



RBC Capital Markets

OTC Derivatives: Update on Trade Reporting in Canada

Revised: June 10, 2014 (Original publication: November 26, 2013)

**Canadian Securities Administrators (CSA)
publish final OTC derivatives trade
reporting rules**

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On November 14th, 2013, the Ontario Securities Commission, Autorité des Marchés Financiers (Québec) and Manitoba Securities Commission published final rules and accompanying companion policies detailing the scope, obligations and timing of over-the-counter (OTC) derivatives reporting by Canadian markets participants.¹ April 10th, 2014, Canadian authorities issued a press release, indicating their intent to extend the start of Canadian OTC derivatives reporting obligations due to market readiness concerns and setting the stage for amendments to final rules.²

Where released, final rules have since been amended to reflect new reporting dates, but also to relieve reporting burden for Canadian non-dealers transacting in OTC derivatives. Final rules from other provincial authorities are expected in short order.

Under amended rules, and further anticipated rules and guidance, it is expected that Canadian authorities will require that:

- all OTC derivatives transactions involving Canadian-based entities, their guaranteed affiliates, or derivatives dealers registered in Canada, be reported to a designated TR;
- derivatives dealers assume reporting obligations where they are counterparty to a transaction, with the possibility of delegating reporting obligations;
- final rules alleviate burden for Canadian end-users - no longer requiring that non-dealer Canadian counterparties verify transaction reporting by a foreign dealer counterparty and take on reporting obligations should the foreign dealer fail to do so;
- any new transaction that involves a derivatives dealer as counterparty or that is cleared through a central counterparty (CCP) be reported as of October 31st, 2014, with all other new trades being reported as of June 30th, 2015;
- certain pre-existing transactions be reported, if contractual obligations are still outstanding as of April 30, 2015 (dealer and CCP-cleared trades) or December 31, 2015 (other trades); and,
- foreign entities, captured by Canadian rules, report under their home jurisdiction's requirements (if equivalent to Canadian rules) and make data available to provincial authorities, in order to qualify for substituted compliance for transactions with other foreign entities.

Introduction

Increasing post-trade transparency is an integral part of the G20 leaders' 2009 commitment to reform OTC derivatives markets and will be the first reform element to be mandated in Canada. Reporting to designated trade repositories is intended to increase regulators' ability to monitor the build-up of exposures within the financial system, or with any single market participant, and will allow for greater oversight of derivatives market activity. When combined with public dissemination of select data, trade reporting can also promote fair and efficient markets for all participants.

Trade reporting for OTC derivatives has already begun in jurisdictions such as the U.S., Japan, the European Union (EU), and other Asian jurisdictions. In order to foster global integration, Canadian trade reporting rules emulate many of these larger jurisdictions' requirements, while also providing clarifications on issues such as cross-border conflicts

1 The CSA first provided views on the application of trade reporting rules for Canada through consultation papers and model rules, with relevant references provided at the end of this note.

2 For CSA press release see http://www.osc.gov.on.ca/en/NewsEvents_nr_20140410_csa-derivatives-trade-reporting-date-extended.htm.

and reporting by central counterparties (CCPs). The addition of Canadian reporting requirements will nonetheless translate into an important change in business practices for many Canadian market participants.

RBC Capital Markets has prepared the following summary to highlight the most relevant portions of Canadian trade reporting rules and to briefly contrast these against existing rules in the U.S. and Europe.

Trade repositories

Trade repositories (TRs) are financial market infrastructures that collect and warehouse transaction-level information, often times across asset classes. Under final Canadian rules, market participants must report transactions to a TR that is designated (approved) by provincial authorities, in order to meet their reporting obligations.

TRs designated by provincial authorities will, amongst other requirements, be required to:

- demonstrate that they meet international standards applicable to this type of financial market infrastructure;
- implement, maintain and enforce policies and procedures, designed to ensure the safety, privacy and confidentiality of derivatives data;
- maintain objective, risk-based participation criteria that permit fair and open access; and,
- publicly disclose their fees and allocate these equitably across participants.

Designated TRs will also be expected to accept data in each asset class set out for reporting by provincial authorities.

There are currently no TRs based in Canada and therefore, Canadian market participants will likely be reporting to one of the established offshore TRs. Canadian authorities would have access to data in foreign repositories as a condition of TR recognition, while reporting entities would also have access to TR data for their own transactions.

The largest TR at the moment is the DTCC Global Trade Repository (GTR) for OTC derivatives. DTCC has repositories in the U.S., the U.K. and Singapore, covering product classes that include interest rate, credit, equity, commodity and foreign exchange. RBC does the majority of its trade reporting to DTCC, where required by foreign rules, and DTCC is currently the incumbent for Canadian trade reporting. Other TRs are, however, emerging.

Reporting obligations

In Canada, OTC derivatives transactions involving a “local counterparty” must be reported to a designated trade repository.

A “local counterparty” would include:

- a person or company, other than an individual, organized in or that has its head office or principal place of business in an applicable Canadian province;
- an affiliate, whose liabilities are the responsibility of an entity described in the preceding bullet; or,
- an entity registered in a Canadian province as a derivatives dealer or alternative category as a result of trading in derivatives – although final provincial rules to this effect have yet to be released.

Final rules have clarified that this definition of “local counterparty” excludes guaranteed affiliates of registered foreign derivatives dealers. Ultimately, the reach of reporting obligations will also depend on the CSA’s final registration requirements for OTC derivatives market participants.

An exclusion from reporting a “local counterparty” transaction also exists for commodities other than cash or currency, where neither counterparty is a derivatives dealer and the transaction would not push either counterparty above \$500,000 in total notional derivatives transactions.

Finally, a number of products, not traditionally considered derivatives, are excluded from reporting obligations. These products are set out in Figure 1 below.

Figure 1: Products not subject to reporting obligations in Canada

Foreign exchange	<ul style="list-style-type: none"> • Short term contract for the purchase and sale of a currency, that includes a fixed settlement date within an industry standard time frame (T+2 unless paired with a related securities transaction). • There must be an intention to take physical delivery in a currency referenced in the contract (excludes non-deliverable forwards (NDFs)). • Common market netting provisions for settlement will not necessarily violate the intent to take delivery. • The contract must not permit a rollover (e.g. by not having a fixed settlement date or by allowing for the settlement date to be extended).
Physical commodities	<ul style="list-style-type: none"> • Transactions in goods where there is intent to settle the contract by delivery in a physical form or by delivery of an instrument evidencing ownership of the commodity.
Exchange-traded derivatives	<ul style="list-style-type: none"> • Contracts traded on certain prescribed exchanges (e.g. listed futures, options or equity derivatives). • Derivatives executed on swap execution facilities and multilateral trading facilities will not qualify.
Gaming and insurance contracts	<ul style="list-style-type: none"> • These are typically covered by specific legislation and are not traditionally considered derivatives.

Duty to report

Provincial authorities have clarified a hierarchy of reporting obligations in their amended rules, specifying which counterparty should report transactions to the TR.

- Where a transaction is cleared through a CCP, it is the CCP’s obligation to report.
 - Canadian rules require that a CCP report transactions to a TR selected by the reporting party, if specified.
- For a non-centrally cleared transaction between two derivatives dealers, both have the obligation to report. Practically, one of the derivatives dealers assumes this duty to avoid duplicate records at the TR – the determination being based on industry-standard protocols.

- For non-centrally cleared transactions between a derivatives dealer and non-dealer, the derivatives dealer is the reporting counterparty.
- For all other scenarios, the local counterparty (or counterparties) has an obligation to report, although actual reporting can be delegated.

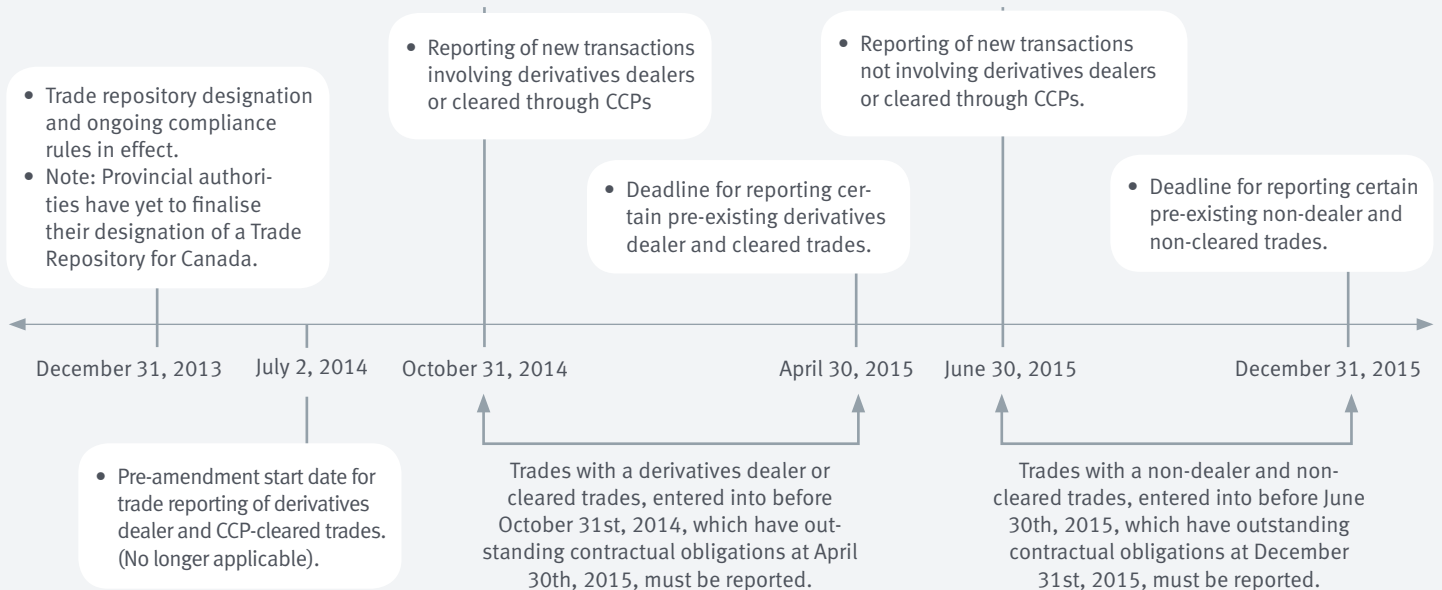
For example, an end-user transacting with a foreign dealer, not registered in Canada, would have its trades reported by that foreign dealer. For purposes of determining reporting obligations, a “derivatives dealer” need not refer to an entity registered under Canadian authorities’, yet to be released, derivatives registration rules. Rather, counterparties will exchange legal representations regarding their status under Canadian rules (derivatives dealer or not) through industry standard documentation. These representations would reflect the type of business carried out by an entity.

Start of trade reporting

For any transaction involving a derivatives dealer or that is centrally cleared, and which takes places on or after October 31st, 2014, reporting to a TR will be required.

Where a transaction is between two non-dealers, but falls under the reporting obligation, reporting will be required as of June 30th, 2015.

Figure 2: Amended timelines for trade reporting in Canada



Back-loading and public dissemination

For reportable transactions, involving a derivatives dealer or cleared through a CCP, entered into before the October 31st, 2014 reporting date, certain data must be submitted to a TR on April 30th, 2015 if they still have outstanding contractual obligations at that time.

For reportable non-dealer and non-cleared trades, entered into before the June 30th, 2015 deadline, certain data must be submitted to a TR on December 31st, 2015 if they still have outstanding contractual obligations at that time.

Similar to other jurisdictions, Canadian rules require TRs to publicly disclose a subset of transaction-level data, providing derivatives users with greater transparency into pricing and market depth. TR's cannot reveal the identity of transaction counterparties; rather publicly disclosed data relates to contract terms, timing of transactions and price.³

The rules contemplate the public dissemination of transaction data on a T+1 basis. RBC and other industry participants have encouraged regulators to examine whether such timing is appropriate given the size of the Canadian market and for certain circumstances (e.g. large block trades). In response, Canadian provincial authorities have delayed public disclosure of transaction level data until April 30th, 2015, in order to further study the appropriateness of this requirement.

Data to be reported

Due to the large amounts of data that TRs receive, a system of internationally standardized fields has evolved to identify reported transactions. Examples are presented in Figure 3 on page 7.

For most end-users of derivatives, the crucial field is the Legal Entity Identifier (LEI). Clients require an LEI when reporting transactions, or when dealers report trades to which they are a counterparty.

In addition to the unique identifiers listed above, a reporting party can be required to provide over 70 other information fields to the TR. These fields are divided into three categories, listed in Figure 4 on page 7. Provincial authorities have streamlined their approach with international standards in this regard, requiring similar fields to U.S. requirements.

³ For an example of transaction-level data, made publicly available by DTCC, visit <https://rtdata.dtcc.com/gtr/dashboard.do>.

Figure 3: Identifiers used in trade reporting under Canadian rules

Legal entity identifier (LEI)	<ul style="list-style-type: none"> • TR data is typically stored by LEI rather than counterparty name, in order to standardize entity identification. • Branches and divisions of a company use the same LEI as their parent entity. However, each fund in a fund family typically requires its own LEI. • Natural persons (i.e. individuals) do not need an LEI.⁴ • The international community is working on a Global LEI System. In the interim, internationally sanctioned providers of pre-LEIs, known as Local Operating Units (LOUs), are available. • DTCC has been designated to assign an LEI called the Global Markets Entity Identifier (GMEI). RBC clients are encouraged to obtain this LEI.⁴
Unique transaction identifier (UTI)	<ul style="list-style-type: none"> • UTIs help the TR distinguish between the millions of transaction reports that it will receive. • Canadian rules allow a TR to either assign its own UTI to each transaction or to accept a UTI from the reporting party.
Unique product identifier (UPI)	<ul style="list-style-type: none"> • UPIs must follow international standards and are available for most products. • This field must be assigned by the reporting counterparty.

Figure 4: Three categories of reportable TR data under Canadian rules

Creation data	<ul style="list-style-type: none"> • Relates to the execution of a transaction. • Must be reported in real-time or as soon as technologically practicable, but no later than end of day on T+1.
Life-cycle event data	<ul style="list-style-type: none"> • Life-cycle events typically include changes in the terms of a derivatives contract. • These should be reported by the end of the day on which the event occurs, if practicable. Otherwise by end of day on T+1.
Valuation data	<ul style="list-style-type: none"> • Valuation data is based on industry-accepted valuation standards. • If the reporting counterparty is a derivatives dealer or CCP, then it must report daily based on the previous day's data. • If a non-dealer entity is reporting, valuations can be reported quarterly based on the last day of the quarter and no later than 30 days after the end of the quarter.

⁴ A list of LEI providers can be found at http://www.lei.org/publications/gls/lou_20131003_2.pdf. Once the Global LEI system is finalized, pre-LEIs will be identical to LEIs. For sake of simplicity, this document simply refers to pre-LEIs as LEIs. More information on the GMEI LEI, including how to sign up for one, is available by visiting <https://www.gmeiutility.org/>. RBC also has fact sheets relating to the LEI and other helpful information, so please speak to your relationship manager.

Cross-border implications

Given that OTC derivatives reforms were agreed across G20 countries, while being implemented through national regulatory instruments, overlapping requirements may be imposed on market participants who are active in several jurisdictions.

The CSA has anticipated overlaps from its final rules and will provide limited substituted compliance to entities based outside a Canadian province, namely foreign derivatives dealers registered in Canada and foreign guaranteed affiliates of Canadian entities, when

Figure 5: Comparison of trade reporting requirements across jurisdictions

	Canada	Europe (EMIR)	U.S. (CFTC rules)
Reportable products	OTC derivatives transactions.	OTC and exchange-traded derivatives.	OTC “swaps” as defined by the CFTC.
Entities captured	Canadian-based entities, their guaranteed affiliates and foreign dealers registered in Canada.	European Economic Area (EEA) financial counterparties and EEA non-financial counterparties (above and below a clearing threshold).	All U.S. persons, including guaranteed affiliates of U.S. persons and funds majority owned by U.S. persons. .
Timing of reporting	Real time, no later than T+1 for dealers.	Generally T+1.	As soon as technologically practicable, generally no later than T+1.
Duty to report	Generally the derivatives dealer, otherwise the local counterparty (ies). One party should assume the reporting responsibility but can delegate.	Dual-sided reporting, both counterparties have the reporting obligation. Counterparties may delegate reporting to one of the two counterparties.	Generally a U.S.-registered Swap Dealer. Reporting obligations cannot be delegated across entities.
Market infrastructures	CCPs are required to report cleared trades. No mention of swap execution facilities reporting in Canadian rules.	CCPs are required to report trades similar to other entities (box above). No mention of multilateral trading facility reporting.	CCPs are generally required to report cleared trades. Trades executed on a SEF or exchange must be reported by the trade platform.
Substituted compliance	Expected to be available to foreign derivatives dealers or other entities registered in Canada and foreign affiliates of Canadian entities. Transactions must be otherwise reported under an equivalent regime and Canadian regulators must have access to TR data.	No equivalence for trade reporting at present.	Non-U.S. Swap Dealers need not report trades with non-U.S. persons until Dec 21 2013. Further substituted compliance could be granted by end of year.

dealing with other foreign entities. In both instances, two requirements must be met for substituted compliance:

- 1) a transaction must be reported under a foreign regime; and,
- 2) the applicable provincial securities administrator must have access to TR data for that transaction.

Overall, final Canadian reporting rules have similarities to those in the U.S. and Europe, which should facilitate compliance for Canadian entities subject to overlapping requirements. However, there are notable differences, as highlighted in Figure 5.

Conclusion

The release of final trade reporting rules for Canada marks the beginning of an important phase for many Canadian market participants, who otherwise may not have been affected by OTC derivatives reforms to date.

As further rules are released by Canadian regulators and the complexity of regulation increases, RBC will continue to keep its valued clients abreast of new developments, documentation requirements and responsibilities through client communications and customer interactions.

If there are any questions regarding points raised in this report or other OTC developments, please do not hesitate to contact:

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Final trade reporting rules

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Manitoba Securities Commission, Notice of Manitoba Securities Commission Rule 91-506 Derivatives: Product Determination, Companion Policy 91-506CP Derivatives: Product Determination, Manitoba Securities Commission Rule 91-507 Trade Repositories and Derivatives Trade Reporting and Companion Policy 91-507CP Trade Repositories and Derivatives Data Reporting. Available at: http://www.msc.gov.mb.ca/legal_docs/legislation/notices/91_506_507_notice_package.pdf

Trade reporting consultation papers and model rules

Multilateral CSA Staff Notice 91-302: Updated Model Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting. Available at: https://www.bcsc.bc.ca/Securities_Law/Policies/Policy9/PDF/91-302__Multilateral_CSA_Staff_Notice__June_6__2013

CSA Consultation Paper 91-301 – Model Provincial Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting. Available at: http://www.osc.gov.on.ca/documents/en/Securities-Category9/csa_20121206_91-301_model-provincial-rules.pdf

CSA Consultation Paper 91-402 – Derivatives: Trade Repositories. Available at: http://www.osc.gov.on.ca/documents/en/Securities-Category9/csa_20110623_91-402_trade-repositories.pdf