

06 September 2013

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario
M5H 3S8

Submitted to comments@osc.gov.on.ca

Re: **Proposed OSC Rule Derivatives: Product Determination**
Proposed OSC Rule Trade Repositories and Derivatives Data Reporting

Dear Sir/Madam:

Markit is pleased to submit the following comments to the Ontario Securities Commission (the “**OSC**” or the “**Commission**”) in response to its Proposed Rules *Derivatives: Product Determination and Trade Repositories and Derivatives Data Reporting* (together the “**Proposed Rules**”).¹

Introduction

Markit² is a provider of financial information services to the global financial markets, offering independent data, valuations, risk analytics, as well as processing services across regions, asset classes and financial instruments. Our products and services are used by a large number of market participants to reduce risk, increase transparency, and improve the operational efficiency in their financial markets activities.

Most of Markit’s processing services are provided by MarkitSERV,³ a company that offers confirmation, connectivity, and reporting services to the global derivatives markets, making it easier for participants in these markets to interact with each other. Specifically, MarkitSERV provides trade processing, confirmation, matching, and reconciliation services for derivatives across regions and asset classes, as well as universal middleware connectivity for downstream processing such as clearing and reporting. Such services, which are offered also by various other providers, are widely used by participants in these markets and are recognized as tools to increase efficiency, reduce cost, and secure legal certainty. With over 2,600 firms globally using the MarkitSERV platforms, including agents for over 29,000 buy-side fund entities, our legal, operational, and technological infrastructure plays an important role in supporting the OTC derivatives markets in North America, Europe and the Asia-Pacific region. In 2012, over 20 million OTC derivative transaction processing events were processed using MarkitSERV.

In Canada, the major banks and an increasing number of hedge funds, asset managers, pension funds, fund administrators and other market participants use Markit’s products and services. Markit has a local

¹ Ontario Securities Commission Proposed Rules *Derivatives: Product Determination and Trade Repositories and Derivatives Data Reporting*. 36 OSC 5737 (June 6, 2013).

² Markit is a financial information services company with over 3,000 employees in North America, Europe, and Asia Pacific. The company provides independent data, valuations and processing services for financial products across asset classes in order to reduce risk and improve operational efficiency. Please see www.markit.com for additional information.

³ MarkitSERV, a wholly owned subsidiary of Markit Group Limited, provides a single gateway for OTC derivatives trade processing. The company offers trade processing, confirmation, matching, and reconciliation services across regions and asset classes, including interest rate, credit, equity, and foreign exchange derivatives. MarkitSERV also connects dealers and buy-side institutions to trade execution venues, CCPs, and trade repositories. Please see www.markitserv.com for additional information.

office based in Toronto to better support our Canadian clients and we have dedicated substantial resources to establishing data and valuations services that will help Canada-based market participants comply with upcoming regulatory requirements. Also, the major banks and an increasing number of asset managers, pension funds, hedge funds, fund administrators and other market participants process their derivatives transactions on the MarkitSERV platforms. In addition to increasing the efficiency with which trades are legally confirmed, MarkitSERV has dedicated substantial resources to establishing the necessary connectivity to help Canada-based market participants comply with upcoming regulatory requirements such as clearing and reporting.

Markit has been actively and constructively engaged in the discussion regarding regulatory reform of financial markets. Over the last several years, Markit has submitted over 80 comment letters to regulatory authorities around the world and we participated in numerous roundtables.⁴ We regularly provide regulatory authorities with our insights on current market practice, for example in relation to the confirmation of derivative transactions, efficient means of reporting transactions to Trade Repositories, clearing connectivity, portfolio reconciliation practices, and pre-trade credit checks. We also advise regulatory bodies on approaches to enable timely and cost-effective implementation of newly established requirements, for example through the use of multi-layered phase-in or by providing participants with a choice of means for satisfying regulatory requirements. Additionally, we work closely with the industry and other relevant third-party providers to ensure adequate preparation, testing and data loading.

Last December, Markit submitted a response to the CSA Consultation Paper on *Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting*.⁵ We appreciate the fact that the CSA/OSC decided to make several changes to the previously proposed rules in response to the feedback they received. We also welcome the publication of the OSC's Proposed Rules on the reporting of derivatives contracts and we appreciate the opportunity to provide the Commission with our comments. Specifically, we believe that (i) a Reporting Counterparty approach to the reporting to Trade Repositories ("**TRs**") is beneficial as it tends to simplify the task of reporting and reduce the burden on end users; (ii) data reporting should be phased in both by asset class and by participant type; (iii) access to TR services should not be unreasonably limited including the use of closed, proprietary interfaces; (iv) a requirement for TRs to accept data for all derivatives of the asset class can prevent harmful data fragmentation; (v) reporting to a TR should occur only as soon as technologically practicable following execution; (vi) backloading requirements should be limited to a certain minimum maturity; (vii) identifiers should be referred to at the high taxonomy level while specific identifiers should be required only when adopted globally; (viii) data accuracy is best ensured by one party reporting data that has been verified by both counterparties; (ix) delegation of the reporting obligation for trade data and valuation data should be explicitly allowed; and (x) the Commission should provide further clarification on the reporting of all of the relevant transactions that exist in the context of central clearing.

General comments

Based on significant development work over the last several years, MarkitSERV today provides market participants with a universal solution for compliance with their regulatory and real-time reporting obligations based on its established connectivity between counterparties, execution venues, CCPs, and Trade Repositories. Many major derivative dealers use MarkitSERV to comply with their Dodd Frank reporting obligations⁶ and all of them rely on MarkitSERV to meet their commitments to the OTC Derivatives Regulators Forum ("**ODRF**") in relation to the reporting of interest rates, credit and equity derivatives.

⁴ This number includes responses that have been submitted by MarkitSERV.

⁵ Markit response to Canadian Securities Administrators ("CSA"), "CSA Consultation Paper 91-301 – Model Provincial Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting" (December 6, 2012) available [here](#).

⁶ Real Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1182 (Jan. 9, 2012); Swap Data Recordkeeping and Reporting, 77 Fed. Reg. 2136 (Jan. 13, 2012); and Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 Fed. Reg. 35200 (June 12, 2012).

Given our extensive experience in helping market participants comply with requirements to report their OTC derivatives transactions to TRs in multiple jurisdictions,⁷ we believe that the OSC should follow several principles when implementing such requirements. Firstly, the reporting rules should provide counterparties with sufficient flexibility to simplify the task of reporting to a TR as much as possible. Secondly, any reporting requirements should take into account the market practices that have been established in the global OTC derivatives markets over the years and permit that, where appropriate, such practices can be used to satisfy the newly created regulatory requirements. We are convinced that, by following these principles, the OSC will not only enable a timely implementation but it will also help avoiding the creation of unnecessary cost.

Data reporting should be phased-in by asset class and participant type

As we stated in our previous letter to the CSAs,⁸ we believe that any compliance dates for Data Reporting should be set such that they provide market participants with sufficient time to analyse, build, adjust and test their systems and procedures before they are required to be in compliance with the requirements. This need has been explicitly acknowledged by regulatory authorities in other jurisdictions.⁹ We support the OSC's approach of setting compliance dates for reporting to TRs such that market participants are provided with additional time to prepare for compliance. However, based on our experience in other jurisdictions we believe that the provision of an additional 3 months for non-dealers might not be sufficient.¹⁰

Further, we believe that the OSC should consider making use of a more granular phasing-in for the reporting requirements. Specifically, when designing a compliance phase-in schedule, the Commission should also take into account the characteristics of the different asset classes. This is because derivatives across the various asset classes vary widely in relation to their degree of product standardization and electronification, the number of product variations, the nature and number of counterparties, the size of the asset class as well as the amount of central clearing that occurs already today. All of those factors impact the ability of market participants to report transactions in the respective asset classes to TRs.

Based on these considerations, and consistent with the approach that has been taken in other jurisdictions,¹¹ we recommend that the OSC require compliance with the Data Reporting requirements first in the asset classes of interest rates and credit as these are at a more advanced stage of development. Compliance with the reporting requirements for other asset classes, i.e., foreign exchange, equities, and commodities, should only be required at a later stage.¹²

Reporting Obligation

The Commission proposed that “all derivative transactions involving a local counterparty are required to be reported to a designated trade repository or to the Commission.”¹³ It also set out a hierarchy that would be used to determine which counterparty or party to the derivatives transaction will be required to report the transaction to the TR.¹⁴

⁷ For example, for the reporting of derivatives transactions to TRs, the MarkitSERV platforms are live in the United States and Japan, while they will be going live in Hong Kong and Australia in December and in Europe and Singapore in January.

⁸ Markit response to CSA.

⁹ See, for example, the SEC's Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act.

¹⁰ OSC Proposed Rule, par. 42(2) and (3).

¹¹ Swap Data Recordkeeping and Reporting, 77 Fed. Reg. 2136 (Jan. 13, 2012).

¹² The OSC might also want to consider establishing timelines per sub-product category in an asset class as necessary since it is our experience that even within an asset class the levels of automation can vary significantly. For example, a customized product such as a basket transaction done for an end-user client may require further implementation phasing due to its complex structure.

¹³ OSC Proposed Rule, par. 6.

¹⁴ Specifically, “The counterparty required to report derivatives data for a transaction to a designated trade repository is, (a) if the transaction is cleared, through a clearing agency, the clearing agency; (b) if the transaction is not cleared through a clearing agency and is between a dealer and a counterparty that is not a dealer, the dealer; (c) if paragraphs (a) and (b) do not apply and both counterparties agree, in writing or otherwise, that one of them is required to report derivatives data for the transaction to the

In our previous response we urged the CSAs to provide both sufficient flexibility and clarity on how to determine the responsibilities for data reporting. On that basis we generally welcome the OSC's approach in the Proposed Rules in this respect.¹⁵ Specifically, we support the OSC's decision to establish a "Reporting Counterparty" (or "**RCP**") approach where, in most cases, only one party would be responsible for the reporting of the transaction to the TR. Our view is based on the experiences that we have gathered supporting reporting firms both in the United States, where an RCP or "one-sided reporting" approach has been established,¹⁶ and in Europe, where both counterparties have an obligation to report to the TR.¹⁷ We believe that the reporting of a *single, verified* record of the transaction data *by one party* provides the advantages of creating clarity, avoiding duplication, reducing the potential for error, and simplifying the workflow. It herewith reduces the cost of reporting while it also minimizes the burden for end users. We also welcome the OSC's proposal, for transactions that are not cleared and where neither counterparty is a derivatives dealer, to allow the counterparties to agree on who will report.

However, in those cases where the reporting obligation remains with both counterparties,¹⁸ we believe it would be useful for the OSC to establish requirements to ensure that this reporting happens without duplication. Such objective could be achieved most effectively if the counterparties were to agree on the use of a common unique transaction identifier for the transaction, which is a requirement in other jurisdictions.¹⁹

Access to designated trade repository services

The OSC proposed to prohibit a TR from "unreasonably limiting access to its services, permitting unreasonable discrimination among its participants or imposing unreasonable burdens on competition."²⁰ In this context, the Proposed Rules would also prohibit TRs from "developing closed, proprietary interfaces."

We are supportive of such requirements as we believe that they will be helpful to ensure that reporting parties not only have a choice between the various competing TRs, but they can also chose which of the various competing middleware providers they want to use in order to establish the necessary connectivity with their preferred TRs.

Acceptance of reporting

In our previous letter to the CSAs we supported the CSAs' proposal to require the designated TR to accept derivatives data for reporting purposes from its users for *all* derivatives of the asset class (or classes) set out in its designation order. This is because we believe that it is a crucial measure to prevent harmful fragmentation of the data which would ultimately reduce its usefulness for regulatory purposes. We therefore welcome the OSC's decision to require a designated TR to accept derivatives data from its participants "for all derivatives of the asset class or classes set out in the Commission's designated order."²¹

Based on the same rationale, we also support the OSC's proposal to require that "all derivatives data reported for a given transaction must be reported to the Commission or the same designated trade repository to which the initial report is submitted."²²

designated trade repository, the counterparty required to report the derivatives data under that agreement and (d) in any other case, both counterparties." OSC Proposed Rule, par. 27(1)(a)-(d).

¹⁵ OSC Proposed Rule, par. 27(1).

¹⁶ Swap Data Recordkeeping and Reporting, 77 Fed. Reg. 2136 (Jan. 13, 2012).

¹⁷ ESMA Final Report: Draft technical standards under the Regulation (EU) No 648/2012 of the European Parliament and of the council of 4 July 2012 on OTC Derivatives, CCPs and Trade Repositories. 27 September 2012.

¹⁸ "...in any other case, both counterparties." OSC Proposed Rule, par. 27(1)(d).

¹⁹ The CFTC's Unique Swap Identifier ("USI"), for example, is a unique identifier assigned to all swap transactions which identifies the transaction (the swap and its counterparties) uniquely throughout its life time. The creation and use of the USI has been mandated by the CFTC and SEC as part of the Dodd-Frank Act. CFTC: Unique Swap Identifier Data Standard. October 2012 .

²⁰ OSC Proposed Rule, par. 13.

²¹ OSC Proposed Rule, par. 14.

²² OSC Proposed Rule, par. 25(5).

The reporting of cleared transactions

We note that the OSC's proposed hierarchy to determine the responsibility for reporting differentiates between the reporting of a derivatives transaction that "is cleared"²³ and one that "is not cleared".²⁴ However, we believe that it is not entirely clear from the Proposed Rules how the various transactions that will typically exist as part of the workflow for cleared transactions shall be reported to the TR.

Specifically, the proposed regime does not seem to fully acknowledge the fact that most derivatives transactions that "are cleared" will initially consist of an "uncleared" transaction between the two original counterparties (the so-called alpha trade) which will then be replaced through novation by two "cleared" transactions (beta and gamma trades) between the counterparties and the CCP. We note that the OSC's proposal states, in one instance, that "a transaction that is cleared is required to be reported as a separate, new transaction with reporting links to the original transaction."²⁵ Also, it states that "a transaction is considered to be cleared if and when it is novated to a clearing agency."²⁶ However we feel it is somewhat confusing that the OSC also states, in other instances, that the reporting obligations depend on whether the transaction "is cleared" or "is not cleared".²⁷

We believe that the potential for confusion could be reduced if the Commission explicitly addressed the reporting of all relevant transactions in the workflow of clearing. The OSC should note that, to ensure that TRs capture an accurate reflection of current risk at all times and store a complete picture of all stages of the life of derivatives transactions, regulatory authorities in other jurisdictions will often require the reporting of both alpha *and* beta/gamma trades.

Timeliness of reporting

The OSC proposed that the reporting of derivatives transactions to the TR shall be performed "on a real-time basis" and "where not technologically possible as soon as possible but not later than the end of the next business day following the day that the transaction as entered into."²⁸

Based on our experience we believe that it would be overly demanding to require the reporting to TRs on a "real-time basis". We therefore recommend that the Commission instead require reporting to the TR to occur "as soon as technologically practicable, but no later than the business day following execution". While it might make little difference in terms of the actual timeliness of the reporting, such requirement would seem to be more practicable and also consistent with the approach taken in other jurisdictions.²⁹

Pre-existing derivatives

The Commission proposed that "a local counterparty to a transaction entered into [*insert date*] that had outstanding contractual obligations on that day must report, or cause to be reported, [...] to a designated trade repository in accordance with this Part not later than 365 days after [*insert date*]."³⁰ The Commission also stated that pre-existing transactions would be exempted from the reporting obligation if they expired or have been unwound before that date.³¹

Our experience with the reporting of "historical swaps" in other jurisdictions¹¹ has shown that such "backloading" requirements, if not appropriately designed, can create significant challenges. We therefore

²³ OSC Proposed Rule, par. 27(1)(a).

²⁴ OSC Proposed rule, par. 27(1)(b).

²⁵ OSC Proposed Rule, par. 1(4).

²⁶ OSC Proposed Rule, par. 35(1).

²⁷ OSC Proposed Rule, S.27.

²⁸ OSC Proposed Rule, par. 6.

²⁹ For example in the United States under CFTC rules.

³⁰ OSC Proposed Rule, par. 26.

³¹ OSC Proposed Rule, par. 26 and 42(4).

commend the OSC for taking a pragmatic approach. We agree with the Commission's view that to not require the reporting of derivatives transactions that have already expired or been unwound at the time of the reporting³² will reduce the burden for market participants while the Commission would only forgo a "marginal utility".

We also generally agree with the Commission that limiting the backloading requirements to contracts with a certain minimum maturity can be an equally sensible measure. However, it seems as if the rules are constructed as such that, if a counterparty backloaded its relevant transactions 360 days after [insert date], it would have to report all transactions with a minimum maturity of [insert date] plus 365 days, i.e. including contracts with a very short maturity. We therefore believe the language should be changed to, "report all outstanding contracts that, at the time of the backloading, have a maturity of no less than [x] years". That said, we have found that some firms find it challenging to sub-divide their outstanding derivatives transactions into different maturity categories, where one category has to be backloaded into the TR and the other not. We therefore encourage the OSC to allow firms to report *all* of their relevant derivatives transactions that are outstanding on the reporting start date, i.e. including those that have maturities shorter than [x] years, if they wanted to do so.³³

Identifiers

The OSC proposed that a TR has to "identify all counterparties to a transaction by a legal entity identifier ("**LEI**") that will uniquely identify parties to a transaction."³⁴ Additionally, the OSC proposed that a unique transaction identifier ("**UTI**") would be assigned as well as a unique product identifier ("**UPI**").³⁵

We agree with the Commission that the use of these specific identifiers that have been (or are expected to be) adopted globally should be encouraged. However, recent experience has shown that, for a variety of reasons, industry participants might agree on using alternative versions of these identifiers. Some of these alternatives might be used just for an interim period while others could be identified as the most appropriate solution for specific jurisdictions or asset classes.

We therefore support the OSC's pragmatic approach to allow also for the use of other identifier standards where this was appropriate. Specifically, we suggest that OSC only refer to a high level taxonomy and require that "relevant identifiers for counterparties, the transaction, or the product that have been agreed upon for reporting purposes (UTI, LEI, and UPI where they have been widely adopted) shall be reported to TRs".³⁶

Requirement to confirm the accuracy of the data

The OSC proposed that a designated TR will be required to confirm the accuracy of the reported data generally with both counterparties as long as they are participants of the TR.³⁷ It also states that such confirmation can be delegated to "a third party representative".³⁸

As discussed in more detail above, we believe that in an RCP reporting regime the OSC can best ensure the accuracy of the data that is reported to TRs by requiring, or at least encouraging, the reporting by only

³² OSC Proposed Rule, par. 26.

³³ This might result in a certain degree of "over-reporting", or more information being captured in TRs than would have been the case otherwise.

³⁴ OSC Proposed Rule, par. 30.

³⁵ OSC Proposed Rule, pars. 30-31.

³⁶ Specifically, given the current status of the various identifier-related initiatives OSC's regime should result in the following outcome: a) the use of UTIs as transaction identifiers would be required from the start, b) the use of LEIs as entity identifiers would be required when adopted while alternative entity identifiers could be reported in the interim, and c) the use of the industry-agreed high level ISDA product taxonomy as product identifiers would be permitted unless a UPI is subsequently created and adopted on a global basis.

³⁷ OSC Proposed Rule, par. 23(2).

³⁸ OSC Proposed Rule, par. 27(4).

one party of transaction records that have been *verified by both counterparties*. The reporting framework should require TRs to use appropriate means to confirm the accuracy of the data they receive, differentiating by the source and nature of the data. Such approach to ensure data accuracy would significantly reduce the burden to counterparties and would be consistent with other jurisdictions. For example, under CFTC rules, a Swap Data Repository (“**SDR**”) will not be required to affirmatively communicate with both counterparties when data is received from a third-party service provider, a CCP, or an execution platform if a) the SDR reasonably believes the data is accurate, b) the data reflects that both counterparties agreed to the data and c) the counterparties were provided with a 48-hour correction period.³⁹ We believe that it would be sensible for the Commission to take a similar approach.

Duty to report

The OSC should note that, with many derivatives transactions being cross-border, their processing is often facilitated by internationally operating providers of middleware services.⁴⁰ These entities tend to operate across jurisdictions, so it will often be easier and more efficient to task them with ensuring the compliance of participants across various national requirements than for counterparties to handle such responsibilities themselves. We believe that the use of such entities for reporting to TRs, as well, provide benefits to the international regulatory authorities, as well as to market participants. This has been evidenced by the fact that reporting by Swap Dealers under the CFTC’s requirements in the United States has largely been delegated to such third parties.

Recent experience also seems to confirm the Commission’s view that the ability for reporting parties to delegate the task of reporting to third parties will help to “mitigate the initial costs associated with implementing necessary systems” and would make the objectives of the Proposed Rule more achievable.⁴¹ We therefore welcome the OSC’s proposal to allow reporting parties to delegate some or all of their reporting obligations.⁴² In this context, we have the following comments:

- The OSC proposed that, where the reporting is delegated to another entity, the reporting counterparty “remains responsible for ensuring the timely and accurate reporting of derivatives data.”⁴³ We generally agree with this approach, as it is consistent with other jurisdictions.⁴⁴
- The Commission stated that “the reporting counterparty” may delegate its reporting obligation.⁴⁵ We encourage the Commission to clarify that, in case that reporting obligation remained with both counterparties,⁴⁶ they would *both* have the right to delegate the reporting to a third party, which they could chose individually, or they could agree between themselves to use a single third party to report for them.

Valuation data

The Commission proposed that valuation data for uncleared derivatives transactions shall be reported to the TR “daily using industry accepted valuation standards and relevant closing market data from the previous business day by each local counterparty that is a dealer.”⁴⁷ The Commission also decided⁴⁸ to not

³⁹ In contrast, when transaction data is reported by a counterparty, the Swap Data Repository is required to notify both counterparties of the data reported and receive acknowledgement of the accuracy from both counterparties. Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 Fed. Reg. 54538 (September 1, 2011).

⁴⁰ In previous responses we have called such entities Independent Verification Services (“**IVS**”) and defined them as “entities that act independently from and on behalf of the counterparties to the transaction to facilitate the agreement of a verified record of the complete transaction details that is used for subsequent processing.”

⁴¹ OSC Proposed Rule, par. 10.

⁴² OSC Proposed Rule, par. 27(4).

⁴³ OSC Proposed Rule, par. 27(4).

⁴⁴ See CSA Consultation Paper 91-301 Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting (December 6, 2012).

⁴⁵ OSC Proposed Rule, par. 27(4).

⁴⁶ For example, under “Reporting Obligation” Option (iii).

⁴⁷ OSC Proposed Rule, par. 35(2)(a).

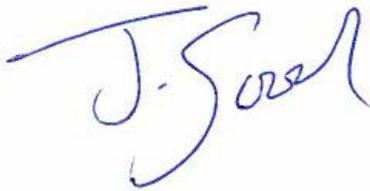
amend the requirement for both derivative dealers to report valuation data as it felt that “having two derivatives dealers report valuation data is useful from a regulatory perspective as it allows for the relevant Commission to have access to two valuation data points for the same transaction.”⁴⁹

In this context, we note that the obligation to report valuation data for the derivatives transactions to the TR seems to be detached from the RCP concept that the Commission establishes for the reporting of the initial transaction.⁵⁰ We therefore welcome the Commission’s clarification⁵¹ that delegation is also permitted for the reporting of valuation data, independent of whether the reporting of the other data elements is also delegated or performed by the RCP itself.

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Markit appreciates the opportunity to comment on the OSC’s Proposed Rules on *Derivatives: Product Determination* and *Trade Repositories and Derivatives Data Reporting*. We would be happy to elaborate or further discuss any of the points addressed above. In the event you may have any questions, please do not hesitate to contact the undersigned or Marcus Schüler at marcus.schueler@markit.com.

Yours sincerely,



Jeff Gooch
Head of Processing, Markit
Chairman & CEO, MarkitSERV

⁴⁸ As one commenter pointed out this would seem to unnecessarily obligate both of them to do the reporting, despite an arrangement between them that one would be the reporting counterparty. OSC Proposed Rule, S35.

⁴⁹ OSC Proposed Rule, S.35.

⁵⁰ “Valuation data” is presented in OSC Proposed Rule, par. 35, while the RCP concept is presented in OSC Proposed Rule, par. 27.

⁵¹ Par. 35, p. 5785.