

CFTC/SEC Request for Comments:

Section A: Status of Regulation

1. Province of Ontario
2. Yes.

“Derivative” means an option, swap, futures contract, forward contract or other financial or commodity contract or instrument whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest (including a value, price, rate, variable, index, event, probability or thing), but does not include,

- (a) a commodity futures contract as defined in subsection 1 (1) of the *Commodity Futures Act*,
 - (b) a commodity futures option as defined in subsection 1 (1) of the *Commodity Futures Act*,
 - (c) a contract or instrument that, by reason of an order of the Commission under subsection (10), is not a derivative, or
 - (d) a contract or instrument in a class of contracts or instruments prescribed by the regulations not to be derivatives; (“produit dérivé”)
3. Yes.
 4. Any type of counterparty may enter into a derivatives transaction with registration required for intermediaries and disclosure required for certain other counterparties.
 5. To be determined.
 6.
 - a. The Ontario Securities Commission (“OSC”).
 - b. To be determined.
 - c. To be determined.
 - d. It is proposed that all derivatives transactions entered into by a Canadian counterparty will be reported to a trade repository but this has not been finalized.
 - e. Regulatory oversight of the derivatives market in Ontario is conducted solely by the OSC¹. The Investment Industry Regulatory Organization of Canada (IIROC) oversees affiliated derivative dealers of the major Canadian banks.

¹ Where a derivatives market also operate in other jurisdictions of Canada, it may also be regulated by the securities regulators of those jurisdictions.

- f. To be determined.
- g. Yes.
- h. Ontario counterparties' derivatives trades are regulated when dealing with non-Ontario counterparties.
- i. Ability to exercise authority resides with the OSC and any other delegated Self-Regulatory Organization ("SRO").

Section B: Regulatory Requirements for Market Participants

1. Through a registration process which has yet to be determined. It is anticipated that the regulatory framework will also identify derivatives participants who are exempt from registration but recognized as market participants by some other means.
2. It is anticipated that there will be a group of derivative participants who will be exempt from registration and/or licensing requirements but details are yet to be determined.
3. Yet to be determined, but will likely be informed and influenced by the current registration requirements for securities registrants.
4. To be determined.
5. To be determined.
6. To be determined.
7. To be determined but it is anticipated that this will be the intent.
8. To be determined.

Section C: Regulatory Requirements for Organized Markets, Electronic Execution Facilities and Other Types of Markets

1. The regulatory framework include requirement for organized markets for derivatives to be recognized but at this time details of requirements have yet to be determined.
2. To be determined.
3. To be determined.
4. To be determined.
5. To be determined.
6. To be determined but it is anticipated that this will be the intent.
7. Yet to be determined but will likely mirror current registration requirements where the foreign market is granted an exemption if it is subject to an equivalent regulatory regime.

Section D: Regulatory Requirements for Central Counterparties

1. The regulatory framework include requirements for central counterparties that provide clearing and settlement services but at this time details have yet to be determined. Currently, CCPs who offer services to Ontario entities must be

- recognized by the OSC as a Clearing Agency under subsection 21.2(0.1) of the Securities Act (Ontario) or be exempt from such recognition.
2. Central counterparty requirements are to be further developed however at present the following requirements are in place;

Clearing agencies Prohibition

21.2 (0.1) No person or company shall carry on business in Ontario as a clearing agency unless the person or company is recognized by the Commission under this section as a clearing agency. 2005, c. 31, Sched. 20, s. 2 (1).

Clearing agencies

(1) The Commission may, on the application of a clearing agency, recognize the clearing agency if the Commission is satisfied that to do so would be in the public interest. 1994, c. 11, s. 358.

Same

(2) A recognition under this section shall be made in writing and shall be subject to such terms and conditions as the Commission may impose. 1994, c. 11, s. 358.

Commission's powers

(3) The Commission may make decisions with respect to any of the following matters if the Commission is satisfied that it is in the public interest to do so:

1. Any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized clearing agency.
2. The manner in which a recognized clearing agency carries on its business. 2005, c. 31, Sched. 20, s. 2 (2).

In addition, a clearing agency that carries on business in Ontario must meet certain criteria, that are currently outlined in OSC Staff Notice 24-702, and deal with: governance, fees, access, rules and rule making, due process, risk management, systems and technology, financial viability and reporting, operational reliability, protection of assets, outsourcing and information sharing and regulatory cooperation. These criteria are based on the existing CPSS-IOSCO principles for central counterparties and securities settlement systems.

3. Exclusion from the clearing agency recognition process requires the submission of an application to the OSC which is considered upon review.
4. Application must be made to the OSC.
5. Recognized or exempt clearing agencies are required to continue to meet the criteria that are outlined in OSC Staff Notice 24-702, and they may also subject to additional terms and conditions of recognition or exemption that are tailored to them. Regulations governing central counterparty clearing houses ("CCPs") will be developed, but details of the requirements are, at this point, yet to be determined.

6. Yes
7. Foreign CCPs that carry on business in Ontario are subject to the same recognition requirement as domestic CCPs, and have to meet the criteria for recognition and exemption. Further requirements to be determined.

Section E: Regulatory Requirements for Data Repositories

1. It is the intention of the OSC to establish a regulatory framework for trade/data repositories for all derivatives.
2. To be determined.
3. To be determined.
4. To be determined.
5. To be determined.
6. To be determined but it is anticipated that data repositories will be required to adhere to standards established via international committees such as CPSS/IOSCO.
7. To be determined but it is anticipated that this will be the intent.
8. To be determined.
9. To be determined.

Section F: Regulatory Comparison

1. No comment.
2. No comment.
3. No comment.
4. No comment.
5. No comment.
6. No comment.
7. No comment.

Section G: Swap Market Information – [Market Reg. to confirm this section.]

1. There are currently no markets that trade swaps.
2. Precise data is not available but it is assumed that the main derivative participants include the following six Canadian banks (Royal, TD Bank, CIBC, Bank of Montreal, Scotia Bank and National Bank of Canada).
3. LCH.Clearnet Limited and CME Clearing Europe (the following answers deal only with their Canadian businesses)
 - a. LCH – Interest rate swaps, and commodity swaps; CMECE – commodity swaps;
 - b.
 - i. Data not available.

- ii. Data not available.
- c.
 - i. No comment.
 - ii. No comment.
 - iii. No comment.