

POLICY STATEMENT RESPECTING ACCREDITED COUNTERPARTIES **DERIVATIVES ACT**

Purpose

Section 3 of the *Derivatives Act* (the “Act”) sets out the definition of “accredited counterparty”. Derivatives transactions of an accredited counterparty are exempted from many provisions of the Act. This Policy Statement is intended to specify, for greater certainty, certain components of this definition.

Financial institutions

Paragraph 3 of the definition of accredited counterparty includes Canadian and foreign financial institutions, as well as supranational financial institutions.

Under paragraphs 1 and 2, the definition also includes any government and public board.

Accreditation of certain counterparties

The criteria of the definition of an accredited counterparty should be applied at the time a derivative is entered into. A counterparty is not required to ensure that the other counterparty continues to be accredited during the life of the derivative.

An accredited counterparty that engages in a derivatives transaction is responsible for determining whether the other party is also accredited and whether the transaction thus benefits from the exemption set out in section 7 of the Act. To do so, the counterparty may rely on the factual statements made by the other party, provided that it does not have reasonable grounds to believe that such statements are false. However, the counterparty is nonetheless responsible for determining whether, on the basis of the facts, the exemption is applicable. Usually, the person conducting such a transaction should conserve all documents necessary to establish that it has rightly availed itself of the exemption.

Under paragraph 7 of the definition of accredited counterparty, a person will be considered an accredited counterparty if that person has the requisite knowledge and experience, and has the minimum assets provided for in section 1 of the Derivatives Regulation. Such person must establish in a conclusive and verifiable manner that the requisite conditions have been met. The establishment of compliance with these conditions may vary significantly based on a person's particular circumstances. The counterparties concerned should be satisfied that they are able to evaluate the information obtained.

Hedgers

Under paragraph 12 of the definition of accredited counterparty, a person will be considered an accredited counterparty if, because of its activities, it is exposed to one or more risks attendant upon those activities and it seeks to hedge that risk by engaging in a derivatives transaction, or a series of derivatives transactions, where the underlying interest is directly associated with that risk or a related underlying interest.

The definition of hedging in section 3 of the Act provides a description of what is considered a hedge for the purpose of paragraph 12 of the definition of accredited counterparty.

A person solely relying on paragraph 12 of the definition of accredited counterparty for the purposes of section 7 of the Act must comply with the requirements set out in sections 1.1 and 1.2 of the *Derivatives Regulation*. A person that qualifies under any other

definition of accredited counterparty, for example a dealer under the Act, is not subject to these requirements. However, a person solely relying on paragraph 12 of the definition of accredited counterparty is subject to these requirements whether or not its counterparty to a derivatives transaction or a series of derivatives transactions is a person that qualifies under any other paragraph in the definition of accredited counterparty.

A person subject to the requirement set out in section 1.1 of the *Derivatives Regulation* may delegate its obligation to deliver the certification, but remains responsible for ensuring the timeliness of the delivery and the accuracy of the content of the certification. For example, the person subject to this requirement must still ensure that the initial certification is delivered to the Authority within 30 days after it entered into a derivatives transaction or a series of derivatives transactions and annually thereafter. The effective date of the derivatives transaction or a series of derivatives transactions should be used for the purposes of the annual delivery.