

LCLCRLPDC
Department of Justice
Maligaliqiyikkut
Ministère de la Justice

IN THE MATTER OF THE *SECURITIES ACT*
S. Nu. 2008, c.12, as amended

- and -

DTCC Data Repository (U.S.) LLC

RECOGNITION ORDER

Section 72

Background

1. DTCC Data Repository (U.S.) LLC (the Applicant) intends to carry on business as a trade repository in Nunavut (the Local Jurisdiction) in accordance with Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (MI 96-101).
2. The Applicant has filed an application with the Superintendent of Securities (the Superintendent) seeking recognition as a quotation and trade reporting system pursuant to section 72 of the *Securities Act* (Nunavut) (the Act).
3. Under the *Memorandum of Understanding respecting the Oversight of Clearing Agencies, Trade Repositories and Matching Service Utilities*, dated December 3, 2015, among various Canadian securities regulatory authorities, the Ontario Securities Commission (the OSC) has been selected as the lead authority for the Applicant.
4. Under the *Memorandum of Understanding regarding Cooperation and the Exchange of Information related to the Supervision of Cross-border Covered Entities* dated March 25, 2014, the United States (US) Commodity Futures Trading Commission (the CFTC), the Superintendent and other Canadian securities regulatory authorities have agreed to share information regarding cross-border covered entities, including the Applicant.

Interpretation

5. Terms defined in the Act, National Instrument 14-101 *Definitions*, Multilateral Instrument 91-101 *Derivatives: Product Determination* or in MI 96-101 have the same meaning in this Recognition Order (order) unless otherwise defined herein.


Representations

6. This decision is based on the following representations made by the Applicant to the Superintendent:
- (a) the Applicant is a limited liability company organized under the laws of the state of New York and situated in the US;
 - (b) the Applicant is an indirect, wholly owned subsidiary of The Depository Trust & Clearing Corporation (DTCC);
 - (c) the Applicant is provisionally registered by the CFTC as a swap data repository (SDR) and is in good standing as a SDR; and
 - (d) the Applicant is designated as a trade repository by the OSC pursuant to an order dated September 19, 2014 (the OSC Designation Order) and is in good standing in Ontario as a trade repository.

Decisions

7. Based on the representations herein, the Superintendent is satisfied that the recognition of the Applicant will not be prejudicial to the public interest.
8. The Superintendent recognizes the Applicant as a quotation and trade reporting system under section 72 of the Act, for the purposes of acting as a trade repository in accordance with MI 96-101, effective July 28, 2016, on the terms and conditions in Schedule A and Schedule C that are attached to and a part of this order.
9. The Superintendent exempts the Applicant from certain requirements, as set out in Schedule B and Schedule D that are attached to and a part of this order.

Dated at Iqaluit, in Nunavut, this 28th day of July, 2016.

per 
Jeff Mason
Superintendent of Securities

Schedule A

General Terms and Conditions

Regulation by the CFTC and the OSC

1. The Applicant will maintain in good standing its registration with the CFTC as a SDR and will remain subject to regulatory oversight by the CFTC.
2. The Applicant will maintain, in good standing, its designation as a trade repository by the OSC and will remain subject to regulatory oversight by the OSC.

Local Services

3. The Applicant will provide services to its participants that are local counterparties in the NWT (Local Participants) on the same terms and conditions, including fees, as it provides to comparable participants in other jurisdictions in Canada where the Applicant is recognized or designated as a trade repository.
4. The Applicant will offer a trade repository solution that enables Local Participants to fulfill their reporting obligation under MI 96-101.
5. The trade repository will offer the services referenced in paragraphs 3 and 4 between the hours of 8 a.m. and 8 p.m., Eastern Time on Monday through Friday except when closed for maintenance.
6. The Applicant will accept derivatives data in relation to specified derivatives that are required to be reported in the Local Jurisdiction, in the following asset classes: interest rate, equity, commodity, credit and foreign exchange.

Reporting Requirements

7. The Applicant will, to the extent that it would not cause the Applicant to violate any applicable US laws or any other applicable privacy or other laws governing the sharing of information and the protection of personal information to which the Applicant is, in each case, subject, promptly provide the Superintendent when requested, either directly or indirectly through the CFTC or OSC, as the case may be, with any information that:
 - (a) is reported to the Applicant under MI 96-101;
 - (b) is in the custody or control of the Applicant;
 - (c) relates to Local Participants, the operations of the Applicant as a recognized trade repository in the Local Jurisdiction or compliance with this order.
8. The Applicant will, to the extent that it would not cause the Applicant to violate any applicable US laws or any other applicable privacy or other laws governing the sharing of information and the protection of personal information to which the Applicant is, in each case, subject, promptly notify the Superintendent of any of the following:

- (a) a material change or proposed material change to its status as a SDR in the US or the regulatory oversight of the CFTC;
 - (b) a material change or proposed material change to its status as a trade repository in Ontario or the regulatory oversight of the OSC;
 - (c) a material change to the control or ownership of its ultimate parent, DTCC;
 - (d) a material change to the representations in this order;
 - (e) a Local Participant has been sanctioned by the Applicant or has had its access terminated by the Applicant;
 - (f) a Local Participant has been denied access to the Applicant's services as a trade repository after the exhaustion of the Applicant's appeal process;
 - (g) the Applicant has notified the OSC of any event, circumstance or situation under the part of the OSC Designation Order entitled "Reporting Requirements".
9. The Applicant will, to the extent that it would not cause the Applicant to violate any applicable US laws or any other applicable privacy or other laws governing the sharing of information and the protection of personal information to which the Applicant is, in each case, subject, provide the Superintendent with a list of current Local Participants at such times as are prescribed for the provision of corresponding information to the OSC under the OSC Designation Order.

Data Reporting and Dissemination

10. The Applicant will, to the extent that such action would not cause the Applicant to violate any applicable US law or any other applicable privacy or other laws governing the sharing of information and the protection of personal information to which the Applicant is, in each case, subject, fulfill its obligations under section 37 of MI 96-101 by providing the Superintendent with data in the Applicant's possession that is reportable to the Superintendent pursuant to MI 96-101, in the manner and at times acceptable to the Superintendent.
11. In addition to providing the Superintendent with access to derivatives data as referred to in paragraph 10 above, the Applicant will also provide similar access to a Canadian securities regulatory specified by the Superintendent, in writing, to the extent that would not cause the Applicant to violate any applicable US law or any other applicable privacy or other laws governing the sharing of information and the protection of personal information to which the Applicant is, in each case, subject.

MI 96-101

12. The Applicant will, subject to the exemptions in Schedule B, comply with the applicable requirements set out in MI 96-101.

Schedule B

Exemption

Background

1. The Applicant has filed an application with the Superintendent for recognition as a quotation and trade reporting system (QTRS) pursuant to section 72 of the Act to allow it to act as a trade repository under MI 96-101.
2. MI 96-101 requires the Applicant to:
 - (a) file an amendment to the information provided in Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* (Form 96-101F1), in the manner set out in Form 96-101F1, no later than 45 days before implementing a significant change to any matter set out in Form 96-101F1 pursuant to subsection 3(1) of MI 96-101;
 - (b) file audited financial statements for its most recently completed financial year with the Superintendent as part of its application for recognition pursuant to subsection 4(1) of MI 96-101 ;
 - (c) file annual audited financial statements with the Superintendent no later than the 90th day after the end of its financial year pursuant to subsection 5(1) of MI 96-101;
 - (d) hold sufficient insurance coverage and liquid net assets funded by equity to cover potential general business losses pursuant to subsection 20(2) of MI 96-101;
 - (e) have policies and procedures reasonably designed to identify scenarios that could potentially prevent it from being able to provide its critical operations and services as a going concern and to assess the effectiveness of a full range of options for an orderly wind-down pursuant to subsection 20(4) of MI 96-101;
 - (f) establish, implement and maintain written rules to facilitate its orderly wind-down pursuant to subsection 20(5) of MI 96-101;
 - (g) on a reasonably frequent basis, create and make available on its website, in a manner that is easily accessible to the public, at no cost, aggregate data on, if applicable, price relating to the derivatives reported to it under this MI 96-101 pursuant to subsection 39(1) of MI 96-101; and
 - (h) make available, on its website, aggregated data broken-down, if applicable, by geographic location pursuant to subsection 39(2) of MI 96-101.
3. The Applicant is seeking an exemption under section 43 of MI 96-101 from the requirements in subsections 3(1), 4(1), 5(1), 20(2), 20(4) and 20(5) of MI 96-101 and

from the requirements to make aggregate data on price available under subsection 39(1) of MI 96-101 and to provide a breakdown of aggregate data available by geographic location under subsection 39(2) of MI 96-101 (collectively, the Exemption Sought).

4. The CFTC requires the Applicant to file proposed changes to certain materials, including changes to the Applicant's rulebook (collectively the US Filings), no later than ten business days before the intended effective date of the proposed changes. Subsection 3(1) of MI 96-101 requires that the Applicant file significant changes to matters set out in Form 96-101F1. The filings required under subsection 3(1) of MI 96-101 includes materials that will be the same as the US Filings.
5. The Applicant does not have audited financial statements for its most recently completed financial year and it has provided the Superintendent with its unaudited financial statements and audited financial statements of its ultimate parent, the Depository Trust & Clearing Corporation, for the most recent financial year.
6. The CFTC does not require that the Applicant furnish annual audited financial statements but does require annual unaudited financial statements be filed (the CFTC Filing Requirement).
7. Pursuant to 17 CFR § 49.25, the CFTC currently requires that the Applicant maintain liquid net assets equal to a minimum of six months of operating expenses, maintain sufficient financial resources to perform its SDR functions, and maintain sufficient financial resources to cover its operating costs for a period of at least one year (the CFTC Asset Requirements).
8. The CFTC does not currently impose requirements that are comparable to subsection 20(4) and 20(5) of MI 96-101.
9. The CFTC does not currently impose a requirement to make publicly available aggregate data by price that is comparable to subsection 39(1) of MI 96-101.
10. The CFTC does not currently impose a requirement to make publicly available aggregate data broken-down by geographic location that is comparable to subsection 39(2) of MI 96-101.

Representations

11. The Applicant will provide the Superintendent with financial statements substantially similar to those provided to the CFTC in accordance with the CFTC Filing Requirement.
12. The Applicant will hold sufficient assets to comply with the CFTC Asset Requirements which amounts are sufficient to meet all asset requirements of MI 96-101 but it will not maintain insurance coverage to cover potential general business losses.
13. In the event the CFTC implements requirements that are comparable in all material respects to the requirements contained in subsection 20(4) and subsection 20(5) of MI 96-

101, the Applicant will comply with such requirements within a reasonable period of time.

14. In the event that the CFTC does impose a requirement to make publicly available aggregate data by price that is comparable to subsection 39(1) of MI 96-101 or a requirement to make publicly available aggregate data broken-down by geographic location that is comparable to subsection 39(2) of MI 96-101, the Applicant will comply with such requirement or requirements, as the case may be, within a reasonable period of time.
15. The OSC has granted the Applicant with relief from requirements that are similar to the requirements set forth in subsections 4(1), 5(1), 20(2), 20(4), and 20(5) of MI 96-101 and that relief continues to apply.

Decision

16. Considering that it is not be prejudicial to the public interest, the Superintendent orders that the Exemption Sought is granted, provided that:
 - (a) the Applicant remains registered as a SDR and is subject to the regulatory oversight and requirements of the CFTC;
 - (b) in the event that the Applicant is required to file an amendment to Form 96-101F1 under subsection 3(1) of MI 96-101 and materials relating to the amendment are filed with the CFTC, the Applicant files the US Filings with the Superintendent at the same time it files with the CFTC. In the event that the Applicant is required to file an amendment to Form 96-101F1 under subsection 3(1) of MI 96-101 and materials relating to the amendment are filed with the OSC, but those materials are not filed with the CFTC, the Applicant files such materials with the Superintendent at the same time it files with the OSC pursuant to the OSC Designation Order. In the event that the Applicant is required to file an amendment to Form 96-101F1 under subsection 3(1) of MI 96-101 and materials relating to the amendment are filed with neither the CFTC nor the OSC, the Applicant files the amendment in accordance with subsection 3(1) of MI 96-101;
 - (c) the Applicant files with the Superintendent, concurrently with filing with the CFTC and no later than the 90th day after the end of its financial year:
 - (i) annual unaudited financial statements of the Applicant prepared in accordance with US GAAP as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107), and
 - (ii) annual audited financial statements of its ultimate parent, The Depository Trust & Clearing Corporation, prepared in accordance with U.S. GAAP and audited in accordance with U.S. AICPA GAAS or U.S. PCAOB GAAS as these terms are defined in NI 52-107.

- (d) the Applicant complies with the CFTC Asset Requirements; and
- (e) as required by applicable law, the Applicant's proposed new or amended rules, policies and procedures are subject to approval by the CFTC.

Schedule C

Nunavut-Specific Terms and Conditions

Compliance with MI 96-101

1. The Applicant will provide services as a trade repository for specified derivatives in accordance with the MI 96-101, but will not operate a trading platform for securities or derivatives in Nunavut.

Schedule D

Nunavut-Specific Exemption

Background

1. The Applicant is seeking recognition as a quotation and trade reporting system (QTRS) and is therefore subject to all requirements applicable to QTRSs under the Act.
2. The Applicant is seeking recognition as a QTRS in Nunavut solely for the purpose of providing services as a trade repository under MI 96-101 and does not intend to operate as a marketplace as defined in National Instrument 21-101 *Marketplace Operation* (NI 21-101) and therefore seeks an exemption from all requirements applicable to QTRSs or marketplaces in NI 21-101, National Instrument 23-101 *Trading Rules* and National Instrument 23-103 *Electronic Trading and Direct Access to Marketplaces* (the Nunavut exemption sought).

Representations

3. The Applicant will offer persons in Nunavut services to allow those persons to report trades in specified derivatives.
4. The Applicant will not conduct business as a marketplace in Nunavut.

Decision

5. Considering that it is not prejudicial to the public interest, the Superintendent orders that the Nunavut exemption sought is granted provided that the Applicant does not conduct business as a marketplace in Nunavut.