

Chapter 6

Request for Comments

6.1.1 CSA Notice and Request for Comment – Proposed National Instrument 93-102 Derivatives: Registration and Proposed Companion Policy 93-102 Derivatives: Registration



CSA Notice and Request for Comment

Proposed National Instrument 93-102 *Derivatives: Registration*

Proposed Companion Policy 93-102 *Derivatives: Registration*

April 19, 2018

Introduction

We, the Canadian Securities Administrators (the **CSA** or **we**), are publishing the following for a 150-day comment period, expiring on September 17, 2018:

- Proposed National Instrument 93-102 *Derivatives: Registration* (the **Instrument**);
- Proposed Companion Policy 93-102 *Derivatives: Registration* (the **CP**).

Collectively, the Instrument and the CP are referred to as the **Proposed Instrument** in this Notice.

We are issuing this Notice to solicit comments on the Proposed Instrument. We welcome all comments on this publication and have also included specific questions in the Comments section.

On April 4, 2017, we published for comment Proposed National Instrument 93-101 *Derivatives: Business Conduct* and Proposed Companion Policy 93-101 *Derivatives: Business Conduct* (the instrument and the companion policy are collectively referred to as the *Business Conduct Instrument*). The comment period for the Business Conduct Instrument published in 2017 closed on September 1, 2017. We have considered the comments made on that publication to develop the Proposed Instrument, whenever appropriate.

The Proposed Instrument together with the Business Conduct Instrument are intended to implement a comprehensive regime for the regulation of persons or companies that are in the business of trading derivatives and in the business of advising on derivatives. We expect that a future version of the Business Conduct Instrument will be published for a second comment period shortly after the publication of the Proposed Instrument so that there will be considerable overlap of each instrument's comment period. This will allow commenters to consider the Proposed Instrument and the revised Business Conduct Instrument together when making their comments.

In developing the Proposed Instrument, the CSA has consulted with the Bank of Canada, the Office of the Superintendent of Financial Institutions (**OSFI**) and the Department of Finance (Canada). We intend to continue to consult with these entities through the development of the Proposed Instrument.

This version of the Proposed Instrument does not include provisions that will facilitate the transition to the new regulatory requirements applicable to derivatives firms. Appropriate provisions relating to transition will be included in a future version of the Proposed Instrument and may include, for example, transitional relief from proficiency requirements in section 18.

We intend to consider amendments to other instruments and policies that establish the existing operational infrastructure for registration, including National Instrument 33-109 *Registration Information*.

Background

In April 2013, the CSA published for comment a consultation paper, CSA Consultation Paper 91-407 *Derivatives: Registration* (the **Consultation Paper**), that outlined a proposed registration and business conduct regime for derivatives market participants.

After considering the comments received on the Consultation Paper and reviewing developments internationally, we have developed the Proposed Instrument.

As we indicated in the CSA Notice that accompanied the 2017 publication of the Business Conduct Instrument, we have chosen to split the proposed derivatives registration and business conduct regimes into two separate rules. This approach simplifies each rule, and is intended to ensure that all derivatives firms remain subject to certain minimum standards in all Canadian jurisdictions.

Staff from certain jurisdictions will consider whether modifications to securities legislation, including act amendments, are needed to implement the Proposed Instrument. In particular, it is known that accredited counterparties are exempt by law from the registration requirement under the Québec *Derivatives Act* when transacting with each other. The implementation of the Proposed Instrument is therefore subject to the Québec National Assembly's decision to revoke this exemption.

While the registration regime contemplated by the Proposed Instrument would apply in all CSA jurisdictions, Ontario's Securities Act provides that certain specified financial institutions are exempt from registration. As a result, the Ontario Securities Commission (the OSC) will not register those specified financial institutions when they act as derivatives dealers or advisers in the Ontario market.

OSC staff note that to the extent these financial institutions are acting as derivatives dealers or advisers, they will be subject to the Business Conduct Instrument, other relevant requirements and prohibitions under Ontario securities law, and various powers that are available to the OSC to promote compliance with the law. These specified financial institutions are also subject to certain prudential obligations and oversight. OSC staff would expect to employ all of the available tools, as appropriate, to attempt to achieve outcomes that are as closely aligned as possible to the outcomes of the Proposed Instrument.

Even with the regulatory tools discussed above, the OSC has identified a gap that relates to the registration of individual representatives of specified financial institutions and is currently assessing potential regulatory solutions that are available to address this gap.

Substance and Purpose of the Proposed Instrument

The CSA have developed the Proposed Instrument to help protect investors, reduce risk and, improve transparency and accountability in the over-the-counter (**OTC**) derivatives¹ markets.

During the financial crisis of 2008, some firms dealing in derivatives contributed to the crisis by not effectively managing their own derivatives related risks. The International Organization of Securities Commissions (**IOSCO**) noted in 2012 that "historically, market participants in OTC derivatives markets have, in many cases not been subject to the same level of regulation as participants in the traditional securities market. This lack of sufficient regulation allowed certain participants to operate in a manner that created risks to the global economy that manifested during the financial crisis of 2008."²

The Proposed Instrument includes requirements

- designed to mitigate risks to market participants,
- designed to ensure that key staff members of derivatives dealers and derivatives advisers have the necessary education, training and experience needed to carry out their obligations, and
- for derivatives firms and individual representatives to register with applicable securities regulators in Canada and allow those regulators to deny registration to a firm or an individual or suspend registration of a firm or an individual in appropriate circumstances.

¹ The Proposed Instrument applies to derivatives as determined in accordance with the product determination rule applicable in the relevant jurisdiction.

² <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD381.pdf> (DMI Report) at p 1.

The Proposed Instrument, together with the Business Conduct Instrument, is intended to establish a robust investor protection regime that meets IOSCO's international standards. The resulting proposed regime is consistent with the regulatory approach taken by most IOSCO jurisdictions with active derivatives markets.³

A person or company is subject to the Proposed Instrument only if it must register as a derivatives adviser or a derivatives dealer under securities legislation. The Proposed Instrument also provides exclusions and exemptions for certain persons or companies from the requirements to register as a derivatives dealer or as a derivatives adviser. Persons or companies that are excluded or exempted from the requirement to register are not subject to any obligations under the Proposed Instrument other than the conditions relating to the exclusion or exemption.

This version of the Proposed Instrument does not include registration requirements for persons that have very large gross notional amounts under derivatives but would not otherwise be required to be registered. After additional analysis relating to Canadian derivatives markets, a future version of the Proposed Instrument, that will be published for comment, may include an additional registration category for these large non-dealer derivatives participants.

Section 31 refers to minimum capital requirements that will be described in Appendix C. Appendix C is currently blank but we will propose capital requirements and seek comments on its content in a future version of the Proposed Instrument that will be published for comment. We expect that the minimum capital requirements will be consistent with capital requirements proposed by regulatory authorities in other jurisdictions, including the U.S. We also intend to include a conditional exemption from these capital requirements for derivatives dealers that are already subject to equivalent capital requirements imposed by other authorities, including prudential authorities.

Conditional exemptions from the requirement to register

The Instrument includes a number of exemptions from the requirement to register. These exemptions include an exemption from registration for derivatives dealers that have a limited notional amount of derivatives. Notional amount is determined based on the derivatives dealer's aggregate month-end gross notional amount under outstanding derivatives. Additional discussion of these exemptions, including a discussion of how notional amount is to be calculated for the purpose of these exemptions, is included later in the notice.

The Instrument also includes exemptions from the requirement to register for certain derivatives dealers and derivatives advisers that have their head office or principal place of business outside of Canada.

Each of the exemptions from the requirement to register is subject to specific terms and conditions.

Conditional exemptions from specific registration requirements

The Instrument provides an exemption from specific registration requirements in certain circumstances. Additional discussion of these exemptions is included later in this notice.

One exemption from specific registration requirements is for registered derivatives dealers that are dealer members of the Investment Industry Regulatory Organization of Canada (**IIROC**). This exemption is subject to the condition that they comply with the equivalent requirements imposed by IIROC. These requirements will be listed in Appendix E. We will consult with IIROC staff to complete Appendix E and publish it for comment in a future version of the Proposed Instrument that will be published for comment.

The Instrument contains a similar exemption for Canadian financial institutions where they are subject to and comply with equivalent requirements imposed by a federal or provincial prudential authority. We have completed an analysis of the requirements that apply to financial institutions that are regulated by OSFI and by the Autorité des marchés financiers (**AMF**). Appendix F lists specific requirements from which financial institutions that are regulated by OSFI and the AMF will, subject to specific conditions, be exempted. We will work to complete the analysis for other provincial prudential authorities and intend to publish for comment a full version of Appendix F in a future version of the Proposed Instrument that will be published for comment.

Finally, the Instrument includes certain exemptions from the requirement to register and from specific registration requirements under the Instrument for persons or companies that have their head office or principal place of business outside of Canada. Exemptions from specific requirements may be available where these persons or companies are subject to and comply with equivalent requirements in the jurisdiction where their head office or principal place of business is located. We intend to publish for comment full versions of each of Appendix B, D, G and H in a future version of the Proposed Instrument that will be published for comment.

³ <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD497.pdf> (DMI Implementation Review) at p. 13.

Summary of the Instrument

Part 1 – Definitions

Part 1 of the Instrument sets out relevant definitions and principles of interpretation. Some of the most important definitions in the Instrument are as follows.

Commercial Hedger

The term “commercial hedger” is referenced in the definition of “eligible derivatives party”. Commercial hedgers are subject to a lower financial threshold to qualify as eligible derivatives parties when compared to other, non-individual, persons or companies.

Derivatives party

In the Proposed Instrument, the term “derivatives party” refers to a derivatives firm’s counterparties, customers, and other persons or companies that the derivatives firm may deal with or advise. It is not necessary that the parties consider a client relationship to exist in order for one party to be a derivatives party to the other.

Eligible derivatives party

The term “eligible derivatives party” refers to those derivatives parties that do not require the full set of protections afforded to “retail” customers or investors, either because they may reasonably be considered to be sophisticated or because they have sufficient financial resources to obtain professional advice or otherwise protect themselves through contractual negotiation with the derivatives firm. The concept is important because firm and individual registration exemptions are not available if the firm or individual deals with or advises non-eligible derivatives parties.

As currently drafted, the definition of “eligible derivatives party” is consistent with the anticipated definition of that term in the future version of the Business Conduct Instrument, with modifications made to address comments received. The definition is also generally consistent with the current regulatory regimes in the U.S. and Canada in relation to OTC derivatives.⁴ In addition, the eligible derivatives party concept is similar to the definition of “permitted client” in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)*, with a few modifications intended to reflect the different nature of derivatives markets.⁵

Notional amount

Notional amount is used in section 50 and in section 51 of the Instrument. These sections establish exemptions from registration for certain derivatives dealers that have a monetary notional amount below a prescribed threshold (\$250 million in section 50 and \$1 billion under commodities derivatives in section 51). Notional amount refers to the monetary amount or the amount of the underlying asset that is used to calculate a settlement payment or delivery obligation under a derivative.

For derivatives negotiated in monetary amounts, the methodology for determining the notional amount for the purpose of section 50 and section 51 should be in accordance with CPMI-IOSCO’s Technical Guidance on Harmonisation of critical OTC derivatives data elements (other than UTI and UPI) (the **CDE Guidance**), published on April 9, 2018.^{6,7}

In other cases, the derivatives contract will reference a non-monetary amount, such as a notional quantity (or volume) of an underlying asset. This is the case for commodity derivatives that reference a quantity of a commodity and equity derivatives that reference a number of a type of securities. Accordingly, expressing a threshold as a monetary amount requires converting the notional quantity of an underlying asset into a monetary amount. In general the formula for converting a notional quantity of an underlying asset into a notional amount, expressed in monetary terms, is the following:

$$\text{notional amount} = \text{price} \times \text{quantity}$$

⁴ See, for example, the definition of “eligible contract participant” under the U.S. *Commodity Exchange Act* and the *Securities Exchange Act of 1934* applicable to CFTC and SEC swap dealers and major swap participants, the definition of “qualified party” in Alberta Blanket Order 91-507 *Over-the-Counter Derivatives*, the definition of “qualified party” in British Columbia Blanket Order 91-501 *Over-the-Counter Derivatives*, the definition of “qualified party” in Manitoba Blanket Order 91-501 *Over The Counter Trades in Derivatives*, the definition of “qualified party” in New Brunswick Local Rule 91-501 *Derivatives*, the definition of “qualified party” in Nova Scotia Blanket Order 91-501 *Over The Counter Trades in Derivatives*, the definition of “accredited counterparty” in section 3 of the Quebec *Derivatives Act*, and the definition of “qualified party” in Saskatchewan General Order 91-908 *Over-the-Counter Derivatives*.

⁵ CSA Notice and Request for Comment - *Proposed National Instrument 93-101 Derivatives: Business Conduct Proposed Companion Policy 93-101CP Derivatives: Business Conduct*, dated April 4, 2017, particularly questions 1 through 4 on pages 13 and 14.

⁶ <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD598.pdf>

⁷ Where the notional amount is a monetary amount based in a currency other than Canadian dollars, the notional amount must be converted to Canadian dollars.

Annex I to this Notice sets out two proposed methodologies for determining, for the purpose of regulatory thresholds, the notional amount expressed in monetary terms for derivatives that are negotiated in non-monetary amounts. Column 1 sets out a methodology that is based on the CDE Guidance. The \$250 million threshold in section 50 and the \$1 billion threshold in the section 51 commodity derivatives exemption were determined using the methodology based on the CDE Guidance. Specifically, with respect to the “quantity” element for derivatives that reference a non-monetary amount, particularly commodity derivatives, the CDE Guidance calls for the use of “total notional quantity”. The total notional quantity is determined by aggregating the notional quantity of the underlying asset for each settlement period in the derivatives contract. See Column 1 of Annex I for more details. We are seeking comment on the methodology, that is based on the CDE Guidance, set out in Column 1 of Annex I.

We are also considering, and seeking comment on, an alternative methodology (the **Regulatory Notional Methodology**) set out in Column 2 of Annex I. With respect to “quantity”, the Regulatory Notional Methodology employs a concept of “monthly notional amount approximation” rather than aggregated total notional quantity. The monthly notional quantity approximation is aimed at equalizing different settlement period durations and quantities to facilitate comparability of notional amounts expressed in monetary terms. For derivatives (negotiated in non-monetary amounts) that have multiple settlement periods, for example a swap, the Regulatory Notional Methodology calls for the notional amount to be determined using the monthly notional quantity approximation. Similarly, for derivatives (negotiated in non-monetary amounts) that have a notional amount schedule, the notional amount for the purpose of regulatory thresholds would be determined using the monthly notional amount approximation, and would apply for the duration of the derivative. See Column 2 of Annex I for more details.

If the Regulatory Notional Methodology is adopted, we expect that we would implement a notional amount threshold in section 51 that is smaller than the proposed \$1 billion threshold. Based on our analysis of trade reporting data, we anticipate that the threshold in section 51 would be in the range of \$250 million to \$500 million but note that this threshold may be significantly lower following further analysis.

The CSA will continue to monitor international work and to consult with foreign regulators relating to methodologies for determining a monetary notional amount for a derivative that references a notional quantity or volume.

The CSA is seeking specific comment on both the methodology that is based on the CDE Guidance, as set out in Column 1 of Annex I, and the Regulatory Notional Methodology, as set out in Column 2 of Annex I, for determining monetary notional amount for the purpose of regulatory thresholds. We are also interested in general comments on potential issues relating to the implementation of either methodology.

Affiliated entity

Subsection 1(3) establishes that persons or companies will be considered to be affiliated entities if one controls the other or if the same person or company controls both. Subsection (1)(4) establishes when one person or company is considered to control another person or company for the purpose of the Instrument. We are seeking specific comment on the proposed definition of “affiliated entity” and the tests set out for “control”.

In the context of other instruments relating to OTC derivatives, we are also considering a definition of “affiliated entity” that is based on the concept of “consolidation” under accounting principles. A draft of an alternative version of a definition of “affiliated entity” is included as Annex II of this CSA Notice. We intend to consider comments we receive on the two approaches as we further develop the OTC derivatives regulatory regime. Either of these proposed definitions may be used in the final version of the Proposed Instrument.

Principal regulator

To adapt the proposed registration regime to the Canadian context and to reduce the regulatory burden, section 2 allows registered derivatives firms and individuals that are required to notify or to deliver documents under the Instrument to a Canadian securities regulator to comply with these obligations by notifying or by delivering the document to their principal regulator, as defined in subsection 1(1).

For a derivatives firm that has its head office outside of Canada, the “principal regulator” will be the regulator or the securities regulatory authority in the jurisdiction of Canada where the derivatives firm has its primary business office in Canada or, if the derivatives firm has no business office in Canada, the jurisdiction of Canada where the firm expects to conduct the most of its activities that require registration as a derivatives firm as at the end of its current financial year or conducted most of its activities that require registration as a derivatives firm as at the end of its most recently completed financial year.

For a derivatives firm that has its head office located in a Canadian jurisdiction that exempts the firm from the requirement to register as a derivatives dealer or a derivatives adviser, including the exemption for certain financial institutions in Ontario, the “principal regulator” will be the regulator or the securities regulatory authority in the jurisdiction of Canada where the firm expects to conduct most of its activities that require registration as a derivatives firm as at the end of its current financial year or

conducted most of its activities that require registration as a derivatives firm as at the end of its most recently completed financial year.

We intend to consider amendments to other instruments and policies that establish the existing operational infrastructure for registration, including National Instrument 33-109 *Registration Information* and National Policy 11-204 *Process for Registration in Multiple Jurisdictions*. Any such amendments will be published for comment.

Subsection 2(2) establishes the documents that must be provided to all applicable regulatory authorities rather than just the principal regulator. This section is similar in effect to subsection 1.3(5) of NI 31-103.

Part 2 – Application

Part 2 of the Instrument sets out a number of provisions relating to the application and scope of the Instrument.

Section 3 is a scope provision intended to ensure that the Instrument applies in respect of the same contracts and instruments in all jurisdictions of Canada. Each jurisdiction has adopted a Product Determination Rule that excludes certain types of contracts and instruments from being derivatives for the purpose of the Instrument.

Section 5 provides that the Instrument does not apply to:

- certain governments;
- central banks;
- certain crown corporations of Canada or a jurisdiction of Canada;
- certain international organizations;
- qualifying clearing agencies.

Part 3 – Requirement to register and categories of registration for derivatives firms

In all jurisdictions, unless an exclusion or an exemption applies, derivatives dealers and derivatives advisers are required to register under securities legislation. Section 6 establishes additional triggers for registration as a derivatives dealer where a person conducts certain specified activities.

Section 7 establishes the categories of registration for derivatives dealers and section 8 establishes the categories of registration for derivatives advisers.

Section 9 prohibits a derivatives dealer from transacting with an individual that is not an eligible derivatives party unless the derivatives dealer is a dealer member of IIROC. This prohibition applies even if most of the derivatives dealer's transactions involve derivatives parties that are either individuals that qualify as eligible derivatives parties or derivatives parties that are not individuals. Derivatives firms that are required to be a dealer member of IIROC will also be required to be registered with the CSA.

Division 2 of Part 3 establishes requirements relating to the suspension and revocation of registration for derivatives firms. The provisions in this Division are similar to the provisions in Part 10 of NI 31-103.

Part 4 – Categories of registration for individuals

Part 4 establishes registration categories for individual registrants and outlines the activities that each type of individual registrant may perform. The individual registration categories are:

- derivatives dealing representative;
- derivatives advising representative;
- derivatives ultimate designated person;
- derivatives chief compliance officer;
- derivatives chief risk officer.

Subsection 16(3) sets out two exemptions from the requirement to register as a derivatives dealing representative. The first exemption will apply where the individual is required to register solely because they transact with, or on behalf of, an affiliated entity of the individual's sponsoring derivatives firm, other than an affiliated entity that is an investment fund. The second exemption will apply where the individual does not solicit or transact with, or on behalf of, a derivatives party that is not an eligible derivatives party.

Subsection 16(4) sets out an exemption from the requirement to register as a derivatives advising representative that is comparable to the exemptions for derivatives dealing representatives in subsection 16(3). This exemption does not apply where the individual acts as an adviser for a managed account.

Part 5 – Registration requirements for individuals

Division 1 of Part 5 sets out proficiency requirements for individuals that are required to be registered under securities legislation. Subsection 18(1) establishes general proficiency requirements for all individuals that perform an activity that requires registration.

Subsections 18(2) to (6) establish a requirement that registered derivatives firms not designate or allow an individual to act in any role that requires individual registration unless the individual meets the proficiency requirements applicable to their individual registration category. These requirements are intended to ensure that each registered individual has the education, training and experience to carry out the responsibilities of their role. These specific requirements were developed after considering existing proficiency requirements under NI 31-103,⁸ the Québec *Derivatives Regulation*,⁹ and the dealer members rules of IIROC.¹⁰ The proposals focus more on experience requirements than the proficiency requirements under NI 31-103 as there are few designations and courses that are tailored to the OTC derivatives markets. We anticipate amending the proficiency requirements in the future as OTC derivatives' specific designations or courses are offered.

Division 2 of Part 5 sets out requirements relating to suspension and revocation of registration for individual registrants. This Division is similar to the provisions in Part 6 of NI 31-103.

Part 6 – Derivatives ultimate designated persons, derivatives chief compliance officers and derivatives chief risk officers

Part 6 establishes specific obligations for persons registered as derivatives ultimate designated persons, derivatives chief compliance officers and derivatives chief risk officers. In developing these requirements, we considered comparable requirements in NI 31-103 as well as requirements under U.S. Commodities Futures Trading Commission rules relating to swap dealers.

Section 26 establishes a requirement that each registered derivatives firm designate individuals to act as a derivatives ultimate designated person, as a derivatives chief compliance officer and as a derivatives chief risk officer.

Sections 27 through 29 establish, for each registered individual, their requirements, roles, and responsibilities. These include requirements for the derivatives ultimate designated person to escalate issues to the registered derivatives firm's board of directors and, in specified circumstances, report instances of non-compliance with the Instrument or with other securities legislation to the applicable regulator or the securities regulatory authority. Sections 28 and 29 establish requirements for the derivatives chief compliance officer and derivatives chief risk officer to escalate issues to the derivatives ultimate designated person.

Section 27 establishes a requirement that the ultimate designated person report certain material incidents of non-compliance with securities legislation to the applicable regulator or the securities regulatory authority.

Sections 28 and 29 also establish requirements for the chief compliance officer and chief risk officer to submit annual reports to the derivatives firm's board of directors. We may periodically request a copy of these reports, upon the entry into force of the Instrument and thereafter, to monitor the compliance and implementation of the Instrument and, from a broader perspective, of the OTC derivatives regulations. We may also periodically review the reports of the chief compliance officer to monitor the compliance of derivatives dealers with the conditions of the exemptions available under the Instrument.

These requirements in Part 6 are in addition to the requirements imposed on senior derivatives managers in the Business Conduct Instrument.

⁸ See Part 3, Division 2 of NI 31-103.

⁹ <https://lautorite.qc.ca/en/professionals/regulations-and-obligations/derivatives/derivatives-regulation/>, sections 11.6, 11.6.1, 11.13 and 11.13.1.

¹⁰ <http://www.iiroc.ca/Rulebook/Pages/default.aspx>, see IIROC dealer member rule 2900.

Part 7 – Financial requirements

Section 31 sets out a requirement that registered derivatives firms maintain capital in accordance with the requirements in Appendix C. Appendix C is blank in this version of the Instrument. As mentioned above, we intend to publish proposed capital requirements in a future version of the Instrument that will be published for comment.

Under section 32, a regulator or securities regulatory authority may require a registered derivatives firm to direct its independent auditor to conduct an audit or review and deliver a copy of the direction to the regulator or the securities regulatory authority. This is comparable to section 12.8 of NI 31-103.

Sections 34 and 35 describe the information to be included in the annual and interim financial statements that must be delivered by a registered derivatives firm to the applicable Canadian securities regulator under subsections 36(1) and 36(2), respectively. We expect that these financial statements comply with the requirements in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards (NI 52-107)*. If any consequential amendments to NI 52-107 are needed, they will be published for comment. These requirements are comparable to the requirements in sections 12.10 and 12.11 of NI 31-103.

Part 8 – Compliance and risk management

Part 8 establishes requirements relating to compliance and risk management policies and procedures.

Section 38 establishes a general requirement that registered derivatives firms establish, maintain and apply policies and procedures reasonably designed to ensure that the firm, and each individual acting on its behalf, complies with securities legislation in relation to its derivatives dealing or advising activities.

Section 39 requires registered derivatives firms to adopt written risk management policies and procedures that will allow the firm to monitor and manage risks associated with the firm's derivatives business. In particular, paragraph 39(3)(g) specifies that these policies and procedures must require the reporting of a material change to the registered derivatives firm's risk exposures or a material breach of a risk limit to the firm's derivatives ultimate designated person and board of directors. Also, subsection 39(4) requires a registered derivatives firm to conduct an independent review of its risk management systems at least every two years. Staff of the registered derivatives firm may conduct the review if they are sufficiently independent from the firm's derivatives business.

Sections 40, 41 and 42 are based on IOSCO standards for risk mitigation.¹¹ These standards “promote legal certainty, reduce risk and improve efficiency”¹² in the OTC derivatives market. These three sections set out minimum standards for (i) the confirmation of the material terms of each derivative transacted with or for a derivatives party, (ii) a written agreement with the derivatives party that establishes a process for determining the value of the derivative unless the transaction is cleared through a qualifying clearing agency, and (iii) a written agreement that establishes a process for resolving a dispute when there is a discrepancy about the material terms of the derivative or the value of the derivative. Subsection 42(3) establishes a requirement to report a dispute that has not been resolved within a reasonable period of time to the firm's board of directors. Subsection 42(4) establishes a requirement for the firm to report, to the regulator or the securities regulatory authority, a dispute that has not been resolved within 30 days of reporting the dispute to its board of directors.

Section 43 imposes an obligation for a registered derivatives firm to establish and maintain business continuity and disaster recovery plans, and to review these plans at least annually. Staff of the registered derivatives firm may conduct these reviews if they are sufficiently independent from staff responsible for the business continuity and disaster recovery plans.

Section 44 sets out requirements for a registered derivatives firm to conduct portfolio reconciliation for all derivatives to which the firm is a counterparty except derivatives cleared through a qualifying clearing agency. The section also requires registered derivatives firms to resolve material discrepancies in terms or valuations identified through the portfolio reconciliation process as soon as possible.

Section 45 imposes an obligation on a registered derivatives firm to establish, maintain and apply policies and procedures to terminate offsetting derivatives and conduct portfolio compression exercises.

Part 9 – Records

Part 9 establishes record keeping requirements for registered derivatives firms.

¹¹ <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD469.pdf> (Risk Mitigation Standards for Non-centrally Cleared OTC Derivatives)

¹² <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD469.pdf> (Risk Mitigation Standards for Non-centrally Cleared OTC Derivatives)

Section 46 establishes a requirement that registered derivatives firms must keep complete records of derivatives, derivatives transactions and advice provided in relation to derivatives. Section 47 establishes requirements about the form, accessibility and retention of the records referred to in section 46.

Part 10 – Exemptions from the requirement to register and exemptions from specific requirements in this Instrument

Divisions 1 and 3 of Part 10 provide firms, local and foreign, with exemptions from the requirement to register. These exemptions are subject to a number of terms and conditions.

Divisions 2 and 4 of Part 10 provide registered derivatives firms, local and foreign, with exemptions from specific registration requirements when a registered derivatives firm is already subject to and compliant with equivalent requirements imposed by another (local or foreign) regulatory authority. The requirements for which these exemptions apply, and the corresponding equivalent requirements, are listed in an appendix of the Instrument.

We have tailored the exemptions from the requirement to register and the exemptions from specific requirements to the nature of the Canadian OTC derivatives market.

At the time of this publication, Appendices B, D, E, G and H are not yet completed. Appendix F contains the information related to the equivalent requirements under the guidelines of OSFI and AMF; the information relating to requirements from other provincial prudential authorities has not yet been included. The CSA will solicit comments on all appendices in a future version of the Proposed Instrument that will be published for comment.

Division 1 and Division 3 – Exemptions from the requirement to register

Division 1 and Division 3 of Part 10 provide exemptions from the requirement to register. Firms that meet the conditions for the exemptions in the Division will not be required to register.

Section 48 provides an exemption in British Columbia, Manitoba and New Brunswick from the requirement to register as a derivatives dealer for a person or company that meets the criteria in that section. Section 48 is necessary as securities legislation in these provinces has a registration requirement for dealers based on “trading” rather than “being in the business of trading”. The exemption in this section results in the registration trigger being consistent in all jurisdictions in Canada.

Section 49 provides that a derivatives end-user (e.g., an entity that trades derivatives for its own account for commercial purposes) is exempt from the requirement to register as a derivatives dealer subject to specific terms and conditions set out in the Instrument.

Sections 50 and 51 also provide exemptions from the requirement to register as a derivatives dealer where a dealer’s gross notional amount under derivatives does not exceed a prescribed threshold. Section 50 provides an exemption from the requirement to register for a derivatives dealer with a notional amount that does not exceed \$250 million. Section 51 provides a similar exemption for a person or company that is a derivatives dealer only in respect of commodity derivatives (as defined in subsection 51(1) of the Instrument) if the dealer’s gross notional amount of commodity derivatives does not exceed \$1 billion.

For a derivatives dealer whose head office or principal place of business is in Canada, the gross notional amount must be calculated using all derivatives to which the derivatives dealer is a counterparty. For a derivatives dealer whose head office or principal place of business is not in Canada, the gross notional amount will be calculated using only derivatives where the counterparty to the derivatives dealer is a Canadian counterparty. Canadian counterparty is defined in section 1 of the Instrument.

Each of these exemptions is only available if certain conditions are met, including that the derivatives dealer does not solicit or transact with, or on behalf of, a derivatives party that is not an eligible derivatives party. These sections are intended to reduce the regulatory burden on firms that only transact with, or on behalf of, eligible derivatives parties and that, because of their limited exposure, represent a small risk to our markets.

Section 52 establishes an exemption from the requirement to register as a derivatives dealer for a person or company whose head office or principal place of business is in a foreign jurisdiction and that is subject to regulatory requirements that are equivalent to the requirements in the Instrument. Amongst other conditions, the exemption applies only where the person or company

- does not solicit or transact a derivative with a person or company that is not an eligible derivatives party,
- is authorized to deal in derivatives in the jurisdiction where their head office or principal place of business is located and this jurisdiction is specified in Appendix B to the Instrument, and

- complies with all laws of that jurisdiction applicable to it as a derivatives dealer

Appendix B will list the foreign jurisdictions that have regulatory requirements that are equivalent to the requirements in the Instrument.

In Division 3, section 57 provides an exemption for persons and companies that provide general advice in relation to derivatives, where the advice is not tailored to the needs of the person or company receiving the advice (e.g., analysis published in mass media), and the person or company discloses all financial or other interests in relation to the advice.

Section 59 provides an exemption from the requirement to register as a derivatives adviser for a person or company whose head office or principal place of business is in a foreign jurisdiction and that is subject to regulatory requirements that are equivalent to the requirements in the Instrument. The conditions under this exemption are similar to the conditions applicable to a derivatives dealer under the exemption in section 52. Appendix G will list the foreign jurisdictions that have regulatory requirements that are equivalent to the requirements in the Instrument for the purpose of section 59.

Division 2 and Division 4 – Exemptions from specific registration requirements

The exemptions provided in Division 2 and Division 4 aim to reduce the regulatory burden on firms already subject to requirements imposed by other regulatory bodies that are equivalent to the specific requirements of the Instrument. These exemptions are subject to some conditions, including the condition that the registered derivatives firm that benefits from the exemption remain subject to and in compliance with the equivalent requirement imposed by the other regulatory body.

The exemptions in these divisions do not provide an exemption from the requirement to register but instead exempts a person or company from specific registration requirements if they meet the specific conditions. Persons or companies that benefit from these exemptions will still be required to register as a derivatives dealer or a derivatives adviser, as applicable.

IIROC dealer members and Canadian Financial Institutions

Division 2 of Part 10 provides an exemption from specific requirements for registered derivatives dealers that are IIROC dealer members or for financial institutions that are regulated by a federal or provincial prudential authority. Sections 55 and 56 provide, under certain conditions, an exemption from the requirements in the Instrument listed in Appendix E, for IIROC dealer members, or in Appendix F, for Canadian financial institutions, where the requirement imposed by IIROC or the prudential authority achieves a substantially equivalent outcome as the Proposed Instrument.

Foreign derivatives dealers and foreign derivatives advisers

In Division 2, section 54 provides, under certain conditions, an exemption from certain requirements under the Instrument for a registered derivatives dealer whose head office or principal place of business is in a foreign jurisdiction and that is regulated under the laws of a foreign jurisdiction. In Division 4, section 61 provides a similar exemption for a registered derivatives adviser whose head office or principal place of business is in a foreign jurisdiction. These exemptions from requirements under the Instrument are available when the registered derivatives dealer or registered derivatives adviser is in compliance with equivalent requirements under the laws of the foreign jurisdiction. Derivatives firms that benefit from these exemptions will still be required to register with the CSA.

These exemptions apply to the provisions of the Instrument where the registered derivatives dealer or the registered derivatives adviser meets all of the conditions in each section, including the condition that the firm is subject to and in compliance with the laws of a foreign jurisdiction set out in Appendix D, for registered derivatives dealers, and in Appendix H, for foreign derivatives advisers, opposite the name of the relevant foreign jurisdiction.

Anticipated Costs and Benefits

As mentioned above, we have developed the Proposed Instrument to help protect investors and counterparties, reduce risk and improve transparency and accountability in the OTC derivatives markets. Moreover, the registration requirement under the Instrument prevents persons from dealing in or advising on derivatives where they do not have the education, training and experience to carry out their responsibilities or their past behavior makes their registration contrary to the public interest.

The Proposed Instrument aims to provide participants in the Canadian OTC derivatives markets with protections that are equivalent to protections offered to participants in other major international markets.

There will be compliance costs for derivatives firms that may increase the cost of trading or receiving advice for market participants. In the CSA's view, the compliance costs to market participants are proportionate to the benefits to the Canadian market of implementing the Proposed Instrument. The major benefits and costs of the Proposed Instrument are described below.

(a) Benefits

The Proposed Instrument will protect participants in the Canadian OTC derivatives market by imposing requirements on key market participants, including requirements to provide Canadian securities regulators with information that will increase transparency into the finances of persons or companies dealing in or advising on derivatives. In addition, the Instrument imposes compliance and risk management requirements that require those derivatives dealers and derivatives advisers to take steps to identify and manage their derivatives related risks.

Securities legislation requires firms that are derivatives dealers and derivatives advisers, and key individuals acting on behalf of those dealers and advisers, to register. Registration allows us to assess the suitability of these firms before they are allowed to carry on the business of dealing or advising in our jurisdictions. In addition, registration allows us to review key individuals' suitability to act based on their education, training and experience as well as past incidents involving insolvency or inappropriate activity.

The registration of ultimate designated persons, chief compliance officers and chief risk officers allows us to identify key persons that will be points of contact for compliance and risk management issues. These requirements also allow us to impose specific obligations on these key persons who will be responsible for a failure of a firm to meet its regulatory obligations.

As mentioned above, the registration of individuals constitutes an important gatekeeping responsibility of a market regulator, by which individuals that do not satisfy minimum standards of integrity and proficiency or that have records of financial judgments or convictions for financial crimes, are not authorized to occupy important compliance and risk management-related functions in a derivatives firm.

Registration also allows securities regulatory authorities to suspend or revoke the registration of the firm or any individual registrants, as appropriate. It is worth noting that suspension or revocation of registration under securities legislation has historically only been used in extreme circumstances where the registered firm's ongoing operations would not be in the public interest. This would include where the firm has an ongoing history of material non-compliance, usually after sanctions have been imposed, or where the ongoing operation of the firm has the potential to harm investors.

The capital requirements, that will be introduced in a future version of the Proposed Instrument that will be published for comment, are an important tool for managing default risk by registered derivatives firms by ensuring the firms have sufficient assets to meet their derivatives obligations and by providing authorities with adequate information to identify and address potential risks.

Furthermore, requirements relating to compliance and risk management systems protect the derivatives firm's derivatives parties and the market as a whole by mitigating the risk that the derivatives firm experiences an event that could have an outcome that is contrary to the interest of its derivatives parties, such as a default on its derivatives obligations. Appropriately designed and applied compliance systems allow derivatives firms to identify, address and escalate issues at an early stage and provide securities regulatory authorities with appropriate information relating to those issues.

In summary, the Proposed Instrument is intended to foster confidence in the Canadian derivatives market by creating a regime that meets international standards and is, where appropriate, equivalent to the regimes in major trading jurisdictions. Currently, OTC derivatives are regulated differently across Canadian jurisdictions. The Proposed Instrument aims to reduce compliance costs for derivatives firms to the degree possible, by harmonizing the rules across Canadian jurisdictions and establishing a regime that is tailored for the derivatives market. This tailored regime will replace the existing securities registration regime that is inconsistent across jurisdictions and that is not tailored to the OTC derivatives markets.

(b) Costs

Generally, firms will incur costs from analyzing the requirements and establishing policies and procedures for compliance. Increased costs may also result from the introduction of financial requirements for registered derivatives firms that are not already subject to equivalent financial requirements. Any costs associated with complying with the Proposed Instrument are expected to be borne by registered derivatives firms and in certain circumstances may be passed on to derivatives parties.

There is also a possibility that foreign derivatives firms may be dissuaded from entering or remaining in the Canadian market due to the costs of complying with the Proposed Instrument, which would reduce Canadian derivatives parties' options for derivatives services. However, the Instrument contemplates a number of exemptions, including exemptions for smaller derivatives dealers that only deal with eligible derivatives parties and for derivatives firms located in foreign jurisdictions, which are subject to and in compliance with equivalent requirements under foreign laws. These exemptions could significantly reduce compliance costs associated with the Proposed Instrument for derivatives firms located in and complying with the laws of approved foreign jurisdictions.

Finally, jurisdictions impose registration fees for registrants. These fees are established under the laws of each Canadian jurisdiction.

(c) Conclusion

The CSA are of the view that the impact of the Proposed Instrument, including anticipated compliance costs for derivatives firms, is proportional to the benefits sought.

Protection of derivatives parties and the integrity of the Canadian derivatives market are the fundamental principles of the Proposed Instrument. The Proposed Instrument aims to provide a level of protection similar to that offered to derivatives parties in other jurisdictions with significant OTC derivatives markets, while being tailored to the nature of the Canadian market. To achieve a balance of interests, the Proposed Instrument is designed to promote a safer environment in the Canadian derivatives market while offering exemptions to derivatives firms that represent a small risk to our markets, that only deal with eligible derivatives parties or that are already subject to and compliant with equivalent requirements.

Contents of Annexes

The following annexes form part of this CSA Notice:

- Annex I – Description of Proposed Methodologies for Determining Notional Amount
- Annex II – Alternative version of the definition of “affiliated entity”
- Annex III – Proposed National Instrument 93-102 Derivatives: Registration
- Annex IV – Proposed Companion Policy 93-102 Derivatives: Registration
- Annex V – Local Matters

Comments

In addition to your comments on all aspects of the Proposed Instrument, the CSA also seek specific feedback on the following questions:

1) Methodology for determining “notional amount”

Annex I describes two different methodologies for determining notional amount for derivatives that reference a notional quantity (or volume) of an underlying asset: (i) the methodology based on the CDE Guidance, set out in Column 1 of Annex I, and (ii) the Regulatory Notional Amount methodology set out in Column 2 of Annex I.

- (a) Please provide any comments relating to the constituent elements (price, quantity, etc.) of the proposed methodologies.
- (b) Please provide comments on the most appropriate approach to determining the notional amount, for the purpose of regulatory thresholds, of a derivative with a notional amount schedule, including a schedule with notional amounts not denominated in Canadian dollars.
- (c) Please provide comments on the most appropriate approach to determining notional amount for a multi-leg derivative.

For example, in a multi-leg derivative with multiple legs that are exercisable, deliverable or otherwise actionable and that are not mutually exclusive, is it appropriate to determine the notional amount for the derivative by summing the notional amount for each such leg that is exercisable, deliverable or otherwise actionable and that is not mutually exclusive?

Other multi-leg derivatives may have multiple legs that are not exercisable, deliverable or otherwise actionable or that are mutually exclusive. For these types of multi-leg derivatives, is it appropriate to determine the notional amount for the derivative by using a weighted average of the notional amount of each such leg that is not exercisable, deliverable or otherwise actionable or that is mutually exclusive?

- (d) Please provide any general comments on determining notional amount for the purpose of regulatory thresholds, including relating to implementation of the proposed methodologies.

2) Definition of “affiliated entity”

The Instrument defines “affiliated entity” on the basis of “control”, and sets out certain tests for “control”. In the context of other rules relating to OTC derivatives, we are also considering a definition of “affiliated entity” that is based on accounting concepts of “consolidation” (a proposed version of the definition is included in Annex II). Please provide any comments you may have on (i) the definition in the Instrument, (ii) a definition in Annex II, and (iii) the appropriate balance between harmonization across related rules and using different definitions to more precisely target specific entities under different rules.

3) Definition of “eligible derivatives party”

Paragraphs (m), (n) and (o) provide that certain persons and companies are eligible derivatives parties if they meet certain criteria, including meeting certain financial thresholds. Are these criteria appropriate? Please explain your response.

4) Application of the derivatives adviser registration requirement to registered advisers/portfolio managers under securities legislation

Under the Proposed Instrument, a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others in derivatives will be required to register as a derivatives adviser unless an exemption from registration is available.

We understand that a registered adviser under securities or commodity futures legislation may provide advice in relation to derivatives or strategies involving derivatives, or may manage an account for a client and make trading decisions for the client in relation to derivatives or strategies involving derivatives. If the performance of these activities in relation to derivatives is limited in nature so that it could reasonably be considered incidental to the performance of their activities as a registered adviser for securities, we may consider the registered adviser/portfolio manager to not be “in the business of advising others in relation to derivatives”.

- (a) Do you agree with this approach? If not, why not? Alternatively, should we consider including an express exemption from the derivatives adviser registration requirement for a registered adviser under securities or commodity futures legislation? If yes, what if any conditions should apply to this exemption?
- (b) When should the provision of advice by a registered adviser/portfolio manager in relation to derivatives be considered incidental to the performance of their activities as a registered adviser/portfolio manager? What factors should we consider in distinguishing between registered advisers who need to register as derivatives advisers from registered advisers that do not need to register as derivatives advisers?

5) IIROC membership for certain derivatives dealers

Section 9 prohibits a derivatives dealer from transacting with an individual that is not an eligible derivatives party unless the derivatives dealer is a dealer member of IIROC. Should a derivatives dealer that deals with an individual that is not an eligible derivatives party be required to become an IIROC dealer member? Are there any other circumstances where a derivatives dealer should be required to be an IIROC dealer member?

6) Exemption from the individual registration requirements for derivatives dealing representatives and derivatives advising representatives

Subsection 16(3) and subsection 16(4) provide an exemption from the requirement to register an individual as a derivatives dealing representative or as a derivatives advising representative in certain circumstances. Are the exemptions appropriate? In subparagraph 16(4)(b)(iii), individuals that act as an adviser for a managed account are not eligible for the exemption from the requirement to register as a derivatives advising representative. Is this carve out appropriate where an individual has discretionary authority over the account of an eligible derivatives party?

7) Specific proficiency requirements for individual registrants

Subsections 18(2) through (6) of the Instrument establish specific proficiency requirements for each individual registration category. Are these specific requirements appropriate? If not what specific exams, designations or experience are appropriate?

8) Derivatives ultimate designated person

Subparagraph 27(3)(c)(i) requires a derivatives firm’s ultimate designated person to report any instance of non-compliance with securities legislation, including the Instrument, relating to derivatives or the firm’s risk management policies if the non-compliance creates a risk of material harm to any derivatives party. Is this requirement appropriate?

9) Requirements, roles and responsibilities of ultimate designated persons, chief compliance officers and chief risk officers

Sections 27 through 29 of the Instrument establish requirements, roles, and responsibilities of individuals registered as the ultimate designated person, the chief compliance officer and the chief risk officer for each registered firm. Considering the obligations imposed on senior derivatives managers in the Business Conduct Instrument, are the requirements, roles and responsibilities in sections 27 through 29 of the Instrument appropriate?

10) Minimum requirements for risk management policies and procedures

Section 39 sets out the minimum requirements for risk management policies and procedures. Are any of the requirements inappropriate? Are the requirements for an independent review of risk management systems appropriate?

11) Exemptions from the requirement to register for derivatives dealers with limited derivatives

Sections 50 and 51 establish exemptions from the requirement to register for derivatives dealers that have a gross notional amount that does not exceed prescribed thresholds. These exemptions provide that derivatives dealers that have their head office or principal place of business in Canada must calculate their gross notional amount based on outstanding derivatives with any counterparty, regardless of where the counterparty resides. Derivatives dealers that have their head office and principal place of business outside of Canada would calculate their gross notional amount based on outstanding derivatives where the counterparty is a Canadian resident. Would this result in Canadian resident derivatives dealers being placed at a competitive disadvantage, particularly where foreign derivatives dealers may be exempt from regulatory requirements in their home jurisdiction?

12) Exemptions from specific requirements in this Instrument for investment dealers

Section 55 exempts IIROC dealer members from specific requirements under the Instrument where those dealer members are subject to equivalent IIROC requirements. The IIROC dealer members will also be required to register in each CSA jurisdiction where their activities result in an obligation to register as a derivatives dealer or derivatives adviser. Does this obligation to register result in an excessive regulatory burden for the firms? Please provide specific information relating to this burden.

Please provide your comments in writing by **September 17, 2018**.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In addition, all comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the *Autorité des marchés financiers* at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Please address your comments to each of the following:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Request for Comments

Please send your comments **only** to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Grace Knakowski
Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
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Questions

Please refer your questions to any of the following:

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ANNEX I**Description of the Proposed Methodologies for Determining
Notional Amount Derivatives Negotiated in Non-Monetary Amounts**

	Column 1	Column 2
Product	Notional Amount based on the CDE Guidance	Notional Amount under the Regulatory Notional Methodology
Equity Derivatives		
Equity options and similar products	Product of the strike price specified in the contract and the number of shares or index units	Product of the delta-adjusted spot price at the time of the transaction and the number of shares or index units
Equity forwards and similar products	Product of the forward price specified in the contract and the number of shares or index units	Product of the forward price specified in the contract and the number of shares or index units
Equity dividend swaps and similar products	Product of the period fixed strike specified in the contract and the number of shares or index units	Product of the period fixed strike specified in the contract and the number of shares or index units
Equity swaps, portfolio swaps and similar products	Product of the initial price and the number of shares or index units	Product of the initial price and the number of shares or index units
Equity variance swaps and similar products	Variance amount	Variance amount
Equity volatility swaps and similar products	Vega notional amount	Vega notional amount
Equity CFDs and similar products	Product of the initial price and the number of shares or index units	Product of the initial price and the number of shares or index units
Commodity Derivatives		
Commodity options and similar products	Product of the strike price specified in the contract and the total notional quantity	Product of the delta-adjusted spot price specified in the contract and the notional quantity
Commodity forwards and similar products	Product of the forward price specified in the contract and the total notional quantity	Product of the forward price specified in the contract and the monthly notional quantity approximation
Commodity fixed/float swaps and similar products	Product of the fixed price specified in the contract and the total notional quantity	Product of the fixed price specified in the contract and the monthly notional quantity approximation
Commodity basis swaps and similar products	Product of the last available spot price at the time of the transaction of the underlying asset of the leg with no spread and the total notional quantity of the leg with no spread	The greater of (i) the product of the last available spot price at the time of the transaction of the underlying asset of leg 1 and the monthly notional quantity approximation of leg 1, and (ii) the product of the last available spot price at the time of the transaction of the underlying asset of leg 2 and the monthly notional quantity approximation of leg 2
Commodity swaptions and similar products	Notional amount of the underlying transaction	Notional amount of the underlying transaction
Commodity CFDs and similar products	Product of the initial price and the total notional quantity	Product of the initial price and the notional quantity

Notes applicable to all derivatives	
	All conversions to monetary notional amounts, including all conversions to Canadian dollars, must be made at the time of the transaction.
	For all derivatives with exercise optionality (e.g., swaptions) or volumetric optionality, the optionality must be assumed to be exercised and the regulatory notional amount would be determined as above.
	For derivatives with multiple settlement periods, which settlement periods are not monthly, "monthly notional quantity approximation" is calculated as: $\left(\frac{\text{total notional quantity}}{\text{total number of days between effective date and maturity}} \right) \times \left(\frac{365}{12} \right)$
	If applicable to the derivative, the notional amount must reflect any multipliers and option entitlements.
	For derivatives whereby the quantity unit of measure differs from the price unit of measure, the price or total quantity must be converted to a unified unit of measure.
	For basket-type derivatives, the notional amount of the derivative is the sum of the notional amounts of each constituent of the basket.
	Any reference to a price, including a spot price, means the absolute value of the price. For example, a negative price must be treated as the absolute value of that negative price.
	Any reference to "spot price" means the quoted price in an active market for the underlying asset or, if no quoted price in an active market is available, the fair value of the underlying asset, as determined in accordance with the <i>Fair value hierarchy</i> set out in IFRS 13 <i>Fair Value Measurement</i> .
	Information relating to certain terms, including "delta adjusted-spot price" and "initial price" will be established in Appendix A of local and multilateral instruments relating to Trade Repositories and Derivatives Data Reporting. ¹³

¹³ These instruments are Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*, Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* and, in Québec, Regulation 91-507 respecting trade repositories and derivatives data reporting.

ANNEX II

Alternative version of the definition of “affiliated entity”

In this Instrument, a person or company (the first party) is an affiliated entity of another person or company (the second party) if any of the following apply:

- (a) the first party and the second party are consolidated in consolidated financial statements prepared in accordance with
 - (i) IFRS, or
 - (ii) generally accepted accounting principles in the United States of America;
- (b) all of the following apply:
 - (i) neither the first party's nor the second party's financial statements, nor the financial statements of another person or company, were prepared in accordance with the principles or standards specified in subparagraphs (a)(i) or (ii);
 - (ii) the first party and the second party would have been, at the relevant time, required to be consolidated in consolidated financial statements prepared by the first party, the second party or the other person or company, if the consolidated financial statements were prepared in accordance with the principles or standards specified in subparagraphs (a)(i) or (ii);
- (c) both parties are prudentially regulated entities that are supervised on a consolidated basis.

ANNEX III

**PROPOSED NATIONAL INSTRUMENT 93-102
DERIVATIVES: REGISTRATION**

**PART 1
DEFINITIONS AND INTERPRETATION**

Definitions and interpretation

1. (1) In this Instrument,

“Canadian counterparty” means a derivatives party to which either of the following applies:

- (a) the derivatives party is a person or company, other than an individual, organized under the laws of Canada or a jurisdiction of Canada or that has its head office or principal place of business in Canada;
- (b) the derivatives party is an affiliated entity of a person or company described in paragraph (a) and the person or company is responsible for the liabilities of that affiliated entity;

“Canadian financial institution” means any of the following:

- (a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act;
- (b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

“commercial hedger” means a person or company that carries on a business and that transacts a derivative that is intended to hedge risks relating to that business if those risks arise from potential changes in value of one or more of the following:

- (a) an asset that the person or company owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;
- (b) a liability that the person or company incurs or anticipates incurring;
- (c) a service which the person or company provides, purchases, or anticipates providing or purchasing;

“derivatives adviser” means

- (a) a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others in respect of derivatives, and
- (b) any other person or company required to be registered as a derivatives adviser under securities legislation;

“derivatives dealer” means

- (a) a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives as principal or agent, and
- (b) any other person or company required to be registered as a derivatives dealer under securities legislation;

“derivatives firm” means a derivatives dealer or a derivatives adviser, as applicable;

“derivatives party” means

- (a) in relation to a derivatives dealer, one of the following:
 - (i) a person or company for which the derivatives dealer acts or proposes to act as an agent in relation to a transaction;

- (ii) a person or company that is, or is proposed to be, a party to a derivative if the derivatives dealer is the counterparty, and
- (b) in relation to a derivatives adviser, a person or company to which the adviser provides or proposes to provide advice in relation to a derivative;

“eligible derivatives party” means, for a derivatives party of a derivatives firm, any of the following:

- (a) a Canadian financial institution;
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);
- (c) a subsidiary of a person or company referred to in paragraph (a) or (b), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of the subsidiary;
- (d) a person or company registered under the securities legislation of a jurisdiction of Canada as at least one of the following:
 - (i) a derivatives dealer;
 - (ii) a derivatives adviser;
 - (iii) an adviser;
 - (iv) an investment dealer;
- (e) a pension fund that is regulated by the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada or a wholly-owned subsidiary of the pension fund;
- (f) an entity organized under the laws of a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (e);
- (g) the Government of Canada or the government of a jurisdiction of Canada, or any crown corporation, agency or wholly-owned entity of the Government of Canada or the government of a jurisdiction of Canada;
- (h) the government of a foreign jurisdiction, or any agency of that government;
- (i) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;
- (j) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a managed account managed by the trust company or trust corporation, as the case may be;
- (k) a person or company that is acting on behalf of a managed account if the person or company is registered or authorized to carry on business as one of the following:
 - (i) an adviser or a derivatives adviser;
 - (ii) the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction;
- (l) an investment fund that is advised by an adviser registered or exempted from registration under securities legislation or under commodity futures legislation in Canada;
- (m) a person or company, other than an individual, that has represented to the derivatives firm, in writing, that
 - (i) it has the requisite knowledge and experience to evaluate the information about derivatives that has been provided to the person or company by the derivatives firm, the suitability of the derivatives for

- the person or company, and the characteristics of the derivatives to be transacted on the person or company's behalf, and
- (ii) it has net assets of at least \$25 000 000 as shown on its most recently prepared financial statements;
- (n) a person or company, other than an individual, that has represented to the derivatives firm, in writing, that
- (i) it has the requisite knowledge and experience to evaluate the information provided to the person or company about derivatives, the suitability of the derivatives for that person or company, and the characteristics of the derivatives to be transacted on the person or company's behalf,
 - (ii) it has net assets of at least \$10 000 000 as shown on its most recently prepared financial statements, and
 - (iii) it is a commercial hedger in relation to the derivatives that it transacts with the derivatives firm;
- (o) an individual that has represented to the derivatives firm, in writing, that
- (i) he or she has the requisite knowledge and experience to evaluate the information provided to the individual about derivatives, the suitability of the derivatives for that individual, and the characteristics of the derivatives to be transacted on the individual's behalf, and
 - (ii) he or she beneficially owns financial assets, as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*, that have an aggregate realizable value before tax but net of any related liabilities of at least \$5 000 000;
- (p) a person or company, other than an individual, that has represented to the derivatives firm, in writing, that its obligations under derivatives that it transacts with the derivatives firm are fully guaranteed or otherwise fully supported, under a written agreement, by one or more eligible derivatives parties, other than a person or company that only qualifies as an eligible derivatives party under paragraph (n) or under paragraph (o);
- (q) a person or company, other than an individual, that has represented to the derivatives firm, in writing, that all of the following apply:
- (i) the person or company is a commercial hedger in relation to the derivatives that it transacts with the derivatives firm;
 - (ii) the obligations of the person or company, under derivatives that it transacts with the derivatives firm, are fully guaranteed or otherwise fully supported, under a written agreement, by one or more eligible derivatives parties other than a person or company that only qualifies as an eligible derivatives party under paragraph (o);
- (r) a qualifying clearing agency;

“investment dealer” means a person or company registered as an investment dealer under the securities legislation of a jurisdiction of Canada;

“IIROC” means the Investment Industry Regulatory Organization of Canada;

“managed account” means an account of a derivatives party for which a person or company makes the trading decisions if that person or company has discretion to transact derivatives for the account without requiring the derivatives party’s express consent to the transaction;

“non-eligible derivatives party” means a derivatives party that is not an eligible derivatives party;

“notional amount” has the meaning set out in Appendix A;

“principal regulator” means

- (a) for a registered derivatives firm that has its head office in Canada, the securities regulatory authority or regulator in the jurisdiction in which the firm’s head office is located,

- (b) for a registered derivatives firm that has its head office in a jurisdiction of Canada where the firm is exempt from the requirement to register as a derivatives dealer or as a derivatives adviser, the securities regulatory authority or regulator in the jurisdiction of Canada where the firm is required to register as a derivatives firm and where the firm expects to conduct most of its activities that require registration as a derivatives firm as at the end of its current financial year, or conducted most of its activities that require registration as a derivatives firm as at the end of its most recently completed financial year, and
- (c) for a derivatives firm that has its head office in a foreign jurisdiction, the securities regulatory authority or regulator in the jurisdiction of Canada the firm identified in one of the following:
 - (i) item 2.2(b) of its most recently submitted Form 33-109F6 *Firm Registration* under National Instrument 33-109 *Registration Information*;
 - (ii) its most recently submitted Form 33-109F5 *Change of Registration Information* under National Instrument 33-109 *Registration Information*, if the change noted in that form relates to item 2.2(b) of Form 33-109F6 *Firm Registration*;

“qualifying clearing agency” means a person or company if either of the following applies:

- (a) it is recognized or exempted from recognition as a clearing agency or a clearing house, as applicable, in a jurisdiction of Canada;
- (b) it is regulated by an authority in a foreign jurisdiction that applies regulatory requirements that are consistent with the *Principles for market infrastructures* applicable to central counterparties and published by the Bank for International Settlements’ Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions in April 2012, as amended from time to time;

“registered derivatives firm” means a derivatives dealer or a derivatives adviser that is registered under the securities legislation of a jurisdiction in Canada as a derivatives dealer or a derivatives adviser;

“registered derivatives individual” means an individual who is registered on behalf of a derivatives firm as any of the following:

- (a) a derivatives dealing representative;
- (b) a derivatives advising representative;
- (c) a derivatives ultimate designated person;
- (d) a derivatives chief compliance officer;
- (e) a derivatives chief risk officer;

“registered securities firm” is a person or company that is registered as a dealer, an adviser or an investment fund manager in a category of registration specified in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“sponsoring derivatives firm” means the registered derivatives firm in a jurisdiction of Canada on whose behalf an individual acts as a derivatives advising representative, a derivatives dealing representative, a derivatives ultimate designated person, a derivatives chief compliance officer or a derivatives chief risk officer;

“transaction” means any of the following:

- (a) entering into a derivative or making a material amendment to, terminating, assigning, selling or otherwise acquiring or disposing of a derivative;
- (b) the novation of a derivative, other than a novation with a qualifying clearing agency;

“valuation” means the current value of a derivative determined in accordance with applicable accounting standards for fair value measurement using a methodology that is consistent with industry standards;

- (2) In this Instrument, “adviser” includes
- (a) in Manitoba, an “adviser” as defined in the *Commodity Futures Act* (Manitoba),
 - (b) in Ontario, an “adviser” as defined in the *Commodity Futures Act* (Ontario), and
 - (c) in Québec, an “adviser” as defined in the *Securities Act* (Québec).
- (3) In this Instrument, a person or company is an affiliated entity of another person or company if one of them controls the other or each of them is controlled by the same person or company.
- (4) In this Instrument, a person or company (the first party) is considered to control another person or company (the second party) if any of the following apply:
- (a) the first party beneficially owns or directly or indirectly exercises control or direction over securities of the second party carrying votes which, if exercised, would entitle the first party to elect a majority of the directors of the second party unless the first party holds the voting securities only to secure an obligation;
 - (b) the second party is a partnership, other than a limited partnership, and the first party holds more than 50% of the interests of the partnership;
 - (c) all of the following apply:
 - (i) the second party is a limited partnership;
 - (ii) the first party is a general partner of the limited partnership referred to in subparagraph (i);
 - (iii) the first party has the power to direct the management and policies of the second party by virtue of being a general partner of the second party;
 - (d) all of the following apply:
 - (i) the second party is a trust;
 - (ii) the first party is a trustee of the trust referred to in subparagraph (i);
 - (iii) the first party has the power to direct the management and policies of the second party by virtue of being a trustee of the second party.
- (5) In this Instrument, a person or company is a subsidiary of another person or company if one of the following applies:
- (a) it is controlled by,
 - (i) the other person or company,
 - (ii) the other person or company and one or more persons or companies each of which is controlled by that person or company, or
 - (iii) two or more persons or companies each of which is controlled by the other person or company;
 - (b) it is a subsidiary of a person or company that is that other person or company’s subsidiary.
- (6) For the purpose of this Instrument, a person or company described in paragraph (k) of the definition of “eligible derivatives party” is an adviser acting on behalf of a managed account owned by another person or company.
- (7) For the purpose of determining whether a derivatives party is an eligible derivatives party, a derivatives firm must not rely on a written representation if reliance on that representation would be unreasonable.
- (8) In this Instrument, in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, “derivative” means a “specified derivative” as defined in Multilateral Instrument 91-101 *Derivatives: Product Determination*.

Information may be given to the principal regulator

2. (1) For the purpose of a requirement in this Instrument to report or notify the regulator or the securities regulatory authority or to deliver or submit a document to the regulator or the securities regulatory authority, a person or company may report or notify or deliver or submit the document to the person or company's principal regulator.
- (2) Subsection (1) does not apply to a derivatives firm relying on the exemptions in either of the following:
- (a) section 52 [*Foreign derivatives dealers – exemption from registration*];
 - (b) section 59 [*Foreign derivatives advisers – exemption from registration*].

PART 2 APPLICATION

Scope of Instrument

3. This Instrument applies to
- (a) in Manitoba,
 - (i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and
 - (ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security,
 - (b) in Ontario,
 - (i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and
 - (ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security, and
 - (c) in Québec, a derivative specified in section 1.2 of *Regulation 91-506 respecting Derivatives Determination*, other than a contract or instrument specified in section 2 of that regulation.

In each other local jurisdiction, this Instrument applies to a derivative as defined in subsection 1(8) of this Instrument. This text box does not form part of this Instrument and has no official status.

Qualifying clearing agencies

4. This Instrument does not apply to a qualifying clearing agency.

Governments, central banks and international organizations

5. This Instrument does not apply to any of the following:
- (a) the Government of Canada, the government of a jurisdiction of Canada or the government of a foreign jurisdiction;
 - (b) the Bank of Canada or a central bank of a foreign jurisdiction;
 - (c) a crown corporation or agency, the accounts of which are consolidated for accounting purposes with those of the Government of Canada or with the government of a jurisdiction of Canada;
 - (d) the Bank for International Settlements;
 - (e) the International Monetary Fund.

**PART 3
REQUIREMENT TO REGISTER AND
CATEGORIES OF REGISTRATION FOR DERIVATIVES FIRMS**

Division 1 – Firm Registration and Categories of Registration

Derivatives dealer registration – additional registration triggers

6. In addition to the registration requirement that applies under other provisions of securities legislation, a person or company must register as a derivatives dealer if one or more of the following applies:
- (a) the person or company transacts with, for or on behalf of a non-eligible derivatives party;
 - (b) the person or company solicits or initiates contact with a non-eligible derivatives party for the purpose of encouraging that person or company to transact in a derivative or to offer a service relating to a transaction or transactions;
 - (c) the person or company, on behalf of another person or company, other than an affiliated entity, facilitates the clearing of one or more derivatives through a clearing agency or a clearing house, as applicable.

Derivatives dealer registration categories

7. (1) The following are the categories of registration for a person or company that is required to be registered under securities legislation as a derivatives dealer:
- (a) derivatives dealer;
 - (b) restricted derivatives dealer.
- (2) A person or company registered in the category of
- (a) derivatives dealer may act as a derivatives dealer in respect of any derivative, and
 - (b) restricted derivatives dealer may act as a derivatives dealer in accordance with the terms, conditions, restrictions and requirements applied to its registration.

Derivatives adviser registration categories

8. (1) The following are the registration categories for a person or company that is required to be registered under securities legislation as a derivatives adviser:
- (a) derivatives adviser;
 - (b) restricted derivatives adviser.
- (2) A person or company registered in the category of
- (a) derivatives adviser may act as a derivatives adviser in respect of any derivative, and
 - (b) restricted derivatives adviser may act as a derivatives adviser, in respect of any derivatives, in accordance with the terms, conditions, restrictions and requirements applied to its registration.

IIROC membership for certain derivatives dealers

9. A registered derivatives dealer must not transact derivatives with a derivatives party who is an individual and who is not an eligible derivatives party unless the derivatives dealer is a dealer member of IIROC, as defined under the rules of IIROC.

Division 2 – Suspension and revocation of registration – derivatives firms

Failure to pay fees

10. (1) In this section, “annual fees” means

- (a) in Alberta, the fees required under section 5 of ASC Rule 13-501 *Fees*,
 - (b) in British Columbia, the annual fees required under section 22 of the Securities Regulation, B.C. Reg. 196/97,
 - (c) in Manitoba, the fees required under paragraph 1.(2)(a) of the Manitoba Fee Regulation, M.R. 491/88R,
 - (d) in New Brunswick, the fees required under section 2.2 (c) of Local Rule 11-501 *Fees*,
 - (e) in Newfoundland and Labrador, the fees required under section 143 of the *Securities Act*,
 - (f) in Nova Scotia, the fees required under Part XIV of the regulations made pursuant to the *Securities Act*,
 - (g) in the Northwest Territories, the fees required under sections 1(c) and 1(e) of the Securities Fee regulations, R-066-2008;
 - (h) in Nunavut, the fees required under section 1(a) of the Schedule to R-003-2003 to the Securities Fee regulation, R.R.N.W.T. 1990, c.20,
 - (i) in Prince Edward Island, the fees required under section 175 of the *Securities Act*, R.S.P.E.I., Cap. S-3.1,
 - (j) in Québec, section 5 of the Tariffs for Costs and Fees Payable in respect of Derivatives,
 - (k) in Saskatchewan, the annual registration fees required to be paid by a registrant under section 176 of The Securities Regulations (Saskatchewan), and
 - (l) in Yukon, the fees required under O.I.C. 2009/66, pursuant to section 168 of the *Securities Act*.
- (2) If a registered derivatives firm has not paid the annual fees by the 30th day after the date the annual fees were due, the registration of the registered derivatives firm is suspended until reinstated or revoked under securities legislation.

If IIROC membership is revoked or suspended

11. If IIROC revokes or suspends a registered derivatives firm’s membership, the registered derivatives firm’s registration is suspended until reinstated or revoked under securities legislation.

Activities not permitted while a firm’s registration is suspended

12. If a registered derivatives firm’s registration in a category is suspended, the registered derivatives firm must not act as a derivatives dealer or a derivatives adviser, as the case may be, under that category.

Revocation of a suspended registration – firm

13. If a registration has been suspended under this Division and it has not been reinstated, the registration is revoked on the 2nd anniversary of the suspension.

Exception for firms involved in a hearing or proceeding

14. Despite section 13 [*Revocation of a suspended registration – firm*], if a hearing or proceeding concerning a suspended registered derivatives firm is commenced under securities legislation or under the rules of IIROC, the firm’s registration remains suspended.

Application of Division 2 in Ontario

15. Other than section 12 [*Activities not permitted while a firm's registration is suspended*], this Division does not apply in Ontario.

In Ontario, measures governing suspension are in section 29 of the Securities Act (Ontario) and are similar to those in Division 2 of Part 3.

PART 4 CATEGORIES OF REGISTRATION FOR INDIVIDUALS

Individual registration categories

16. (1) The following are the categories of registration for an individual who is required, under securities legislation, to be registered to act on behalf of a registered derivatives firm:
- (a) derivatives dealing representative;
 - (b) derivatives advising representative;
 - (c) derivatives ultimate designated person;
 - (d) derivatives chief compliance officer;
 - (e) derivatives chief risk officer.
- (2) An individual registered in the category of
- (a) derivatives dealing representative may act as a dealer in respect of any derivative that the individual's sponsoring derivatives firm is permitted to transact,
 - (b) derivatives advising representative may act as an adviser in respect of any derivative that the individual's sponsoring derivatives firm is permitted to advise on,
 - (c) derivatives ultimate designated person must perform the functions set out in section 27 [*Derivatives ultimate designated person*],
 - (d) derivatives chief compliance officer must perform the functions set out in section 28 [*Derivatives chief compliance officer*], and
 - (e) derivatives chief risk officer must perform the functions set out in section 29 [*Derivatives chief risk officer*].
- (3) An individual is exempt from the requirement to register as a derivatives dealing representative of a registered derivatives dealer if either of the following applies:
- (a) the individual would otherwise only be required to register as a derivatives dealing representative as a result of transacting with or on behalf of an affiliated entity, other than an affiliated entity that is an investment fund, of the registered derivatives dealer;
 - (b) the individual does not solicit or transact with, for or on behalf of, a non-eligible derivatives party.
- (4) An individual is exempt from the requirement to register as a derivatives advising representative of a registered derivatives adviser if either of the following applies:
- (a) the individual would otherwise only be required to register as a derivatives advising representative as a result of advising an affiliated entity, other than an affiliated entity that is an investment fund, of the registered derivatives adviser;
 - (b) if both of the following apply:
 - (i) the individual does not advise a non-eligible derivatives party;
 - (ii) the individual does not act as an adviser for a managed account of any derivatives party.

PART 5
REGISTRATION REQUIREMENTS FOR INDIVIDUALS

Division 1 – Individual proficiency requirements

Definitions

17. In this Part,

“Canadian Investment Manager designation” means the designation earned through the Canadian investment manager program prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every program that preceded that program, or succeeded that program, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned program;

“CPH Course Exam” means the examination prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

“Chief Compliance Officers Qualifying Exam” means the examination prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

“CFA Charter” means the charter earned through the Chartered Financial Analyst program prepared and administered by the CFA Institute and so named on the day this Instrument comes into force, and every program that preceded that program, or succeeded that program, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned program;

“Derivatives Fundamentals Course Exam” means the examination prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

“Risk Manager Designation” means a designation qualifying an individual as a financial risk manager by the Global Association of Risk Managers or professional risk manager by The Professional Risk Managers’ International Association, each so named on the day this Instrument comes into force, and every designation that preceded that designation, or succeeded that designation, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned designation;

“Futures Licensing Course Exam” means the examination prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

“National Commodity Futures Exam” means the examination prepared and administered by the Financial Industry Regulatory Authority in the United States of America and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

“PDO Exam” means any of the following:

- (a) the Officers’, Partners’ and Directors’ Exam prepared and administered by the IFSE Institute and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;
- (b) the Partners, Directors and Senior Officers Course Exam prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination.

Initial and ongoing proficiency requirements

- 18. (1)** A registered derivatives firm must not allow an individual to perform an activity on its behalf that requires registration unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently, including understanding the structure, features and risks of each derivative that the individual transacts or recommends.
- (2)** In addition to the requirement in subsection (1), a registered derivatives firm must not designate an individual to act as its derivatives chief compliance officer unless either of the following applies:
- (a) all of the following apply:
 - (i) the individual has earned a CFA Charter or a professional designation as a lawyer or a Chartered Professional Accountant in a jurisdiction of Canada, a notary in Québec, or the equivalent in a foreign jurisdiction;
 - (ii) the individual has passed the PDO Exam or the Chief Compliance Officers Qualifying Exam;
 - (iii) the individual has either
 - (A) gained at least 36 months of relevant derivatives experience while working at a registered securities firm, a derivatives dealer, a derivatives adviser, or a person or company that conducts the activities of a derivatives dealer or derivatives adviser in a foreign jurisdiction;
 - (B) provided professional services related to derivatives for at least 36 months and also worked at a derivatives dealer or a derivatives adviser for 12 months;
 - (b) the individual has passed either the PDO Exam or the Chief Compliance Officers Qualifying Exam and one or more of the following applies:
 - (i) the individual has worked at a registered securities firm, at a derivatives dealer, at a derivatives adviser or at a person or company that conducts the activities of a derivatives dealer or derivatives adviser in a foreign jurisdiction specified in Column 1 of Appendix B, for 5 years, including for 36 months in a compliance capacity;
 - (ii) the individual has worked for 5 years at a Canadian financial institution in a compliance capacity relating to derivatives.
- (3)** In addition to the requirement in subsection (1), a registered derivatives firm must not designate an individual to act as its derivatives chief risk officer, unless one or more of the following applies:
- (a) the individual has earned a CFA Charter, has received a Risk Manager Designation or has received equivalent certification as a risk manager;
 - (b) the individual has passed the CPH Course Exam, and one or more of the following applies:
 - (i) the individual has gained 36 months of relevant derivatives experience while working at a registered securities firm, a derivatives dealer, a derivatives adviser or at a person or company that conducts the activities of a derivatives dealer or derivatives adviser in a foreign jurisdiction specified in Column 1 of Appendix B;
 - (ii) the individual has provided professional services related to derivatives for 36 months and also worked at a registered securities firm, a derivatives dealer or a derivatives adviser for 12 months;
 - (c) the individual has passed the PDO Exam and either of the following applies:
 - (i) the individual has worked at a derivatives dealer or a derivatives adviser for 5 years, including for 36 months in a risk management capacity;
 - (ii) the individual has worked for 5 years at a Canadian financial institution in a risk management capacity relating to derivatives.

- (4) In addition to the requirement in subsection (1), a registered derivatives firm must not allow an individual to act, on its behalf, as a derivatives dealing representative unless either of the following applies:
- (a) the individual has passed the Derivatives Fundamentals Course Exam;
 - (b) the individual has passed the Futures Licensing Course Exam and the National Commodity Futures Exam.
- (5) Despite subsection (4), a registered derivatives firm may allow an individual to act on its behalf as a derivatives dealing representative without meeting the requirements in that subsection if the individual is exempt from the requirement to register under subsection 16(3).
- (6) In addition to the requirement in subsection (1), a registered derivatives firm must not allow an individual to act on its behalf as a derivatives advising representative unless one or more of the following applies:
- (a) the individual has earned a CFA Charter and has gained 12 months of relevant investment management experience, including experience relating to derivatives, in the 36-month period before applying for registration;
 - (b) all of the following apply:
 - (i) the individual has received the Canadian Investment Manager Designation;
 - (ii) the individual has passed the Derivatives Fundamentals Course Exam;
 - (iii) the individual has gained 48 months of relevant investment management experience, including experience relating to derivatives, at least 12 months of which was gained in the 36-month period before applying for registration.
- (7) Despite subsection (6), a registered derivatives firm may allow an individual to act on its behalf as a derivatives advising representative without meeting the requirements in that subsection if the individual is exempt from the requirement to register under subsection 16(4).
- (8) For the purpose of this section, an individual is deemed to have not passed an examination unless the individual passed the examination not more than 36 months before the date of his or her application for registration.
- (9) Subsection (8) does not apply if the individual passed the examination more than 36 months before the date of his or her application and has met one of the following conditions:
- (a) the individual was registered in the same category in any jurisdiction of Canada at any time during the 36-month period before the date of his or her application;
 - (b) the individual has gained 12 months of relevant industry experience during the 36-month period before the date of his or her application.
- (10) For the purpose of paragraph (9)(a), an individual is not considered to have been registered during any period in which the individual's registration was suspended.

Division 2 – Suspension and revocation of registration - individuals

If individual ceases to have authority to act for the derivatives firm

19. If a registered derivatives individual ceases to have authority to act as a registered derivatives individual on behalf of his or her sponsoring derivatives firm because of the end of, or change in, the individual's employment, partnership, or agency relationship with the firm, the individual's registration with the firm is suspended until reinstated or revoked under securities legislation.

If IIROC approval is revoked or suspended

20. If IIROC revokes or suspends a registered individual's approval in respect of a registered derivatives dealer, the individual's registration as a derivatives dealing representative of the registered derivatives dealer is suspended until reinstated or revoked under securities legislation.

If sponsoring derivatives firm is suspended

21. If a registered derivatives firm's registration in a category is suspended, the registration of each registered derivatives dealing representative or derivatives advising representative acting on behalf of the firm in that category is suspended until reinstated or revoked under securities legislation.

Dealing and advising activities suspended

22. If an individual's registration in a category is suspended, the individual must not act as a derivatives dealer or a derivatives adviser, as the case may be, under that category.

Revocation of a suspended registration – individual

23. If a registration of an individual has been suspended under this Division and it has not been reinstated, the registration is revoked on the 2nd anniversary of the suspension.

Exception for individuals involved in a hearing or proceeding

24. Despite section 23 [*Revocation of a suspended registration – individual*], if a hearing or proceeding concerning a suspended individual is commenced under securities legislation or under the rules of IIROC, the individual's registration remains suspended.

Application of this Division in Ontario

25. Other than section 22 [*Dealing and advising activities suspended*] this Division does not apply in Ontario.

In Ontario, measures governing suspension are in section 29 of the Securities Act (Ontario) and are similar to those in Division 2 of Part 5.

**PART 6
DERIVATIVES ULTIMATE DESIGNATED PERSON,
DERIVATIVES CHIEF COMPLIANCE OFFICER AND
DERIVATIVES CHIEF RISK OFFICER**

Requirement to designate a derivatives ultimate designated person, a derivatives chief compliance officer and a derivatives chief risk officer

26. Each registered derivatives firm must designate an individual who is registered under securities legislation in the applicable category as
- (a) a derivatives ultimate designated person responsible for performing the functions set out in section 27 [*Derivatives ultimate designated person*],
 - (b) a derivatives chief compliance officer responsible for performing the functions set out in section 28 [*Derivatives chief compliance officer*], and
 - (c) a derivatives chief risk officer responsible for performing the functions set out in section 29 [*Derivatives chief risk officer*].

Derivatives ultimate designated person

27. (1) The derivatives ultimate designated person must be one of the following:
- (a) the chief executive officer of the registered derivatives firm, or if the registered derivatives firm does not have a chief executive officer, an individual acting in a capacity similar to that of a chief executive officer;
 - (b) a partner or the sole proprietor of the registered derivatives firm;
 - (c) if the registered derivatives firm has other significant business activities, the officer in charge of the division of the registered derivatives firm that conducts the activities that require the firm to be registered as a derivatives dealer or as a derivatives adviser.

- (2) If the individual registered as a registered derivatives firm's derivatives ultimate designated person ceases to meet the conditions specified in subsection (1), the registered derivatives firm must designate an individual who does meet these conditions to act as its derivatives ultimate designated person.
- (3) The derivatives ultimate designated person of a registered derivatives firm must do all of the following:
- (a) supervise the activities of the registered derivatives firm that are directed towards ensuring compliance with securities legislation relating to derivatives by the registered derivatives firm and each individual acting on the registered derivatives firm's behalf;
 - (b) promote compliance with securities legislation relating to derivatives by the registered derivatives firm and individuals acting on its behalf;
 - (c) report, on a timely basis, to the board of directors, or individuals acting in a similar capacity for the registered derivatives firm, any circumstance that the derivatives ultimate designated person becomes aware of, indicating that the registered derivatives firm, or any individual acting on its behalf, may be in non-compliance with this Instrument, securities legislation relating to derivatives or the firm's risk management policies and procedures required under section 39 [*Risk management policies and procedures*] and any of the following apply:
 - (i) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to a derivatives party;
 - (ii) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to capital markets;
 - (iii) the non-compliance is part of a pattern of non-compliance;
 - (d) report, on a timely basis, to the regulator or, in Québec, the securities regulatory authority any circumstances where, with respect to the derivatives activities of the registered derivatives firm, the registered derivatives firm is not or was not in compliance with this Instrument or securities legislation relating to derivatives and one or more of the following applies:
 - (i) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to a derivatives party;
 - (ii) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to capital markets;
 - (iii) the non-compliance is part of a pattern of non-compliance.

Derivatives chief compliance officer

28. (1) The derivatives chief compliance officer must be one of the following:
- (a) an officer or partner of the registered derivatives firm;
 - (b) the sole proprietor of the registered derivatives firm.
- (2) If the individual registered as a registered derivatives firm's derivatives chief compliance officer ceases to meet the conditions specified in subsection (1), the registered derivatives firm must designate an individual who does meet these conditions to act as its derivatives chief compliance officer.
- (3) The derivatives chief compliance officer of a registered derivatives firm must do all of the following:
- (a) establish, maintain and apply written policies and procedures reasonably designed to assess compliance, by the registered derivatives firm and individuals acting on its behalf, with securities legislation relating to derivatives;
 - (b) monitor and assess compliance, by the registered derivatives firm and individuals acting on its behalf, with securities legislation relating to derivatives;

- (c) report to the derivatives ultimate designated person of the registered derivatives firm, as soon as possible after the derivatives chief compliance officer becomes aware of any circumstances indicating that the registered derivatives firm, or any individual acting on its behalf, may be in non-compliance with securities legislation relating to derivatives and one or more of the following applies:
 - (i) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to a derivatives party;
 - (ii) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to capital markets;
 - (iii) the non-compliance is part of a pattern of non-compliance;
- (d) submit an annual report to the registered derivatives firm's board of directors, or individuals acting in the same capacity for the registered derivatives firm, for the purpose of assessing compliance, by the registered derivatives firm and individuals acting on its behalf, with securities legislation relating to derivatives that must, at a minimum
 - (i) identify the policies and procedures referenced in paragraph (a),
 - (ii) provide an assessment of the effectiveness of the policies and procedures referenced in paragraph (a),
 - (iii) discuss where the policies and procedures referenced in paragraph (a) need to be improved and identify potential changes to address the needs for improvement,
 - (iv) list any material changes to the policies and procedures referenced in paragraph (a) during the coverage period of the report, and
 - (v) describe any circumstance reported to the derivatives ultimate designated person under paragraph (c) and the corresponding action taken.

Derivatives chief risk officer

29. (1) The derivatives chief risk officer must be one of the following:

- (a) an officer or partner of the registered derivatives firm;
- (b) the sole proprietor of the registered derivatives firm.

(2) If the individual registered as the registered derivatives firm's derivatives chief risk officer ceases to meet the conditions specified in subsection (1), the registered derivatives firm must designate an individual who does meet these conditions to act as its derivatives chief risk officer.

(3) The derivatives chief risk officer of a registered derivatives firm must do all of the following:

- (a) establish, maintain and apply the policies and procedures for assessing and managing risks related to the registered derivatives firm, including policies and procedures reasonably designed to ensure compliance with section 39 [*Risk management policies and procedures*];
- (b) monitor and assess compliance, by the registered derivatives firm and individuals acting on its behalf, with the firm's risk management policies and procedures;
- (c) report to the derivatives ultimate designated person of the registered derivatives firm, as soon as possible after the derivatives chief risk officer becomes aware of any circumstances indicating that the registered derivatives firm, or any individual acting on its behalf, may be in material non-compliance with the registered derivatives firm's risk management policies and procedures required under section 39 [*Risk management policies and procedures*];
- (d) submit an annual report to the registered derivatives firm's board of directors, or individuals acting in a similar capacity for the registered derivatives firm, for the purpose of assessing compliance with the firm's risk management policies and procedures, identifying the firm's material risks and assessing the effectiveness of the firm's risk management policies and procedures.

Providing access to the board of directors

30. A registered derivatives firm must ensure that its derivatives ultimate designated person, its derivatives chief compliance officer and its derivatives chief risk officer have reasonable access to the firm's board of directors, or individuals acting in a similar capacity for the firm, at such times as the derivatives ultimate designated person, the derivatives chief compliance officer or the derivatives chief risk officer may consider necessary or advisable in view of his or her responsibilities.

PART 7 FINANCIAL REQUIREMENTS

Division 1 – Capital requirements

Capital requirements

31. A registered derivatives firm must maintain excess working capital in accordance with the requirements set out in Appendix C.

Division 2 – Audits

Direction by the regulator or securities regulatory authority to conduct an audit or review

32. A registered derivatives firm must direct its independent auditor in writing to conduct any audit or review required by the regulator or, in Québec, the securities regulatory authority during its registration and must deliver a copy of the direction to the regulator or the securities regulatory authority
- (a) with its application for registration, and
 - (b) no later than the 10th business day after the registered derivatives firm changes its auditor.

Co-operating with the auditor

33. A registered derivatives firm must not withhold, destroy or conceal any information or documents or otherwise fail to cooperate with a reasonable request made by an auditor of the registered derivatives firm in the course of an audit.

Division 3 – Financial reporting

Annual financial statements

34. (1) Annual financial statements delivered to the regulator or, in Québec, the securities regulatory authority under this Division must include the following:
- (a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows, each prepared for the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;
 - (b) a statement of financial position, signed by at least one director of the registered derivatives firm, as at the end of the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;
 - (c) notes to the financial statements.
- (2) The annual financial statements delivered to the regulator or, in Québec, the securities regulatory authority under this Division must be audited.

Interim financial statements

35. (1) Interim financial statements delivered to the regulator or, in Québec, the securities regulatory authority under this Division for interim periods may be limited to the following:
- (a) a statement of comprehensive income for the 3-month period ending on the last day of the interim period and for the same period of the immediately preceding financial year, if any;

- (b) a statement of financial position, signed by at least one director of the registered derivatives firm, as at the end of the interim period and as at the end of the same interim period of the immediately preceding financial year, if any.
- (2) The interim financial statements delivered to the regulator or, in Québec, the securities regulatory authority under this Division must be prepared using the same accounting principles that the registered derivatives firm uses to prepare its annual financial statements.

Delivering financial statements

- 36. (1) A registered derivatives firm must deliver its audited annual financial statements to the regulator or, in Québec, the securities regulatory authority no later than the 90th day after the end of its financial year.
- (2) A registered derivatives firm must deliver its interim financial statements to the regulator or, in Québec, the securities regulatory authority no later than the 30th day after the end of the first, second and third interim period of its financial year.
- (3) Despite subsection (1), a registered derivatives firm is not required to deliver its audited annual financial statements if the registered derivatives firm has filed its annual financial statements in compliance with section 4.1 of National Instrument 51-102 – *Continuous Disclosure Obligations*.
- (4) Despite subsection (2), a registered derivatives firm is not required to deliver its interim financial statements if the registered derivatives firm has filed its interim financial statements in compliance with section 4.3 of National Instrument 51-102 – *Continuous Disclosure Obligations*.

Delivering financial information

- 37. (1) A registered derivatives firm must deliver to the regulator or, in Québec, the securities regulatory authority, no later than the 90th day after the end of its financial year, a completed Form 93-102F1 *Calculation of Excess Working Capital*, showing the calculation of the registered derivatives firm's excess working capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any.
- (2) A registered derivatives dealer must deliver, to the regulator or, in Québec, the securities regulatory authority, no later than the 30th day after the end of the first, second and third interim periods of its financial year, a completed Form 93-102F1 *Calculation of Excess Working Capital*, showing the calculation of the dealer's excess working capital as at the end of the interim period and as at the end of the immediately preceding interim period, if any.

**PART 8
COMPLIANCE AND RISK MANAGEMENT**

Compliance policies and procedures

- 38. A registered derivatives firm must establish, maintain and apply written policies and procedures that are reasonably designed to establish a system of controls and supervision sufficient to ensure that the registered derivatives firm and each individual acting on its behalf in respect of its activities relating to transacting in or advising on derivatives complies with applicable securities legislation.

Risk management policies and procedures

- 39. (1) A registered derivatives firm must establish, maintain, and apply written policies and procedures that are reasonably designed to establish a system of controls and supervision to monitor and manage the risks associated with its derivatives related activity.
- (2) The policies and procedures referred to in subsection (1) must be approved by the registered derivatives firm's board of directors, or individuals acting in a similar capacity for the firm.
- (3) The risk management policies and procedures referred to in subsection (1) must, at a minimum
 - (a) identify material risks to the registered derivatives firm, including risks from affiliated entities and from specific derivatives or types of derivatives,
 - (b) establish risk tolerance limits,
 - (c) establish requirements for the registered derivatives firm to appropriately manage risks,

- (d) provide for the periodic review of the registered derivatives firm's risks and risk tolerance limits to ensure they reflect the firm's derivatives related activity,
 - (e) permit the derivatives chief risk officer and other senior management to monitor compliance with risk management requirements and risk tolerance limits in order to detect and address non-compliance,
 - (f) provide for periodic reports to the registered derivatives firm's derivatives ultimate designated person and its board of directors, or individuals acting in a similar capacity for the firm, on the registered derivatives firm's material risks, risk tolerance limits, compliance with risk management requirements, compliance with risk tolerance levels and recommendations for changing risk management policies and risk tolerance limits, and
 - (g) when there is a material change to the registered derivatives firm's risk exposures or a material breach of a risk limit, require an immediate report to the firm's
 - (i) derivatives ultimate designated person,
 - (ii) the chief executive officer, or if the registered derivatives firm does not have a chief executive officer, an individual acting in a similar capacity, if different from the derivatives ultimate designated person, and
 - (iii) its board of directors, or individuals acting in a similar capacity for the firm.
- (4) A registered derivatives firm must conduct an independent review of its risk management systems on a reasonably frequent basis and not less than once every two calendar years.

Confirmation of material terms

40. A registered derivatives firm must confirm the material terms of each derivative transacted with or for a derivatives party as soon as feasible after completion of the transaction.

Agreement for process of determining the value of a derivative

41. A registered derivatives firm must, in relation to each transaction with a derivatives party, enter into a written agreement with the derivatives party that establishes a process for determining the value of the derivative.

Agreement for process relating to disputes

42. (1) A registered derivatives firm must, in relation to each derivative transacted with a derivatives party, enter into a written agreement with the derivatives party that establishes
- (a) when a discrepancy relating to material terms or valuations between the registered derivatives firm and the derivatives party is a dispute, and
 - (b) a process for resolving a dispute as soon as possible.
- (2) A registered derivatives firm must establish, maintain and apply written policies and procedures that are reasonably designed to, within a reasonable period of time, resolve a dispute with a derivatives party relating to the material terms or valuation of a derivative.
- (3) A registered derivatives firm must report a dispute referred to in subsection (1), that has not been resolved within a reasonable period of time, to its board of directors, or individuals acting in a similar capacity for the firm.
- (4) If a dispute has not been resolved within 30 days of reporting the dispute to its board of directors, or individuals acting in a similar capacity for the firm, as required under subsection (3), the derivatives firm must report the dispute to the regulator or, in Québec, the securities regulatory authority.

Business continuity and disaster recovery

43. (1) A registered derivatives firm must establish, maintain and apply a written business continuity and disaster recovery plan that is reasonably designed to allow the registered derivatives firm to minimize disruption and allow the registered derivatives firm to continue its business operations.

- (2) The business continuity and disaster recovery plan must outline the procedures to be followed in the event of an emergency or other disruption of the registered derivatives firm's normal business activities.
- (3) A registered derivatives firm must conduct independent tests of its business continuity and disaster recovery plan on a reasonably frequent basis and not less than annually.

Portfolio reconciliation

- 44. (1) A registered derivatives firm must conduct portfolio reconciliation for all derivatives to which the registered derivatives firm is a counterparty.
- (2) The portfolio reconciliation required under subsection (1) must be conducted for each portfolio of the registered derivatives firm at least once each calendar year.
- (3) A registered derivatives firm must establish, maintain and apply written policies and procedures to resolve discrepancies in materials terms and valuations identified as a result of the portfolio reconciliation as soon as possible after they are identified.
- (4) A registered derivatives firm must enter into a written agreement with each derivatives party that describes the terms of the portfolio reconciliation required to be conducted under subsection (1).

Portfolio compression

- 45. (1) A registered derivatives firm must establish, maintain and apply written policies and procedures that are reasonably designed to do all of the following:
 - (a) terminate fully offsetting derivatives with a derivatives party that is a derivatives firm in a timely fashion;
 - (b) terminate fully offsetting derivatives with a derivatives party that is not a derivatives firm, at the request of that derivatives party, in a timely fashion;
 - (c) engage in bilateral portfolio compression exercises with each of its derivatives parties that is a derivatives firm, when appropriate;
 - (d) engage in a multilateral portfolio compression exercise with each of its derivatives parties that is a derivatives firm, when appropriate;
 - (e) evaluate portfolio compression exercises involving the registered derivatives firm that were initiated by a third-party.
- (2) Despite subsection (1), the policies and procedures required in that subsection do not need to apply to a derivative that is cleared through a qualifying clearing agency.

**PART 9
RECORDS**

Records

- 46. (1) A registered derivatives firm must keep complete records of all its derivatives, transactions and derivatives advising activities, including, as applicable, all of the following:
 - (a) general records of its derivatives business and activities, financial affairs and compliance with applicable provisions of this Instrument, including
 - (i) financial statements,
 - (ii) calculation of its excess working capital, and
 - (iii) evidence of its compliance with policies and procedures required under this Instrument;

- (b) an itemized record of post-transaction processing and events, including
 - (i) derivatives portfolio reconciliation including records of reconciliation discrepancies and valuation disputes and the name of the third party that performed the portfolio reconciliation,
 - (ii) derivatives portfolio compressions including the derivatives included in the compression, the identity of the counterparties participating in the compression, results of the compression and the name of the third party performing the compression,
 - (iii) valuation of each derivative,
 - (iv) central clearing of each derivative,
 - (v) the name of any third-party responsible for sending trade data to a designated trade repository, and
 - (vi) matching and confirmation of each derivative.
- (2) A registered derivatives firm must keep complete records of all business activities relating to transacting in or advising in respect of derivatives, including
 - (a) minutes of meetings of its board of directors, or of meetings of individuals acting in a similar capacity for the firm,
 - (b) records of its organizational structure,
 - (c) audit, compliance and risk management reports,
 - (d) business and strategic plans, and
 - (e) financial records.

Form, accessibility and retention of records

- 47. (1)** A registered derivatives firm must keep all records required under section 46 [Records],
- (a) in a readily accessible and safe location and in a durable form,
 - (b) in the case of a record or supporting documentation that relates to a derivative, for a period of 7 years following the date on which the derivative expires or is terminated, and
 - (c) if paragraph (b) does not apply, for a period of 7 years following the date on which the record was created.
- (2)** Despite subsection (1), in Manitoba, with respect to a registered derivatives firm or a derivatives party located in Manitoba, the time period applicable to records and supporting documentation kept pursuant to subsection (1) is 8 years.

**PART 10
EXEMPTIONS FROM THE REQUIREMENT TO REGISTER AND
EXEMPTIONS FROM SPECIFIC REQUIREMENTS IN THIS INSTRUMENT**

Division 1 – Exemptions from the requirement to register as a derivatives dealer

Persons or companies not in the business of trading in British Columbia, Manitoba and New Brunswick

- 48.** In British Columbia, Manitoba and New Brunswick, a person or company is exempt from the requirement to register as a derivatives dealer if all of the following apply:
- (a) the person or company is not engaged in the business of trading derivatives, as principal or agent;
 - (b) the person or company does not solicit or otherwise transact a derivative with, for or on behalf of a non-eligible derivatives party;

- (c) the person or company does not regularly quote prices at which they would be willing to transact a derivative or otherwise make or offer to make a market in a derivative;
- (d) the person or company does not regularly facilitate or otherwise intermediate transactions for another person or company;
- (e) the person or company does not facilitate the clearing of a derivative through the facilities of a qualifying clearing agency for another person or company, other than an affiliated entity.

Exemption for certain derivatives end-users

49. (1) The exemption in subsection (2) is not available to a person or company if either of the following applies:

- (a) the person or company is a registered derivatives firm or a registered securities firm in any jurisdiction of Canada or is registered under the commodity futures legislation of any jurisdiction of Canada;
- (b) the person or company is registered under the securities, commodity futures or derivatives legislation of a foreign jurisdiction in which its head office or principal place of business is located in a category of registration to carry on the activities in that jurisdiction that registration as a derivatives dealer or derivatives adviser would permit it to carry on in the local jurisdiction.

(2) A person or company is exempt from the requirement to register as a derivatives dealer if all of the following apply:

- (a) the person or company does not solicit or otherwise transact a derivative with, for or on behalf of, a non-eligible derivatives party;
- (b) the person or company does not, in respect of any derivative or transaction, advise non-eligible derivatives parties, other than general advice that is provided in accordance with the conditions of section 57 [*Advising generally*];
- (c) the person or company does not regularly make or offer to make a market in a derivative with a derivatives party;
- (d) the person or company does not regularly facilitate or otherwise intermediate transactions for another person or company;
- (e) the person or company does not facilitate clearing of a derivative through the facilities of a qualifying clearing agency for another person or company, other than an affiliated entity.

Derivatives dealers with a limited notional amount under derivatives

50. (1) The exemption in subsection (2) is not available to a person or company if either of the following applies:

- (a) the person or company is a registered derivatives firm or a registered securities firm in any jurisdiction of Canada or registered under the commodities futures legislation of any jurisdiction of Canada;
- (b) the person or company is registered under the securities, commodity futures or derivatives legislation of a foreign jurisdiction specified in Column 1 of Appendix B, in which its head office or principal place of business is located, in a category of registration to carry on the activities in that jurisdiction that registration as a derivatives dealer or derivatives adviser would permit it to carry on in the local jurisdiction;

(2) A person or company is exempt from the requirement to register as a derivatives dealer if all of the following apply:

- (a) the person or company does not solicit or otherwise transact a derivative with, for or on behalf of, a non-eligible derivatives party;
- (b) the person or company does not, in respect of derivatives or transactions, advise non-eligible derivatives parties, other than general advice that is provided in accordance with the conditions of section 57 [*Advising generally*];

- (c) either of the following applies:
 - (i) if the person or company has its head office or principal place of business in a jurisdiction of Canada, the person or company, together with each affiliated entity of the person or company, and excluding derivatives between these affiliated entities, has not had, in the previous 24 calendar months, an aggregate month-end gross notional amount under outstanding derivatives, exceeding \$250 000 000;
 - (ii) if the person or company has its head office and principal place of business in a foreign jurisdiction, the person or company, together with each affiliated entity of the person or company, and excluding derivatives between these affiliated entities, has not had, in the previous 24 calendar months, an aggregate month-end gross notional amount under outstanding derivatives that have a Canadian counterparty, exceeding \$250 000 000.

Commodity derivatives dealers with a limited notional amount under commodity derivatives

51. (1) In this section:

“commodity” means

- (a) any good, article, service, right or interest of which any unit is, from its nature or by mercantile custom, treated as the equal of any other unit, except
 - (i) the currency of Canada or of any foreign jurisdiction or a right to or interest in the currency of Canada or any foreign jurisdiction,
 - (ii) a cryptocurrency, and
 - (iii) a security, and
- (b) any other prescribed good, article, service, right or interest or any class of those;

“commodity derivative” means a derivative that has, as its only underlying asset, a commodity.

(2) The exemption in subsection (3) is not available to a person or company if either of the following applies:

- (a) the person or company is a registered derivatives firm or a registered securities firm in any jurisdiction of Canada or registered under the commodities futures legislation of any jurisdiction of Canada;
- (b) the person or company is registered under the securities, commodity futures or derivatives legislation of a foreign jurisdiction specified in Column 1 of Appendix B, in which its head office or principal place of business is located, in a category of registration to carry on the activities in that jurisdiction that registration as a derivatives dealer or derivatives adviser would permit it to carry on in the local jurisdiction;

(3) A person or company is exempt from the requirement to register as a derivatives dealer if all of the following apply:

- (a) the person or company does not solicit or otherwise transact a derivative with, for or on behalf of a non-eligible derivatives party;
- (b) the person or company does not, in respect of derivatives or transactions, advise non-eligible derivatives parties, other than general advice that is provided in accordance with the conditions of section 57 [*Advising generally*];
- (c) the person or company, and each affiliated entity of the person or company, is only a derivatives dealer in respect of commodity derivatives;
- (d) either of the following applies:
 - (i) if the person or company has its head office or principal place of business in a jurisdiction of Canada, the person or company, together with each affiliated entity of the person or company, and excluding derivatives between affiliated entities, has not had, in the previous 24 calendar months, an aggregate month-end gross notional amount under outstanding commodity derivatives, exceeding \$1 000 000 000;

- (ii) if the person or company has its head office and principal place of business in a foreign jurisdiction, the person or company, together with each affiliated entity of the person or company, and excluding derivatives between affiliated entities, has not had, in the previous 24 calendar months, an aggregate month-end gross notional amount under outstanding commodity derivatives that have a Canadian counterparty, exceeding \$1 000 000 000.

Foreign derivatives dealers – exemption from registration

52. (1) A person or company whose head office or principal place of business is in a foreign jurisdiction specified in Column 1 of Appendix B is exempt from the requirement to register as a derivatives dealer if all of the following apply:

- (a) the person or company does not solicit or transact in a derivative with, for or on behalf of a non-eligible derivatives party;
- (b) the person or company is registered, licensed or otherwise authorized under the securities, commodity futures or derivatives legislation of the foreign jurisdiction to conduct the derivatives activities in that foreign jurisdiction it proposes to conduct with a derivatives party;
- (c) the person or company is subject to and complies with each of the requirements or guidelines of the foreign jurisdiction that are specified in Column 2 of Appendix B;
- (d) the person or company promptly notifies the regulator or, in Québec, the securities regulatory authority of each instance of material non-compliance with a requirement or guideline of the foreign jurisdiction
 - (i) to which the person or company is subject and
 - (ii) that are specified in Column 2 of Appendix B.

(2) The exemption under subsection (1) is not available unless all of the following apply:

- (a) the person or company engages in the business of a derivatives dealer in the foreign jurisdiction in which its head office or principal place of business is located;
- (b) one of the following applies in relation to each derivatives party of the person or company:
 - (i) the derivatives party is a registered derivatives dealer in any jurisdiction of Canada, a registered derivatives adviser in any jurisdiction of Canada or a derivatives dealer that is exempt from the requirement to register under section 50 [*Derivatives dealers with a limited notional amount under derivatives*] or section 51 [*Commodity derivatives dealers with a limited notional amount under derivatives*];
 - (ii) the person or company has delivered to the derivatives party a statement in writing disclosing the following:
 - (A) the foreign jurisdiction in which the person or company's head office or principal place of business is located;
 - (B) that all or substantially all of the assets of the person or company may be situated outside of the local jurisdiction;
 - (C) that there may be difficulty enforcing legal rights against the person or company because of the above;
 - (D) the name and address of the agent for service of the person or company in the local jurisdiction;
- (c) the person or company has submitted to the securities regulatory authority a completed Form 93-102F2 *Submission to Jurisdiction and Appointment of Agent for Service*;
- (d) the person or company undertakes to the securities regulatory authority to provide the securities regulatory authority with prompt access to its books and records upon request.

- (3) A person or company that relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year must notify the regulator or, in Québec, the securities regulatory authority of that fact by December 1 of that year.
- (4) In Ontario, subsection (3) does not apply to a person or company that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.

Affiliated entities – exemption from recognition as a derivatives dealer

- 53. (1) A person or company is exempt from the requirement to register as a derivatives dealer if the person or company would only be required to register as a derivatives dealer as a result of dealing with an affiliated entity.
- (2) The exemption in subsection (1) is not available if the person or company is required to register as a derivatives dealer as a result of dealing with an affiliated entity that is an investment fund.

Division 2 – Exemptions from specific requirements for derivatives dealers

Foreign derivatives dealers - exemption from specific requirements that apply to registered derivatives dealers

- 54. (1) A registered derivatives dealer whose head office or principal place of business is in a foreign jurisdiction specified in Column 1 of Appendix D is exempt from a requirement specified in Column 2 of that appendix if all of the following apply:
 - (a) it is registered, licensed or otherwise authorized under the securities, commodity futures or derivatives legislation of the foreign jurisdiction to conduct the derivatives activities in that jurisdiction that it proposes to conduct with the derivatives party;
 - (b) it is subject to and complies with the corresponding requirement or guideline of the foreign jurisdiction that is specified in Column 3 of Appendix D;
 - (c) it promptly notifies the regulator, in Québec, the securities regulatory authority of each instance of material non-compliance with a requirement or guideline of the foreign jurisdiction
 - (i) to which it is subject, and
 - (ii) that is specified in Column 3 of Appendix D.
- (2) The exemption in subsection (1) is not available unless all of the following apply:
 - (a) the registered derivatives dealer engages in the business of a derivatives dealer in the foreign jurisdiction in which its head office or principal place of business is located;
 - (b) the registered derivatives dealer has delivered to each derivatives party a statement in writing disclosing all of the following:
 - (i) the foreign jurisdiction in which the registered derivatives dealer's head office or principal place of business is located;
 - (ii) that all or substantially all of the assets of the registered derivatives dealer may be situated outside of the local jurisdiction;
 - (iii) that there may be difficulty enforcing legal rights against the registered derivatives dealer because of the above;
 - (iv) the name and address of the agent for service of the registered derivatives dealer in the local jurisdiction.

Investment dealers

- 55. A registered derivatives dealer that is a dealer member of IIROC is exempt from the requirement specified in Column 1 of Appendix E if the registered derivatives dealer complies with the corresponding IIROC requirement specified in Column 2.

Canadian financial institutions

56. A registered derivatives dealer that is a Canadian financial institution regulated by a regulatory authority specified in Column 1 of Appendix F is exempt from a requirement specified in Column 2 of that appendix if all of the following apply:
- (a) it is subject to and complies with the requirement and guideline specified in Column 3 of Appendix F that correspond to the applicable requirement in Column 2;
 - (b) it promptly notifies the regulator or, in Québec, the securities regulatory authority of each instance of material non-compliance with a requirement or guideline
 - (i) to which it is subject, and
 - (ii) that is specified in Column 3 of Appendix F.

Division 3 – Exemptions from the requirement to register as a derivatives adviser

Advising generally

57. (1) For the purposes of subsection (3), “financial or other interest” includes any of the following:
- (a) ownership, beneficial or otherwise, of the underlying interest or underlying interests of the derivative;
 - (b) ownership, beneficial or otherwise of, or other interest in a derivative that has the same underlying interest as the derivative;
 - (c) a commission or other compensation received or expected to be received from any person or company in relation to a transaction, an underlying interest in the derivative or a derivative that has the same underlying interest as the derivative;
 - (d) a financial arrangement in relation to the derivative, an underlying interest in the derivative or a derivative that has the same underlying interest as the derivative;
 - (e) any other interest that relates to the transaction.
- (2) A person or company is exempt from the requirement to register as a derivatives adviser if the advice that the person or company provides does not purport to be tailored to the needs of the person or company receiving the advice.
- (3) If the person or company that is exempt under subsection (2) recommends a transaction for a derivative, for a class of derivatives or for the underlying interest of a derivative or class of derivatives in which any of the following has a financial or other interest, the person or company must disclose the interest, including a description of the nature of the interest, concurrently with providing the advice:
- (a) the person or company;
 - (b) any partner, director or officer of the person or company;
 - (c) if the person or company is an individual, the spouse or child of the individual;
 - (d) any other person or company that would be an insider of the first mentioned person or company if the first mentioned persons or companies were a reporting issuer.

Derivatives dealer without discretionary authority

58. A registered derivatives dealer, or a registered derivatives dealing representative acting on behalf of the dealer, that provides advice to a derivatives party is exempt from the requirement to register as a derivatives adviser or a derivatives advising representative if the advice is
- (a) in connection with a transaction for which the individual providing the advice has the necessary proficiency under section 18 [*Initial and ongoing proficiency*], and
 - (b) not in respect of a managed account of the derivatives party.

Foreign derivatives advisers – exemption from registration

- 59. (1)** A person or company whose head office or principal place of business is in a foreign jurisdiction specified in Column 1 of Appendix G is exempt from the requirement to register as a derivatives adviser if all of the following apply:
- (a) the person or company does not, in respect of derivatives or transactions, advise non-eligible derivatives parties, other than general advice that is provided in accordance with the conditions of section 57 [*Advising generally*];
 - (b) the person or company is registered, licensed or otherwise authorized under the securities, commodity futures or derivatives legislation of the foreign jurisdiction to conduct the derivatives activities in the foreign jurisdiction that it proposes to conduct with a derivatives party;
 - (c) the person or company is subject to and complies with each of the requirements or guidelines of the foreign jurisdiction that are specified in Column 2 of Appendix G;
 - (d) the person or company promptly notifies the regulator or, in Québec, the securities regulatory authority of each instance of material non-compliance with a requirement or guideline of the foreign jurisdiction
 - (i) to which the person or company is subject, and
 - (ii) that are specified in Column 2 of Appendix G.
- (2)** The exemption under subsection (1) is not available unless all of the following apply:
- (a) the person or company engages in the business of a derivatives adviser in the foreign jurisdiction in which its head office or principal place of business is located;
 - (b) one of the following applies in relation to each derivatives party of the person or company:
 - (i) the derivatives party is a registered derivatives dealer in any jurisdiction of Canada, a registered derivatives adviser in any jurisdiction of Canada or a derivatives dealer that is exempt from the requirement to register under section 50 [*Derivatives dealers with a limited notional amount under derivatives*] or section 51 [*Commodity derivatives dealers with a limited notional amount under derivatives*];
 - (ii) the person or company has delivered to the derivatives party a statement in writing disclosing all of the following:
 - (A) the foreign jurisdiction in which the person or company's head office or principal place of business is located;
 - (B) that all or substantially all of the assets of the person or company may be situated outside of the local jurisdiction;
 - (C) that there may be difficulty enforcing legal rights against the person or company because of the above;
 - (D) the name and address of the agent for service of the person or company in the local jurisdiction;
 - (c) the person or company has submitted to the securities regulatory authority a completed Form 93-102F2 *Submission to Jurisdiction and Appointment of Agent for Service*;
 - (d) the person or company undertakes to the securities regulatory authority to provide the securities regulatory authority with prompt access to its books and records upon request.
- (3)** A person or company that relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year must notify the regulator or, in Québec, the securities regulatory authority of that fact by December 1 of that year.

- (4) In Ontario, subsection (3) does not apply to a person or company that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.

Affiliated Entities – exemption from registration as a derivatives adviser

60. (1) A person or company is exempt from the requirement to register as a derivatives adviser if the person or company would only be required to register as a derivatives adviser as a result of advising an affiliated entity.
- (2) The exemption in subsection (1) is not available if the person or company is required to register as a derivatives adviser as a result of advising an affiliated entity that is an investment fund.

Division 4 – Exemptions from specific requirements for derivatives advisers

Foreign derivatives advisers – exemption from specific requirements that apply to registered derivatives advisers

61. (1) A registered derivatives adviser whose head office or principal place of business is in a foreign jurisdiction specified in Column 1 of Appendix H is exempt from a requirement specified in Column 2 of that appendix if all of the following apply:
- (a) it is registered, licensed or otherwise authorized under the securities, commodity futures or derivatives legislation of the foreign jurisdiction to conduct the derivatives activities in that jurisdiction that it proposes to conduct with the derivatives party;
 - (b) it is subject to and complies with the corresponding requirement or guideline of the foreign jurisdiction that is specified in Column 3 of Appendix H;
 - (c) it promptly notifies the regulator or, in Québec, the securities regulatory authority of each instance of material non-compliance with a requirement or guideline of the foreign jurisdiction
 - (i) to which it is subject, and
 - (ii) that is specified in Column 3 of Appendix H.
- (2) The exemption in subsection (1) is not available unless all of the following apply:
- (a) the registered derivatives adviser engages in the business of a derivatives adviser in the foreign jurisdiction in which its head office or principal place of business is located;
 - (b) the registered derivatives adviser has delivered to each derivatives party a statement in writing disclosing all of the following:
 - (i) the foreign jurisdiction in which the registered derivatives adviser's head office or principal place of business is located;
 - (ii) that all or substantially all of the assets of the registered derivatives adviser may be situated outside of the local jurisdiction;
 - (iii) that there may be difficulty enforcing legal rights against the registered derivatives adviser because of the above;
 - (iv) the name and address of the agent for service of the registered derivatives adviser in the local jurisdiction.

**PART 11
GRANTING AN EXEMPTION**

Granting an exemption

62. (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

- (3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

**PART 12
TRANSITION**

(intentionally left blank)

Provisions relating to implementation will be included in a future version of the Instrument, as appropriate.

**PART 13
EFFECTIVE DATE**

Effective date

- 63. (1)** This Instrument comes into force on *[insert date]*.
- (2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after *[insert date]*, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

Appendix A

NOTIONAL AMOUNT

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Please see the CSA Notice and Request for Comments for a discussion of the alternatives being considered for defining "Notional Amount" in this Appendix.

Appendix B

FOREIGN DERIVATIVES DEALERS – EXEMPTION FROM REGISTRATION
(Section 52)

Column 1	Column 2
Foreign jurisdiction	Equivalent requirement(s) and guideline(s) of foreign regulatory authority

A completed version of Appendix B will be published for comment in a future version of the Instrument.

Appendix C

CAPITAL REQUIREMENTS
(Section 37)

(intentionally left blank)

A completed version of Appendix C will be published for comment in a future version of the Instrument.

Appendix D

FOREIGN DERIVATIVES DEALERS - EXEMPTION FROM SPECIFIC REQUIREMENTS
(Section 54)

Column 1	Column 2	Column 3
Foreign regulatory authority	Requirements of National Instrument 93-102 – <i>Derivatives: Registration</i>	Equivalent requirement(s) and guideline(s) of foreign regulatory authority

A completed version of Appendix D will be published for comment in a future version of the Instrument.

Appendix E

EXEMPTIONS FOR IIROC DEALER MEMBERS
(Section 55)

Column 1	Column 2
Requirements of National Instrument 93-102 – <i>Derivatives: Registration</i>	Equivalent IIROC requirement(s)

A completed version of Appendix E will be published for comment in a future version of the Instrument.

Appendix F

EXEMPTIONS FOR CANADIAN FINANCIAL INSTITUTIONS
(Section 56)

Column 1	Column 2	Column 3
Regulatory authority	Requirements of National Instrument 93-102 – <i>Derivatives: Registration</i>	Equivalent requirement(s) and guideline(s) of regulatory authority
Office of the Superintendent of Financial Institutions	Section 31 Capital requirements	(this section will be included once specific capital requirements are proposed in the Instrument)
	Section 33 – Co-operating with the auditor	1. OSFI Guideline – Corporate Governance, section V
	Section 37 – Delivering financial information	1. OSFI Reporting Requirements
	Section 38 – Compliance policies and procedures	1. OSFI Guideline E13 Regulatory Compliance Management, section IV(i) 2. OSFI Guideline B-7 Derivatives Sound Practices, section titled “Regulatory Compliance Risk”
	Section 39 – Risk management policies and procedures	1. OSFI Guideline – Corporate Governance, section IV 2. OSFI Guideline B-7 Derivatives Sound Practices
	Section 40 – Confirmation of material terms	1. OSFI Guideline B-7 Derivatives Sound Practices, section titled “Trade Confirmation”
	Subsection 42(1) – Agreement for process relating to disputes	1. OSFI Guideline E-22 Margin Requirements for Non-Centrally Cleared Derivatives, section 34
	Subsection 42(2) – Agreement for process relating to disputes	1. OSFI Guideline E-22 Margin Requirements for Non-Centrally Cleared Derivatives, section 28
	Section 43 – Business continuity and disaster recovery	1. OSFI Guideline B-7 Derivatives Sound Practices 2. OSFI Guideline B-10 Outsourcing of Business Activities, Functions and Processes, section 7.2.3
	Section 44 – Portfolio reconciliation	1. OSFI Guideline B-7 Derivatives Sound Practices, section titled “Portfolio Reconciliation”
	Section 45 – Portfolio compression	1. OSFI Guideline B-7 Derivatives Sound Practices, section titled “Portfolio Compression”
Section 46 – Records – as those records relate to compliance with sections 31, 33, 37, 38, 39, 42(1), 42(2), 43, 44 and 45.	1. OSFI Guideline E13 Regulatory Compliance Management, section IV(vii) 2. <i>Bank Act</i> (Canada), sections 238 and 597	
Autorité des Marchés Financiers	Section 31 – Capital requirements	1. AMF Capital Management Guideline 2. AMF Liquidity Adequacy Guideline 3. AMF Adequacy of capital base
	Section 33 – Co-operating with the auditor	1. AMF Governance Guideline, sections 7.1 and 7.2

Request for Comments

Column 1	Column 2	Column 3
Regulatory authority	Requirements of National Instrument 93-102 – <i>Derivatives: Registration</i>	Equivalent requirement(s) and guideline(s) of regulatory authority
	Section 37 – Delivering financial information	1. AMF Instructions afférentes au formulaire de divulgation Ligne directrice sur les normes relatives à la suffisance du capital de base 2. Act respecting financial services cooperatives
	Section 38 – Compliance policies and procedures	1. AMF Compliance Guideline
	Section 39 - Risk management policies and procedures	1. AMF Integrated Risk Management Guideline 2. AMF Governance Guideline
	Section 43 - Business continuity and disaster recovery	1. AMF Business Continuity Management Guideline
	Section 46 – Records – as those records relate to compliance with sections 31, 33, 37, 38, 39, 42(1), 42(2), 43, 44 and 45.	1. Act respecting financial services cooperatives 2. AMF Derivatives Risk Management Guidelines

Appendix G

FOREIGN DERIVATIVES ADVISERS – EXEMPTION FROM REGISTRATION
(Section 59)

Column 1	Column 2
Foreign jurisdiction	Equivalent requirement(s) and guideline(s) of foreign regulatory authority

A completed version of Appendix G will be published for comment in a future version of the Instrument.

Appendix H

FOREIGN DERIVATIVES ADVISERS – EXEMPTION FROM SPECIFIC REQUIREMENTS
(Section 61)

Column 1	Column 2	Column 3
Foreign regulatory authority	Requirements of National Instrument 93-102 – <i>Derivatives: Registration</i>	Equivalent requirement(s) and guideline(s) of foreign regulatory authority

A completed version of Appendix H will be published for comment in a future version of the Instrument.

Form 93-102F1

Calculation of Excess Working Capital

(intentionally left blank)

A completed version of Form 93-102F1 will be published for comment in a future version of the Instrument.

Form 93-102F2

Submission to Jurisdiction and Appointment of Agent for Service

1. Name of person or company ("International Firm"):
2. Jurisdiction of incorporation of the International Firm:
3. Head office address of the International Firm:
4. The name, e-mail address, phone number and fax number of the International Firm's derivatives chief compliance officer.

Name:
E-mail address:
Phone:
Fax:
5. Section of National Instrument 93-102 *Derivatives: Registration* the International Firm is relying on:

 Section 52 [*Foreign derivatives dealers – exemption from registration*]

 Section 59 [*Foreign derivatives advisers– exemption from registration*]
6. Name of agent for service of process (the "Agent for Service"):
7. Address for service of process on the Agent for Service:
8. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.
9. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.
10. Until 6 years after the derivatives firm ceases to rely on section 52 [*Foreign derivatives dealers – exemption from registration*] or section 59 [*Foreign derivatives advisers– exemption from registration*], the derivatives firm must submit to the securities regulatory authority
 - a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated; and
 - b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service.
11. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

(Signature of the International Firm or authorized signatory)

(Name and Title of authorized signatory)

ANNEX IV

**PROPOSED COMPANION POLICY 93-102
DERIVATIVES: REGISTRATION**

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PART 1 GENERAL COMMENTS

Introduction

This companion policy (the **Policy**) sets out the views of the Canadian Securities Administrators (the **CSA** or **we**) on various matters relating to National Instrument 93-102 *Derivatives: Registration* (the **Instrument**) and related securities legislation.

Except for Part 1, the numbering and headings of Parts, sections and subsections in this Policy correspond to the numbering and headings in the Instrument. Any general guidance for a Part or section appears immediately after the Part or section name. Any specific guidance on a section or subsection follows any general guidance. If there is no guidance for a Part or section, the numbering in this Policy will skip to the next provision that does have guidance.

Unless otherwise stated, any reference to a Part, section, subsection, paragraph, subparagraph or definition in this Policy is a reference to the corresponding Part, section, subsection, paragraph, subparagraph or definition in the Instrument.

Additional requirements applicable to registrants

In addition to the requirements in the Proposed Instrument, registrants must comply with additional requirements. These additional requirements include

- National Instrument 31-102 *National Registration Database* (**NI 31-102**) and the Companion Policy to NI 31-102, and
- National Instrument 33-109 *Registration Information* (**NI 33-109**) and the Companion Policy to NI 33-109.

Definitions and interpretation

Unless defined in the Instrument or this Policy, terms used in the Instrument and in this Policy have the meaning given to them in securities legislation, including in National Instrument 14-101 *Definitions* (**NI 14-101**). “Securities legislation” is defined in NI 14-101, and includes statutes and other instruments related to both securities and derivatives.

In this Policy,

“Product Determination Rule” means,

- in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 91-101 *Derivatives: Product Determination*,
- in Manitoba, Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination*,
- in Ontario, Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination*, and
- in Québec, *Regulation 91-506 respecting Derivatives Determination*;

“regulator” means the regulator or securities regulatory authority in a jurisdiction.

Requirement to register

The requirement to register is found in securities legislation. A derivatives firm must register if it is

- in the business of trading derivatives,
- in the business of advising others on derivatives,
- holding itself out as being in the business of trading or advising, or
- otherwise required to be registered under section 6 of the Instrument.

Individuals must register if they trade or advise on behalf of a registered derivatives dealer or a registered derivatives adviser unless they are exempted from the requirement to register under subsection (3) or (4) of section 16 of the Instrument or under

the securities legislation of a jurisdiction. Individuals are also required to register if they act as the derivatives ultimate designated person, derivatives chief compliance officer or derivatives chief risk officer of a registered derivatives firm.

All individual registrants and permitted individuals of any registered derivatives firm or firm that is applying to become a registered derivatives firm must file Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals (Form 33-109F4)*.

“Permitted individual” has the meaning given to the term in NI 33-109. It means, for a registered derivatives firm, an individual who

- is a member of the registered derivatives firms board of directors, or the chief executive officer, chief financial officer, or chief operating officer of the registered derivatives firm, or an individual that is the functional equivalent of any of those positions,
- has beneficial ownership of, or direct or indirect control or direction over, 10 percent or more of the voting securities of the registered derivatives firm, or
- is a trustee, executor, administrator or other personal or legal representative, that has direct or indirect control or direction over 10 percent or more of the voting securities of the registered derivatives firm.

There is no renewal requirement for registration, but fees must be paid every year to maintain registration.

Factors in determining a business purpose

In determining whether a person or company is in the business of trading or advising in derivatives, a number of factors should be considered. Guidance relating to these factors is included in Part 3 of this Policy.

Exemptions from the requirement to register and exemptions from specific requirements applicable to registered firms

Divisions 1 and 3 of Part 10 provide exemptions from the derivatives dealer and the derivatives adviser registration requirement. There may be additional exemptions in securities legislation.

Where a person or company is exempted from the requirement to be registered as a derivatives dealer or derivatives adviser, it will not be subject to the requirements in the Instrument applicable to registered dealers or registered advisers. It is, however, subject to the terms and conditions of the exemption.

Divisions 2 and 4 of Part 10 establish exemptions from specific requirements under the Instrument applicable to persons or companies that are registered as derivatives dealers or derivatives advisers. A person or company is still required to register and comply with each registration requirement where an exemption does not apply.

The exemptions in Part 10 do not require an application if the conditions of the exemption are met.

In other cases, upon application, the relevant regulator may grant exemptions from the requirement to register as a derivatives dealer or a derivatives adviser or may grant exemptions from specific requirements in the Instrument.

Interpretation of terms defined in the Instrument

Section 1 – Definition of Canadian financial institution

The definition of “Canadian financial institution” in the Instrument is consistent with the definition of this term in National Instrument 45-106 *Prospectus Exemptions (NI 45-106)* with one exception. The definition of this term in NI 45-106 does not include a Schedule III bank (due to the separate definition of the term “bank” in NI 45-106), with the result that NI 45-106 contains certain references to “a Canadian financial institution or a Schedule III bank”. The definition of this term in the Instrument includes a Schedule III bank.

“Schedule III bank” means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada).

Section 1 – Definition of commercial hedger

The concept of “commercial hedger” is meant to apply to a business entering into a transaction for the purpose of managing risks inherent in its business. This could include, for example, a commodity producer managing risks associated with fluctuations in the price of the commodity it produces or a company entering into an interest rate swap to hedge its interest rate risks associated with a loan obligation. It is not intended to include a circumstance where the commercial enterprise enters into a

transaction for speculative purposes; there has to be a significant link between the transaction and the business risks being hedged.

Paragraphs (n) and (q) of the definition of “eligible derivatives party” provide that a commercial hedger will qualify as an eligible derivatives party if it meets the conditions in those paragraphs, including the specified financial assets threshold.

Section 1 – Definition of derivatives party

The term “derivatives party” is similar to the concept of a “client” in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Obligations (NI 31-103)*. We have used the term “derivatives party” instead of “client” to reflect the circumstance where the derivatives firm may not regard its counterparty as its “client.”

Section 1 – Definition of eligible derivatives party

The term “eligible derivatives party” is intended to refer to a derivatives party that may not require the full set of protections that are provided to other derivatives parties that are not eligible derivatives parties.

Subsection 16(3) includes an exemption for an individual from the requirement to register as a derivatives dealing representative of a registered derivatives firm if the individual does not solicit or otherwise transact with a derivatives party that is a non-eligible derivatives party.

A similar exemption for derivatives advising representatives is included in subsection 16(4).

In addition, many of the exemptions in Part 10 are conditional on the derivatives firm not transacting with, soliciting or advising persons or companies that are not eligible derivatives parties.

A derivatives firm should take reasonable steps to determine if a derivatives party is an eligible derivatives party. In determining whether the person or company that it transacts with, solicits or advises is an eligible derivatives party, the derivatives firm may rely on factual representations made in writing by the derivatives party, unless a reasonable person would have grounds to believe that such statements are false or it is otherwise unreasonable to rely on the representations. Under subsection 46(1), a derivatives firm is required to keep records it uses in determining whether a derivatives party is an eligible derivatives party.

Section 1 – Definition of eligible derivatives party – paragraphs (m) to (q)

Under paragraphs (m) through (q) of the definition of “eligible derivatives party”, a person or company will only be considered to be an eligible derivatives party if it has made certain representations to the derivatives firm in writing.

If the derivatives firm has not received a written factual statement from a derivatives party, the derivatives firm should not consider the derivatives party to be an eligible derivatives party.

We expect that a derivatives firm would maintain a copy of each derivatives party’s written representations that are relevant to its status as an eligible derivatives party and would have policies and procedures reasonably designed to ensure that the information relating to each derivatives party is up to date. Subsection 1(7) provides that a derivatives firm must not rely on such a written representation if reliance on that representation would be unreasonable. See subsection 1(7) of this Policy for further guidance.

For the purposes of paragraphs (m) and (n), net assets must have an aggregate realizable value, before taxes, but after deduction of the corresponding liabilities, that are more than the prescribed threshold (\$25 000 000 in paragraph (m) and \$10 000 000 in paragraph (n)) or an equivalent amount in another currency. Unlike in paragraph (o), assets considered for the purposes of paragraphs (m) and (n) are not limited to “financial assets”.

A person or company is only an eligible derivative party under paragraphs (n) and (q) if the person or company is, at the time the transaction occurs, a commercial hedger. In determining that a derivatives party is a commercial hedger, the derivatives firm may rely on a written representation from the derivatives party that it is a commercial hedger for the derivatives it transacts with the derivatives firm unless a reasonable person would have grounds to believe that the statement is false or it is otherwise unreasonable to believe that the representation is accurate. This representation may be tailored by the eligible derivatives party and the derivatives firm to provide for specific derivatives or types of derivatives.

In the case of paragraph (o), the individual must beneficially own financial assets, as that term is defined in section 1.1 of NI 45-106, that have an aggregate realizable value before tax but net of any related liabilities of at least \$5,000,000 (or an equivalent amount in another currency). “Financial assets” is defined to include cash, securities or a deposit, or an evidence of a deposit that is not a security for the purposes of securities legislation.

Paragraph (p) of the definition of “eligible derivatives party” provides that a derivatives firm may treat a derivatives party as an eligible derivatives party if the derivatives party represents to the derivatives firm that all of its obligations under a derivative are guaranteed or otherwise fully supported (under a letter of credit or credit support agreement) by one or more eligible derivatives parties, other than eligible derivatives parties that only qualify as eligible derivatives parties under paragraph (n).

Subparagraph (q)(ii) of the definition of “eligible derivatives party” is similar to paragraph (p), but does not exclude qualifying guarantors or credit support providers that are eligible derivatives parties under paragraph (n).

Section 1 – Definition of notional amount

The term “notional amount” has the meaning set out in Appendix A to the Instrument. The term is used in sections 50 and 51, which provide for certain exemptions to persons or companies from the requirement to register as a derivatives dealer, on conditions including a condition that the person or company, together with its affiliated entities, have a notional amount under all outstanding derivatives below a specified threshold.

While, in most cases, the notional amount for a specific derivative will be the monetary amount specified in the derivative, in some cases, the derivative may reference a non-monetary amount, such as a notional quantity (or volume) of an underlying asset. In these latter cases, calculating the monetary notional amount outstanding will require converting the notional quantity of the underlying asset into a monetary value. Appendix A to the Instrument establishes how the monetary notional amount must be calculated for these derivatives.

Section 1 – Definition of valuation

The term “valuation” is defined to mean the current value of a derivative. The value should be determined in accordance with accounting principles for fair value measurement that are consistent with accepted methodologies within the derivatives firm’s industry. Where market quotes or market-based valuations are unavailable, we expect the value to represent the current mid-market level derived from market-based metrics incorporating a fair value hierarchy. The mid-market level does not have to include adjustments incorporated into the value of a derivative to account for the characteristics of an individual counterparty.

Subsection 1(7)

Whether it is reasonable for a derivatives firm to rely on a derivatives party’s written representation will depend on the particular facts and circumstances of the derivatives party and its relationship with the derivatives firm.

For example, in determining whether it is reasonable to rely on a derivatives party’s representation that it has the requisite knowledge and experience, a derivatives firm may consider factors such as

- whether the derivatives party enters into transactions with frequency and regularity,
- whether the derivatives party has staff who have experience in derivatives and risk management,
- whether the derivatives party has retained independent advice in relation to its derivatives, and
- publicly available financial information.

Section 2 – Information may be given to the principal regulator

Section 2 reduces the regulatory burden for registered derivatives firms and individuals acting for registered derivatives firms, by allowing the firm or individual that is subject to an obligation to report or notify, or to deliver or submit a document, to more than one regulator by providing the foregoing to its principal regulator. However, foreign derivatives dealers and foreign derivatives advisers relying on the exemptions in section 52 and section 59, respectively, must report in each jurisdiction where it is relying on the exemption and not only to the principal regulator.

The definition of “principal regulator” in subsection 1(1) establishes the criteria for determining the principal regulator for a derivatives firm.

PART 2 APPLICATION

Section 3 – Scope of instrument

Section 3 ensures that the Instrument applies to the same contracts and instruments in all jurisdictions of Canada. Each jurisdiction has adopted a Product Determination Rule that excludes certain types of contracts and instruments from being derivatives for the purpose of the Instrument.

Section 5 – Governments, central banks and international organizations

Section 5 provides that the Instrument does not apply to certain governments, central banks, international organizations and crown corporations that meet the conditions set out in the section, from the application of the Instrument. Section 5 does not, however, exclude derivatives firms that deal with or advise these entities from the application of the Instrument.

PART 3 REQUIREMENT TO REGISTER AND CATEGORIES OF REGISTRATION FOR DERIVATIVES FIRMS

Fitness for registration

We will only register a firm if it appears to be fit for registration. Following registration, a firm must maintain its fitness in order to remain registered. If we determine that a registrant has become unfit for registration, we may suspend or revoke the registration. See Division 2 of this Part for guidance on suspension and revocation of a registered derivatives firm's registration.

Terms and conditions

We may impose terms and conditions on a registrant at the time of registration or at any time after registration. Terms and conditions imposed at the time of registration are generally permanent, for example, in the case of a restricted derivatives dealer who is limited to specific activities. Terms and conditions imposed after registration are generally temporary and are intended to address specific issues relating to the registrant. For example, if a registered derivatives dealer is having financial problems that lead to the firm struggling to maintain the required capital, we may impose a condition to its registration requiring the firm to file weekly financial statements and capital calculations until the concerns are addressed.

Opportunity to be heard

An applicant has an opportunity to be heard by the regulator before its application for registration is denied. It also has an opportunity to be heard before the regulator imposes terms and conditions on its registration if it disagrees with the terms and conditions.

Assessing fitness for registration – firms

We assess whether a firm is or remains fit for registration through the information that the firm is required to provide on forms and through compliance reviews. Based on this information, we consider whether the firm is able to carry out its obligations under securities legislation. For example, a firm that has a history of compliance issues may not be fit for registration.

In addition, when determining whether a registered derivatives firm whose head office is outside Canada is, and remains, fit for registration, we will consider whether the firm maintains registration or regulatory organization membership in the foreign jurisdiction that is appropriate for the derivatives related business that it carries out there.

Division 1 – Firm Registration and Categories of Registration

The categories of registration for registered derivatives firms have two main purposes:

- to specify the type of business that the firm may conduct, and
- to provide a framework for the requirements the firm must meet.

A firm may be required to register in more than one category. For example, a derivatives dealer that acts as a portfolio manager for a fund that holds derivatives must register both as a derivatives dealer and as a derivatives adviser. In addition, if a person or company acts as a securities dealer and as a derivatives dealer, it must register in the appropriate dealer category under NI 31-103 and as a derivatives dealer under the Instrument.

Individual registered in a firm category

An individual can be registered in both a firm and individual category. For example, a sole proprietor who is registered in the firm category of derivatives adviser must, if required under the Instrument, also be registered in the individual category of derivatives advising representative.

Registration triggers

A person or company will be required to register as a derivatives dealer if it is

- in the business of trading derivatives, or
- required to register under section 6.

A person or company will be required to register as a derivatives adviser if it is in the business of advising others in respect of derivatives.

Factors in determining a business purpose – derivatives dealer

In determining whether a person or company is in the business of trading or in the business of advising in derivatives, a number of factors should be considered. Several factors that we consider relevant are described below. This is not a complete list and other factors may also be considered.

- *Acting as a market maker* – Market making is generally understood as the practice of routinely standing ready to transact derivatives by
 - responding to requests for bids or quotes on derivatives, or
 - making quotes available to other persons or companies that seek to transact derivatives, whether to hedge a risk or to speculate on changes in the market value of the derivative.

Market makers are typically compensated for providing liquidity through spreads, fees or other compensation, including fees or compensation paid by an exchange or a trading facility that do not relate to the change in the market value of the derivative transacted. A person or company that contacts another person or company about a transaction to accommodate its own risk management needs or to speculate on the market value of a derivative will not, typically, be considered to be acting as a market maker.

A person or company will be considered to be “routinely standing ready to transact derivatives” if it is responding to requests for bids or quotes or making quotes available with some frequency, even if it is not on a continuous basis. Persons or companies that respond to requests or make quotes available occasionally are not “routinely standing ready”.

A person or company would also typically be considered to be a market maker when it holds itself out as undertaking the activities of a market maker.

Engaging in bilateral discussions relating to the terms of a transaction will not, on its own, constitute market making activity.

- *Directly or indirectly carrying on the activity with repetition, regularity or continuity* – Frequent or regular transactions are a common indicator that a person or company may be engaged in trading or advising for a business purpose. The activity does not have to be its sole or even primary endeavour for it to be in the business. We consider regularly trading or advising in any way that produces, or is intended to produce, profits to be for a business purpose.
- *Facilitating or intermediating transactions* – The person or company provides services relating to the facilitation of trading or intermediation of transactions between third-party counterparties to derivatives contracts.
- *Transacting with the intention of being compensated* – The person or company receives, or expects to receive, any form of compensation for carrying on transaction activity. This would include any compensation that is transaction or value-based including compensation from spreads or built-in fees. It does not matter if the person or company actually receives compensation or what form the compensation takes. However, a person or company would not be considered to be a derivatives dealer solely by reason that it realizes a profit

from changes in the market price for the derivative (or its underlying reference asset), regardless of whether the derivative is intended for the purpose of hedging or speculating.

- *Directly or indirectly soliciting in relation to transactions* – The person or company directly solicits transactions. Solicitation includes contacting someone by any means, including communication that offers (i) transactions, (ii) participation in transactions or (iii) services relating to transactions. This would include providing bids or quotes to derivatives parties or potential derivatives parties that are not provided in response to a request. This includes advertising on the internet with the intention of encouraging transacting in derivatives by local persons or companies. A person or company might not be considered to be soliciting solely because it contacts a potential counterparty, or a potential counterparty contacts them to enquire about a transaction, unless it is the person or company's intention or expectation to be compensated from the transaction. For example, a person or company that wishes to hedge a specific risk might not be considered to be soliciting for the purpose of the Instrument if it contacts multiple potential counterparties to enquire about potential transactions to hedge the risk.
- *Engaging in activities similar to a derivatives adviser or derivatives dealer* – The person or company carries out any activities related to transactions involving derivatives that would reasonably appear, to a third party, to be similar to the activities discussed above. This would not include the operator of an exchange or a clearing agency.
- *Providing derivatives clearing services* – The person or company provides services to allow third parties, including counterparties to transactions involving the person or company, to clear derivatives through a clearing agency. These services are actions in furtherance of a trade conducted by a person or company that would typically play the role of an intermediary in the derivatives market.

In determining whether or not it is, for the purposes of the Instrument, a derivatives dealer, a person or company should consider its activities holistically. We do not consider that all of the factors discussed above necessarily carry the same weight or that any one factor will be determinative.

Factors in determining a business purpose – derivatives adviser

Under securities legislation, a person or company engaging in or holding itself out as engaging in the business of advising others in relation to derivatives is generally required to register as a derivatives adviser unless an exemption is available.

As with the definition of “derivatives dealer”, the definition of “derivatives adviser” (and the definition of “adviser” in securities legislation generally) requires an assessment of whether the person or company is “in the business” of conducting an activity. In the case of derivatives advisers, it is necessary to determine whether a person or company is “advising others” in relation to derivatives.

As with derivatives dealers, a person or company that is determining whether or not it is a derivatives adviser, for the purposes of the Instrument, should consider its activities holistically. We do not consider that all of the factors discussed above necessarily carry the same weight or that any one factor will be determinative.

The definition of “derivatives adviser” also contains an additional element that the derivatives adviser should be in the business of “advising others” in relation to derivatives. Examples of persons and companies that may be considered to be in the business of advising others in relation to derivatives include the following:

- a registered adviser under securities or commodity futures legislation that provides advice to an investment fund or another person or company in relation to derivatives or derivatives trading strategies;
- a registered adviser under securities or commodity futures legislation that manages an account for a client and makes trading decisions for the client in relation to derivatives or derivatives trading strategies;
- an investment dealer that provides advice to clients in relation to derivatives or derivatives trading strategies;
- a person or company that recommends a derivative or derivatives trading strategy to investors as part of a general solicitation by an online derivatives trading platform.

In determining whether a person or company may be considered to be in the business of advising others in relation to derivatives, it may be helpful to consider certain exemptions from the derivatives adviser registration requirement including the following:

- Section 57 [*Advising generally*];
- Section 58 [*Derivatives dealer without discretionary authority*].

For example, a person or company that discusses the merits of a particular derivative or derivatives trading strategy in a newsletter or on a website may be considered to be advising others in relation to derivatives. However, so long as the conditions in section 57 [*Advising generally*] are satisfied, including the condition that the person or company discloses any financial or other interest, the person or company would be exempt from the adviser registration requirement.

Similarly, a derivatives dealer that recommends a particular derivative or derivatives trading strategy to a customer in connection with a proposed transaction may be considered to be advising the customer in relation to derivatives. However, so long as the derivatives dealer is appropriately registered and has the necessary proficiency to provide the advice (or is otherwise exempt from registration), the derivatives dealer does not need to also register as a derivatives adviser.

If the derivatives firm's trading or advising activity is incidental to the firm's primary business, we may not consider it to be for a business purpose. For example, appropriately licensed professionals, such as lawyers, accountants, engineers, geologists and teachers, may provide advice in relation to derivatives in the normal course of their professional activities. We would generally not consider them to be advising on derivatives for a business purpose if such activities are incidental to their bona fide professional activities.

Factors in determining a business purpose – general

Generally, we would consider a person or company that engages in the activities discussed above in an organized and repetitive manner to be a derivatives dealer or, depending on the context, a derivatives adviser. Ad hoc or isolated instances of the activities discussed above may not necessarily result in a person or company being a derivatives dealer or, depending on the context, a derivatives adviser. Similarly, organized and repetitive proprietary trading, in and of itself, absent other factors described above, may not result in a person or company being considered to be a derivatives dealer for the purpose of the Instrument.

A person or company does not need to have a physical location, staff or other presence in the local jurisdiction to be a derivatives dealer or derivatives adviser in that jurisdiction. A derivatives dealer or a derivatives adviser in a local jurisdiction is a person or company that conducts the described activities in that jurisdiction. For example, this would include a person or company that is located in a local jurisdiction and that conducts dealing or advising activities in that local jurisdiction or in a foreign jurisdiction. This would also include a person or company located in a foreign jurisdiction that conducts dealing or advising activities with a derivatives party located in the local jurisdiction.

Section 6 – Derivatives dealer registration – additional registration triggers

In addition to the general requirement, under securities legislation, for a person or company to register if it is in the business of trading derivatives or in the business of advising others in relation to derivatives, section 6 describes other types of activity that will require a person or company to register as a derivatives dealer without the need for a general business trigger analysis.

If a person or company engages in an activity specified in paragraphs (a) to (c), it will be required to register as a derivatives dealer or rely on an exemption from the requirement to register.

Paragraphs (a) and (b) impose an obligation to register as a derivatives dealer if a person or company transacts a derivative with or solicits or initiates contact to encourage a derivatives party to enter into a transaction with a person or company that is not an eligible derivatives party.

Paragraph (b) imposes the obligation to register where a person or company "solicits or initiates contact" with a person or company that is not an eligible derivatives party. Examples of situations where a person or company is initiating contact include

- contacting a person or company directly through any means, including an in-person meeting, by telephone, through a seminar, including a seminar offered through the internet or by other similar medium, or by e-mail,
- advertising using a medium that is reasonably available to a person or company in the local jurisdiction that is not an eligible derivatives party, and
- operating a website that offers or purports to offer services in the local jurisdiction.

Paragraph (c) requires a person or company to register as a derivatives dealer if it facilitates clearing of one or more derivatives for another person or company, other than an affiliated entity, through a clearing agency or a clearing house, as applicable. A person or company that facilitates clearing for another person would be a "clearing intermediary" under National Instrument 94-

102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* and subject to applicable obligations under that instrument.

Paragraphs 7(1)(b) and 7(2)(b) – Restricted derivatives dealer

The restricted derivatives dealer category in paragraph 7(1)(b) allows a specialized dealer to carry on a limited trading business while being subject to requirements that are tailored to its business. If there is a compelling case for the proposed trading to take place outside of the general derivatives dealer category, the restricted derivatives dealer category may be used.

If a person or company registers in the restricted derivatives dealer category, we will impose terms and conditions that restrict the dealer's activities. The CSA will co-ordinate terms and conditions for restricted dealers that trigger registration in more than one Canadian jurisdiction.

For example, a person or company that deals in a specific type of derivatives, such as certain commodity-based derivatives, may want staff to fill a role where the person does not meet the proficiency requirements in section 18 but that do have the necessary skills and experience to deal in the specific type of derivatives that the firm transacts. We may register such a firm with terms and conditions that will restrict dealing activity to the applicable commodities.

Paragraphs 8(1)(b) and 8(2)(b) – Restricted derivatives adviser

This is analogous to the restricted dealer category described above. The restricted derivatives adviser category in paragraph 8(1)(b) permits individuals or firms to advise in specific derivatives. The regulator will impose terms and conditions on a restricted derivatives adviser's registration that limit the adviser's activities. For example, a restricted derivatives adviser might be restricted to advising in respect of a specific type of derivatives, such as agricultural commodities.

Section 9 – IIROC membership for certain derivatives dealers

Under section 9, a derivatives firm that is registered as a derivatives dealer must also be a dealer-member of IIROC if the firm transacts or solicits transactions with a derivatives party

- (i) who is an individual, and
- (ii) who is not an eligible derivatives party.

This means that a registered derivatives dealer will not be required to be an IIROC member if it only transacts with or solicits transactions with either or both of the following:

- (i) derivatives parties that are not individuals;
- (ii) derivatives parties that are individuals who qualify as eligible derivatives parties.

However, the Instrument does not preclude such a dealer from seeking IIROC membership if it chooses to do so on a voluntary basis.

Under section 55 [*Investment dealers*], a registered derivatives dealer that is a dealer-member of IIROC is exempt from specific requirements in the Instrument applicable to registered derivatives dealers that are specified in Appendix E, if the registered derivatives dealer complies with the corresponding IIROC provisions that are identified in Appendix E.

Division 2 – Suspension and revocation of registration – derivatives firms

The requirements for surrendering registration and additional requirements for suspending and revoking registration are found in the securities legislation of each jurisdiction. The guidance for Division 2 of Part 3 relates to requirements under securities legislation which includes the Instrument.

There is no renewal requirement for registration but a registered derivatives firm must pay fees every year to maintain its registration and the registration of individuals acting on its behalf. A registered derivatives firm may carry on the activities for which it is registered until its registration is

- suspended automatically under the Instrument
- suspended by the regulator under certain circumstances, or
- surrendered by the registered derivatives firm.

Suspension

A registered derivatives firm whose registration has been suspended must not carry on the activity for which it is registered. The derivatives firm remains a registrant, although it may not carry out activities that require registration and remains subject to the jurisdiction of the regulator. A suspension remains in effect until the regulator reinstates or revokes the firm's registration.

If a registered derivatives firm that is registered in more than one category is suspended in one of the categories, the regulator will consider whether to suspend the firm's registration in other categories or to impose terms and conditions, subject to an opportunity to be heard.

Automatic suspension

A registered derivatives firm's registration will automatically be suspended if

- it fails to pay its annual fees within 30 days of the due date, or
- it is a member of IIROC, IIROC revokes or suspends the firm's membership.

Registered derivatives firms do not have an opportunity to be heard by the regulator in the case of any automatic suspension. If a registered derivatives firm is voluntarily terminating its membership with IIROC but wishes to continue to be registered, it should consult with its principal regulator before it terminates its status as a dealer member of IIROC.

Suspension in the public interest

A registered derivatives firm's registration may be suspended if the regulator exercises its power under securities legislation and determines that it is no longer in the public interest for the firm to be registered. The regulator may do this if it has serious concerns about the ongoing fitness of the registered derivatives firm or any of its registered individuals. For example, this may be the case if a registered derivatives firm, or one or more of its registered individuals or permitted individuals, is charged with a crime, in particular fraud or theft.

Reinstatement

"Reinstatement" means that a suspension on a registration has been lifted. Once reinstated, a derivatives firm may resume carrying on the activity it is registered for.

Section 13 – Revocation of a suspended registration – firm

Section 14 – Exception for firms involved in a hearing or proceeding

If a registered derivatives firm's registration has been suspended and has not been reinstated, section 13 results in it being revoked on the second anniversary of the suspension. Section 14 is an exception from section 13 and provides that if a hearing or proceeding concerning the suspended firm has commenced, the registration remains suspended.

"Revocation" means that the regulator has terminated the registered derivatives firm's registration. A firm whose registration has been revoked must submit a new application if it wants to be registered again.

Surrender

A registered derivatives firm may apply to surrender its registration in one or more categories at any time by filing an application with its principal regulator. There is no prescribed form for an application to surrender.

Before the regulator accepts a registered derivatives firm's application to surrender registration, the derivatives firm must provide the regulator with evidence that its existing derivatives parties have been dealt with appropriately.

The regulator does not have to accept a registered derivatives firm's application to surrender its registration. Instead, the regulator can act in the public interest by suspending, or imposing terms and conditions on the firm's registration.

When considering a registered derivatives firm's application to surrender its registration, the regulator typically considers the registered derivatives firm's actions, the completeness of the application and the supporting documentation.

The firm's actions

The regulator may consider whether the registered derivatives firm

- has stopped carrying on activity requiring registration,
- proposes an effective date to stop carrying on activity requiring registration that is within a reasonable period of the date of the application to surrender,
- has outstanding derivatives that will continue after the date of the application to surrender, and
- has paid any outstanding fees and submitted any outstanding filings at the time of filing the application to surrender.

Completeness of the application

Among other things, the regulator may look for

- the registered derivatives firm's reasons for ceasing to carry on activity requiring registration,
- satisfactory evidence that the registered derivatives firm has given all of its derivatives parties reasonable notice of its intention to stop carrying on activity requiring registration, including an explanation of how it will affect its derivatives parties in practical terms,
- how the registered derivatives firm will manage derivatives that will expire after the date that the firm proposes to surrender its registration, and
- satisfactory evidence that the derivatives firm has given appropriate notice to other regulators of the firm, if applicable.

Supporting documentation

The regulator may look for

- evidence that the registered derivatives firm has resolved all outstanding complaints from derivatives parties, settled all litigation, satisfied all judgments or made reasonable arrangements to deal with and fund any payments relating to them, and any subsequent complaints, settlements or liabilities,
- confirmation that all money or securities owed to derivatives parties have been returned or transferred to another derivatives dealer, where possible, according to instructions,
- up-to-date audited financial statements with an auditor's comfort letter,
- evidence that the registered derivatives firm has satisfied any requirements imposed by IIROC for withdrawing as a dealer member, and
- an officer's or partner's certificate supporting these documents.

**PART 4
CATEGORIES OF REGISTRATION FOR INDIVIDUALS**

Responsibilities of a sponsoring derivatives firm

A registered derivatives firm is responsible for the conduct of the individuals who act on its behalf.

A registered derivatives firm

- must undertake due diligence before sponsoring an individual to be registered to act on its behalf (see further guidance in Part 4 of the Companion Policy to NI 33-109), and
- has an ongoing obligation under section 38 [*Compliance policies and procedures*] to establish, maintain and apply written policies and procedures that are reasonably designed to establish a system of controls and

supervision sufficient to ensure that the registered derivatives firm and each individual acting on its behalf in relation to derivatives complies with securities legislation.

These obligations apply even when the individual may be exempted from the requirement to register under subsection 16(3) or 16(4).

Failure of a registered derivatives firm to fulfill these responsibilities may be relevant to the firm's continued fitness for registration.

Fitness for registration

We will only register an individual applicant if they appear to be fit for registration. Following registration, an individual must maintain their fitness in order to remain registered. If we determine that a registrant has become unfit for registration, we may suspend or revoke the registration. See Division 2 of Part 5 of this Companion Policy for guidance on suspension and revocation of an individual's registration.

Assessing fitness for registration – individuals

We use three fundamental criteria to assess whether an individual is or remains fit for registration:

- proficiency
- integrity, and
- solvency

(a) Proficiency

Individual applicants must meet the applicable education, training and experience requirements prescribed in the Instrument and demonstrate knowledge of relevant regulatory requirements relating to derivatives and the derivatives they transact or recommend.

Registered individuals should continually update their knowledge and training to keep pace with changes in derivatives markets and developments in the industry that are relevant to their business. See Part 5 of this Companion Policy for more specific guidance on proficiency.

(b) Integrity

Registered individuals must conduct themselves with integrity and honesty. We will assess the integrity of individuals through the information they are required to provide on registration application forms and other forms required to be filed under securities legislation, including forms required under NI 33-109, and through compliance reviews. For example, applicants are required to disclose information about conflicts of interest, such as other employment or partnerships, service as a member of a board of directors, or relationships with affiliates, and about any regulatory or legal actions against them.

(c) Solvency

We will assess the overall financial condition of an individual applicant or registrant. An individual that is insolvent or has a history of bankruptcy may not be fit for registration. Depending on the circumstances, the regulator may consider the individual's contingent liabilities. The regulator may take into account an individual's bankruptcy or insolvency when assessing their continuing fitness for registration.

Section 16 – Individual registration categories

Multiple individual categories

Individuals who carry on more than one activity requiring registration on behalf of a registered derivatives firm must

- register in all applicable categories, and
- meet the proficiency requirements of each category.

For example, a derivatives advising representative of a registered derivatives adviser who is also the derivatives firm's derivatives chief compliance officer must register in the categories of derivatives advising representative and derivatives chief compliance officer. They must meet the proficiency requirements of both categories.

Individual registered in a firm category

An individual can be registered in both a firm and individual category. For example, a sole proprietor who is registered in the firm category of derivatives adviser must also be registered in the individual category of derivatives advising representative.

Exemption

Under subsection (3), an individual is, subject to certain conditions, exempt from the requirement to register as a derivatives dealing representative if they only transact with, for or on behalf of, or only solicit a transaction with, for or on behalf of, eligible derivatives parties or affiliated entities (other than certain affiliated entities that are investment funds).

Subsection (4) provides a similar exemption to derivatives advising representatives that only advise eligible derivatives parties. The exemption in subsection (4) does not apply to an individual that acts as an adviser for a managed account, even if the beneficiary of the managed account is an eligible derivatives party.

PART 5 REGISTRATION REQUIREMENTS FOR INDIVIDUALS

Division 1 – Individual proficiency requirements

Section 18 – Initial and ongoing proficiency requirements

Proficiency principle

Section 18 has two types of proficiency requirements that are applicable to individuals that are required to register: a general requirement in subsection (1) and specific requirements in subsections (2), (3), (4) and (6).

To meet the general requirement in subsection 18(1), derivatives dealing representatives and derivatives advising representatives must have the necessary education, training and experience to understand the structure, features and risks of each derivative that they recommend to a derivatives party (also referred to as know-your-product). This requirement is in addition to the suitability obligation in section 12 of National Instrument 93-101 *Derivatives: Business Conduct (NI 93-101)* and applies even where there is an exemption from the suitability obligation.

A registered derivatives firm should perform its own analysis of the derivatives its staff recommend to derivatives parties and provide product training to ensure its staff, including its registered derivatives dealing and registered derivatives advising representatives, have a sufficient understanding of those derivatives and their associated risks.

Derivatives chief compliance officers and derivatives chief risk officers must also not perform an activity that requires registration unless they have the education, training and experience that a reasonable person would consider necessary to perform their responsibilities competently. Derivatives chief compliance officers must have a good understanding of the regulatory requirements applicable to their sponsoring derivatives firm and individuals acting on its behalf and have the knowledge and ability to design and implement an effective compliance system. Similarly, derivatives chief risk officers must have an understanding of the risks applicable to their sponsoring derivatives firm and have the knowledge and ability to implement an effective risk management system.

We will consider both the general and specific requirements in determining the individual's fitness for registration and may exercise discretion in making a determination.

Responsibility of the firm

Subsections (2), (3), (4) and (6) of section 18 preclude firms from designating individuals to act in roles that require individual registration unless the individual meets the applicable proficiency requirements. Section 38 requires a registered derivatives firm to have policies and procedures to ensure compliance with applicable securities legislation, including requirements that individuals acting on its behalf

- have, at all times, the proficiency necessary to do their derivatives related tasks, and
- are registered if they are required to be registered under securities legislation.

Exam based requirements

Where specific exams are referenced in section 18, individuals must pass the exams – not only take courses – to meet the education requirements in that section. For example, before an individual can be allowed to act as a derivatives dealing representative under paragraph 18(4)(a), they must pass the Derivatives Fundamentals Course Exam. Individuals are responsible for completing the necessary preparation to pass an exam and for having the necessary proficiency in all areas covered by the exam.

Time limits on examination requirements

Under subsection 18(8), there is a time limit on the validity of exams prescribed in section 18. Individuals must pass an exam within 36 months before they apply for registration. However, this time limit does not apply if the individual

- was registered in an active capacity (i.e., not suspended), in the same category in a jurisdiction of Canada at any time during the 36-month period before the date of their application, or
- has gained relevant securities or derivatives industry experience for a total of 12 months during the 36-month period before the date of their application. These months do not have to be consecutive, or with the same firm or organization.

These time limits do not apply to the CFA Charter or the Risk Manager Designation since we do not expect the holders of these designations to have to retake the courses or successfully retake the exams that form part of the requirements applicable to these designations. However, if the individual no longer has the right to use the CFA Charter or the Risk Manager Designation, by reason of revocation of the designation or otherwise, we may consider the reasons for such a revocation to be relevant in determining an individual's fitness for registration. Registered individuals are required to notify the regulator of any change in the status of their CFA Charter or their designations within 10 days of the change, by submitting Form 33-109F5 *Change of Registration Information* in accordance with NI 31-102.

When assessing an individual's fitness for registration, the regulator may consider

- the date on which the relevant examination was passed, and
- the length of time between any suspension and reinstatement of registration during the 36 -month period.

See guidance relating to Division 2 of this Part, below, for guidance on the meaning of "suspension" and "reinstatement".

Relevant industry experience

The relevant experience under paragraph 18(9)(b) should be relevant to the category applied for. It may include experience acquired in any of the following:

- during employment at a firm that is a derivatives dealer or derivatives adviser;
- in related fields, such as investment banking; securities or derivatives trading on behalf of a financial institution; securities, derivatives or commodities research; portfolio management; investment advisory services; or supervision of those related fields;
- in legal, accounting or consulting practices related to derivatives or the securities industry;
- in other professional service fields that relate to derivatives or the securities industry;
- in a derivatives or securities-related business in a foreign jurisdiction.

Granting exemptions

We may grant an exemption from any of the education and experience requirements if we are satisfied that an individual has qualifications or relevant experience that are equivalent to, or more appropriate in the circumstances than, the prescribed requirements.

Proficiency for representatives of restricted derivatives dealers and restricted derivatives advisers

We will decide on a case-by-case basis what education and experience are required for registration as

- a derivatives dealing representative, derivatives chief compliance officer or derivatives chief risk officer of a restricted derivatives dealer, and
- a derivatives advising representative, derivatives chief compliance officer or derivatives chief risk officer of a restricted derivatives adviser.

The regulator will determine these requirements when it assesses the individual's fitness for registration.

Proficiency requirements for derivatives advising representatives

The 48 months of relevant investment management experience referred to in subparagraph 18(6)(b)(iii) does not have to be consecutive, or with the same firm or organization.

For individuals with a CFA Charter, the regulator will decide on a case-by-case basis whether the experience they gained to earn the CFA Charter qualifies as relevant experience.

What constitutes relevant experience may vary according to the level of specialization of the individual. It may include

- securities or derivatives research and analysis experience, demonstrating an ability in, and understanding of, portfolio analysis or portfolio security selection, or
- management of investment portfolios on a discretionary basis, including investment or risk management decision making, rebalancing and evaluating performance.

Derivatives advising representatives with discretionary authority

A derivatives advising representative may have discretionary authority over portfolios of others, including for a managed account. Accordingly, this category of registration involves the most extensive proficiency requirements. We expect an individual who seeks registration as a derivatives advising representative to demonstrate a high quality of experience that is clearly relevant to discretionary portfolio management. Such experience may include working at one or more of the following:

- a derivatives adviser registered or operating under an exemption from registration in a foreign jurisdiction;
- an insurance company;
- a pension fund;
- a derivatives dealer;
- an investment dealer.

Restriction on acting for another registered firm

We will not usually allow registration for an individual if that same individual, regardless of the category of registration, acts on behalf of more than one sponsoring firm, whether it is a registered derivatives firm or a registered securities firm, unless the sponsoring firms are affiliated entities, and the scale and types of activities carried out make it reasonable for the same person to act for each firm. If sponsoring firms propose to permit an individual who is registered to act on behalf of another sponsoring firm, we will consider this on a case-by-case basis. When reviewing an application, we will consider if

- there are valid business reasons for the individual to be registered to act on behalf of both sponsoring firms,
- the individual will have sufficient time to adequately serve both sponsoring firms,
- the applicant's sponsoring firms have demonstrated that they have policies and procedures addressing any conflicts of interest that may arise due to the dual registration, and
- the sponsoring firms will be able to deal with these conflicts, including supervising how the individual will deal with these conflicts.

Division 2 – Suspension and revocation of registration – individuals

The requirements for surrendering registration and additional requirements for suspending and revoking registration are found in the securities legislation of each jurisdiction. The guidance for this Division relates to requirements under securities legislation, which includes the Instrument.

There is no renewal requirement for registration. A registered individual may carry on the activities for which they are registered until their registration is

- suspended automatically under the Instrument,
- suspended by the local regulator under certain circumstances, or
- surrendered by the individual.

An individual whose registration is suspended must not carry on the activity for which they are registered. The individual otherwise remains a registrant and is subject to the jurisdiction of the regulator. A suspension remains in effect until the individual's registration is reinstated or revoked.

If an individual who is registered in more than one category is suspended in one of the categories, the regulator will consider whether to suspend the individual's registration in other categories or to impose terms and conditions, subject to an opportunity to be heard.

Automatic suspension

An individual's registration will automatically be suspended if

- they cease to have a working relationship with their sponsoring firm,
- the registration of their sponsoring firm is suspended or revoked, or
- the individual is an approved person of IIROC, and IIROC revokes or suspends the individual's approval.

An individual must have a sponsoring derivatives firm to be registered. If an individual leaves their sponsoring derivatives firm for any reason, their registration is automatically suspended. Automatic suspension is effective on the day that an individual no longer has authority to act on behalf of their sponsoring derivatives firm.

Individuals do not have an opportunity to be heard by the regulator in the case of any automatic suspension.

Suspension in the public interest

An individual's registration may be suspended if the regulator exercises its power under securities legislation and determines that it is no longer in the public interest for the individual to be registered. The regulator may do this if it has serious concerns about the ongoing fitness of the individual. For example, this may be the case if an individual is charged with a crime, in particular fraud or theft.

Reinstatement

"Reinstatement" means that a suspension on a registration has been lifted. Once reinstated, an individual may resume carrying on the activity they are registered for. If a suspended individual joins a new sponsoring derivatives firm, they will have to apply for reinstatement under the process set out in NI 33-109. Subject to certain conditions in NI 33-109, reinstatement or transfer to the new firm will be automatic if the individual

- transfers directly from one sponsoring derivatives firm to another registered derivatives firm in the same jurisdiction,
- joins the new sponsoring derivatives firm within 90 days of leaving their former sponsoring derivatives firm,
- seeks registration in the same category as the one previously held, and
- completes and files Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals (Form 33-109F7)*.

This allows individuals to engage in activities requiring registration from their first day with the new sponsoring derivatives firm.

Individuals are not eligible for an automatic reinstatement if they

- have new information to disclose regarding regulatory, criminal, civil or financial matters as described in Item 9 of Form 33-109F7, or
- as a result of allegations of criminal activity or breach of securities legislation,
 - were dismissed by their former sponsoring derivatives firm, or
 - were asked by their former sponsoring derivatives firm to resign.

In these cases, the individual must apply to have their registration reinstated under NI 33-109 using Form 33-109F4.

Section 19 – If individual ceases to have authority to act for the derivatives firm

Under section 19, if a registered individual ceases to have authority to act on behalf of their sponsoring derivatives firm because their working relationship with the firm ends or changes, the individual's registration with the registered derivatives firm is suspended until reinstated or revoked under securities legislation. This applies whether the individual or the firm ends the relationship.

If a registered derivatives firm terminates its working relationship with a registered individual for any reason, the firm must complete and file a notice of termination on Form 33-109F1 *Notice of Termination of Registered Individuals and Permitted Individuals (Form 33-109F1)* no later than ten days after the effective date of the individual's termination. This includes situations where an individual resigns, is dismissed or retires.

The registered derivatives firm must file additional information about the individual's termination prescribed in Part 5 of Form 33-109F1 (except where the individual is deceased), no later than 30 days after the date of termination. We use this information to determine if there are any concerns about the individual's conduct that may be relevant to their ongoing fitness for registration.

Section 20 – If IIROC approval is revoked or suspended

If IIROC suspends or revokes its approval of an individual, the individual's registration in the category requiring IIROC approval will be automatically suspended. If IIROC suspends an individual for reasons that do not involve significant regulatory concerns and subsequently reinstates the individual's approval, the individual's registration will usually be reinstated by the regulator as soon as possible.

Section 23 – Revocation of a suspended registration – individual

“Revocation” means that the regulator has terminated the individual's registration. An individual whose registration has been revoked must submit a new application if they want to be registered again.

Surrender or termination of registration

If an individual wants to terminate their registration in one or more of the non-principal jurisdictions where the individual is registered, the individual may apply to surrender their registration at any time by completing Form 33-109F2 *Change or Surrender of Individual Categories (Form 33-109F2)* and having their sponsoring derivatives firm file it.

If an individual wants to terminate their registration in their principal jurisdiction, Form 33-109F1 must be filed by the individual's sponsoring derivatives firm. Once Form 33-109F1 is filed, the individual's termination of registration will be reflected in all jurisdictions.

PART 6 DERIVATIVES ULTIMATE DESIGNATED PERSON, DERIVATIVES CHIEF COMPLIANCE OFFICER AND DERIVATIVES CHIEF RISK OFFICER

Part 6 requires registered derivatives firms to designate a derivatives ultimate designated person, a derivatives chief compliance officer and a derivatives chief risk officer. While each of these individuals have specific functions for compliance and risk management, they are not solely responsible for compliance and risk management; it is the responsibility of the firm as a whole. Part 6 also imposes responsibilities on individuals that are designated as derivatives ultimate designated persons, derivatives chief compliance officers or derivatives chief risk officers by registered derivatives firms.

The obligations of the derivatives ultimate designated person in subsection 27(3) and the obligations of a derivatives chief compliance officer in subsection 28(3) only apply to compliance with securities legislation relating to derivatives.

The same person registered in more than one category

The same person may be registered in more than one category if they meet the requirements for each registration category. For example, one person may be designated as both the derivatives chief compliance officer and derivatives chief risk officer. We prefer firms to separate these functions, but we recognize that it might not be practical for some registered derivatives firms, particularly very small firms.

Section 27 – Derivatives ultimate designated person

The derivatives ultimate designated person is responsible for promoting a culture of compliance and overseeing the effectiveness of a registered derivatives firm's compliance system. They do not have to be involved in the day-to-day management of the compliance group. There are no specific education or experience requirements for the ultimate designated person. However, they are subject to the general proficiency principle in subsection 18(1).

Subparagraphs 27(3)(d)(i) and (ii) refer to a risk of material harm to a derivatives party or to capital markets. The registered derivatives firm should establish a standard for determining when there is a risk of material harm to a derivatives party of the firm or to the capital markets. Whether the harm is "material" is dependent on the specific circumstances. Material harm to a small, unsophisticated derivatives party may differ from material harm to a larger, more sophisticated derivatives party.

Section 28 – Derivatives chief compliance officer

The derivatives chief compliance officer is responsible for the monitoring and oversight of the registered derivatives firm's compliance system as it relates to derivatives. This includes

- establishing and updating policies and procedures for the firm's compliance system relating to derivatives, and
- managing the compliance monitoring and reporting, relating to derivatives, according to the firm's policies and procedures.

At the firm's discretion, the derivatives chief compliance officer may also have authority to take supervisory or other action to resolve compliance issues.

The derivatives chief compliance officer must meet the proficiency requirements set out in Part 5. No other compliance staff have to be registered unless they trigger registration in another category. The derivatives chief compliance officer may set the knowledge and skills necessary or desirable for individuals who report to them.

Registered derivatives firms must designate one derivatives chief compliance officer. However, in large firms, the scale and kinds of activities carried out by different operating divisions may warrant the designation of more than one derivatives chief compliance officer. We will consider applications, on a case-by-case basis, for different individuals to act as the derivatives chief compliance officer of a firm's operating divisions.

Paragraph 28(3)(c) requires the derivatives chief compliance officer to report to the ultimate designated person any instances of non-compliance with securities legislation relating to derivatives if any of the conditions in subparagraphs (i) through (iii) apply. The derivatives chief compliance officer should report non-compliance to the derivatives ultimate designated person even if it has been corrected.

Subparagraph 28(3)(d)(ii) requires, as an element of the chief compliance officer's annual report, an assessment of the effectiveness of the registered derivatives firm's policies and procedures to assess compliance with securities legislation relating to derivatives.

Whether the harm is "material" is dependent on the specific circumstances. Material harm to a small unsophisticated derivatives party may differ from material harm to a larger, more sophisticated derivatives party.

Subparagraph 28(3)(d)(iii) requires, as an element of the chief compliance officer's annual report, that the report recommend potential changes to compliance policies and procedures to address needed improvements. Where a previous report discussed future improvements that were being planned, subsequent reports should discuss the outcomes of the changes that were implemented during the most recent scope period, any monitoring or testing of those changes, whether any compliance issues arose from the changes and, if there were any issues with how those issues were handled.

The description of circumstances of non-compliance required under subparagraph 28(3)(d)(v) should include a discussion of how the registered derivatives firm reached a decision on a course of remediation, how the implementation of the remediation was executed, any follow-up testing of the remediation and any noteworthy results from such testing.

While there is no requirement under paragraph 28(3)(d) to deliver to the regulator the annual report referred to in paragraph 28(3)(d), a regulator may request this report from time to time.

Section 29 – Derivatives chief risk officer

The derivatives chief risk officer is responsible for the monitoring and oversight of the registered derivatives firm's risk management systems associated with the firm's derivatives related activities. This includes

- establishing and updating policies and procedures to implement and operate a risk management system that identifies and manages risk, particularly risk relating to derivatives, and
- managing and monitoring compliance with the registered derivatives firm's risk management system according to the firm's policies and procedures.

The derivatives chief risk officer must meet the proficiency requirements set out in Part 5. No other risk staff have to be registered unless they trigger registration in another category.

Registered derivatives firms must designate one derivatives chief risk officer. However, in large firms, the scale and type of activities carried out by different operating divisions and the variety of risks associated with these operating divisions may warrant the designation of more than one derivatives chief risk officer. We will consider applications, on a case-by-case basis, for different individuals to act as the derivatives chief risk officer of a firm's operating divisions.

Under paragraph 29(3)(c), the derivatives chief risk officer must report potential material non-compliance with the registered derivatives firm's risk management policies and procedures to the firm's derivatives ultimate designated person. Instances of non-compliance should be reported even if the non-compliance has been corrected.

The registered derivatives firm should establish a standard for determining when there is material non-compliance with the firm's risk management policies and procedures. Whether non-compliance is "material" is dependent on the specific circumstances.

PART 7 FINANCIAL REQUIREMENTS

Section 34 – Annual financial statements

Section 35 – Interim financial statements

Accounting Principles

Registered derivatives firms are required to deliver annual financial statements and interim financial information that comply with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (**NI 52-107**).

Part 3 of NI 52-107 refers to Canadian GAAP applicable to publicly accountable enterprises, which is IFRS as incorporated into the Handbook. Under Part 3 of NI 52-107, annual financial statements and interim financial information delivered by a registrant must be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises except that any investments in subsidiaries, jointly controlled entities and associates must be accounted for as specified for separate financial statements in International Accounting Standard 27 – Consolidated and Separate Financial Statements. Separate financial statements are sometimes referred to as non-consolidated financial statements.

Subsection 3.2(3) of NI 52-107 requires annual financial statements to include a statement and description about this required financial reporting framework. Section 2.7 of Companion Policy to National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (**52-107CP**) provides guidance on subsection 3.2(3). We remind registered derivatives firms to refer to these provisions in NI 52-107 and 52-107CP in preparing their annual financial statements and interim financial information.

Part 4 of NI 52-107 refers to Canadian GAAP for public enterprises, which is Canadian GAAP as it existed before the mandatory effective date for the adoption of IFRS, included in the Handbook as Part V. Under Part 4 of NI 52-107, annual financial statements and interim financial information delivered by a registered derivatives firm must be prepared in accordance with Canadian GAAP for public enterprises except that the financial statements and interim financial information must be prepared on a non-consolidated basis.

Section 36 – Delivering financial statements

Subsections 36(3) and (4) provide exclusions from the requirement to deliver annual and interim financial statements where the registered derivatives firm is a reporting issuer that is in compliance with its obligation to file its annual and interim financial statements. These exclusions will reduce the regulatory burden of registered derivatives firms that are already filing financial information.

PART 8 COMPLIANCE AND RISK MANAGEMENT

Section 38 – Compliance policies and procedures

Section 38 requires a registered derivatives firm to establish, maintain and apply policies and procedures that establish a system of controls and supervision (i.e., a “compliance system”) to ensure that the registered derivatives firm and each individual acting on its behalf, in relation to its activities relating to transacting in or advising on derivatives, complies with applicable securities legislation.

We expect that a compliance system that is sufficient to meet the requirements of this section will include internal controls and monitoring systems that are reasonably likely to identify non-compliance at an early stage and supervisory systems that allow the firm to correct non-compliant conduct in a timely manner.

As previously stated in Part 1, “securities legislation” is defined in NI 14-101, and includes statutes and other instruments related to both securities and derivatives. We do not expect that the compliance system established in accordance with the Instrument would be applicable to activities other than a derivatives firm’s derivatives activities. For example, a registered derivatives dealer may also be a reporting issuer. The compliance system established to monitor compliance with the Instrument would not necessarily be concerned with matters related only to the registered derivatives firm’s status as a reporting issuer, though it would be acceptable to have a single compliance system related to the registered derivatives firm’s compliance with all applicable securities legislation. These policies and procedures should be reviewed periodically and updated as appropriate.

Section 39 – Risk management policies and procedures

We expect that risk management policies and procedures establish a risk management system that is sufficient to meet the requirements of section 39 and include internal controls and monitoring systems that are reasonably likely to identify potential risks relating to derivatives at an early stage and supervisory systems that allow the firm to mitigate risk in a timely manner. While section 39 is limited to risks associated with a registered derivatives firm’s derivatives activities, the risk management system should take into account all sources of risk that could impact the registered derivatives firm’s derivatives activities, including the firm’s obligations under derivatives.

The risk management system of a registered derivatives firm should, at a minimum

- take into account market, credit, liquidity, foreign currency, legal, operational, settlement, and any other applicable risks,
- establish risk tolerance limits and allow for the detection of breaches of those limits, and
- take into account risks relating to derivatives posed by affiliated entities.

Paragraph 39(3)(f) requires that the risk management policies and procedures provide for periodic reports to the registered derivatives firm’s ultimate designated person and board of directors. We expect these reports to include

- a description of all applicable risk exposures including market, credit, liquidity, foreign currency, legal, operational, and settlement exposures,
- any recommended or completed changes to the policies and procedures or the risk management system,
- the recommended time frame for implementing changes, and
- the status of any incomplete implementation of previously recommended changes.

The policies and procedures should also allow the registered derivatives firm to assess the risks of any derivative, including a novel type of derivative that the registered derivatives firm transacts. In doing the assessment for a novel type of derivative, a registered derivatives firm may consider

- the type of derivatives party with which the new derivative will be transacted,
- the new derivative's characteristics and economic function,
- whether the derivative requires a novel pricing methodology or presents novel legal and regulatory issues,
- all relevant risks associated with the new derivative and how the risks will be managed,
- whether the new derivative would materially alter the overall risk profile of the registered derivatives firm, and
- whether the registered derivatives firm needs to make any changes to the policies and procedures prior to engaging in transactions involving the new derivative.

Subsection 39(4) requires an independent review of the registered derivatives firm's risk management systems on a reasonably frequent basis (at least once every two years). These reviews should be conducted by a party that is independent and at arm's length from the derivatives business unit. This could include a review conducted by the registered derivatives firm's internal audit group (or a comparable unit within the firm) if that group has the appropriate expertise and has sufficient independence from the derivatives business unit.

In addition to the independent review required under subsection 39(4), we expect that a registered derivatives firm's risk management policies and procedures will provide for more frequent internal reviews of its effectiveness, as appropriate.

Section 40 – Confirmation of material terms

Where the derivatives party is an individual or a firm that is not an eligible derivatives party, the registered derivatives firm complies with the requirements of subsection 40(1) by delivering the written confirmation required in section 29 of NI 93-101.

Subsection 43(3) – Business continuity and disaster recovery

Subsection 43(3) requires a registered derivatives firm to conduct independent tests of its business continuity and disaster recovery plans. Staff of the registered derivatives firm may conduct these tests if the firm has the necessary expertise and are sufficiently independent from the business unit responsible for business continuity and disaster recovery.

Section 44 – Portfolio reconciliation

Section 44 requires a registered derivatives firm to conduct a portfolio reconciliation for all derivatives to which the firm is a counterparty. Portfolio reconciliation entails verifying the existence of all outstanding transactions with a counterparty, comparing principal economic terms, ensuring that the records of each counterparty relating to the derivative or a portfolio of derivatives are consistent, and identifying and remediating any inconsistencies. When a registered derivatives firm is developing its policies and procedures for conducting portfolio reconciliations, it should consider industry practices such as the practices published by the International Swaps and Derivatives Association.¹

Section 45 – Portfolio compression

Portfolio compression is a risk reduction process by which two or more counterparties wholly or partially terminate some or all of the derivatives between them, and replace the terminated derivatives with another derivative whose combined notional amount is less than the combined notional amount of the terminated derivatives. The process reduces the market exposure of derivatives in a portfolio by eliminating matched derivatives or derivatives that do not contribute risk to the portfolio. Compression may be done bilaterally, (i.e., with just one other counterparty), or multilaterally (i.e., between several counterparties).

The process to simplify the management of the portfolio by aggregating positions into fewer contracts without reduction of the notional value (with a view, for instance, to standardise the terms of derivatives, to make them eligible for clearing or to facilitate the management of the contract) is not included in the scope of portfolio compression.

Section 45 does not impose specific timelines for conducting portfolio compression. When establishing written policies and procedures relating to portfolio compression, a registered derivatives firm should consider a number of factors, including the size of the firm's portfolio in relation to each of its counterparties. Smaller derivatives firms that have relatively small derivatives positions may apply for exemptive relief from any or all of the requirements in section 45.

¹ See the ISDA website located at <http://www2.isda.org/> for further information relating to portfolio reconciliation practices.

PART 9 RECORDS

Section 47 – Form, accessibility and retention of records

Paragraph 47(1)(a) requires a registered derivatives firm to keep its records in a safe location. This includes ensuring that no one has unauthorized access to information, particularly confidential derivatives party and counterparty information. We would expect a registered derivatives firm to be particularly vigilant if it maintains books and records in a location that may be accessible by a third party. In this case, we would expect the registered derivatives firm to have a confidentiality agreement with the third party.

PART 10 EXEMPTIONS FROM THE REQUIREMENT TO REGISTER AND FROM SPECIFIC REGISTRATION REQUIREMENTS

The Instrument provides several exemptions from the registration requirement as well as several exemptions from certain requirements in the Instrument. We also note that there may be additional exemptions in securities legislation.

If a firm is exempt from the requirement to register, the individuals acting on its behalf under that exemption are likewise exempt.

Sections 52, 54, 56, 59 and 61 require persons or companies that rely on those exemptions to promptly notify the regulator of any material non-compliance with specific regulatory requirements of another regulatory authority. The specific regulatory requirements are listed in the applicable Appendix referenced in the section. Sections 27 and 28 of this Policy provide guidance about when non-compliance with applicable requirements is material.

Division 1 – Exemptions from the requirement to register as a derivatives dealer

This Division provides a derivatives dealer with exemptions from the requirement to register as a derivatives dealer if it complies with the conditions of the exemption. A derivatives dealer that is exempt from the derivatives dealer registration requirement will not be subject to other requirements in the Instrument that would be applicable to it if it was registered as a derivatives dealer.

Section 49 – Exemption for certain derivatives end-users

Section 49 provides an exemption from the requirement to register as a derivatives dealer for a person or company that does not have the status described in subsection (1) and does not engage in the activities described in subsection (2).

For example, a person or company that frequently and regularly transacts in derivatives to hedge business risk but that does not undertake any of the activities in subsection (2) may qualify for this exemption. Typically, such a person or company would transact with a derivatives dealer who itself may be subject to some or all of the requirements of the Instrument.

Under paragraph 49(2)(c), this exemption is not available to a person or company that regularly makes a market in derivatives.

Section 50 – Derivatives dealers with a limited notional amount under derivatives

Section 51 – Commodity derivatives dealers with a limited notional amount under derivatives

Section 50 provides an exemption from the requirement to register for derivatives dealers that do not have more than \$250 million in aggregate gross notional amount outstanding, whose derivatives parties are all eligible derivatives parties and that meet the other conditions in paragraphs 50(a) to (d).

Section 51 provides an exemption from the requirement to register for derivatives dealers that are only in the business of trading derivatives that have commodities as their only underlying asset and that meet the other conditions in paragraphs 51(2)(a) to (e).

To comply with the condition in paragraph 51(2)(e), a person or company cannot conduct any activity that would require it to register as a derivatives dealer for a derivative that is not a commodity derivative.

Determination of notional amount

Appendix A establishes requirements for determining the notional amount for a derivative for the purpose of both sections 50 and 51. To determine the aggregate gross notional amount outstanding, a derivatives dealer must aggregate the notional amount of each outstanding derivative to which the derivatives dealer or its affiliated entities are a party, without netting. The notional amounts for derivatives between affiliated entities are not included when aggregating notional amount outstanding for the purpose of the thresholds in sections 50 and 51.

Under sections 50 and 51, a derivatives dealer that has its head office or principal place of business outside of Canada is only required to aggregate its notional amounts under outstanding derivatives with a Canadian counterparty. A derivatives dealer that has its head office or principal place of business in Canada is required to aggregate the notional exposure of all derivatives to which it is a counterparty regardless of whether the derivatives party is a Canadian counterparty.

Section 52 – Foreign derivatives dealers– exemption from registration

General principle

Section 52 allows a derivatives dealer with its head office or principal place of business in a foreign jurisdiction listed in Appendix B to transact with, or on behalf of derivatives parties, without being registered as a derivative dealer, if,

- each of the firm's derivatives parties are eligible derivatives parties, and
- the derivatives dealer satisfies the other conditions specified in section 52.

The exemption in section 52 is only available where a foreign derivatives dealer is subject to and in compliance with the requirements of the laws of the applicable foreign jurisdiction specified in Column 1 of Appendix B. Where a foreign derivatives dealer is not subject to the requirements in a foreign jurisdiction listed in Appendix B, including where it relies on an exclusion or an exemption (including discretionary relief) from those requirements in the foreign jurisdiction, the exemption in section 52 will not be available.

Notice requirement

If the foreign derivatives dealer is relying on the exemption, it must provide an initial notice by submitting a Form 93-102F2 *Submission to Jurisdiction and Appointment of Agent for Service (Form 93-102F2)* with the regulator in each jurisdiction where it relies on the exemption. If there is any change to the information in the foreign derivatives dealer's Form 93-102F2, it must update it by filing a replacement Form 93-102F2 with those jurisdictions.

So long as the foreign derivatives dealer continues to rely on the exemption, it must file an annual notice with the corresponding regulators in accordance with subsection 52(3). Subsection 52(3) does not prescribe a form of annual notice; an email or letter will be acceptable.

In Ontario, compliance with the filing and fee payment requirements applicable to an unregistered exempt foreign dealer under Ontario Securities Commission Rule 13-502 *Fees* satisfies the annual notification requirement in subsection 52(3).

Division 2 – Exemptions from specific requirements for derivatives dealers

The exemptions in Division 2 provide registered derivatives dealers with exemptive relief from the requirements to comply with specific requirements in the Instrument that are applicable to registered derivatives dealers.

Section 54 – Foreign derivatives dealers – exemption from specific requirements

Section 54 provides to registered derivatives dealers, whose head office or principal place of business is in a foreign jurisdiction specified in Column 1 of Appendix D, exemptions from certain requirements in the Instrument specified in Column 2 of Appendix D, on the terms set out in section 54.

Paragraph 54(1)(b) requires that the foreign registered derivatives dealer be subject to and in compliance with the corresponding requirements or guidelines of the foreign jurisdiction specified in Column 3 of Appendix D.

Column 3 of Appendix D does not incorporate any exemption or discretionary relief granted to the foreign derivatives dealer under the laws of the foreign jurisdiction. Where a foreign registered derivatives dealer proposes to rely upon any such exemption or discretionary relief, it will need to address this through an application for exemptive relief in the applicable local Canadian jurisdictions.

Division 3 – Exemptions from the requirement to register as a derivatives adviser

This Division provides a derivatives adviser with an exemption from the requirement to register as a derivatives adviser if it complies with the conditions of the exemption.

A derivatives adviser that is exempt from the derivatives adviser registration requirement will not be subject to other requirements in the Instrument that would be applicable to it if it was registered as a derivatives adviser.

Section 57 – Advising generally

Section 57 contains an exemption from the requirement to register as a derivatives adviser if advice is not tailored to the needs of the recipient.

In general, we would not consider advice to be tailored to the needs of the recipient if it

- is a general discussion of the merits and risks of a derivative or class of derivatives,
- is delivered through newsletters, articles in general circulation newspapers or magazines, websites, e-mail, internet chat rooms, bulletin boards, television or radio, and
- does not claim to be tailored to the needs and circumstances of any recipient.

This type of general advice can also be given at conferences. However, if a purpose of the conference is to solicit the audience and generate specific transactions in specific derivatives or class of derivatives, we may consider the advice to be tailored or we may consider the individual or firm giving the advice to be engaged in trading activity.

Under subsection 57(3), if an individual or a firm relying on the exemption has a financial or other interest in the derivative or class of derivatives it recommends, or in an underlying interest of the derivative, it must disclose the interest to the recipient when it makes the recommendation.

Section 59 – Foreign derivatives advisers – exemption from registration

Section 59 allows a derivatives adviser with its head office or principal place of business in a foreign jurisdiction listed in Appendix G to act as an adviser to derivatives parties, without being registered as a derivative adviser, if

- each of the firm's derivatives parties are eligible derivatives parties, and
- the derivatives adviser satisfies the other conditions specified in section 59.

The exemption in section 59 is only available where a foreign derivatives adviser is subject to and in compliance with the requirements of the laws of the applicable foreign jurisdiction specified in Column 1 of Appendix G. If a foreign derivatives adviser is not subject to the requirements in a foreign jurisdiction listed in Appendix G, including where it relies on an exclusion or an exemption (including discretionary relief) from those requirements in the foreign jurisdiction, the exemption in section 59 will not be available.

Division 4 – Exemptions from specific requirements in this Instrument for derivatives advisers

Section 61 – Foreign derivatives advisers – exemption from specific requirements

Section 61 provides to registered derivatives advisers, whose head office or principal place of business is in a foreign jurisdiction specified in Column 1 of Appendix H, exemptions from certain requirements in the Instrument specified in Column 2 of Appendix H, on the terms set out in section 61.

Paragraph 61(1)(b) requires that the foreign registered derivatives adviser be subject to and comply with the corresponding requirements or guidelines of the foreign jurisdiction specified in Column 3 of Appendix H.

Column 3 of Appendix H does not incorporate any exemption or discretionary relief granted to the foreign derivatives adviser under the laws of the foreign jurisdiction. Where a foreign registered derivatives adviser proposes to rely upon any such exemption or discretionary relief, it will need to address this through an application for exemptive relief in the applicable local Canadian jurisdictions.

ANNEX V

LOCAL MATTERS

ONTARIO RULE-MAKING AUTHORITY

AUTHORITY FOR THE PROPOSED INSTRUMENT

In Ontario, the rule-making authority for the Proposed Instrument is in paragraphs 1, 1.1 to 1.6, 2, 3, 4, 5, 5.1, 7, 8, 8.1, 8.2, 10, 10.1, 11, 13, 18, 19.1 to 19.7, 25, 33, 35, 39, 39.1, 40, 41, 43, 45, 49 and 56 of subsection 143(1) of the *Securities Act*.