

Chapter 5

Rules and Policies

5.1.1 OSC Rule 91-506 Derivatives: Product Determination

ONTARIO SECURITIES COMMISSION RULE 91-506 *DERIVATIVES: PRODUCT DETERMINATION*

Application

1. This Rule applies to Ontario Securities Commission Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*.

Excluded derivatives

2. (1) A contract or instrument is prescribed not to be a derivative if it is

- (a) regulated by,
 - (i) gaming control legislation of Canada or a jurisdiction of Canada, or
 - (ii) gaming control legislation of a foreign jurisdiction, if the contract or instrument
 - (A) is entered into outside of Canada,
 - (B) is not in violation of legislation of Canada or Ontario, and
 - (C) would be regulated under gaming control legislation of Canada or Ontario if it had been entered into in Ontario;
- (b) an insurance or annuity contract entered into,
 - (i) with an insurer holding a licence under insurance legislation of Canada or a jurisdiction of Canada and regulated as insurance under that legislation, or
 - (ii) outside of Canada with an insurer holding a licence under insurance legislation of a foreign jurisdiction, if it would be regulated as insurance under insurance legislation of Canada or Ontario if it had been entered into in Ontario;
- (c) a contract or instrument for the purchase and sale of currency that,
 - (i) except where all or part of the delivery of the currency referenced in the contract or instrument is rendered impossible or commercially unreasonable by an intervening event or occurrence not reasonably within the control of the parties, their affiliates or their agents, requires settlement by the delivery of the currency referenced in the contract or instrument,
 - (A) within two business days, or
 - (B) after two business days provided that the contract or instrument was entered into contemporaneously with a related security trade and the contract or instrument requires settlement on or before the relevant security trade settlement deadline,
 - (ii) is intended by the counterparties, at the time of the execution of the transaction, to be settled by the delivery of the currency referenced in the contract within the time periods set out in subparagraph (i), and
 - (iii) does not allow for the contract or instrument to be rolled over;

- (d) a contract or instrument for delivery of a commodity other than cash or currency that,
 - (i) is intended by the counterparties, at the time of execution of the transaction, to be settled by delivery of the commodity, and
 - (ii) does not allow for cash settlement in place of delivery except where all or part of the delivery is rendered impossible or commercially unreasonable by an intervening event or occurrence not reasonably within the control of the counterparties, their affiliates, or their agents;
- (e) evidence of a deposit issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada), by an association to which the *Cooperative Credit Associations Act* (Canada) applies or by a company to which the *Trust and Loan Companies Act* (Canada) applies;
- (f) evidence of a deposit issued by a credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* or a similar statute of Canada or a jurisdiction of Canada (other than Ontario) applies or by a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or a similar statute of a jurisdiction of Canada (other than Ontario); or
- (g) traded on an exchange recognized by a securities regulatory authority, an exchange exempt from recognition by a securities regulatory authority or an exchange that is regulated in a foreign jurisdiction by a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding.

(2) For the purposes of paragraph (1)(g), an exchange does not include a derivatives trading facility.

Investment contracts and over-the-counter options

3. A contract or instrument, other than a contract or instrument to which section 2 applies, that is a derivative, and that is otherwise a security solely by reason of being an investment contract under paragraph (n) of the definition of "security" in subsection 1(1) of the Act, or being an option described in paragraph (d) of that definition, that is not described in section 5, is prescribed not to be a security.

Derivatives that are securities

4. A contract or instrument, other than a contract or instrument to which any of sections 2 and 3 apply, that is a security and would otherwise be a derivative is prescribed not to be a derivative.

Derivatives prescribed to be securities

5. A contract or instrument that is a security and would otherwise be a derivative, other than a contract or instrument to which any of sections 2 to 4 apply, is prescribed not to be a derivative if such contract or instrument is used by an issuer or affiliate of an issuer solely to compensate an employee or service provider or as a financing instrument and whose underlying interest is a share or stock of that issuer or its affiliate.