

ANNEX C

PROPOSED NATIONAL INSTRUMENT 93-101 *DERIVATIVES: BUSINESS CONDUCT*

PART 1 DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1. (1) In this Instrument

“Canadian financial institution”¹ means any of the following:

- (a) an association governed by the *Cooperative Credit Associations Act* (Canada)
- (b) a bank named in Schedule I or II of the *Bank Act* (Canada),
- (c) a loan corporation, trust company, insurance company, treasury branch, credit union, central credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized to carry on business in Canada or a jurisdiction of Canada or the Confédération des caisses populaires et d'économie Desjardins du Québec;

“collateral” means cash, securities or other property that is

- (a) received or held by a derivatives firm from, for or on behalf of a derivatives party, and
- (b) intended to or does margin, guarantee, secure, settle or adjust one or more derivatives between the derivatives firm and the derivatives party;

“commercial hedger” means a person or company that carries on a business and that transacts a derivative to hedge a risk in respect of that business related to any of the following:

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

¹ Final publication expected to reference the definition of “Canadian financial institution” in NI 14-101.

“commodity derivative” means a derivative that has, as its only underlying interest, a commodity other than cash, currency or a cryptoasset;

“derivatives adviser” means

- (a) a person or company engaging in or holding themselves 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 themselves 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, any 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;

“derivatives party assets” means any asset, including collateral, received or held by a derivatives firm from, for or on behalf of a derivatives party;

“derivatives position” means the economic interest of a counterparty in an outstanding derivative at a point in time;

“derivatives sub-adviser” means an adviser to any of the following:

- (a) a derivatives adviser;
- (b) an adviser that is registered as an adviser under securities or commodity futures legislation;
- (c) a registered investment dealer or a derivatives dealer that is, in each case, a dealer

member of IIROC acting as an adviser in accordance with the rules of IIROC;

“eligible commercial hedger” means a person or company that only qualifies as an eligible derivatives party under paragraph (n) of the definition of “eligible derivatives party”;

“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 continued 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) a 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 in a jurisdiction of Canada;
 - (ii) the equivalent of an adviser or a derivatives adviser under the securities legislation of a jurisdiction of Canada or of a foreign jurisdiction;
- (l) an investment fund if either of the following apply:
 - (i) the investment fund is managed by a person or company registered as an investment fund manager under the securities legislation of a jurisdiction of Canada;
 - (ii) the investment fund is advised by an adviser registered or exempted from registration under securities legislation or under commodity futures legislation of a jurisdiction of 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 provided to the person or company about derivatives 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 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 is a commercial hedger in relation to the derivatives that it transacts with the derivatives firm;
- (o) an individual who has represented to the derivatives firm, in writing, that
 - (i) the individual has the requisite knowledge and experience to evaluate the

information provided to the individual about derivatives by the derivatives firm, the suitability of the derivatives for the individual, and the characteristics of the derivatives to be transacted on the individual's behalf, and

- (ii) the individual 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 (o);
- (q) a qualifying clearing agency;

“institutional foreign exchange market” means the global foreign exchange market comprised of persons or companies that are active in foreign exchange markets as part of their business and transact in foreign exchange contracts or instruments, including short-term foreign exchange contracts or instruments;

“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 another 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;

“permitted depository” means a person or company that is any of the following:

- (a) a Canadian financial institution;
- (b) a qualifying clearing agency;
- (c) the Bank of Canada or the central bank of a permitted jurisdiction;
- (d) in Québec, a person recognized or exempted from recognition as a central securities depository under the *Securities Act* (Québec);

- (e) a person or company
 - (i) whose head office or principal place of business is in a permitted jurisdiction,
 - (ii) that is a banking institution or trust company of a permitted jurisdiction, and
 - (iii) that has shareholders' equity, as reported in its most recent audited financial statements, of not less than \$100 000 000;
- (f) with respect to derivatives party assets that it receives from a derivatives party, a derivatives dealer;

“permitted jurisdiction” means a foreign jurisdiction that is any of the following:

- (a) a country where the head office or principal place of business of a Schedule III bank is located, and a political subdivision of that country;
- (b) if a derivatives party has provided express written consent to the derivatives dealer entering into a derivative in a foreign currency, the country of origin of the foreign currency used to denominate the rights and obligations under the derivative entered into by, for or on behalf of the derivatives party, and a political subdivision of that country;

“qualifying clearing agency” means a person or company if any of the following apply:

- (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 financial market infrastructures* applicable to central counterparties, as amended from time to time, and published by the Bank for International Settlements' Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions;

“referral arrangement” means any arrangement in which a derivatives firm agrees to pay or receive a referral fee;

“referral fee” means any compensation, regardless of its form, whether made directly or indirectly, paid for the referral of a derivatives party to or from a derivatives firm;

“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 firm” means a registered derivatives firm or a registered securities firm;

“registered securities firm” means 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*;

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

“short-term foreign exchange contract or instrument” means a contract or instrument referred to in the following:

- (a) in Manitoba, paragraph 2(1)(c) of Manitoba Securities Commission Rule 91-506 Derivatives: Product Determination;
- (b) in Ontario, paragraph 2(1)(c) of Ontario Securities Commission Rule 91-506 Derivatives: Product Determination;
- (c) in Québec, paragraph 2(c) of Regulation 91-506 respecting Derivatives Determination;
- (d) in all other jurisdictions, paragraph 2(1)(c) of Multilateral Instrument 91-101 Derivatives: Product Determination;

“segregate” means to separately hold or separately account for a derivatives party’s positions related to derivatives or derivatives party assets;

“transaction” means either 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 value of a derivative as at a certain date determined in accordance with applicable accounting standards for fair value measurement using a methodology that is consistent with derivatives 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) the person or company 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) 2 or more persons or companies each of which is controlled by the other person or company;

- (b) the person or company 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 deemed to be transacting as principal when it acts as an agent or trustee for a managed account.
- (7) 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*.

PART 2 APPLICATION AND EXEMPTION

Application to registered and unregistered persons or companies

- 2. For greater certainty, this Instrument applies to a person or company whether or not the person or company is a registered derivatives firm or an individual acting on behalf of a registered derivatives firm.

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
- (d) in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, a “specified derivative” as defined in Multilateral Instrument 91-101 *Derivatives: Product Determination*.

Application – short-term foreign exchange contract or instrument

3.1 (1) Despite section 3, this Instrument applies to a person or company when transacting with a derivatives party referred to in paragraphs (a) to (m) and (q) of the definition of eligible derivatives party in a short-term foreign exchange contract or instrument in the institutional foreign exchange market if all of the following apply:

- (a) the person or company is a Canadian financial institution;
 - (b) the person or company is a derivatives dealer;
 - (c) the person or company has had, at any time after the date on which this Instrument comes into force, a month-end gross notional amount under all outstanding derivatives that exceed \$500 000 000 000.
- (2)** In respect of a short-term foreign exchange contract or instrument to which subsection (1) applies, this Instrument does not apply other than the following provisions:
- (a) section 8 [*Fair dealing*];
 - (b) section 9 [*Conflicts of interest*];
 - (c) section 11 [*Handling complaints*];
 - (d) Division 1 [*Compliance*] of Part 5 [*Compliance and recordkeeping*].

Application – affiliated entities

4. This Instrument does not apply to a person or company in respect of dealing with or advising an affiliated entity of the person or company unless the affiliated entity is an investment fund.

Application – qualifying clearing agencies

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

Application – governments, central banks and international organizations

6. 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) the Bank for International Settlements;
 - (d) the International Monetary Fund.

Exemptions from certain requirements in this Instrument when dealing with or advising an eligible derivatives party

7. (1) A derivatives firm is exempt from this Instrument, other than the requirements set out in subsection (3), in relation to a transaction with a derivatives party, if the derivatives party
- (a) is an eligible derivatives party, and
 - (b) is not an individual or eligible commercial hedger.
- (2) A derivatives firm is exempt from this Instrument, other than the requirements set out in subsection (3), in relation to a transaction with a derivatives party, if the derivatives party
- (a) is an eligible derivatives party,
 - (b) is an individual or eligible commercial hedger, and
 - (c) has waived, upon written notice to the derivatives firm, the protections provided in this Instrument.
- (3) Despite subsection (1) and (2), the following requirements apply:
- (a) Division 1 [*General obligations towards all derivatives parties*] of Part 3 [*Dealing with or advising derivatives parties*];
 - (b) sections 23 [*Interaction with other Instruments*] and 24 [*Segregating derivatives party assets*];
 - (c) subsection 27(1) [*Content and delivery of transaction information*];
 - (d) Part 5 [*Compliance and recordkeeping*].

Part 6 [Exemptions] of this Instrument provides exemptions from the requirements of this Instrument to persons or companies, subject to certain terms and conditions:

- *Foreign derivatives dealers that trade with derivatives dealers (s. 36)*
- *Certain derivatives end-users (s. 37)*
- *Foreign derivatives dealers (s. 38)*
- *Investment dealers (s. 39)*
- *Canadian financial institutions (s. 40)*
- *Derivatives traded on a derivatives trading facility where the identity of the derivatives party is unknown (s. 41)*
- *Advising generally (s. 42)*
- *Foreign derivatives advisers (s. 43)*
- *Foreign derivatives sub-advisers (s. 44)*
- *Registered advisers under securities or commodity futures legislation (s. 45)*

The text boxes in this Instrument do not form part of this Instrument and have no official status.

PART 3 DEALING WITH OR ADVISING DERIVATIVES PARTIES

DIVISION 1 – GENERAL OBLIGATIONS TOWARDS ALL DERIVATIVES PARTIES

Fair dealing

- 8. (1)** A derivatives firm must act fairly, honestly and in good faith with a derivatives party.
- (2)** An individual acting on behalf of a derivatives firm must act fairly, honestly and in good faith with a derivatives party.

Conflicts of interest

- 9. (1)** A derivatives firm must establish, maintain and apply reasonable policies and procedures to identify existing material conflicts of interest, and material conflicts of interest that the derivatives firm in its reasonable opinion would expect to arise, between the derivatives firm, including each individual acting on behalf of the derivatives firm, and a derivatives party.
- (2)** A derivatives firm must respond to an existing or potential conflict of interest identified under subsection (1).
- (3)** If a reasonable derivatives party would expect to be informed of a conflict of interest identified under subsection (1), the derivatives firm must disclose, in a timely manner, the nature and extent of the conflict of interest to a derivatives party whose interest conflicts with the interest identified.

Know your derivatives party

10. (1) For the purpose of paragraph (2)(c) in Ontario, “insider” has the same meaning as in the *Securities Act* except that “reporting issuer”, as it appears in the definition of “insider”, is to be read as “reporting issuer or any other issuer whose securities are publicly traded”.
- (2) A derivatives firm must establish, maintain and apply reasonable policies and procedures to
- (a) obtain facts necessary to comply with applicable legislation relating to the verification of a derivatives party’s identity,
 - (b) establish the identity of a derivatives party and, if the derivatives firm has cause for concern, make reasonable inquiries as to the reputation of the derivatives party,
 - (c) if transacting with, for or on behalf of, or advising a derivatives party in respect of a derivative that has one or more securities as an underlying interest, establish whether either of the following applies:
 - (i) the derivatives party is an insider of a reporting issuer or any other issuer whose securities are publicly traded;
 - (ii) the derivatives party would reasonably be expected to have access to material non-public information relating to any interest underlying the derivative;
 - (d) if the derivatives firm will, as a result of its relationship with the derivatives party have any credit risk in relation to the derivatives party, establish the creditworthiness of the derivatives party.
- (3) For the purpose of establishing the identity of a derivatives party that is a corporation, partnership or trust, a derivatives firm must establish the following:
- (a) the nature of the derivatives party’s business;
 - (b) the identity of any individual if either of the following applies:
 - (i) in the case of a corporation, is a beneficial owner of, or exercises direct or indirect control or direction over, more than 25% of the voting rights attached to the outstanding voting securities of the corporation;
 - (ii) in the case of a partnership or trust, exercises control over the affairs of the partnership or trust.
- (4) A derivatives firm must take reasonable steps to keep the information required under this section current.

- (5) This section does not apply if the derivatives party is a registered firm or a Canadian financial institution.

Handling complaints

11. (1) In Quebec, a derivatives firm is deemed to comply with this section if it complies with sections 74 to 76 of the Derivatives Act (R.S.Q., chapter I-14.01) (Québec).
- (2) A derivatives firm must document and, in a manner that a reasonable person would consider fair and effective, promptly respond to each complaint made to the derivatives firm about any product or service offered by the derivatives firm or an individual acting on behalf of the derivatives firm.

Tied selling

12. A derivatives firm, or an individual acting on behalf of the derivatives firm, must not impose undue pressure on or coerce a person or company to obtain a derivatives-related product or service from a particular person or company, including the derivatives firm and any of its affiliated entities, as a condition of obtaining another product or service from the derivatives firm.

DIVISION 2 – ADDITIONAL OBLIGATIONS WHEN DEALING WITH OR ADVISING CERTAIN DERIVATIVES PARTIES

The obligations in this Division 2 apply if a derivatives firm is dealing with (i) a non-eligible derivatives party or (ii) an eligible derivatives party who is either an individual or eligible commercial hedger that has not waived these protections – see section 7.

Derivatives-party-specific needs and objectives

13. (1) A derivatives firm must take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a derivatives party to transact in a derivative, or transacts in a derivative for a derivatives party's managed account, it has sufficient information regarding all of the following to enable it to meet its obligations under section 14[*Suitability*]:
- (a) the derivatives party's needs and objectives with respect to its transacting in derivatives;
 - (b) the derivatives party's financial circumstances;
 - (c) the derivatives party's risk tolerance;
 - (d) if applicable, the nature of the derivatives party's business and the operational risks it wants to manage.

- (2) A derivatives firm must take reasonable steps to keep the information required under this section current.

Suitability

14. (1) A derivatives firm, or an individual acting on behalf of a derivatives firm, must take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a derivatives party to transact in a derivative, or transacts in a derivative for a derivatives party's managed account, both the derivative and the transaction are suitable for the derivatives party.
- (2) If a derivatives party instructs a derivatives firm, or an individual acting on behalf of a derivatives firm, to transact in a derivative and, in the derivatives firm's reasonable opinion, following the instruction would result in a transaction or derivative that is not suitable for the derivatives party, the derivatives firm must inform the derivatives party in writing of the derivatives firm's opinion and must not transact in the derivative unless the derivatives party instructs the derivatives firm to proceed anyway.

Permitted referral arrangements

15. A derivatives firm, or an individual acting on behalf of a derivatives firm, must not participate in a referral arrangement in respect of a derivative with another person or company unless all of the following apply:
- (a) before a derivatives party is referred by or to the derivatives firm, the terms of the referral arrangement are set out in a written agreement between the derivatives firm and the person or company;
 - (b) the derivatives firm records all referral fees;
 - (c) the derivatives firm, or the individual acting on behalf of the derivatives firm, ensures that the information prescribed by subsection 17(1) [*Disclosing referral arrangements to a derivatives party*] is provided to the derivatives party in writing before the derivatives firm or the individual receiving the referral either opens an account for the derivatives party or provides services to the derivatives party.

Verifying the qualifications of the person or company receiving the referral

16. A derivatives firm, or an individual acting on behalf of a derivatives firm, must not refer a derivatives party to another person or company unless the derivatives firm first takes reasonable steps to verify and conclude that the person or company has the appropriate qualifications to provide the services, and, if applicable, is registered to provide those services.

Disclosing referral arrangements to a derivatives party

17. (1) The written disclosure of the referral arrangement required by paragraph 15(c) [*Permitted referral arrangements*] must include all of the following:
- (a) the name of each party to the referral arrangement referred to in paragraph 15(a) [*Permitted referral arrangements*];
 - (b) the purpose and material terms of the referral arrangement, including the nature of the services to be provided by each party;
 - (c) any conflicts of interest resulting from the relationship between the parties to the referral arrangement and from any other element of the referral arrangement;
 - (d) the method of calculating the referral fee and, to the extent possible, the amount of the fee;
 - (e) the category of registration, or exemption from registration relied upon, of each derivatives firm and individual acting on behalf of the derivatives firm that is a party to the referral arrangement with a description of the activities that the derivatives firm or individual is authorized to engage in under that category or exemption and, giving consideration to the nature of the referral, the activities that the derivatives firm or individual is not permitted to engage in;
 - (f) any other information that a reasonable derivatives party would consider important in evaluating the referral arrangement.
- (2) If there is a change to the information set out in subsection (1), the derivatives firm must ensure that written disclosure of that change is provided to each derivatives party affected by the change as soon as possible and no later than the 30th day before the date on which a referral fee is next paid or received.

PART 4 DERIVATIVES PARTY ACCOUNTS

DIVISION 1 – DISCLOSURE TO DERIVATIVES PARTIES

The obligations in this Division 1 of Part 4 apply if a derivatives firm is dealing with (i) a non-eligible derivatives party or (ii) an eligible derivatives party who is either an individual or eligible commercial hedger that has not waived these protections – see section 7.

Relationship disclosure information

18. (1) Before transacting with, for or on behalf of a derivatives party for the first time, or advising a derivatives party for the first time, a derivatives firm must deliver to the derivatives party all information that a reasonable person would consider important about the derivatives party's relationship with the derivatives firm, and each individual acting on behalf of the derivatives firm, that is providing derivatives-related services to the derivatives party.
- (2) Without limiting subsection (1), the information delivered to a derivatives party under that subsection must include all of the following:
- (a) a description of the nature or type of the derivatives party's account;
 - (b) a description of the conflicts of interest that the derivatives firm is required to disclose to a derivatives party under securities legislation;
 - (c) disclosure of the fees or other charges the derivatives party might be required to pay related to the derivatives party's account;
 - (d) a general description of the types of transaction fees or other charges the derivatives party might be required to pay in relation to derivatives;
 - (e) a general description of any compensation paid to the derivatives firm by any other party in relation to the different types of derivatives that a derivatives party may transact in through the derivatives firm;
 - (f) a description of the content and frequency of reporting for each account or portfolio of a derivatives party;
 - (g) disclosure of the derivatives firm's obligations if a derivatives party has a complaint contemplated under section 11 [*Handling complaints*];
 - (h) a statement that the derivatives firm has an obligation to assess whether a derivative is suitable for a derivatives party prior to executing a transaction or at any other time or a statement identifying the exemption the derivatives firm is relying on in respect of this obligation;
 - (i) the information a derivatives firm must collect about the derivatives party under sections 10 [*Know your derivatives party*] and 13 [*Derivatives-party-specific needs and objectives*];
 - (j) a general explanation of how performance benchmarks might be used to assess the performance of a derivatives party's derivatives and any options for benchmark information that might be available to the derivatives party from the derivatives firm;

- (k) in the case of a derivatives firm that holds or has access to derivatives party assets, a general description of the manner in which the assets are held, used or are invested by the derivatives firm and a description of the risks and benefits to the counterparty arising from the derivatives firm holding or having access to use or invest the derivatives party assets in that manner.
- (3) A derivatives firm must deliver the information required under subsection (1) to the derivatives party in writing before the derivatives firm does either of the following:
- (a) transacts in a derivative with, for or on behalf of the derivatives party;
 - (b) advises the derivatives party in respect of a derivative.
- (4) If there is a significant change in respect of the information delivered to a derivatives party under subsections (2), the derivatives firm must take reasonable steps to notify the derivatives party of the change in a timely manner and, if possible, before the derivatives firm next does either of the following:
- (a) transacts in a derivative with, for or on behalf of the derivatives party;
 - (b) advises the derivatives party in respect of a derivative.
- (5) A derivatives firm must not impose any new fee or other charge in respect of an account of a derivatives party, or increase the amount of any fee or other charge in respect of an account of a derivatives party, unless written notice of the new or increased fee or charge is provided to the derivatives party at least 60 days before the date on which the imposition or increase becomes effective.
- (6) Subsections (1) to (4) do not apply to a derivatives dealer in respect of a derivatives party for whom the derivatives dealer transacts in a derivative only as directed by a derivatives adviser acting for the derivatives party.
- (7) A derivatives dealer referred to in subsection (6) must deliver the information required under paragraphs (2)(a) to (g) to the derivatives party in writing before the derivatives dealer first transacts in a derivative for the derivatives party.

Pre-transaction disclosure

19. (1) Before transacting in a type of derivative with, for or on behalf of a derivatives party for the first time, a derivatives dealer must deliver each of the following to the derivatives party:
- (a) a general description of the type of derivatives and services related to derivatives that the derivatives firm offers;
 - (b) a document designed to reasonably enable the derivatives party to assess each of the following:

- (i) the types of risks that a derivatives party should consider when making a decision relating to types of derivatives that the derivatives dealer offers, including the material risks relating to the type of derivatives transacted and the derivatives party's potential exposure under the type of derivatives;
 - (ii) the material characteristics of the type of derivative, including the material economic terms and the rights and obligations of the counterparties to the type of derivative;
- (c) a statement in writing that is substantially similar to the following:

“A characteristic of many derivatives is that you are only required to deposit funds that correspond to a portion of your total potential obligations when entering into the derivative. However, your profits or losses from the derivative are based on changes in the total value of the derivative. This means the leverage characteristic magnifies the profit or loss under a derivative, and losses can greatly exceed the amount of funds deposited. We may require you to deposit additional funds to cover your obligations under a derivative as the value of the derivative changes. If you fail to deposit these funds, we may close out your position without warning. You should understand all of your obligations under a derivative, including your obligations where the value of the derivative declines.”

Using borrowed money to finance a derivatives transaction involves greater risk than using cash resources only. If you borrow money, your responsibility to repay the loan and pay interest as required by its terms remains the same even if the value of the derivative declines.”

- (2) Before transacting in a derivative with, for or on behalf of a derivatives party, a derivatives dealer must advise the derivatives party of all of the following:
- (a) any material risks or material characteristics that are materially different from those described in the disclosure required under subsection (1);
 - (b) if applicable, the price of the derivative to be transacted and the most recent valuation;
 - (c) any compensation or other incentive payable by the derivatives party relating to the derivative or the transaction.

Daily reporting

20. (1) On each business day, a derivatives dealer must make available to a derivatives party a valuation for each derivative that it has transacted with, for or on behalf of the derivatives party and with respect to which contractual obligations remain outstanding on that day.

- (2) On a monthly basis, a derivatives adviser must make available to a derivatives party a

valuation for each derivative that it has transacted for or on behalf of the derivatives party, unless a derivatives adviser and a derivatives party agree otherwise.

Notice to derivatives parties by non-resident derivatives dealers

21. A derivatives dealer whose head office or principal place of business is not in Canada must not transact in a derivative with a derivatives party in the local jurisdiction unless it has delivered to the derivatives party a statement in writing disclosing all of the following:
- (a) the foreign jurisdiction in which the head office or the principal place of business of the derivatives dealer is located;
 - (b) that all or substantially all of the assets of the derivatives dealer may be situated outside the local jurisdiction;
 - (c) that there may be difficulty enforcing legal rights against the derivatives dealer because of the above;
 - (d) the name and address of the agent for service of process of the derivatives dealer in the local jurisdiction.

DIVISION 2 – DERIVATIVES PARTY ASSETS

Sections 23 and 24 apply when a derivatives firm is dealing with any derivatives party; the remaining sections in this Division only apply if a derivatives firm is dealing with (i) a non-eligible derivatives party or (ii) an eligible derivatives party who is either an individual or eligible commercial hedger that has not waived these protections – see section 7.

Definition – initial margin

22. In this Division, “initial margin” means any derivatives party assets delivered by a derivatives party to a derivatives firm as collateral to cover potential changes in the value of a derivative over an appropriate close-out period in the event of a default.

Application and interaction with other instruments

23. A derivatives firm is exempt from the provisions in this Division if any of the following apply:
- (a) the derivatives firm is subject to and complies with or is exempt from sections 3 to 8 of National Instrument 94-102 Derivatives: Customer Clearing and Protection of Customer Collateral and Positions in respect of derivatives party assets;
 - (b) the derivatives firm is subject to and complies with Guideline E-22 *Margin Requirements for Non-Centrally Cleared Derivatives* issued by the federal Office

of the Superintendent of Financial Institutions (OSFI);

- (c) the derivatives firm is subject to and complies with a regulation as may be prescribed by the securities regulatory authority in respect of derivatives party assets;
- (d) the derivatives firm is subject to and complies with National Instrument 81-102 *Investment Funds* in respect of derivatives party assets.

Segregating derivatives party assets

24. A derivatives firm must segregate derivatives party assets and derivatives positions from the property and derivatives positions of the derivatives firm and other persons or companies.

Holding initial margin

25. A derivatives firm must hold initial margin in an account at a permitted depository.

Investment or use of initial margin

26. (1) A derivatives firm must not use or invest initial margin without receiving written consent from the derivatives party.
- (2) A derivatives firm must not use or invest, for any purpose, the initial margin of a derivatives party unless the derivatives firm has entered into a written agreement with the derivatives party to assume all losses resulting from the investment or use of initial margin by the derivatives firm.

DIVISION 3 – REPORTING TO DERIVATIVES PARTIES

This Division, other than subsection 27(1), applies if a derivatives firm is dealing with (i) a non-eligible derivatives party or (ii) an eligible derivatives party who is either an individual or eligible commercial hedger that has not waived these protections – see section 7.

Content and delivery of transaction information

27. (1) A derivatives dealer that transacts with, for or on behalf of a derivatives party must promptly deliver a written confirmation of the transaction to the following, as applicable:
- (a) the derivatives party;
 - (b) if the derivatives party has consented in writing, a derivatives adviser acting for the derivatives party.

- (2) If a derivatives dealer has transacted with, for or on behalf of a non-eligible derivatives party, the written confirmation required under subsection (1) must include all of the following, if applicable:
- (a) a description of the derivative;
 - (b) a description of the agreement that governs the transaction;
 - (c) the notional amount, quantity or volume of the underlying asset of the derivative;
 - (d) the number of units of the derivative;
 - (e) the total price paid for the derivative and the per unit price of the derivative;
 - (f) the commission, sales charge, service charge and any other amount charged in respect of the transaction;
 - (g) whether the derivatives dealer acted as principal or agent in relation to the derivative;
 - (h) the date and the name of the trading facility on which the transaction took place;
 - (i) the name of each individual acting on behalf of the derivatives firm that provided advice relating to the derivative or the transaction;
 - (j) the date of the transaction;
 - (k) the name of the qualifying clearing agency where the derivative was cleared.

Derivatives party statements

28. (1) A derivatives firm must deliver a statement to a derivatives party referred to in subsection (2), at the end of each quarterly period, if either of the following applies:
- (a) within the quarterly period the derivatives firm transacted a derivative with, for or on behalf of the derivatives party;
 - (b) the derivatives party has an outstanding derivatives position resulting from a transaction where the derivatives firm acted as a derivatives dealer.
- (2) A statement delivered under this section must include all of the following information for each transaction made with, for or on behalf of the derivatives party by the derivatives firm during the period covered by the statement, if applicable:
- (a) the date of the transaction;
 - (b) a description of the transaction, including the notional amount, the number of units of the transaction, the per unit price and the total price;

- (c) information sufficient to identify the agreement that governs the transaction.
- (3) A statement delivered under this section must include all of the following information as at the date of the statement, if applicable:
- (a) a description of each outstanding derivative to which the derivatives party is a party;
 - (b) the valuation, as at the statement date, of each outstanding derivative referred to in paragraph (a);
 - (c) the final valuation, as at the expiry or termination date, of each derivative that expired or terminated during the period covered by the statement;
 - (d) a description of all derivatives party assets held or received by the derivatives firm as collateral;
 - (e) any cash balance in the derivatives party's account;
 - (f) a description of any other assets of a derivatives party held or received by the derivatives firm;
 - (g) the total market value of all cash, outstanding derivatives and other derivatives party assets in the derivatives party's account, other than assets held or received as collateral.

PART 5 COMPLIANCE AND RECORDKEEPING

DIVISION 1 – COMPLIANCE

Definitions

29. In this Division,

“chief compliance officer” means the officer or partner of a derivatives firm who is responsible for establishing, maintaining and applying written policies and procedures to monitor and assess compliance, by the derivatives firm and individuals acting on its behalf, with securities legislation relating to derivatives;

“derivatives business unit” means, in respect of a derivatives firm, a division or other organizational unit that transacts in, or provides advice in relation to, a type of derivative, or a class of derivatives, on behalf of the derivatives firm;

“senior derivatives manager” means, in respect of a derivatives business unit of a derivatives firm, an individual designated by the derivatives dealer under subsection 31(1).

Policies and procedures

30. A derivatives firm must establish, maintain and apply policies, procedures, controls and supervision sufficient to provide reasonable assurance that all of the following are satisfied:

- (a) the derivatives firm and each individual acting on its behalf in relation to transacting in, or providing advice in relation to, a derivative, comply with securities legislation relating to trading and advising in derivatives;
- (b) the risks relating to its derivatives activities within the derivatives business unit are managed appropriately and in accordance with the derivatives firm's risk management policies and procedures;
- (c) each individual who performs an activity on behalf of the derivatives firm relating to transacting in, or providing advice in relation to, a derivative, prior to commencing the activity and on an ongoing basis,
 - (i) has the experience, education and training that a reasonable person would consider necessary to perform the activity competently,
 - (ii) without limiting subparagraph (i), understands the structure, features and risks of each derivative that the individual transacts in or advises in relation to, and
 - (iii) has acted with and continues to act with integrity.

31. (1) A derivatives dealer must do the following:

- (a) designate an individual as a senior derivatives manager in respect of each derivatives business unit;
- (b) identify to the regulator or, in Québec, the securities regulatory authority, upon request, each individual designated as the senior derivatives manager in respect of each derivatives business unit.

(2) A senior derivatives manager must do the following:

- (a) supervise the derivatives-related activities conducted in the derivatives business unit directed towards ensuring compliance by the derivatives business unit, and each individual working in the derivatives business unit, with this Instrument, applicable securities legislation and the policies and procedures required under section 30 [*Policies and procedures*];
- (b) respond by addressing, in a timely manner, any material non-compliance by an individual working in the derivatives business unit with this Instrument, applicable securities legislation or the policies and procedures required under section 30

[*Policies and procedures*], including reporting to the chief compliance officer.

(3) At least once every calendar year, the senior derivatives manager in respect of each derivatives business unit must,

(a) prepare a report containing the following, as applicable:

(i) a description of

(A) each incident of material non-compliance with this Instrument, securities legislation relating to trading in derivatives or the policies and procedures required under section 30 [*Policies and procedures*] by the derivatives business unit or an individual in the derivatives business unit, and

(B) the steps taken to respond to each incidence of material non-compliance;

(ii) a statement to the effect that the derivatives business unit is in material compliance with this Instrument, securities legislation relating to trading and advising in derivatives and the policies and procedures required under section 30 [*Policies and procedures*]; and

(b) submit the report referred to in paragraph (a) to the board of directors of the derivatives firm.

(4) The obligation of the senior derivatives manager under paragraph (3)(b) may be fulfilled by the derivatives firm's chief compliance officer.

Exemptions from the designation and responsibilities of a senior derivatives manager

31.1 (1) A derivatives dealer is exempt from subsection 31(1) and a senior derivatives manager is exempt from subsections 31(2) to 31(4) if all of the following apply:

(a) the derivatives dealer does not solicit or otherwise transact a derivative with, for or on behalf of, a non-eligible derivatives party;

(b) the derivatives dealer does not, in respect of derivatives or transactions, advise a non-eligible derivatives party, other than in accordance with section 42 [*Advising generally*];

(c) either of the following applies:

(i) the derivatives dealer has its head office or principal place of business in a jurisdiction of Canada and the derivatives dealer, together with each affiliated entity of the derivatives dealer, excluding investment funds, and excluding derivatives between these affiliated entities, has not had, in any

of the previous 24 calendar months, an aggregate month-end gross notional amount under outstanding derivatives, exceeding \$250 000 000;

- (ii) the derivatives dealer has its head office and principal place of business in a foreign jurisdiction and the derivatives dealer, together with each affiliated entity of the derivatives dealer, excluding investment funds, and excluding derivatives between these affiliated entities, has not had, in any of the previous 24 calendar months, an aggregate month-end gross notional amount under outstanding derivatives with one or more Canadian counterparties that have a head office or principal place of business in Canada, exceeding \$250 000 000.

(2) A derivatives dealer is exempt from subsection 31(1) and a senior derivatives manager is exempt from subsections 31(2) to 31(4) if all of the following apply:

- (a) the derivatives dealer does not solicit or otherwise transact a derivative with, for or on behalf of, a non-eligible derivatives party;
- (b) the derivatives dealer does not, in respect of derivatives or transactions, advise a non-eligible derivatives party, other than in accordance with section 42 [*Advising generally*];
- (c) the derivatives dealer, and each affiliated entity of the derivatives dealer that is also a derivatives dealer, is a derivative dealer solely as a result of transactions in respect of commodity derivatives;
- (d) either of the following applies:
 - (i) the derivatives dealer has its head office or principal place of business in a jurisdiction of Canada and the derivatives dealer, together with each affiliated entity of the derivatives dealer, excluding investment funds, and excluding derivatives between these affiliated entities, has not had, in any of the previous 24 calendar months, an aggregate month-end gross notional amount under outstanding commodity derivatives, exceeding \$3 000 000 000;
 - (ii) the derivatives dealer has its head office and principal place of business in a foreign jurisdiction and the derivatives dealer, together with each affiliated entity of the derivatives dealer, excluding investment funds, and excluding derivatives between these affiliated entities, has not had, in any of the previous 24 calendar months, an aggregate month-end gross notional amount under outstanding commodity derivatives with one or more Canadian counterparties that have a head office or principal place of business in Canada, exceeding \$3 000 000 000.

Responsibility of a derivatives dealer to report to the regulator or the securities regulatory authority

- 32.** A derivatives dealer must report to the regulator or, in Québec, the securities regulatory authority in a timely manner any circumstance in which a derivatives dealer is not or was not in compliance with this Instrument or other securities legislation relating to trading in derivatives if any of the following applies:
- (a) the non-compliance creates or created, in the opinion of a reasonable person, a risk of material harm to a derivatives party;
 - (b) the non-compliance creates or created, in the opinion of a reasonable person, a risk of material harm to capital markets;
 - (c) the non-compliance is part of a pattern of material non-compliance.

DIVISION 2 – RECORDKEEPING

Derivatives party agreement

- 33. (1)** A derivatives firm must ensure that the derivatives firm, before transacting in a derivative with, for or on behalf of a derivatives party, enters into an agreement with the derivatives party.
- (2)** The agreement referred to in subsection (1) must establish all of the material terms governing the relationship between the derivatives firm and the derivatives party including the rights and obligations of the derivatives firm and the derivatives party.

Records

- 34.** A derivatives firm must keep records of its derivatives transactions and advising activities, including all of the following, as applicable:
- (a) records containing a general description of its derivatives business and activities conducted with, for or on behalf of, derivatives parties, and compliance with applicable provisions of securities legislation, including
 - (i) records of derivatives party assets, and
 - (ii) records documenting the derivatives firm’s compliance with internal policies and procedures;
 - (b) for each derivative, records demonstrating the existence and nature of the derivative, including
 - (i) records of communications with the derivatives party relating to transacting in the derivative,

- (ii) documents provided to the derivatives party to confirm the derivative, the terms of the derivative and each transaction relating to the derivative,
- (iii) correspondence relating to the derivative and each transaction relating to the derivative,
- (iv) records made by staff relating to the derivative and each transaction relating to the derivative, including notes, memos and journals;
- (v) records relating to pre-execution activity for each transaction including all communications relating to quotes, solicitations, instructions, transactions and prices, however they may be communicated,
- (vi) reliable timing data for the execution of each transaction relating to the derivative,
- (vii) records relating to the execution of the transaction, including
 - (A) information obtained to determine whether the counterparty qualifies as an eligible derivatives party,
 - (B) fees or commissions charged,
 - (C) any other information relevant to the transaction, and
 - (D) information used in calculating the derivative's valuation;
- (viii) an itemized record of post-transaction processing and events, including a record in relation to the calculation of margin and exchange of collateral; and
- (ix) the price and valuation of the derivative.

Form, accessibility and retention of records

- 35. (1)** The records required to be maintained in this Instrument must be kept in a safe location, readily accessible and in a durable form for a period of,
- (a) except in British Columbia and Manitoba, 7 years following the date on which the derivative expires or is terminated, and
 - (b) in British Columbia and Manitoba, 8 years following the date on which the derivative expires or is terminated.
- (2)** A record required to be provided to the regulator or, in Québec, the securities regulatory authority must be provided in a format that is capable of being read by the regulator or, in Québec, the securities regulatory authority.

**PART 6
EXEMPTIONS**

DIVISION 1 – EXEMPTION FROM THIS INSTRUMENT

Exemption for foreign liquidity providers – transactions with derivatives dealers

36. A person or company is exempt from the provisions of this Instrument in respect of a transaction if all of the following apply:
- (a) the transaction is made with either an investment dealer registered in accordance with National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* or a derivatives dealer, that, in each case, is transacting as principal for its own account;
 - (b) the person or company is registered, licensed or authorized, or otherwise operates under an exemption or exclusion from a requirement to be registered, licensed or authorized under the securities, commodity futures or derivatives legislation of a foreign jurisdiction in which its head office or principal place of business is located to carry on the activities in that jurisdiction that registration as a derivatives dealer would permit it to carry on in the local jurisdiction;
 - (c) the person or company is not any of the following:
 - (i) a derivatives dealer whose head office or principal place of business is in Canada;
 - (ii) a derivatives dealer that is a Canadian financial institution.

Exemption for certain derivatives end-users

37. (1) A person or company is exempt from the provisions of this Instrument 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 a non-eligible derivatives party, other than general advice that is provided in accordance with the conditions of section 42 [*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 the clearing of a derivative through the facilities of a qualifying clearing agency for another person or company.
- (2) The exemption in subsection (1) 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.

Exemption for foreign derivatives dealers

38. (1) A derivatives dealer whose head office or principal place of business is in a foreign jurisdiction specified in Appendix A is exempt from the provisions in this Instrument if all of the following apply:
- (a) the derivatives dealer transacts only with, for or on behalf of, a person or company in the local jurisdiction that is an eligible derivatives party;
 - (b) the derivatives dealer is registered, licensed or authorized under the securities, commodity futures or derivatives legislation of a foreign jurisdiction specified in Appendix A to conduct the derivatives activities in the foreign jurisdiction that it proposes to conduct with the derivatives party;
 - (c) the derivatives dealer is subject to and complies with the laws of the foreign jurisdiction applicable to the derivatives dealer relating to the activities being conducted with a derivatives party whose head office or principal place of business is in Canada;
 - (d) the derivatives dealer reports to the regulator or, in Québec, the securities regulatory authority in a timely manner any circumstance in which the derivatives dealer is not or was not in compliance with the laws of the foreign jurisdiction relating to trading in derivatives to which the derivatives dealer is subject, if any of the following apply:
 - (i) the non-compliance creates or created, in the opinion of a reasonable person, a risk of material harm to a derivatives party whose head office or principal place of business is located in Canada;
 - (ii) the non-compliance creates or created, in the opinion of a reasonable person, a risk of material harm to capital markets in Canada;

- (iii) the non-compliance is part of a pattern of material non-compliance relating to the activities being conducted with one or more derivatives parties whose head office or principal place of business is in Canada.
 - (e) the derivatives dealer provides the regulator or, in Québec, the securities regulatory authority with prompt access to its books and records upon request with respect to any matter relating to the activities being conducted with a derivatives party whose head office or principal place of business is located in Canada.
- (2)** The exemption in subsection (1) is not available unless all of the following apply:
- (a) the 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 derivatives dealer has delivered to the derivatives party a statement in writing disclosing all of the following:
 - (i) the foreign jurisdiction in which the derivatives dealer's head office or principal place of business is located;
 - (ii) that all or substantially all of the assets of the derivatives dealer may be situated outside of the local jurisdiction;
 - (iii) that there may be difficulty enforcing legal rights against the derivatives dealer because of the above;
 - (iv) the name and address of the agent for service of process of the derivatives dealer in the local jurisdiction;
 - (c) the derivatives dealer has submitted to the regulator or, in Québec, the securities regulatory authority a completed Form 93-101F1 *Submission to Jurisdiction and Appointment of Agent for Service of Process*.
- (3)** Paragraphs (1) (a) to (e) do not apply in respect of an affiliated entity of the person or company unless the affiliated entity is an investment fund.
- (4)** Paragraph (2)(b) does not apply if the derivatives party is an affiliated entity unless the affiliated entity is an investment fund.

DIVISION 2 – EXEMPTIONS FROM SPECIFIC PROVISIONS IN THIS INSTRUMENT

Investment dealers

39. A derivatives dealer that is a dealer member of IIROC is exempt from the provisions set out in Appendix B if both of the following apply:
- (a) the derivatives dealer is subject to and complies with the corresponding conduct and other regulatory provisions of IIROC in connection with a transaction or other related activity;
 - (b) the derivatives dealer promptly notifies the regulator or, in Québec, the securities regulatory authority of each instance of material non-compliance with a provision that is set out in Appendix B.

Canadian financial institutions

40. A derivatives dealer that is a Canadian financial institution is exempt from the provisions set out in Appendix C if both of the following apply:
- (a) the derivatives dealer is subject to and complies with the corresponding conduct and other regulatory provisions of its prudential regulator in connection with a transaction or other related activity;
 - (b) the derivatives dealer promptly notifies the regulator or, in Québec, the securities regulatory authority of each instance of material non-compliance with a provision that is set out in Appendix C.

Derivatives transacted on a derivatives trading facility where the identity of the derivatives party is unknown

41. A derivatives dealer is exempt from the provisions in this Instrument, except for section 8 [*Fair dealing*], section 11 [*Handling complaints*], and Part 5 [*Compliance and recordkeeping*], in respect of a transaction to which all of the following apply:
- (a) the execution of the transaction is on and subject to the rules of a derivatives trading facility;
 - (b) the derivatives dealer does not know the identity of the derivatives party prior to and at the time of execution of the transaction.

DIVISION 3 – EXEMPTIONS FOR DERIVATIVES ADVISERS

Advising generally

- 42. (1)** For the purpose of subsection (3), “financial or other interest” in relation to a derivative or a transaction includes the following:
- (a) ownership of, beneficial or otherwise, an underlying interest or underlying interests of the derivative;
 - (b) ownership of, beneficial or otherwise, or another 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 that acts as a derivatives adviser is exempt from the provisions of this Instrument applicable to 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 referred to in subsection (2) recommends a transaction involving a derivative, a class of derivatives or 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 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 person or company were a reporting issuer.

Foreign derivatives advisers

- 43. (1)** A derivatives adviser whose head office or principal place of business is in a foreign jurisdiction specified in Appendix D is exempt from the provisions of this Instrument in

respect of advice provided to a derivatives party if all of the following apply:

- (a) the derivatives party to whom the advice is being provided is an eligible derivatives party;
- (b) the derivatives adviser is registered, licensed or authorized, or otherwise operates under an exemption from registration, under the securities, commodity futures or derivatives legislation of a foreign jurisdiction specified in Appendix D to conduct the derivatives activities in the foreign jurisdiction that it proposes to conduct with the derivatives party;
- (c) the derivatives adviser is subject to and complies with the laws of the foreign jurisdiction applicable to the derivatives adviser relating to the activities being conducted with a derivatives party whose head office or principal place of business is in Canada;
- (d) the derivatives adviser provides the regulator or, in Québec, the securities regulatory authority with prompt access to its books and records upon request with respect to any matter relating to the activities being conducted with a derivatives party whose head office or principal place of business is in Canada.

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

- (a) the 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 derivatives adviser has delivered to the derivatives party a statement in writing disclosing the following:
 - (i) the foreign jurisdiction in which the derivatives adviser's head office or principal place of business is located;
 - (ii) that all or substantially all of the assets of the derivatives adviser may be situated outside of the local jurisdiction;
 - (iii) that there may be difficulty enforcing legal rights against the derivatives adviser because of the above;
 - (iv) the name and address of the agent for service of process of the derivatives adviser in the local jurisdiction;
- (c) the derivatives adviser has submitted to the regulator or, in Québec, the securities regulatory authority a completed Form 93-101F1 *Submission to Jurisdiction and Appointment of Agent for Service of Process*;

- (3) A derivatives adviser that relied on the exemption under subsection (1) during the 12-month period preceding December 1 of a year must notify the regulator or, in, 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 derivatives adviser that complies with the filing and fee payment provisions applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.
- (5) A person or company is exempt from subsections (2) and (3) if the person or company is registered as a derivatives adviser in the local jurisdiction.
- (6) Paragraphs (1) (a) to (d) do not apply in respect of an affiliated entity of the person or company unless the affiliated entity is an investment fund.
- (7) Paragraph (2)(b) does not apply if the derivatives party is an affiliated entity unless the affiliated entity is an investment fund.

Foreign derivatives sub-advisers

44. (1) A derivatives sub-adviser whose head office or principal place of business is in a foreign jurisdiction specified in Appendix E is exempt from the provisions of this Instrument if all of the following apply:
- (a) the obligations and duties of the sub-adviser are set out in a written agreement with the derivatives adviser or derivatives dealer;
 - (b) the derivatives adviser or derivatives dealer has entered into a written agreement with its derivatives parties on whose behalf derivatives advice is or portfolio management services are to be provided, agreeing to be responsible for any loss that arises out of the failure of the derivatives sub-adviser to do any of the following:
 - (i) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the derivatives firm and each derivatives party of the derivatives firm for whose benefit the derivatives advice is, or portfolio management services are, to be provided;
 - (ii) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.
- (2) The exemption under subsection (1) is not available unless all of the following apply:
- (a) the derivatives sub-adviser's head office or principal place of business is in a foreign jurisdiction;
 - (b) the derivatives sub-adviser is registered in a category of registration, or operates under an exemption from registration, under the securities, commodity futures or

derivatives legislation of the foreign jurisdiction in which its head office or principal place of business is located;

- (c) the legislation of the foreign jurisdiction referred to in paragraph (b) permits the derivatives sub-adviser to carry on the activities in that jurisdiction that registration as a derivatives adviser would permit it to carry on in the local jurisdiction;
- (d) the derivatives sub-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.

Registered advisers under securities or commodity futures legislation

45. A derivatives adviser that is registered as an adviser under securities legislation or, in Ontario and Manitoba commodity futures legislation, is exempt from the provisions set out in Appendix F if the derivatives adviser complies with the corresponding business conduct provisions of securities or commodity futures legislation in connection with a transaction or other related derivatives activity with a derivatives party.²

PART 7 GRANTING AN EXEMPTION

Granting an exemption

46. (1) The regulator or, in Québec, 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 8 TRANSITION AND EFFECTIVE DATE

Transition for existing non-individual derivatives parties

47. (1) In this section “transition period” means the period commencing on [*insert effective date*] and expiring on [*insert effective date + 5 years*]
- (2) During the transition period, for the purposes of this Instrument, an “eligible derivatives party”, as defined in section 1(1) [*Definitions and interpretation*], includes a person or company, other than an individual, that is any of the following:

² For final publication, Appendix F will list the specific corresponding provisions found in NI 31-103.

- (a) a permitted client, as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
 - (b) in Quebec, an accredited counterparty, as that term is defined in the *Derivatives Act* (Québec);
 - (c) a qualified party, as that term is defined in any of the following:
 - (A) in Alberta, Blanket Order 91-507 *Over-the-Counter Derivatives*;
 - (B) in British Columbia, Blanket Order 91-501 *Over-the-Counter Derivatives*;
 - (C) in Manitoba, Blanket Order 91-501 *Over-the-Counter Trades in Derivatives*;
 - (D) in New Brunswick, Local Rule 91-501 *Derivatives*;
 - (E) in Nova Scotia, Blanket Order 91-501 *Over-the-Counter Trades in Derivatives*;
 - (F) in Saskatchewan, General Order 91-908 *Over-the-Counter Derivatives*;
 - (d) an eligible contract participant as that term is defined under Section 1(a)(18) of the United States *Commodity Exchange Act*.
- (3) Despite subsection (2), if either of the following circumstances apply, the definition of “eligible derivatives party”, as set out in subsection 1(1), applies to that circumstance:
- (a) the derivatives firm has obtained a representation from the derivatives party in writing, that the derivatives party is considered to be an eligible derivatives party on the basis of any of paragraphs (2)(a) to (d);
 - (b) the representation referred to in paragraph (a) was made prior to the effective date of this Instrument.

Transition for existing transactions

48. Other than section 8 [*Fair dealing*], the provisions of this Instrument do not apply in respect of a transaction if both of the following apply:
- (a) the transaction was entered into before the effective date of this Instrument;
 - (b) the derivatives firm has taken reasonable steps to determine that the derivatives party is one or more of the following, as applicable:
 - (i) a permitted client, as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

- (ii) in Quebec, an accredited counterparty, as that term is defined in the *Derivatives Act* (Quebec);
- (iii) a qualified party, as that term is defined in any of the following:
 - (i) in Alberta Blanket Order 91-507 *Over-the-Counter Derivatives*;
 - (ii) in British Columbia Blanket Order 91-501 *Over-the-Counter Derivatives*;
 - (iii) in Manitoba Blanket Order 91-501 *Over-the-Counter Trades in Derivatives*;
 - (iv) in New Brunswick Local Rule 91-501 *Derivatives*;
 - (v) in Nova Scotia Blanket Order 91-501 *Over-the-Counter Trades in Derivatives*;
 - (vi) in Saskatchewan General Order 91-908 *Over-the-Counter Derivatives*;
- (iii) an “eligible contract participant” as that term is defined in Section 1(a)(18) of the United States Commodity Exchange Act.

Effective date

49. (1) This Instrument comes into force on [*insert date of final publication + one year*].
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [*insert date of final publication + one year*], this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

APPENDIX A
TO NATIONAL INSTRUMENT 93-101 *DERIVATIVES: BUSINESS CONDUCT*

FOREIGN DERIVATIVES DEALERS
(Section 38)

LIST OF SPECIFIED FOREIGN JURISDICTIONS

Australia

Brazil

Hong Kong

Japan

Republic of Korea

New Zealand

Singapore

Switzerland

United States of America

United Kingdom of Great Britain and Northern Ireland

Any member country of the European Union

Any other jurisdiction that is recognized or designated by the securities regulatory authority or, except in Ontario and Quebec, the regulator

APPENDIX B
TO NATIONAL INSTRUMENT 93-101 *DERIVATIVES: BUSINESS CONDUCT*

DEALER MEMBERS
(Section 39)

Section 10, Know your derivatives party

Section 11, Handling complaints

Section 13, Derivatives-party-specific needs and objectives

Section 14, Suitability

Section 18(2)(a)-(k) to (4), Relationship disclosure information

Section 19, Pre-transaction disclosure

Section 20, Daily reporting

Section 24, Segregating derivatives party assets

Section 25, Holding initial margin

Section 26, Investment or use of initial margin

Section 27, Content and delivery of transaction information

Section 28, Derivatives party statements

Section 31, Designation and responsibilities of senior derivatives managers

Section 32, Responsibility of derivatives dealer to report to the regulator or the securities regulatory authority

APPENDIX C
TO NATIONAL INSTRUMENT 93-101 DERIVATIVES: *BUSINESS CONDUCT*

CANADIAN FINANCIAL INSTITUTIONS
(Section 40)

Section 10, Know your derivatives party

Section 12, Tied selling

Section 24, Segregating derivatives party assets

Section 25, Holding initial margin

Section 26, Investment or use of initial margin

Section 33, Derivatives party agreement

APPENDIX D
TO NATIONAL INSTRUMENT 93-101 *DERIVATIVES: BUSINESS CONDUCT*

FOREIGN DERIVATIVES ADVISERS
(Section 43)

LIST OF SPECIFIED FOREIGN JURISDICTIONS

Australia

Brazil

Hong Kong

Japan

Republic of Korea

New Zealand

Singapore

Switzerland

United States of America

United Kingdom of Great Britain and Northern Ireland

Any member country of the European Union

Any other jurisdiction that is recognized or designated by the securities regulatory authority or, except in Ontario and Quebec, the regulator

APPENDIX E
TO NATIONAL INSTRUMENT 93-101 *DERIVATIVES: BUSINESS CONDUCT*

FOREIGN DERIVATIVES SUB-ADVISERS
(Section 44)

LIST OF SPECIFIED FOREIGN JURISDICTIONS

Australia

Brazil

Hong Kong

Japan

Republic of Korea

New Zealand

Singapore

Switzerland

United States of America

United Kingdom of Great Britain and Northern Ireland

Any member country of the European Union

Any other jurisdiction that is recognized or designated by the securities regulatory authority or, except in Ontario and Quebec, the regulator

APPENDIX F
TO NATIONAL INSTRUMENT 93-101 *DERIVATIVES: BUSINESS CONDUCT*
REGISTERED ADVISERS UNDER SECURITIES AND COMMODITY FUTURES
LEGISLATION
(Section 45)

Section 11, Handling complaints

Section 12, Tied-selling

Division 2 [*Additional obligations when dealing with or advising certain derivatives parties*] of
Part 3 [*Dealing with or advising derivatives parties*];

Part 4 [*Derivatives party accounts*]

Part 5 [*Compliance and recordkeeping*], other than section 30 [*Policies and procedures*]

FORM 91-101F1
SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

(sections [*foreign derivatives dealer*] and [*foreign derivatives adviser*])

1. Name of person or company (“**Foreign Firm**”):
2. If the Foreign Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm.
3. Jurisdiction of incorporation of the Foreign Firm:
4. Head office address of the Foreign Firm:
5. The name, email address, phone number and fax number of the Foreign Firm’s chief compliance officer, or equivalent.

Name:

Email address:

Phone:

Fax:

6. Section of National Instrument 93-101 *Derivatives: Business Conduct* the Foreign Firm is relying on:
 - Section [*foreign derivatives dealer*]
 - Section [*foreign derivatives adviser*]
 - Other [specify] [e.g *exemptive relief decision – please explain*]

7. Name of agent for service of process (the "**Agent for Service**”):
8. Address for service of process on the Agent for Service:
9. The Foreign 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 Foreign 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.

10. The Foreign 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 Foreign Firm's activities in the local jurisdiction.
11. Until 7 years after the Foreign Firm ceases to rely on section **[X]** [*foreign derivatives dealer*] or section **[X]** [*foreign derivatives adviser*], the Foreign 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;
 - 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; and
 - c. a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 20th day after the change.
12. 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 Foreign Firm or authorized signatory)

(Name of signatory)

(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ [*Insert name of Foreign Firm*] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated:

(Signature of the Agent for Service or authorized signatory)

(Name of signatory)

(Title of signatory)