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Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Re: Request for Comments on Proposed Amendments to:

- **OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* and Proposed Changes to Companion Policy 91-507CP *Trade Repositories and Derivatives Data Reporting* (“OSC Rule 91-507”);**
- **AMF’s Regulation to amend Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting and Amendments to *Policy Statement to Regulation 91-507 respecting derivatives determination* and *Policy Statement to Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* (“AMF Rule 91-507”);**
- **MSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* and MSC Companion Policy 91-507CP and proposed changes to 91-506CP (“MSC Rule 91-507”);**
- **Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* and proposed changes to the Companion Policy 96-101CP (“MI 96-101”);**
- **(all amendments separately and/or collectively referred to herein as “Proposed Amendments” and the corresponding “Companion Policies”, where applicable)**

Dear Sirs/Mesdames,

The Depository Trust & Clearing Corporation (“DTCC”),¹ in conjunction with its indirectly wholly owned subsidiary trade repository, DTCC Data Repository (U.S.) LLC (“DDR”),² appreciates the opportunity to provide comments regarding the Proposed Amendments to the Alberta Securities Commission, the Autorité des marchés financiers, the British Columbia Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan, the Financial and Consumer Services Commission (New Brunswick), the Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island, the Manitoba Securities Commission, the Nova Scotia Securities Commission, the Ontario Securities Commission, the Securities Commission of Newfoundland and Labrador, the Superintendent of Securities, Northwest Territories, the Superintendent of Securities, Yukon Territory, and the Superintendent of Securities, Nunavut (collectively, “the Authorities”).

DTCC has a history of providing post-trade processing for the derivatives markets globally beginning with the creation of its Trade Information Warehouse for credit default swaps and subsequently with providing trade repositories (each a “trade repository” or “TR”³) for reporting derivatives transactions to regulators in every major market. DDR has been operating as a provisionally registered swap data repository in the US for reporting to the Commodity Futures Trading Commission (“CFTC”) since late 2012 and as a recognized or designated trade repository for reporting to the Authorities since 2014 and 2016. DDR became a U.S. Securities and Exchange Commission (“SEC”) registered security-based swap data repository in 2021. DTCC estimates that its locally registered TRs around the world provide derivatives reporting for approximately 80% of the OTC derivatives market.

Following below are DTCC/DDR’s comments on the Proposed Amendments.⁴ We look forward to the opportunity to discuss our comments with the Authorities at any time going forward should the Authorities deem that useful.

I. Harmonization of Data Elements and Processes

DTCC has always been a strong advocate for risk mitigation, efficiency, and cost savings in derivative markets. Specifically, DTCC has advocated for harmonization of reporting rules and processes, and standardization of reported terms to realize the goals of the G20, first expressed at the Pittsburgh Summit in 2009. DTCC agrees that global data standards, when applied uniformly across jurisdictions, facilitate the data consistency necessary for data aggregation and data sharing, providing transparency to the public and to regulators seeking to monitor systemic risk. DTCC also agrees that a more consistent global approach to the reporting of data reduces the complexity of reporting, which benefits the industry through streamlined operational and compliance burdens, lowering costs. DTCC, therefore, believes harmonization of derivatives reporting regulations among the North American regulators, CFTC, SEC and the Authorities, should continue to be a priority and strongly encourages the Authorities to develop their trade reporting requirements with this goal in mind.

¹ DTCC provides critical infrastructure to serve all participants in the financial industry, including investors, commercial end-users, broker-dealers, banks, insurance carriers, and mutual funds. DTCC operates as a cooperative that is owned collectively by its users and governed by a diverse Board of Directors. DTCC's governance structure includes more than 300 shareholders. DTCC operates five trade repositories in North America, Europe, the UK and Asia, serving multiple jurisdictions.

² DDR is designated or recognized in each Canadian province or territory to provide derivatives trade reporting to the Authorities.

³ We use the term “trade repository” throughout to refer to DDR in its capacity as a designated or recognized TR, provisionally registered swap data repository, registered security-based swap data repository or when referring generically to trade repositories.

⁴ Please note that we are not providing comments on proposed changes to MSC 91-507 related to the proposed changes to 91-506CP Derivatives: Product Determination referring to crypto assets as financial commodities not excluded from reporting. We anticipate further rulemaking or guidance clarifying the standards for reporting of crypto assets.

A. Critical Data Elements

Regulators around the world are now moving forward to adopt the critical data elements (“CDE”) recommended by the Data Harmonisation Committee of the Committee on Payments and Market Infrastructures (“CPMI”) and the International Organization of Securities Commissions (“IOSCO”). Uniformly implementing the jurisdictionally appropriate CDE will significantly improve data quality and allow for data amalgamation across jurisdictions for a more global view of the market.

To that end, requiring the use of a Legal Entity Identifier (“LEI”), Unique Transaction Identifier (“UTI”), and Unique Product Identifier (“UPI”) as assigned by the Derivatives Service Bureau, and removing ambiguous requirements (e.g., references to “any other details”) and nonprescriptive language related to data reporting requirements from the regulations drives harmonization, data quality and transparency. Regulators worldwide are advancing the use of these identifiers and other CDE. DTCC welcomes the opportunity to work with the Authorities to incorporate CDE consistently across Canada and in line with other jurisdictions globally by utilizing DTCC’s unique view into the efforts being made in multiple jurisdictions.

DTCC believes that, as a practical matter, data elements should be removed from Appendix A (or the relevant sections of the Proposed Amendments) and should only be included in the Technical Manuals. This approach would provide the Authorities with appropriate flexibility to add or remove data elements without new rulemaking or rule amendments, provided the industry is given sufficient lead time to incorporate any changes. Of equal importance, DTCC understands that the Authorities intend to review, with the industry and TRs outside of the rulemaking process, many of the details to be incorporated in the Technical Manuals including validation rules, formatting, and allowable values, before any changes are made to the Technical Manuals. DTCC has seen this approach work in other jurisdictions and strongly encourages such collaboration.⁵ As a result, DTCC will not be commenting in this letter on the Technical Manuals or the data elements listed in Appendix A. DTCC, however, will engage separately with the Authorities as we understand this is your intention.

B. Processing Standards

In addition to data elements, data processing standards would benefit from harmonization. In single-sided reporting jurisdictions, such as the CFTC and SEC, as well as Canada, it is accepted that the party with the reporting obligation (“reporting counterparty”) is responsible for verifying the accuracy of data reported, not the TR. The TR’s role is to provide the reporting counterparty with access to the information it needs to be able to verify the accuracy of or correct submitted data. This is a critical foundational element affecting the existing operational design of TRs—DDR can only engage with its participants.⁶ It is not possible to provide trade counterparties who are not participants with access to data. Therefore, the regulations must be precise that a TR’s duty is to provide “trade state” data access

⁵ When the CFTC issued the data elements in their rules, they did not include additional data elements TRs require to process the data. This omission resulted in a second document, the CFTC Guidebook (the “Guidebook for Parts 43 and 45 Swap Data Reporting and Public Dissemination Requirements”), that had to be issued to the TRs regarding what would be required for reporting for their processing needs, otherwise, the TR required elements would have had to go through a rule making process to add them to the CFTC rules. These steps can be avoided by coordination with the TRs as the rules are being drafted, however, taking the data elements outside of the rules and into the Technical Manuals (which firms are required by regulation to comply with) allows more flexibility to quickly address required elements that may be added or removed as necessary. DTCC engaged with the CFTC as well as the two other CFTC provisionally registered swap data repositories in collaborative efforts to fine tune the CFTC Technical Specifications bringing practical experience and industry knowledge to those efforts.

⁶ We are using the term “participant” as defined in the various Canadian rules to refer to onboarded users. See OSC Rule 91-507 1.(1) for example: “‘participant’ means a person or company that has entered into an agreement with a designated trade repository to access the services of the designated trade repository”.

to participants to enable them to verify the completeness and accuracy of data stored in the TR and reported to regulators.⁷

In this context, it is particularly important for the regulations applicable to TRs to avoid general references to “counterparties” without a corresponding limitation that such counterparties be “participants”. Such references suggest an obligation for TRs to engage with, or allow access to, parties who have not met the know-your-customer or other participant criteria, including agreeing to the contractual obligations required in order for a party to be onboarded.⁸ As currently drafted, Proposed Amendments 23 (formerly Rule 23(1)) requires TRs to provide access to “reporting counterparties” without the provision in deleted Rule 23(2) that access need only be provided to reporting counterparties that are participants. DTCC suggests reinstating Rule 23(2) amending it to read: “Despite subsection (1), a [designated/recognized] trade repository need only provide data access to the derivatives data it maintains to those who are participants of the trade repository.” This would allow for non-reporting counterparties who are participants to identify errors or omissions and communicate them to the reporting counterparty.

II. Data Correction

A. Non-publicly Reported Data Correction

Correction of non-publicly reported swap data as drafted in Proposed Amendments 14(2) requires that TRs accept corrections to all transactions, “including transactions that have expired or were otherwise terminated.”⁹ The Companion Policies state, “[t]he requirement in subsection 14(2) to accept corrections to errors or omissions in derivatives data applies after the expiration or termination of a transaction, subject to the record retention period under section 18.”¹⁰ DTCC suggests the current language in Proposed Amendments 14(2) that “[i]n accordance with subsection 18(2),” be removed and replaced by a new subsection 14.2(c) that mirrors the language of the Companion Policies. This change would make it clear that the duty to accept corrections for a transaction will cease upon the conclusion of the retention period.

DTCC suggests the Proposed Amendments clarify that the acceptance and processing of a correction does not extend the retention period for any record related to the corrected transaction, as retention is driven by the end date of a corrected transaction.

B. Publicly Reported Data Correction

The process for correction of publicly reported data, as drafted in Proposed Amendments 39(1)(b) and Proposed Amendments 39(3)(b), requires a TR to correct data reports previously published.¹¹ This

⁷ “Trade state” is not intended to refer to intra-day data status, but rather trade state data reflects the current state of a live trade as of the end of each day’s reporting cycle.

⁸ See Proposed Amendments 38(1). Please clarify by inserting “onboarded” before “counterparties,” or use the defined term “participant” which refers to onboarded counterparties, and see comments below on questions related to validation, verification and correction of derivatives data and requirement to correct errors. DDR agrees with the way Proposed Amendments 23 and 26.1(1) is drafted in this regard. Note, however, that existing rule 25(1)(c) in the Proposed Amendments continues to suggest that, in certain cases, both counterparty dealers must report and existing rule 25(1)(f) in the Proposed Amendments requires both counterparties to report. While DDR can support reporting by both counterparty dealers, it is at odds with simplifying reporting and a requirement that the counterparties agree who has the reporting obligation would solve for that.

⁹ See Proposed Amendments 14(2).

¹⁰ Id.

¹¹ See Proposed Amendments 39(1)(b) to OSC Rule 91-507, AMF Rule 91-507, MSC Rule 91-507 (“any corrections to data under paragraph (a) resulting from a correction to an error or omission in the derivatives data that is reported to it pursuant to this Rule as soon as technologically practicable after recording a correction to an error or omission in the derivatives data from a participant and in no event later than the time when periodic aggregate data is next made available to the public.”) and to MI 96-101 (“as soon as technologically practicable and in no event later than the time when the data under paragraph (a) is next made available to the public, make any corrections to data under paragraph (a) resulting from a correction to an error or omission in the derivatives data that is reported to it under this Instrument”),

differs from current processes, whereby reporting counterparties must submit corrections and those corrections are made available through the public dissemination of data in a timely fashion post receipt of such corrections. Currently, there is no process for recalculating and reissuing aggregate data and transaction level reports previously made public. Requiring such processes would add an extreme amount of complexity to a TR's systems, which introduces additional risk.

For example, if the notional amount of a trade was corrected, a TR would have to evaluate all previously received submissions for a given trade, determine if the notional was in fact updated at any point, then go back to all weekly reports the data was included in, recalculate, and republish the data for each impacted week. These challenges create additional risks to the integrity of the data and disrupt the present industry understanding that public aggregate reporting is based on data received in a given week (it is point in time data, not dynamic data). The negative impacts of an obligation to correct previously published data reports thus clearly outweigh any benefit provided and should be removed from the Proposed Amendments.

III. Aligning to PFMI

The stated purpose for the Proposed Amendments is to achieve global harmonization of data reporting standards, improve data quality, and allow regulators to identify risks.¹² Additional objectives stated by the Authorities include reducing regulatory burdens and aligning to North American standards. DTCC and DDR strongly support such goals. However, many of the Proposed Amendments, through seeking to align the Authorities' rules with the CPMI IOSCO Principles for Financial Market Infrastructures ("PFMI") even where inclusion of those principles introduces misalignment with other North American standards or may not be applicable to TRs in practice, undercut these goals.

It is understood that the Authorities considered some changes to, and omissions from, the PFMI necessary as they incorporated a principle into a rule.¹³ The Authorities correctly, in DTCC's opinion, viewed the PFMI as guidance. DTCC urges the Authorities to continue to adhere to that concept and, where appropriate, be prescriptive about how a TR complies with a principle; reject principles that do not address risks that the North American TRs experience; and look to conform with the other North American regulators in terms of which PFMI must be complied with and how.

A. Leveraging Practical Experience

The PFMI were published in 2012 before derivatives trade reporting began. As authorities in various jurisdictions issued derivatives reporting regulations, many, like the Authorities, incorporated elements of the PFMI directly into their regulations where comprehensive risk management and governance duties were expected to be necessary given the anticipated role of TRs. In the years since publication of the PFMI and subsequent incorporation into the derivatives reporting regulations, practical experience with derivatives trade reporting and understanding of the risks associated with TRs has greatly increased. As such, it would be appropriate for the PFMI to be revisited and any concerns, or required policies and procedures to address the concerns, be reviewed in the context of trade reporting as it has evolved over the last ten years.

Prior to any such PFMI reevaluation, authorities considering adoption of a principal in their regulations should leverage the practical experience gained over the years to balance anticipated benefit against

¹² See Press Release, Canadian Security Administrators, Canadian Securities Regulators Propose Changes to Enhance Derivatives Data Reporting (June 9, 2022) <https://www.securities-administrators.ca/news/canadian-securities-regulators-propose-changes-to-enhance-derivatives-data-reporting>.

¹³ See Committee on Payments and Market Infrastructures, Board of the International Organization of Securities Commissions, Implementation Monitoring of PFMI: Level 2 Assessment Report for Canada, 3 (August, 2018) <https://www.bis.org/cpmi/publ/d180.pdf>.

potential negative consequences. Specifically, authorities should evaluate the principle in the context of: (i) the practical risks for TRs, given the role of TRs in the financial markets; (ii) value to the industry; (iii) how adoption would impact alignment to other jurisdictions; and (iv) the extent to which the subject principle is already addressed in the broader supervisory framework. While some of the PFMI appear to be good business practices, their adoption should not be implemented without consideration of the burden imposed and recognition that regulators used the PFMI as guidance in their TR registration decisions and continue to use it in their ongoing broad TR inspection and examination authority.

DDR has been reporting derivatives for a decade to the CFTC and for eight years in Canada under the existing rules. Amendments to improve reporting are certainly welcomed. However, amendments to conform to the PFMI where no critical need or risk has been identified should be avoided, as such actions can impose increased compliance burdens and costs on TRs that far exceed the risks TRs pose to financial markets. For example, requiring TRs to create, maintain, test, and file new policies and procedures with the Authorities to address an area where such policies and procedures have not been deemed necessary in the past 8-10 years of reporting and operating a TR represents a significant additional burden without proportionate benefit.

In addition, as the PFMI have not been adopted globally, or even in North America, the incorporation of the PFMI in the Proposed Amendments would increase inconsistency between regulatory standards. Such a result would be in direct conflict with the stated goal of harmonizing regulatory standards. This would have significant downstream impacts on TRs. DDR, for instance, would need to perform an analysis, and maintain ongoing analyses, of the resulting inconsistencies between North American jurisdictions to determine the cost of compliance, including any additional unanticipated technology development necessary to meet the new requirements and address the regulatory conflicts.¹⁴

B. Relevance of Indirect Participation to a Trade Repository

A PFMI concept added in the Proposed Amendments involves indirect participation in a TR (links and tiered participation arrangements) and would require a TR to establish policies and procedures to specifically identify and manage risks from linked relationships, indirect participants, and tiered relationships.¹⁵ As further described below, DDR believes these Proposed Amendments should be removed as they do not address a critical need or risk sufficient to justify the creation of new areas of regulatory misalignment in North America or the imposition of new compliance burdens and costs on TRs.

Indirect participation does not introduce risk to DDR. DDR has a direct contractual relationship with its participants who are submitting required data for reporting to regulators. DDR protects itself legally by having a robust contractual relationship and incorporating rules in a rulebook¹⁶ to which participants must comply. DDR protects itself further operationally by requiring secure connectivity. Any participant caused reporting failure is a risk for the reporting counterparty, not DDR (DDR takes responsibility for any internal issues at DDR that could prevent timely reporting and identifies those to affected participants and to the regulators as part of its incident management process).

In addition, given a TR's role in the market, imposition of this principle is unnecessary to address risk in the financial markets. DDR does not engage in the financial markets as would a clearing agency. Trade reporting through a TR is a post-trade activity and, therefore, does not introduce risk to the derivatives trading markets. There is no direct market consequence upon a disruption in reporting, particularly given

¹⁴ To the extent that the regulations within Canadian jurisdictions are not aligned adds further complexity to this exercise.

¹⁵ See Proposed Amendments 24.1.

¹⁶ The required User Agreement and Rulebook are available publicly on DDR's website.

that publicly reported data in Canada is disseminated 48 hours later, not in real time. In contrast to central counterparty and clearing agency disruptions, the trading and settling of derivatives are not impacted by any failure in the trade reporting process.

The Proposed Amendments differ from the PFMI's slightly with respect to what is a link and linked entities. The PFMI's define a link as "a set of contractual and operational arrangements between two or more FMIs that connect the FMIs directly or through an intermediary."¹⁷ The Proposed Amendments, in adding rule 24.1(1), define a "link" as a contractual and operational arrangement that, directly or indirectly through an intermediary, connects a system of a trade repository with at least a system operated by another person or company for the acceptance, retention, use, disclosure or provision of access to derivatives data." The proposed definition expands the reach of links from other FMIs to any contractual or technical relationship that a TR might have. This expanded definition would seem to be unnecessary as it covers areas already covered by the current rules, specifically rule 24 (Outsourcing) and rule 21(1) (System and other operational risk) as well as rules related to a participant. In the case of a clearing agency, which is an FMI, the clearing agency only connects to the TR for reporting purposes, separate and apart from its clearing functions, and onboards to a TR for reporting purposes just like any other participant. The definition of link is too broad in the Proposed Amendments and, in any case, does not present a risk to TRs that is not already managed under other rules.¹⁸

The concept of a Tiered Relationship is similarly not specifically relevant to material risks encountered or caused by TRs. While TRs may receive large volumes of data from third party reporting services, electronic trading platforms, vendors who provide reporting counterparties with compression services or derivative clearing houses, the potential failure of a link to one of those entities poses no risk to a TR. However, there is risk to the reporting counterparties who may choose to use one of these services and, therefore, the corresponding burden is on the reporting counterparty who uses one of these services. The TR's duty is to have systems in place to accept data and report the data to the regulator. DDR has multiple transmission methods available, including MQ file transfers, Secure File Transfer Protocol, and GUI based submissions, further minimizing connectivity risk for various types of submitters.

The failure of a TR to be able to accept data from a linked participant would fall within the parameters of a technical failure under rules 21 and 24. TRs engage with trading platforms post trade and do not provide such platforms with information needed for platforms to provide their services. Similarly, TRs only engage clearing agencies post the clearing process. TRs do not play any role in providing data to clearing agencies to facilitate clearing. Nor are TRs involved in compression services. Thus, the failure of a TR to be able to receive data, process it and report it to the regulator, will have no financial impact on trading platforms or clearing houses or vendors of compression services. Nor are the activities of these types of FMIs involved in the operations of a TR's reporting services. TRs are the receivers of data once the data has gone through one of these services.

Given a TRs role in a single sided reporting jurisdiction, requiring the establishment of policies and procedures to specifically identify and manage linked relationships, indirect participants and tiered relationships will not address a critical need or risk sufficient to justify the creation of new areas of regulatory misalignment in North America or the imposition of new compliance burdens on TRs.

¹⁷ Committee on Payment and Settlement Systems, Technical Committee of the International Organization of Securities Commissions, Principles for financial market infrastructures, 109 (April 2012) <https://www.bis.org/cpmi/publ/d101a.pdf>.

¹⁸ In fact, the definition is so broad that it captures links a regulator may have to access data or reports from the TR.

C. Sufficiency of Existing Framework

Proposed Amendments 14.1 Operational efficiency and effectiveness. Proposed Amendments 14.1 imposes increased compliance burdens and costs on TRs where no critical need is present. Prior to designation/recognition as a TR, the Authorities evaluated the TR against the requirements set forth in Proposed Amendments 14.1 in connection with the TR's application.¹⁹ On a going forward basis, market competition demands that a TR meet the needs of its participants by providing their services in a secure, efficient, and effective manner or TRs would go out of business. In addition, these items are subject to ongoing evaluation via the Authorities' broad inspection and examination authority. As competitive market pressures, existing rules, and inspection and examination authority are sufficient to address efficiency and effectiveness of TR operations, the requirements in proposed Amendments 14.1 impose increased compliance burdens and costs on TR where there is no sufficient need.

Proposed Amendments 20(7) Capital plan. Nearly all regulations, and specifically those applicable in North America, include governance provisions to ensure the ability of a TR to address general business risks. Governance requirements and obligations regarding monitoring risks, maintaining assets to address identified risks, and establishing a wind-down plan are already in the Canadian regulations. The Proposed Amendments add a requirement only applicable in Canada that DDR maintain a plan, approved by the board, for raising additional equity when existing equity falls close to or below six months of operating expenses.²⁰

This proposal, and the original underlying PFMI key consideration, assumes that a TR operates as an independent and autonomous legal entity. In DDR's case, DDR is a privately owned subsidiary of a larger corporate organization, DTCC. The DTCC board oversees the corporation's financial and capital matters for its group of companies. As a subsidiary, DDR would not independently raise additional equity. Any DDR capital need would be escalated by management through the DDR board up to the DTCC board to determine the most appropriate financial strategy at that time to address the issue. DDR, therefore, could not comply with this Proposed Amendments and recommends that it not be adopted. If the existing regulations are deemed insufficient to address business risk,²¹ then, as an alternative, DDR recommends modifying Proposed Amendments 20(7) to require the TR to establish board governance provisions placing the responsibility on the TR board for reviewing the TR's financial status, including addressing the need for additional equity should liquid assets fall close to or below the requirements of rule 20(3). This provides flexibility for the manner in which a TR, no matter its corporate structure, funds capital requirements.

DTCC has no objection to a requirement that it review its costs and pricing structures as that is being done as a good business practice in any case.

Proposed Amendments 17 Disclosure. Existing Canadian rule 17 describes the matters that must be publicly disclosed.²² The CFTC also explicitly defines the matters it considers relevant to be made public (and, therefore, required) in a disclosure document.²³ DDR publicly discloses its Rulebook, describing rules necessary for its participants to understand and follow in order to report through DDR; a Disclosure Document covering services, access, connectivity, system safeguards, privacy and confidentiality policies; policies related to the non-commercial or commercial use of data; dispute resolution; fees; and governance arrangements. However, the Companion Policies further elaborate that

¹⁹ See Companion Policies regarding Trade repository initial filing of information and designation.

²⁰ Proposed Amendments 20(7).

²¹ It should be noted by the Authorities that they receive quarterly financial statements as required by DDR's registration orders. This provides the Authorities with transparency into DDR's financial condition as a further oversight control.

²² See Section 17 of each of: OSC Rule 91-507, AMF Rule 91-507, MSC Rule 91-507 and Rule MI 96-101.

²³ 17 CFR § 49.26 (2020).

while the Authorities apply the PFMI as part of their oversight, they expect a TR to create a disclosure document revealing its responses to the CPMI IOSCO report, “Disclosure framework for financial market infrastructures.” This requirement would subject TRs to additional costs and new burdens. As existing public documentation and oversight authority already sufficiently address this area, there is no critical need to impose these additional burdens and costs.

Proposed Amendments Business Continuity and Disaster Recovery. The Proposed Amendments continue to refer to a timely recovery in the event of a disruption. DTCC supports the Authorities approach of requiring TRs to have policies and procedures in place to achieve a “timely” recovery. This allows the Authorities to exercise their supervisory powers to examine how a TR designs its systems to achieve recovery in a time period that is relevant to the TRs’ reporting responsibilities and impact to the market. This is one area where the benefit of several years’ experience of trade reporting and its attendant risks is particularly useful and should inform the Authorities approach to the Proposed Amendments (and could inform a reassessment of the PFMI at a future date).

DTCC has operated for years on the basis that its TR business operates with a four hour recovery time objective. This is consistent for all DTCC operated TRs in all jurisdictions and, specifically, is the same for all of North America.²⁴ DTCC sets the recovery time for its systems based upon numerous factors including risk and harm to DTCC, as well as the users and markets it serves. Based on this assessment, TR systems have been categorized with a four hour recovery objective.

However, the Companion Policies to the Proposed Amendments continue to refer to a two hour recovery time objective (the same as would be necessary for a systemically important financial market utility such as a clearing agency). Disruption of TR services do not impact the market or introduce the risks that a failure or system disruption of a clearing agency would and should not be held to the same standard as a clearing agency. While DDR’s four hour recovery time is not the recovery time stipulated in PFMI 17, key consideration 6, four hour recovery for the TRs has been accepted by the regulators of all of DTCC’s TRs outside of Canada and we respectfully request that the Companion Policies align with this global approach.

Proposed Amendments 8(1) and 8(3) Publication of governance. DDR publishes a Governance document on its website and updates it periodically to address any changes. The document includes information regarding board mission, nominations, identity of directors, committees and which directors are on them, and independent perspective. This information has been available during the entire period DDR has provided reporting in Canada.

Proposed Amendments 8(1) combined with the requirement in 8(3) to make the governance arrangements publicly available, introduces potential risk to TRs. Risk management frameworks and risk tolerances (of which there are many, depending on the risks being assessed) could expose TRs to hacking or other strategies to infiltrate the security systems based on vulnerabilities identified in such documents. While DDR’s organizational structure and key staff positions are identified publicly, DDR would not put such individuals at the risk of being made a target by specifying their accountability and responsibilities. The potential value to market participants and whether such information would truly be useful in their decision regarding which TR to use has to be weighed against the risks posed by publication of this type of information. Knowing that TRs are subject to extensive regulation, exam and oversight, and must comply with regulatorily mandated risk management and security requirements appears to have been sufficient information for market participants to have made their decisions regarding use of a TR such that these Proposed Amendments are not justified.

²⁴ In its application for recognition and designation in Canada, DDR in Exhibit G, and for registration with the CFTC in Exhibit W, clearly states its recovery time objective of four hours. The SEC did not require such information as part of its application process.

Proposed Amendments 7 Conflicts of laws across jurisdictions. The Proposed Amendments introduce a requirement for TRs to create policies and procedures to identify and mitigate any risks arising from any potential conflict of laws across jurisdictions. DDR's membership documents are based on New York ("NY") law, include an agreement that the laws of the state of New York govern the agreement and provide that no effect is given to NY's conflict of laws provisions to ensure that there is no ambiguity that NY law applies. These terms have always been in DDR's customer documentation and were submitted as part of DDR's application for registration to be recognized or designated as a TR in Canadian jurisdictions.

As conflict of laws issues have been addressed contractually, the addition of a requirement to create policies and procedures to identify and mitigate any risks arising from any potential conflict of laws across jurisdictions represents an unnecessary burden. Furthermore, DDR provides its services by jurisdiction (with all of Canada as one jurisdiction) and should there be a challenge to its legal authority to provide services under a particular jurisdiction, DDR would continue to provide them in the other jurisdictions where it is registered.

Specific questions where comment is being sought are consolidated below:

Harmonization with global standards

[OSC, AMF, MSC] Please provide your comments on whether you anticipate that the changes to the data field requirements and the corresponding [OSC, AMF, MSC] Derivatives Data Technical Manual will reduce regulatory burden and increase efficiency and clarity when meeting trade reporting requirements.

[CSA 7] In order to harmonize with global standards, we have updated the required data elements for reporting counterparties, as set out in Appendix A to the Trade Reporting Rule. To provide further detail regarding formats for the data elements, we have created a new Manual, as set out in Appendix A to the Trade Reporting CP. Please provide any comments regarding the data elements, the Manual and whether the updates would reduce regulatory burden. We also invite comments on the data elements pertaining to commodity derivatives, while noting that international guidance on such data elements is still being developed.

[DTCC] To the extent the Technical Manuals align to the CFTC's Technical Specifications wherever data elements are in common, this is an excellent step in harmonizing data and reducing regulatory burden on reporting counterparties and TRs. Every effort should be made to mirror the CDE and limit the number of non-CDE fields that are unique to Canadian reporting. In this way, both reporting counterparties and TRs can build their reporting systems with common rules reducing cost, increasing data quality, and allowing for amalgamation of trade data across jurisdictions.

Please refer to comments above about the advantage of not including CDE in the regulations themselves but keeping them in a Technical Manual that can be easily updated. Also please see our statements above concerning specific data element comments.

Reporting hierarchy

[OSC] Do you support adopting the hierarchy in the Proposed Trade Reporting Amendments (as set out in Annexes A and B) or the alternative hierarchy as set out in Annex E?

[MSC, CSA 4] Reporting hierarchy and potential issues with reporting hierarchy under OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting (the Ontario TR Rule). Does the hierarchy enunciated in section 25 for determining the reporting counterparty achieve efficiency in reporting and place the reporting obligations on the entities that are practically able and best situated to do the reporting? We invite comments on the differences in the reporting counterparty hierarchy among the various CSA jurisdictions and how these differences affect market participants.

[DTCC] While we have no comment on the hierarchy in the Proposed Amendments or the alternative hierarchy, DDR does believe that, generally, having to maintain differing reporting rules based upon jurisdictions within Canada may cause extreme burden on reporting counterparties.

[CSA 4 cont.] We note that section 25 of the Ontario TR Rule does not include a provision similar to paragraph 25(2)(c) of the Trade Reporting Rule. Paragraph 25(2)(c) provides that counterparties to a derivative that are either both derivatives dealers or both not derivatives dealers can agree, in writing, about which counterparty will be the reporting counterparty. Under the Ontario TR Rule, if each counterparty to a derivative is a derivatives dealer and one counterparty to a derivative is not a party to the “ISDA Multilateral” each counterparty would be required to be a reporting counterparty.

[DTCC] This proposal continues to allow dual sided reporting while other requirements typical of dual sided reporting have not been proposed (such as matching and pairing to ensure accurate reporting). Given that reporting in North American has traditionally been single-sided, with parties identifying the reporting counterparty, when necessary, DDR recommends dual reporting be removed from the Proposed Amendments.

[CSA 4 cont.] The OSC has developed a potential alternative reporting hierarchy, set out in Annex E to the OSC Notice and Request for Comment dated June 9, 2022, which reduces the need for delegated reporting between derivatives dealers. Please provide any comments on whether you consider the alternative hierarchy to function better for local market participants trading with Ontario counterparties, particularly in comparison with the functioning of the MI 96-101 hierarchy.

[DTCC] DDR believes the existing single-sided reporting regime in North America has been successful for a number of years and does not need to be altered. Alignment to existing CFTC requirements for identifying who the reporting counterparty should be creates uniformity among the North America reporting regimes and consistency with the way reporting has been done historically.

Data accuracy

[OSC, AMF, MSC] Is it necessary for a trade repository to implement policies and procedures to enable all reporting counterparties to ensure that all reported derivatives data is accurate and contains no misrepresentation, or is providing access to such counterparties sufficient to enable them to fulfill this requirement?

[CSA 2] Framework for validation, verification and correction of derivatives data
We have set out a new framework for validation, verification and correction of derivatives data. Please provide any comments regarding the proposed requirements. Is it necessary for a trade

repository to implement policies and procedures to enable reporting counterparties to ensure that reported derivatives data is accurate and contains no misrepresentation, or is providing data access to such counterparties sufficient to enable them to fulfill this requirement?

[DTCC] There is no need for TRs to have policies and procedures to enable reporting counterparties to ensure that reported derivatives data is accurate and contains no misrepresentation. If the responsibility for ensuring accuracy is placed upon the reporting counterparties explicitly in the rules and there is a requirement that TRs provide access to the TR data, then additional policies and procedures are unnecessary. There should be a requirement that TRs provide access to trade state data to participants to enable them to verify the completeness and accuracy of the data that is stored in the TR and subsequently reported to regulators.

Please see additional comments in our letter above regarding clarification that a TR will only provide access to its onboarded users which are “participants” under Canadian rules.

Maintenance and renewal of LEIs

[OSC, AMF] We are interested to receive comments from market participants regarding any potential steps that could be taken to improve the maintenance and renewal of LEIs of non-reporting counterparties.

[MSC, CSA 9] Maintenance and renewal of LEIs

The Proposed Amendments require a local counterparty under section 28 [Legal entity identifiers] to maintain and renew its LEI. However, we have identified instances where non-reporting local counterparties are not maintaining and renewing their LEIs, as required. As a result, the LEIs lapse and the information associated with them is no longer current, which reduces the efficiency of the LEI system. While we do not currently expect reporting counterparties to verify the maintenance and renewal of LEIs of their counterparties, we invite comments from market participants regarding any potential steps that could be taken to improve the maintenance and renewal of LEIs of non-reporting counterparties.

[DTCC] We recommend discussing the role a TR should play in the use of LEIs during our meetings on the Technical Manuals as part of our review of the validation rules.

Additional CSA only questions:

1) Reporting deadline for “end-users”

The deadline of the next business day for reporting derivatives data to a trade repository applies to reporting counterparties whether they are derivatives dealers or end-users. In contrast, we note that the finalized amendments to CFTC Regulation Part 45 allow for reporting by end-users by T + 2 following the execution date. Do market participants anticipate compliance issues regarding the proposed shorter time frame? Please provide reasons.

[DTCC] No comment.

3) Timing of implementation

We anticipate that the implementation date for the Proposed Instrument will be in 2024. Does the proposed implementation timing pose any particular problems for market participants, particularly with regard to implementation of other global trade reporting changes?

[DTCC] DDR recommends avoiding compliance periods where other global regulators are implementing large scale rule changes, allowing at least a three-month buffer between other implementation periods, and aligning where possible with planned changes in North America. DDR also recommends considering a bifurcated implementation, one for the adoption of the Technical Manuals to cover CDE and one for the adoption of an ISO 20022 reporting requirement. DDR looks forward to having more detailed conversations with the Authorities regarding potential implementation dates.

5) Reporting collateral and margin data

The new requirement to report collateral and margin data is consistent with the current ESMA requirements and the new CFTC rules. Are the collateral and margin data reporting requirements and elements capable of being complied with in an efficient manner?

[DTCC] DTCC strongly supports the harmonization of collateral and margin data requirements as part of the overall global harmonization that is necessary to achieve maximum benefit from reporting worldwide.

6) Hierarchy for generating UTIs

Under new subsection 29(1), a new hierarchy has been set out for responsibility for generating UTIs. Does the proposed hierarchy match the practicalities of UTI generation? We have included a new provision for cross-jurisdictional derivatives, such that if a derivative is also reportable to one or more other jurisdictions with a regulatory reporting deadline earlier than under the Instrument, the derivative should be identified in all reporting with the same UTI that was generated according to the rules of the jurisdiction with the earliest regulatory reporting deadline. Please provide any comments on the practicality of this cross-jurisdictional provision.

[DTCC] DTCC believes any hierarchy for generating UTIs should exist prior to reporting to TRs. In the unlikely event the generation of a UTI becomes the responsibility of the TR, however, DDR will continue to generate UTIs at participants' requests, which allows participants to add the UTI to their messages for submission. DTCC would also like to recommend that any hierarchy rule should clearly require only one party to the trade to generate the UTI.

8) Requirement to correct errors relating to closed derivatives

The requirement to correct errors applies to derivatives that are no longer open, as long as the record retention period for the derivative has not expired at the time the error is discovered, while the verification requirements only apply to open derivatives. Please provide any comments regarding the practicability of these proposed requirements, which are consistent with the analogous requirements in the finalized amendments to CFTC Regulation Part 45.

[DTCC] DTCC agrees with this requirement and the alignment to CFTC regulations. This method places the appropriate responsibility on the TRs to provide access to the necessary data

and requires the party with the best knowledge of the transaction to reconcile the data. Please see our comments above concerning the need to limit TRs obligations regarding data access to participants (onboarded users) only.

Conclusion

DTCC appreciates the opportunity to comment on the Commission's Proposed Rules and provide the information set forth above. Should the Commission wish to discuss these comments further, please contact Chris Childs at +212 855-2331 or cchilds@dtcc.com or Kate Delp at +212 855-4760 or kdelp@dtcc.com.

Sincerely yours,

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