

**BC Instrument 91-501**  
***Over-the-Counter Derivatives***

Order Under Sections 48 and 76

**Part 1            DEFINITIONS AND INTERPRETATION**

**1.1     Definitions** - In this Instrument:

“**Accord**” means the International Convergence of Capital Measurement and Capital Standards issued by the Committee on Banking Regulations and Supervisory Practices (Basle, Switzerland: July 1988) (Committee on Banking Supervision) or any successor standards;

“**OTC Derivative**” means a derivative that is not an exchange contract;

“**Qualified Party**” means any of the following:

- (a) a bank to which the Bank Act (Canada) applies;
- (b) the Business Development Bank of Canada continued under the Business Development Bank of Canada Act (Canada);
- (c) a bank subject to the regulatory regime of a country that is a member of the Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord;
- (d) a credit union central or a federation of caisses populaires or any credit union or regional caisse populaire located, in each case, in Canada;
- (e) a loan or trust corporation registered under the loan and trust corporations legislation of a province or territory of Canada or under the Trust and Loan Companies Act (Canada);
- (f) a loan or trust company subject to the regulatory regime of a country that is a member of the Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord for banks that are subject to the country’s banking regulation and supervision;
- (g) an insurance company licensed to do business in Canada or a province or territory of Canada;
- (h) an insurance company subject to the regulatory regime of a country that is a member of the Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord for banks that are subject to the country’s banking regulation and supervision;

- (i) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial or territorial pension supervisory authority;
- (j) a mutual fund or non-redeemable investment fund if each investor in the fund is a Qualified Party;
- (k) a mutual fund, if the investment portfolio of the fund is managed by a person that is registered under the Act or the securities legislation of another province or territory in Canada as a portfolio manager or equivalent;
- (l) a non-redeemable investment fund, if the investment portfolio of the fund is managed by a person that is registered under the Act or the securities legislation of another province or territory in Canada as a portfolio manager or equivalent;
- (m) a person registered under the Act or the securities legislation of another province or territory in Canada as a broker, investment dealer, derivatives dealer or equivalent;
- (n) a person registered under the Act or the securities legislation of another province or territory in Canada as a portfolio manager or equivalent;
- (o) a person registered under the Act or the securities legislation of another province or territory in Canada as a broker or investment dealer or equivalent that is exempt from registration as a portfolio manager or equivalent under the Act or the securities legislation of the province or territory;
- (p) a person that buys, sells, trades, produces, markets, brokers or otherwise uses a commodity in its business and that enters into an OTC derivative, provided that a material component of the underlying interest of the OTC derivative is
  - (i) a commodity that the person buys, sells, trades, produces, markets, brokers, or otherwise uses in its business,
  - (ii) a related commodity, security or variable,
  - (iii) a commodity, security or variable that directly or indirectly affects the commodity that the person buys, sells, trades, produces, markets, brokers or otherwise uses in its business,
  - (iv) a commodity, security or variable for which there is a high degree of correlation between the movement in its value and the movement in the value of the commodity that the person buys, sells, trades, produces, markets, brokers, or otherwise uses in its business, or
  - (v) another OTC derivative, where a material component of the underlying interest of that OTC derivative is a commodity, security or variable referred to in subparagraphs (i) to (iv) above;

- (q) a person that
  - (i) together with its affiliates has entered into one or more OTC derivatives with counterparties that are not its affiliates, if
    - (A) the aggregate value of the notional principal amounts of the OTC derivatives is at least \$1 billion (or its equivalent), and
    - (B) any of the OTC derivatives was outstanding on any day during the previous 15 month period, or
  - (ii) together with its affiliates had total gross marked-to-market positions of or equivalent to at least \$100 million aggregated across counterparties, in one or more OTC derivatives on any day during the previous 15 month period;
- (r) an individual who, either alone or jointly with the individual's spouse, has a net worth, as shown in the individual's most recent statement of assets and liabilities, of at least \$5 million (or its equivalent in another currency), excluding the value of any principal residence;
- (s) a company, partnership, unincorporated association, organization or trust, with total assets, as shown in the balance sheet for its most recently completed financial year end (prepared in accordance with generally accepted accounting principles and audited, if the party has produced an audited balance sheet for that financial year end), in excess of \$25 million (or its equivalent in another currency);
- (t) a person that, directly or indirectly, is wholly-owned by any of the persons described in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (m), (n), (o), (r) and (s);
- (u) a person that, directly or indirectly, wholly owns any of the persons described in paragraphs (a), (c), (d), (e), (f), (g), (h), (m), (n), (o) and (s);
- (v) a direct or indirect wholly-owned subsidiary of a person described in paragraph (u);
- (w) Her Majesty in right of Canada or any province or territory of Canada and any crown corporation, instrumentality or agency of Canada or a province or territory;
- (x) a national government of a country or any political division of a country and any instrumentality or agency of that government or political division;
- (y) a Canadian municipality with a population in excess of 50,000 and any Canadian provincial or territorial capital city;
- (z) a person whose obligations in respect of the OTC derivative are fully guaranteed by another Qualified Party.

**1.3 Interpretation of “Qualified Party” - In this Instrument:**

(a) a party to an OTC derivative is a Qualified Party if that party is a Qualified Party at the time the party trades the OTC derivative;

(b) a party trading an OTC derivative with a party who claims to be a Qualified Party is entitled to rely on a representation by that party that the party is a Qualified Party, unless the first party believes or has reasonable grounds to believe that the representation is false.

**1.4 Interpretation of “acting as principal” - In this Instrument, a party referred to in paragraphs (e), (f), (g), (h), (n), or (o) of the definition of “Qualified Party” in section 1.1 is deemed to be acting as principal when it acts as an agent or trustee for accounts that are fully managed by it.**

**Part 2 EXEMPTION ORDER**

The registration and prospectus requirements of sections 34 and 61 of the Act do not apply to a trade in an OTC derivative where each party to the trade is a Qualified Party acting as principal.