

Draft Regulation

Derivatives Act

(S.Q. 2008, c. 24, s. 175, subpars. (2), (3), (12), (13), (14), (15), (16), (17), (20), (20.1), (20.2), (26), (27) and (29); 2009, c. 25)

Regulation to amend the Derivatives Regulation

Notice is hereby given by the *Autorité des marchés financiers* (the "Authority") that, in accordance with section 175 of the *Derivatives Act* (S.Q. 2008, c. 24), the following draft Regulation, the text of which is published hereunder, may be made by the Authority and subsequently submitted to the Minister of Finance for approval, with or without amendment, after 30 days have elapsed since its publication in the Bulletin of the Authority:

- *Regulation to amend the Derivatives Regulation.*

This draft Regulation is part of the imminent coming into force of legislative and regulatory registration reform provisions and is intended primarily to ensure harmonization between the framework governing the activities carried out by derivatives dealers and advisers and the framework set out in the new registration regime. As well, the draft Regulation is intended to maintain the status quo regarding the education, experience and proficiency requirements in matters related to derivatives in anticipation of the coming into force. However, these requirements will be reviewed at a later date.

Request for comment

Comments regarding the above may be made in writing before **August 31, 2009**, to the following:

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July 31, 2009

REGULATION TO AMEND THE DERIVATIVES REGULATION*

Derivatives Act

(S.Q. 2008, c. 24, s. 175, subpars. (2), (3), (12), (13), (14), (15), (16), (17), (20), (20.1), (20.2), (26), (27) and (29); 2009, c. 25)

1. The Derivatives Regulation is amended by adding the following after Division II:

“DIVISION II.1

“DEALERS AND ADVISERS

“11.1. Regulation 31-102 respecting National Registration Database, approved by Ministerial Order No. 2007-04 dated June 21, 2007, sections 1.1, 1.3, 2.2, 3.1 to 3.4, 3.11 to 3.13, 3.15(1), 3.16(1), 4.1, 4.2, 8.23 to 8.25, 8.30, 9.1, 9.3(1), Part 11, sections 12.1 to 12.4, 12.6 to 12.13, Part 13 and sections 14.2 to 14.14 of Regulation 31-103 respecting Registration Requirements and Exemptions, approved by Ministerial Order No. (*indicate the number and date of the Ministerial Order that approved the Regulation*), and Regulation 33-109 respecting Registration Information, approved by Ministerial Order No. (*indicate the number and date of the Ministerial Order that approved the Regulation*), apply, with the necessary modifications, to the persons contemplated in subdivisions 1 and 2.

“§ 1. — *Registration*

“11.2. A dealer must register in the category of derivatives dealer.

“11.3. A dealer must participate in a contingency fund deemed acceptable by the Authority.

“11.4. An adviser must register in the category of derivatives portfolio manager.

“11.5. A representative must register in one of the following categories:

- (1) derivatives dealing representative;
- (2) derivatives advising representative;
- (3) derivatives associate advising representative.

“11.6. In addition to the education and experience requirements of sections 3.11 and 3.12 of Regulation 31-103 respecting Registration Requirements and Exemptions, the advising representative or the associate advising representative must meet the following requirements to act on behalf of a derivatives portfolio manager:

- (1) have at least 2 years of relevant derivatives experience;
- (2) have passed all required exams of the Investment Industry Regulatory Organization of Canada with respect to derivatives for a dealing representative.

“11.7. To register as an ultimate designated person, a person must be designated by the derivatives dealer or portfolio manager. The dealer or portfolio manager must designate one of the following:

- (1) the chief executive officer or sole proprietor of the dealer or portfolio manager;
- (2) the officer in charge of a division of the dealer or portfolio manager, if the activity that requires the dealer or portfolio manager to register occurs only within the division;

* The Derivatives Regulation, which was approved by Ministerial Order No. 2009-01 dated January 15, 2009 (2009, G.O. 2, 33A), has not been amended since its adoption.

(3) an individual acting in a capacity similar to that of an officer described in paragraph (1) or (2).

“11.8. The ultimate designated person must do all of the following:

(1) supervise the activities of the derivatives dealer or portfolio manager that are directed towards ensuring compliance with the Act by such dealer or portfolio manager and each officer, representative and employee of such dealer or portfolio manager;

(2) promote compliance with the Act by the derivatives dealer or portfolio manager as well as by the officers, representatives and employees of such dealer or portfolio manager.

“11.9. The derivatives dealer or portfolio manager must designate a replacement for the ultimate designated person where such person no longer qualifies under section 11.7.

“11.10. To register as a chief compliance officer, a person must be designated by the derivatives dealer or portfolio manager. The dealer or portfolio manager must designate one of the following:

(1) an officer or partner of the dealer or portfolio manager;

(2) the sole proprietor of the dealer or portfolio manager.

“11.11. The chief compliance officer must do all of the following:

(1) establish and maintain policies and procedures for assessing compliance with the Act by the dealer or portfolio manager, and by the officers, representatives and employees of such dealer or portfolio manager;

(2) monitor and assess compliance with the Act by the dealer or portfolio manager, and by the officers, representatives and employees of such dealer or portfolio manager;

(3) report to the ultimate designated person as soon as possible if the chief compliance officer becomes aware of any circumstances indicating that the dealer, portfolio manager or any individual acting on its behalf may be in non-compliance with the Act and any of the following apply:

(a) the non-compliance creates, in the opinion of a reasonable person, a risk of harm to a client or the capital markets;

(b) the non-compliance is part of a pattern of non-compliance;

(4) submit an annual report to the dealer's or portfolio manager's board of directors, or individuals acting in a similar capacity on its behalf, for the purpose of assessing compliance with the Act by the dealer or portfolio manager, and by the officers, representatives and employees of such dealer or portfolio manager.

“11.12. The derivatives dealer or portfolio manager must designate a replacement for the chief compliance officer where such officer no longer qualifies under section 11.10.

“11.13. In addition to the education and experience requirements of section 3.13 of Regulation 31-103 respecting Registration Requirements and Exemptions, the chief compliance officer of a derivatives portfolio manager must meet the following requirements:

(1) have at least 3 years of relevant derivatives experience;

(2) have passed all required exams of the Investment Industry Regulatory Organization of Canada with respect to derivatives for an officer of a dealer.

“§ 2. — *Exemptions*

“**11.14.** A person authorized to act as a dealer or adviser or authorized to exercise similar functions under legislation applicable in a jurisdiction outside Québec where its head office or principal place of business is located is exempt from the registration requirement to the extent it carries on business solely for an accredited counterparty and its activity involves a standardized derivative that is offered primarily outside Québec.

“**11.15.** The best execution obligation under the second paragraph of section 68 of the Act does not apply to an alternative trading system, where it carries out an activity of a published market and its processing of client orders is limited to accepting such orders for execution in the system.

“§ 3. — *Suspension and revocation*

“**11.16.** If a registered derivatives dealer or portfolio manager has not paid the annual fees due under section 5 of the Tariffs for Costs and Fees Payable in respect of Derivatives, enacted by Order-in-Council No. 93-2009 dated February 11, 2009, by the 30th day after the date the fees were due, the registration of the dealer or portfolio manager is suspended until reinstated or revoked under the Act and this Regulation.

The first paragraph applies as well to a derivatives dealer or portfolio manager deemed to be registered under section 57 of the Act that has not paid the annual fees due under section 271.5 of the Securities Regulation, enacted by Order-in-Council No. 660-83 dated March 30, 1983.

“**11.17.** The suspension of the registration of a dealer, adviser or any of its representatives registered under sections 148 or 149 of the Securities Act (R.S.Q., c. V-1.1) results in the suspension of the registration of a derivatives dealer or portfolio manager or its representative, as the case may be, deemed to be registered under section 57 of the Derivatives Act.

“**11.18.** If the Investment Industry Regulatory Organization of Canada revokes or suspends the membership of a registered derivatives dealer or the authorization of a registered representative, ultimate designated person or chief compliance officer, such registration is suspended until reinstated or revoked under the Act and this Regulation.

“**11.19.** If the registration of a derivatives dealer or portfolio manager is suspended, the registration of each registered representative acting on behalf of such dealer or portfolio manager is suspended until reinstated or revoked under the Act and this Regulation.

“**11.20.** The registration of a representative, ultimate designated person or chief compliance officer who ceases to have authority to act on behalf of a registered derivatives dealer or portfolio manager because of the end of, or a change in, his employment, partnership, or mandatory relationship with the dealer or portfolio manager is suspended until reinstated or revoked under the Act and this Regulation.

“**11.21.** If a registration has been suspended under this section and it has not been reinstated, the registration is revoked on the second anniversary of the suspension.

The first paragraph does not apply where a suspended registrant is party to a proceeding commenced under the Act or under the rules of an SRO.”.

2. This Regulation comes into force on September 28, 2009.