

## BC Instrument 91-506

### *Designation Order - Derivatives*

#### Section 3.2(1) of the *Securities Act*, R.S.B.C.1996, c.418

#### **Background**

1. The Commission anticipates that amendments to the British Columbia *Securities Act* (the Act) contemplated in the *Securities Amendment Act, 2019* (the amendments), will come into force.
2. The amendments include provisions to facilitate the implementation of a regulatory regime for derivatives, including derivatives that are not exchange traded (over-the counter derivatives or (OTC derivatives). The Commission anticipates that will include regulations relating to registration and business conduct.
3. The current proposals for regulations relating to registration and business conduct for OTC derivatives contemplate that persons that are in the business of trading OTC derivatives with counterparties that are not sophisticated will be required to register as derivatives dealers and provide those counterparties with disclosure outlining the risks that result from entering into OTC derivatives.
4. These regulations will not be implemented by the time the amendments come into force.
5. OTC derivatives are currently defined as securities under the Act. Persons that are in the business of trading these derivatives with counterparties that are not sophisticated are subject to the registration and prospectus requirements in Part 5 and Part 9 of the Act.
6. To maintain the *status quo* until regulations relating to registration and business conduct for OTC derivatives are implemented, current requirements for persons in the business of trading OTC derivatives with unsophisticated counterparties should continue to apply.
7. The Act amendments include a power for the Commission to make an order, if to do so would be in the public interest, that a derivative or class of derivatives is a security. Section 5 of the *Interpretation Act* allows the Commission to exercise a power in an enactment that is not yet in force. However, the exercise of the power is not effective until the enactment comes into force.

**Interpretation**

8. Terms defined in the Act or in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

**Order**

9. Considering that to do so would be in the public interest, the Commission orders under section 3.2(1)(b.1) of the Act, as amended by the amendments, that each OTC derivative is a security for the purpose of Part 5 and Part 9 of the Act.

**Effective date**

10. This order comes into effect on March 27, 2020.