

# CANADIAN OVER-THE-COUNTER DERIVATIVES TRANSACTION REPORTING REQUIREMENTS

## COMMENCING OCTOBER 31, 2014 FREQUENTLY ASKED QUESTIONS

Reform of “over the counter” (“OTC”) derivatives markets was mandated by G20 nations in 2009. As part of this reform, G20 nations pledged to require market participants to report the details of their OTC derivative transactions to designated trade repositories. The U.S. and E.U. have already implemented OTC derivative trade reporting regulations and Canada and other G20 nations are following suit.

Common examples of OTC derivatives include foreign exchange (FX) swaps, FX options, FX forwards, interest rate swaps, as well as certain commodity swaps and options. Spot FX transactions, where there is intent to take delivery in the referenced contract currency within two days, or longer if paired with a related securities transaction, are not OTC derivatives.

Key concepts for OTC derivative transaction reporting are provided in the FAQs below.<sup>i</sup>

Q.	<i>What are the new reporting requirements?</i>
A.	All OTC derivative transactions existing on or after October 31, 2014 and involving at least one “local counterparty” in Ontario, Manitoba or Quebec must be reported to a designated trade repository. <sup>ii</sup>
Q.	<i>What is a “local counterparty”?</i>
A.	A “local counterparty” for Ontario, Manitoba or Quebec includes an entity (other than an individual) <ul style="list-style-type: none"><li>(i) organized under the laws of the province,</li><li>(ii) having its head office or principal place of business in the province,</li></ul> an affiliate of an entity described in (i) or (ii) where the entity in (i) or (ii) has guaranteed all / substantially all of the liabilities of the affiliate
Q.	<i>When do the reporting obligations take effect?</i>
A.	Derivatives dealers in Ontario, Quebec and Manitoba are required to report OTC derivative transactions to a provincially-recognized trade repository starting October 31, 2014.  Transactions with dealers entered into before October 31, 2014 and that were outstanding on that day must be reported by April 30, 2015.

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Q.	<i>Will BMO report my OTC derivatives transactions with BMO to a designated trade repository?</i>
A.	Yes, BMO intends to begin reporting all of its OTC derivative transactions to designated trade repositories starting October 31, 2014. Some limited exceptions may apply. For example (i) where a derivative transaction is cleared through a central counterparty, the central counterparty is generally required to report the trade; and (ii) when two derivatives dealers transact with each other, each has an obligation to report, but they may agree on which dealer will report.
Q.	<i>If BMO reports my OTC derivatives transactions, do I have any further Canadian reporting obligations?</i>
A.	<p>No. If you are not a CFTC-registered swap dealer or a derivatives dealer and BMO reports your OTC derivative transactions to a trade repository recognized by your provincial jurisdiction (if applicable), you will have no further Canadian reporting obligation regarding your trades with BMO.</p> <p><b>The information and documentation required from you to allow us to report your OTC derivative transactions is outlined further below.</b></p> <p>You should consult with your legal advisors if you have any questions concerning your reporting obligations.</p>
Q	<i>What do I need to do to facilitate BMO's reporting of my OTC derivative transactions to a designated trade repository?</i>
A.	<p>To allow BMO to report your OTC derivatives transactions accurately, we need some information from you:</p> <ul style="list-style-type: none"> <li>➤ We need to know the provinces in which you are considered to be a "local counterparty".</li> <li>➤ We need you to provide us with your "Legal Entity Identifier" (LEI). We provide information below on how to obtain an LEI from the GMEI Utility.</li> </ul> <p>This and other information can be provided to us by completing the "ISDA Canadian TR Representation Letter No. 1" on the "ISDA Amend" web portal (an electronic document exchange facility) and granting BMO access to your representations.</p> <p>ISDA Amend is a free service to non-swap dealers where users can log on to Markit's website and register themselves and their firms. They will receive a username and password via email and be contacted by Markit Operations team to begin the on-boarding process.</p> <p>Register for ISDA Amend <a href="#">here</a></p>
Q.	<i>Do you require the above information from non-Canadian entities?</i>
A.	Yes. We need you to provide us with the information even if your entity is organized outside Canada or if you are located outside Canada. When you complete the information on the ISDA Amend web portal, there will be an

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	opportunity to indicate that you are not a Canadian entity.
Q.	<i>How do I answer the questions in the “ISDA Canadian TR Representation Letter No. 1” using the ISDA Amend web portal?</i>
A.	Attached as Schedule A to this FAQ document are some helpful tips for completing ISDA Canadian TR Representation Letter No. 1. on the “ISDA Amend” web portal.
Q.	<i>How do I obtain an LEI?</i>
A.	<p>You can obtain an LEI by visiting Global Markets Entity Identifier (GMEI) Utility which currently manages the most registrations globally. The registration process is performed entirely online through <a href="https://www.gmeiutility.org/">https://www.gmeiutility.org/</a></p> <p>The cost is an initial registration fee of USD \$200 payable by credit card, and an annual maintenance fee of USD \$100.</p> <p>A guide to the GMEI Utility registration process is available <a href="#">here</a></p>
Q.	<i>Where can I get more information about Canadian OTC derivative transaction reporting requirements?</i>
A.	The websites listed below provide helpful information about the Canadian OTC derivative transaction reporting requirements.

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Ontario:

[http://www.osc.gov.on.ca/en/Derivatives\\_index.htm](http://www.osc.gov.on.ca/en/Derivatives_index.htm)

Quebec:

<http://www.lautorite.qc.ca/en/regulation-derivatives-pro.html>

Manitoba:

MSC Rule 91-506: [http://www.msc.gov.mb.ca/legal\\_docs/legislation/rules/91\\_506\\_msc\\_2013\\_36.pdf](http://www.msc.gov.mb.ca/legal_docs/legislation/rules/91_506_msc_2013_36.pdf)

MSC Rule 91-507: [http://www.msc.gov.mb.ca/legal\\_docs/legislation/rules/91\\_507\\_msc\\_2013\\_37.pdf](http://www.msc.gov.mb.ca/legal_docs/legislation/rules/91_507_msc_2013_37.pdf)

Notice of rule implementation delay: [http://www.msc.gov.mb.ca/legal\\_docs/legislation/notices/2013\\_49\\_package.pdf](http://www.msc.gov.mb.ca/legal_docs/legislation/notices/2013_49_package.pdf)

ISDA Resources, Canada Page: <http://www2.isda.org/regions/canada/>

ISDA Amend web portal: <http://www.markit.com/Product/ISDA-Amend>

i This material is a general summary for informational purposes only and not for purposes of providing legal advice. Please consult with your own legal advisors regarding the impact of these rules on your OTC derivatives activities. BMO has no obligation to update this material, does not guarantee its accuracy or completeness, and disclaims all liability relating to this material.

ii Provincial regulators may also require some exchange traded derivative transactions to be reported (for example, transactions conducted on foreign/unrecognized exchanges). Provincial regulators are expected to provide guidance on these requirements from time to time.

**SCHEDULE A**

The comments below represent our understanding of how many end-user OTC derivatives market participants (other than CFTC registered swap dealers or derivatives dealers) may want to respond to the questions contained in ISDA Canadian TR Representation Letter No. 1. Whether the responses are appropriate for you will depend on your own circumstances and the information below should not be considered to be, or construed as, legal advice. You should consult with your own legal advisors if you have any questions on how to complete ISDA Canadian TR Representation Letter No. 1.

1. Part I, section 1 of ISDA Canadian TR Representation Letter No. 1 asks you to identify whether or not you are a “Canadian Person”. For this purposes the term “Canadian Person” is defined in the definition section of the representation letter.
2. Part I, section 2 of the ISDA Canadian TR Representation Letter No. 1 asks you to represent whether or not you are a “registered Dealer”. Organizations that only enter into OTC derivatives transactions for purposes of hedging their own risks typically would not register as dealers. You should consult your legal advisors if you are uncertain as to whether this category applies to you.
3. Part II of ISDA Canadian TR Representation Letter No. 1 applies on a jurisdiction-by-jurisdiction basis. The section asks whether you are affiliated to a Canadian Person in a particular Canadian jurisdiction that is generally responsible for your liabilities (e.g. by way of a guarantee or conduit structure). The following examples illustrate how this representation may apply:

*Example A.* Company X is not a Canadian Person (it is a US company), but all of its obligations are guaranteed by Company Y, its 100% owned subsidiary. Company Y is a Canadian Person in Alberta and Ontario (by reason of Company Y having its head office in Alberta and its principal place of business in Ontario). On these facts, Company X would select Alberta and Ontario from the list of Canadian jurisdictions in paragraph (B) of Part II of ISDA Canadian TR Representation Letter No. 1.

*Example B.* Company Q is a Canadian Person in Quebec. Company Q is an affiliate of Company B, a Canadian Person in British Columbia. Company B guarantees all of Company Q’s obligations. On these facts, Company Q would select British Columbia from the list of Canadian jurisdictions in paragraph (B) of Part II of ISDA Canadian TR Representation Letter No. 1.

*Example C.* Partnership UK is a general partnership based in Scotland. Company S is a Canadian Person in Saskatchewan and is a general partner of Partnership UK. On these facts Partnership UK would select Saskatchewan from the list of Canadian jurisdictions in paragraph (B) of Part II of ISDA Canadian TR Representation Letter No. 1.

*Example D.* Company N is a Nova Scotia Unlimited Liability Company whose shares are 100% owned by Company M, a Canadian Person in Manitoba. On these facts, Company N would select Manitoba from the list of Canadian jurisdictions in paragraph (B) of Part II of ISDA Canadian TR Representation Letter No. 1.

4. Part III of ISDA Canadian TR Representation Letter No. 1 allows you to consent to “all reporting requirements” (as described in that section). To avoid receiving repeat requests for consent to report OTC derivative transactions in multiple jurisdictions (eg, the US, the UK, APAC) we ask that you provide your consent by selecting “All Reporting Requirements”. We are under an obligation to report all of our OTC derivative transactions. If we do not receive your consent to report our transactions with you, we may be required to cease transacting with you.
5. Part IV of ISDA Canadian TR Representation Letter No. 1 applies only if you are a dealer or if you want to be treated as a dealer. We don’t expect many (if any) non-dealer firms would want to elect to be treated as a dealer, as this could impose additional reporting obligations. You should consult with your legal advisors if you want to consider this matter further.
6. Part V of ISDA Canadian TR Representation Letter No. 1 provides elections for purposes of determining who will report OTC derivative transactions to Canadian designated trade repositories. We don’t expect many (if any) non-

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dealer firms would want to elect to be treated as a dealer for reporting purposes. If you are not a swap dealer or derivative dealer and you want to rely on BMO to report the OTC derivative trades between your organization and BMO, you should select (B) in Part V of ISDA Canadian TR Representation Letter No. 1.

7. The execution section of ISDA Canadian TR Representation Letter No. 1 allows you to provide us with your organization's Legal Entity Identifier ("LEI") and a contact email address. We ask that you complete this information for purposes of complying with the reporting rules.