trade Vault recommends that CAs continue this practice. Waiting for TRs to provide UTIs would hinder the

[2] We note that Manitoba and Quebec rules, which include Canadian financial institutions in the reporting hierarchy, do not require Canadian financial institutions to report valuation data on a daily basis.

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clearing and reporting processes since TRs are positioned at the end of the reporting chain. Many trades are multijurisdictional and as such have already been assigned a UTI in these jurisdictions either by the reporting party or that jurisdiction's SDR/TR. If the Canadian TRs were required to also create a UTI for trades with previously assigned UTIs, these trades would have multiple UTIs which would defeat the purpose of a *unique* identifier. TRs should only create UTIs in the instance that trades are bilateral (non-cleared), executed off-platform, there is not already an existing UTI/USI, and at the request of the reporting party.

Promote choice of international or industry product taxonomy systems for UPIs

Section 30 of the TR Rule would require reporting parties to use international or industry standard unique product identifiers ("UPIs") when available. Trade Vault is supportive of this requirement, but we caution that the Authorities should not promote the ISDA product taxonomy over other international or industry standard product taxonomies. Deficiencies have been identified within the ISDA taxonomy and Trade Vault therefore believes it should not be required for use by reporting counterparties nor TRs. Reporting parties need discretion to choose the most appropriate product taxonomy, and should not be required to use an inferior product taxonomy. Choice of taxonomy will ensure more useful reporting to the Authorities, relieve reporting counterparties of the burden of UPI creation when a UPI is not available in a particular taxonomy, and maintain conformity to requirements in the US and other final provincial trade reporting rules.

Allow flexibility in the presentation of trade reporting fields required in Appendix A

Trade Vault commends the Authorities for conforming the data fields listed in Appendix A of the TR Rule to the data fields in the Ontario, Quebec and Manitoba trade reporting rules. As is the case in these provinces, the field names reported on transactions should not have to exactly match the field names listed in Appendix A. So long as the necessary data is reported, TRs should be allowed to map the reported fields to those contained in Appendix A. Trade Vault needs to retain the ability to show US fields in the Canadian TR in order to minimize costs for Canadian reporting parties.

Initially allow trade reporting using alternative forms of LEIs

Upon the reporting commencement date, the Authorities should allow reporting counterparties to submit a client code if the non-reporting party has not yet obtained a LEI or is not eligible for an LEI. It may be difficult for the reporting counterparty to always obtain a LEI for its counterparty, especially upon go-live of trade reporting. Once the LEI is available, it can be populated on transactions and in a relatively easy and cost effective manner to update previously reported transactions stored in Trade Vault. There may also be privacy law issues that may not be resolved at time of the effective reporting dates which prohibit the reporting parties from obtaining the necessary counterparty LEIs.

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Part II: Scope Rule Considerations

Clarify reporting of off-facility futures and EFRPs

Paragraph 2(1)(g) of the Scope Rule would exclude a contract from the reporting requirements if it is traded on one or more prescribed exchanges. Further, the Scope CP confirms that a transaction cleared through a clearing agency but not traded on an exchange is not considered to be exchange traded and is therefore subject to the applicable reporting requirements. To avoid uncertainty, Trade Vault recommends that the Authorities clarify that a futures contract resulting from an off-facility future or an Exchange for Related Position ("EFRP") is not reportable. The swap portion of the contract (e.g., the off-facility future or EFRP) will be reportable, and the Authorities will be able to receive data regarding the swap portion of the contract, but the cleared futures position will not be reportable.

Part III: TR Recognition and Ongoing Regulation

Conduct coordinated review of TR applications

Trade Vault appreciates the efforts of the Authorities to develop harmonized requirements for TR recognition and ongoing requirements. While Trade Vault will be required to apply separately for recognition with each Authority, we strongly encourage staff of the Authorities to coordinate their review and streamline questions and comments to avoid unnecessary duplication. It is our preference to file a single application addressed to each of the Authorities, and then respond to consolidated questions and requests from a small number of representatives speaking on behalf of the Authorities. We understand that each Authority will need to conduct an independent review prior to recognizing any TR in their local jurisdiction; however, our experience is that trade reporting issues are common across Canadian jurisdictions. The Authorities should make every effort to coordinate the review of TR applications. Trade Vault is determined to offer a reasonably priced TR solution to all Canadian market participants. If the recognition process is cumbersome and duplicative, this will increase Trade Vault's costs and ultimately those paid by Canadian participants.

Simplify and streamline the comment process for TR applications

Trade Vault recommends that the Authorities should review and approve TRs without a public comment process. In the provinces of Ontario and Quebec, the public comment process consisted of TR applicants preparing a detailed application letter which OSC and AMF published for a thirty day public comment. None of the three TRs that applied in these provinces received a public comment, but the TRs expended substantial time and financial resources to prepare for this public comment process. Given that (i) TRs are already operating in Ontario, Manitoba and Quebec, (ii) the same rules will substantially apply in the Authorities, and (iii) no public comments were received during the OSC and AMF process, we strongly encourage the Authorities to review TR applications without a public comment process. We anticipate that this

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decision would shorten the TR application review process by up to two months while containing application costs for TR applicants.

Legal opinion requirements for non-local TRs

Subsection 2(2)(B) of the TR Rule would require TR applicants located outside of a province to provide regulators with a legal counsel opinion. Trade Vault is willing to fulfill this requirement, provided that the local Authority is a signatory to the CFTC *Memorandum of Understanding, Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Covered Entities*, dated March 25, 2014 (the "MoU"). As of the date of this letter, British Columbia, Alberta, Manitoba, Ontario and Quebec are signatories to the MoU. In order for any US-based TR applicant, including Trade Vault, to deliver a legal opinion to the securities regulators in Saskatchewan, New Brunswick and Nova Scotia, these provinces must first sign the MoU with the CFTC.

Modify the requirement for a TR to deliver audited financials

Subsection 4(1) and section 5(1) of the TR Rule would require the delivery of entity-level audited financial information. In our view, the TR Rule should be modified to allow for TRs to file entity-level unaudited financials and group level audited financials. Such an amendment would better reflect the reality that most TRs are part of large international conglomerates, and therefore do not prepare unconsolidated audited financials. As part of the recognition process in Ontario, Manitoba and Quebec, Trade Vault received discretionary exemptive relief from these requirements. In our view, it would be consistent with the policy objectives of the Authorities to amend the TR Rule to codify the exemptive relief previously granted in Ontario, Manitoba and Quebec concerning delivery of audited financial information.

Streamline process for review and approval of changes to TR rules

We recommend that the Authorities consider amending or deleting subsection 17(6) of the TR Rule. This subsection would require a recognized TR to file proposed new or amended rules, policies and procedures for approval absent an explicit exemption. This requirement is found in the Ontario and Manitoba local trade reporting rules, and all three TRs approved in Ontario and Manitoba received a conditional exemption from the requirement that alleviates the requirement to file proposed new or amended rules, policies and procedures for approval unless such changes apply specifically to Canadian participants. This requirement does not appear in the Quebec local rule. In our view, the Authorities should delete subsection 17(6) of the TR Rule, consistent with the Quebec trade reporting rule, or amend the TR Rule to codify the exemptive relief granted in Ontario and Manitoba (thus doing away with the need for exemptive relief in any of the Authorities).

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Remove proposed requirements for communication and standardization between TRs

Section 15 of the TR Rule would require a recognized TR to use or accommodate internationally accepted communication procedures and standards in order to facilitate the efficient exchange of data between its systems and those of other entities, including other TRs. TRs should be able to utilize data messaging protocols and submission options for its customers that are most effective and least burdensome. Many market participants have existing infrastructure built to electronic confirmation systems which can be leveraged for reporting derivatives. CAs and exchanges already use versions of FIX or standard XML to discharge their reporting obligations. Attempting to overhaul these systems with different frameworks, such as FpML, would be costly and unnecessary to reporting parties. In the commodities market, many transactions are between non-derivatives dealers and the cost of reporting should take into account their previous IT investments.

Trade Vault believes that a competitive marketplace for TR services will present an opportunity for significant reductions to the cost of trade reporting for all market participants. Customers will be free to choose among a number of execution, clearing, and reporting configurations under commercial terms that meet their needs and lower their costs. Trade Vault does not believe that a data standard should be forced upon participants for submitting to TRs, nor should TRs be forced to interconnect to one another. This would reduce the customer benefits that result from competition. The providers who offer the best service at the best value will earn their customer's business. We therefore recommend the deletion of section 15 of the TR Rule.

Remove the requirement of a TR to disclose confidential system information and costs to process trades

Subsection 12(a) of the TR Rule would require a TR to publicly disclose on its website all fees and other material costs imposed on its participants for each service it offers with respect to the collection and maintenance of derivatives data. Subsection 21(8) of the TR Rule would require a TR to publicly disclose on its website "all technology requirements regarding interfacing with or accessing the services provided" by the TR. Trade Vault understands that, as a recognized TR, clear descriptions of priced services should be provided for comparison purposes and supports this disclosure. However, Trade Vault recommends limited disclosure of other information such as material costs, system design and technology procedures on a public website. This disclosure would require a TR to share confidential information that could adversely affect the TR in a competitive marketplace. For greater certainty, the Authorities should consider modifying subsections 12(a) and 21(8) of the TR Rule or adding companion policy guidance to clarify that a TR is not expected to disclose confidential, proprietary or competitively-sensitive information on a public website.

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Permit changes to a recognized TR's fee schedule in an expedited manner

The Authorities appropriately recognized that TR's will need to implement fee changes within timeframes that are less than the fifteen-day required notice period proposed in subsection 3(1) of the TR Rule. Trade Vault recommends TRs be permitted to change fees with notification the following business day when such changes are immaterial. For example, a conversion factor update may be necessary in the commodities asset class (e.g., converting gallons to barrels for an oil swap). In this case, the fee change is due to a different quantity unit which is not a material change warranting a full review. Due to the dynamic nature of commodity markets, products and data values may not be known prior to invoicing as these values are based on real-time customer trade submissions. As a result, TRs need the ability to update fees based on newly submitted products and invoice their customers in a timely manner which conforms to the practices other provinces of Canada.

Substituted compliance results in increased costs to TRs and reporting parties

Section 26(5) of the TR Rule permits a reporting party may, in certain circumstances, to satisfy its reporting obligation by reporting to a TR recognized in another province of Canada or a foreign jurisdiction listed in Appendix B of the TR Rule. If derivatives data resides in another jurisdictional TR, there is additional complexity for data access by the Authorities and further costs to this TR to ensure this access. As such, it is important for the Authorities to be aware that a TR operating under substituted compliance will need to pass these additional costs along to the reporting parties. In addition, Trade Vault believes all TRs operating under the Authorities' oversight should be required to complete the application process as a condition of substituted compliance. TRs are new central market infrastructures that will serve a critical role by enabling the Authorities to monitor market activity and systemic risk. As such, a formal TR application process is necessary to ensure foreign applicants can fully meet the core principles and operating requirements of the Proposed Instruments. Based on Trade Vault's experience operating in multiple jurisdictions, repository core principles and operating requirements are not equivalent across regions.

Valuation submissions to the Authorities should conform to the approach taken by other provinces and under Dodd-Frank

Subsection 37(1)(c) requires TRs to report an aggregate valuation for a derivative. Trade Vault recommends the Authorities adopt a valuation reporting approach that conforms to the recognition orders issued to TRs in Ontario, Quebec and Manitoba as well as CFTC rules. As an example, the commodity asset class is comprised of fungible contracts with defined trading durations (e.g., monthly). These final instruments define valuation data as the submission of daily marks at the position level which enables TRs to market-to-market the associated positions. In other jurisdictions, Trade Vault presents to authorities detailed position and valuation views for comprehensive risk analysis. For example, a natural gas derivative with a calendar duration and monthly settlement terms would be decomposed into twelve individual positions and the associated monthly valuations would be applied to each position of the entire

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derivative. This approach is in accordance with risk management practices deployed by CAs and allows the monitoring of discrete risks (e.g., heating and cooling seasons). Absent further guidance from the Authorities, which could form part of recognition orders for TRs, the valuation approach of the Proposed Instruments would incorrectly apply a constant or average valuation to each monthly position.

Trade Vault recommends the Authorities adopt identical recognition terms and conditions to those that were adopted in Ontario, Manitoba and Quebec. We respectfully submit that it would be inconsistent with the efforts made by the Authorities to develop harmonized requirements for TR recognition if the recognition terms and conditions in the Authorities are not the same as those in Ontario, Manitoba and Quebec.

Conclusion

In conclusion, transparency and financial stability of the derivatives market are key tenets of Proposed Instruments. The Authorities have made great strides towards increasing market transparency through mandatory derivatives reporting to TRs. Trade Vault looks forward to registering a TR in support of Proposed Instruments and thanks the Authorities for the opportunity to provide comments. Please do not hesitate to contact Kara Dutta (+1.770.916.7812 kara.dutta@theice.com) if you have any questions regarding our comments.

Sincerely,



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Annex A – Ancillary Comments to Proposed Instruments

The follow are responses to the Authorities request for comments on specific aspects of the Proposed Instruments. Questions are numbered in accordance to the notice of the Proposed Instruments and reprinted in italics below with Trade Vault's response immediately following.

Question 6: Section 25 of the proposed TR Rule allows the counterparties to a transaction where either both are derivatives dealers, Canadian financial institutions or not derivatives dealers or Canadian financial institutions to agree on who will be the reporting counterparty. Is this appropriate? Will this be effective in ensuring that the reporting obligation will be applied to the appropriate counterparty? Please provide specific examples or analysis.

Trade Vault Response: Parties to a transaction of the same designation should be allowed to select the reporting counterparty. In addition, the Authorities should require parties of the same designation to select one party to report in order to prevent duplicative reporting. In our view, requiring parties to select one party to report is simpler and more effective than the alternative proposed in subsection 25(4) of the TR Rule.

Question 7: Do you foresee any difficulties in counterparties agreeing as to who will be the reporting counterparty? If so, explain.

Trade Vault Response: If master trading agreements are in place and updated with reporting terms prior to transacting, we do not foresee any issues in selecting the reporting counterparty.

Question 8: Does the inclusion of a Canadian financial institution in the reporting counterparty waterfall create any issues? Please provide specific examples of complications or analysis of potential scenarios.

Trade Vault Response: The inclusion of the Canadian financial institution in the proposed waterfall will create unnecessary issues, confusion and re-work amongst counterparties since most market participants already implemented multi-jurisdictional reporting that does not recognize financial institutions as a distinct designation. Additionally, Canadian financial institution should not be required to submit valuation data on a daily basis but should instead submit quarterly to conform to the existing rules in the US and other final provincial instruments. A daily valuation reporting requirement would impose an unnecessary burden on Canadian financial institutions.

Question 10: We have contemplated that there should be some transitional period between the date on which the proposed TR Rule becomes effective and the date that the first reporting obligations will apply. Is a three month period sufficient for trade repositories to seek and obtain recognition? If not, what period would be sufficient?

Trade Vault Response: In our view, a three-month period is insufficient. While it is our preference for the recognition of trade repositories to happen quickly and efficiently, in our experience, this process will take at least three months and potentially longer if the Authorities

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(i) do not engage in a coordinated application review or (ii) require TR applicants to submit to a public consultation process (each as discussed below). Also, in our experience, reporting counterparties need three months to onboard with a recognized TR after the recognition of the TR. We therefore recommend a minimum six-month transitional period between the date on which the TR Rule becomes effective and the date that the first reporting obligations will apply.

Question 11: As outlined in the proposed TR CP, we have considered staged implementation of the trade reporting obligations such that the requirement might apply to those lower in the trade reporting waterfall at successively later dates. Given that trade reporting obligations will likely apply to end-users in Manitoba, Ontario and Québec by the time the proposed TR Rule becomes effective, is it necessary for the Authorities to consider staged implementation? Is the staged implementation in the proposed TR CP appropriate?

Trade Vault Response: Trade Vault agrees with a staged approached as derivative dealers and CAs have the technical capabilities to report earlier than end-users. A staged approach introduces less risk for a successful launch of TRs and the initiation of reporting by market participants.

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