

# Torys on Corporate and Capital Markets

C&CM 2011-7

July 4, 2011

## Canadian Securities Administrators Proposes Mandatory Reporting of OTC Derivatives Trades

By [Patricia Koval](#)

On June 23, 2011, the Canadian Securities Administrators released CSA Consultation Paper 91-402, the first in a series of eight proposed public consultation papers relating to the proposed sweeping regulatory reform of the Canadian over-the-counter (OTC) derivatives market. It is widely believed that lack of market data and transparency in the global OTC derivatives markets severely exacerbated the recent global financial crisis; accordingly, the CSA has focused initially on proposals to require reporting of OTC derivatives transactions to approved trade repositories. In this manner, the CSA contemplates that information will be made available to regulators and, in some cases, the public, to mitigate systemic risk and promote financial stability in the financial system.

### What Must Be Reported

The CSA proposes that all OTC derivative transactions, however transacted (including newly executed derivatives and post-execution events such as full or partial novations or unwinds, as well as certain transactions existing when the reporting requirement comes into effect), would be required to be reported to a trade repository that is established and approved under the framework proposed by the CSA. The following data must be reported for transactions executed after the reporting requirement is implemented:

- **Creation data:** the principal economic terms of the transaction (including the counterparties, the type of transaction, underlying reference, notional amounts, price, execution and termination date), as well as executed legal documentation (i.e., the confirmation).
- **Continuation data:** data that reflect changes in contract terms or counterparty positions. Life cycle data must be reported in respect of credit derivatives and some types of equity derivatives, and snapshot data must be reported for all other types of derivatives, including interest rate, commodity and currency derivatives. "Life cycle data" refers to data necessary to fully report any event that would result in a change to previously reported data, including to report scheduled or anticipated events occurring during the life time of a derivative that do not result in a change to the contractual terms. "Snapshot data" refers to data elements necessary to provide a snapshot view on a daily basis of all the principal economic terms of the derivative, including any changes from the previous day.
- **Valuation data:** daily updated market values of transactions and positions (including mark-to-market values, collateral and margin values).

The CSA contemplates that, other than for block trades, real-time reporting will be required, subject to market participants being able to adopt the required technology to

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facilitate this. Subject to further study in this regard, the CSA is recommending that reports be submitted by the end of business on the next working day after a transaction is executed unless and until real-time reporting is implemented.

In the case of block trades, the CSA recognizes that real-time reporting runs the potential danger of allowing market participants to determine the identity of the counterparties to a trade; this, in turn, could make hedging the risks of a large transaction more difficult and expensive as market participants anticipate the parties' hedging requirements and adjust pricing accordingly. Subject to determining an appropriate threshold to define a block trade, the CSA will permit delayed reporting to preserve the anonymity of the counterparties.

The CSA proposes that OTC derivatives transactions already existing on the date the mandatory reporting rule is implemented (other than those terminating or expiring within one year thereafter) be reported within 180 days of that date. The information to be reported would include the principal economic terms, including the date of the transaction and the identity of the parties, but not the actual trade confirmations.

Canadian participants in the OTC derivatives market who transact in the U.S. market will be subject to similar requirements, both in terms of reporting content and timing, with respect to those transactions under rules currently being developed by U.S. regulators.

## Who Must Report

The CSA proposes that one counterparty to each OTC derivative transaction must report; generally parties who are "financial intermediaries" (a term to be defined by the CSA in an upcoming consultation paper focused on registration) will bear this responsibility. In practice, if both parties to a trade are financial intermediaries, the parties could choose which one will report; similarly, if neither party to the transaction is a financial intermediary (i.e., both are end-users) the parties could choose which party will report. The CSA will permit delegation to a third party in certain circumstances, including to a recognized central counterparty clearing house for centrally cleared transactions. Records for all transactions must be maintained by counterparties for seven years from the date on which the transaction expires or terminates.

## Public Availability of Reported Information

The CSA proposes that trade repositories will periodically publicize aggregate transaction data on positions, transaction volumes and average prices, with additional subset breakdowns that could include, for example, data by market characteristics or trading venue. It is not proposed, however, that this information will identify counterparties to specific transactions or their positions. A market participant will be prohibited from accessing a trade repository's data unless originally submitted by that participant or the participant is the non-reporting counterparty to a submitted trade.

The CSA is proposing, however, to make anonymous post-trade transaction-level data available to the public. Again, this will not include the identity of counterparties to transactions or the positions of market participants.

The CSA is seeking comments on the Consultation Paper by September 12, 2011. The Consultation Paper can be accessed [here](#). 