

Draft Regulation

Derivatives Act

(R.S.Q., c. I-14.01, s. 175, subpars. (2), (3), (12), (18), (21), (21.1), (22), (22.1), (26) and (29); 2009, c. 58, s. 177; 2011, c. 26, s. 61)

Regulation to amend the Derivatives Regulation

Notice is hereby given by the *Autorité des marchés financiers* (the "Authority" or the "AMF") that, in accordance with section 175 of the *Derivatives Act*, R.S.Q., c. I-14.01 (the "Act"), 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.*

The draft Regulation is intended to implement certain provisions of Title IV of the Act which pertains to qualified persons. More particularly, this draft Regulation sets out the conditions for qualification by a person who creates or markets a derivative and for authorization to market the derivative. This draft Regulation also sets out the rules that a qualified person must comply with in the course of business.

The principal rules relate to the following:

- capital requirements;
- the obligation to complete the applications for qualification and for authorization to market a derivative set out in Schedules B and C;
- various obligations to notify the AMF and counterparties to the derivative the qualified person is marketing of any material change in the information provided in the application for qualification, such as any change that could affect the trading of a derivative or cause a capital deficiency;
- the obligation to send certain information annually to the AMF, including the audited financial statements for the qualified person's latest fiscal year;
- the information that dealers must give to clients under the second paragraph of section 70 of the Act if a trade is in a derivative created and marketed by a qualified person.

It is important to note that these obligations are in addition to those provided under new sections 82.1 to 82.7 of the Act, to which this draft Regulation relates, and which have been introduced by section 43 of Bill 7, *An Act to amend various legislative provisions mainly concerning the financial sector*, S.Q., 2011, c. 26, an excerpt of which is appended to this Notice.

Bill 7 therefore enhances the regulation of qualified persons by setting out, in particular, additional rules that qualified persons must comply with, such as maintaining a corporate and organizational structure enabling them to carry on activities effectively, having good governance practices, and taking the necessary measures to ensure the security and reliability of their transactions and activities.

Consultation

Comments regarding the above may be made in writing before **February 1, 2012**, to the following:

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Further information

Further information is available from:

Derek West, Director
Centre of Excellence for Derivatives
Autorité des marchés financiers
Tel.: 514-395-0337, ext. 4491
Toll-free: 1-877-525-0337
E-mail: derek.west@lautorite.qc.ca

December 16, 2011

APPENDIX – EXCERPT FROM SECTION 43 OF BILL 7

43. The Act is amended by inserting the following sections after section 82:

“82.1. A qualified person must maintain a corporate and organizational structure enabling the person to carry on activities effectively and must have adequate human, financial and technological resources to that end.

“82.2. A qualified person must have appropriate business policies and procedures in place and good governance practices, especially as regards the independence of directors and the auditing of financial statements.

“82.3. A qualified person must take the necessary measures to ensure the security and reliability of the person’s transactions and activities.

“82.4. A qualified person must offer derivatives to the public through a dealer, or register with the Authority as a dealer.

“82.5. A qualified person must notify the Authority, in accordance with the rules prescribed by regulation, of any change in the information submitted when applying for qualification.

“82.6. A qualified person must notify the Authority and the person’s counterparties, including those waiting to trade in a derivative, within the time prescribed by regulation, of any change that may affect the trading of a derivative or existing transactions in a derivative.

“82.7. A qualified person is responsible for the property entrusted to the person by counterparties, and must segregate the counterparties’ property from the person’s own property and maintain separate accounting records.”

REGULATION TO AMEND THE DERIVATIVES REGULATION

Derivatives Act

(R.S.Q., c. I-14.01, s. 175, subpars. (2), (3), (12), (18), (21), (21.1), (22), (22.1), (26) and (29); 2009, c. 58, s. 177; 2011, c. 26, s. 61)

1. The Derivatives Regulation, R.R.Q., c. I-14.01, r.1, is amended by inserting the following after Division II.2:

“DIVISION II.3

“QUALIFIED PERSONS

“§ 1. — Application for qualification and authorization to market a derivative

“11.23. Persons who apply for qualification under section 82 of the Act must demonstrate that they meet the obligations under sections 82.1 to 82.3 of the Act as well as the following obligations:

(1) if they do not participate in a contingency fund that protects the property entrusted to them by the counterparties to a derivative that they are marketing, they meet the obligations set out in section 11.29 or 11.30 hereof, as the case may be;

(2) they maintain the books and records necessary to ensure efficient operations and to demonstrate their compliance with the obligations applicable to them under the Act;

(3) they have developed an emergency and contingency plan to ensure business continuity.

Any document intended to demonstrate compliance with the obligations under sections 82.1 to 82.3 of the Act and subparagraphs 1 to 3 above must be provided to the Authority in the manner indicated in the form set out in Schedule B.

“11.24. Persons who apply for qualification must also provide to the Authority, either in writing or electronically, the form set out in Schedule B, duly completed.

The application for qualification must be accompanied by Form 33-109F4 of Regulation 33-109 respecting Registration Information, R.R.Q., c. V-1.1, r. 12, duly completed by every permitted individual, as defined in section 1.1 of that Regulation.

The second paragraph does not apply to a permitted individual who has provided Form 33-109F4 to the Authority prior to the application for qualification referred to in the first paragraph.

“11.25. In order to obtain the authorization referred to in the second paragraph of section 82 or in section 83 of the Act, a person who markets a derivative must provide to the Authority, either in writing or electronically, the form set out in Schedule C, duly completed.

Any objection by the Authority must be made within 21 days after the application for authorization is submitted.

“11.26. Persons who apply for qualification or authorization to market a derivative under section 82 or 83 of the Act must notify the Authority without delay of any change made to the information submitted in the form set out in Schedule B or Schedule C between the time when such application for qualification or authorization to market a derivative is submitted and a decision is issued by the Authority with respect thereto.

This notice of change must be submitted either in writing or electronically in the manner indicated in the form set out in Schedule B or Schedule C.

“§ 2. Obligations regarding qualified persons

“11.27. Qualified persons must, at all times, ensure that they comply with the obligations set out in section 11.23 hereof.

“11.28. Section 11.29 or 11.30, as the case may be, does not apply to qualified persons who participate in a contingency fund that protects the property entrusted to them by the counterparties to a derivative that they are marketing.

“11.29. The excess working capital of the qualified person, as calculated in accordance with Form 31-103F1 Calculation of Excess Working Capital of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations, must not be less than zero for two consecutive days.

For the purpose of completing Form 31-103F1 Calculation of Excess Working Capital, the minimum capital is \$20,000,000 plus 5% of amounts due to counterparties to a derivative that the qualified person is marketing which exceed \$10,000,000.

“11.30. Section 11.29 does not apply to a qualified person who is a member of the Investment Industry Regulatory Organization of Canada if all of the following apply:

(1) the qualified person has minimum capital of not less than \$20,000,000 plus 5% of amounts due to counterparties to a derivative that the qualified person is marketing which exceed \$10,000,000, as calculated in accordance with the Joint Regulatory Financial Questionnaire and Report of the Investment Industry Regulatory Organization (Form 1);

(2) their risk adjusted capital, as calculated in accordance with Form 1 in paragraph 1, is not less than zero for two consecutive days.

“11.31. Qualified persons must notify the Authority without delay, either in writing or electronically, of the following events:

(1) their excess working capital, as calculated in accordance with Form 31-103F1 Calculation of Excess Working Capital, or their risk adjusted capital, as calculated in accordance with the Joint Regulatory Financial Questionnaire and Report (Form1), as the case may be, is less than zero;

(2) any failure, malfunction or material delay of their systems or equipment.

“11.32 Notwithstanding section 11.31, qualified persons must notify the Authority and the counterparties to a derivative that they are marketing, including counterparties waiting to trade such a derivative, either in writing or electronically, of any change that could affect the trading of such a derivative or the transactions under way in respect of such a derivative at least 10 days prior to the change.

“11.33 Notwithstanding section 11.31, qualified persons must notify the Authority either in writing or electronically, of any material change in the information provided in their application for qualification or authorization to market a derivative, in the manner indicated in Schedule B or Schedule C, within seven days of the change, unless they have already notified the Authority of such change in accordance with section 11.32 hereof.

A material change in respect of a qualified person means a change in the business, operations or financial position of the person that would reasonably be expected to be

considered important by a counterparty to the derivative being marketed by the qualified person, including counterparties waiting to trade such a derivative.

A material change in respect of a derivative means a change in information that would reasonably be expected to have a significant effect on its attributes, including its value, the terms and conditions of the contract evidencing the derivative, transaction methods or the risks related to its use, excluding information that is likely to have an effect on the market price or value of its underlying interest.

“11.34. Qualified persons must notify the Authority, either in writing or electronically, of any change in the information provided in their application for qualification or their application for authorization to market a derivative, other than a change contemplated under sections 11.31 to 11.33 hereof, in the manner set out in Schedule B or Schedule C, within 30 days after the end of the quarter in which the change occurred.

“11.35. The updated information sent to the Authority within the time periods set out in sections 11.31 to 11.33 may be used in connection with a public offering of derivatives.

“11.36. Within 90 days after the end of its fiscal year, a qualified person must send the following information to the Authority:

(1) the audited financial statements for its latest fiscal year prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises;

(2) the number of contracts entered into in Québec and their notional value for all derivatives offered to the public during the latest fiscal year;

(3) the percentage of contracts, for each of the latest four quarters, that were profitable for counterparties.

“11.37. Section 82 of the Act does not apply to persons who were exempt, up to the coming into force of this Regulation, from the application thereof pursuant to a decision of the Authority, provided that such persons satisfy the conditions specified in the decision and that they have filed an application for qualification within 30 days after the coming into force of this Regulation.

The exemption set out in the first paragraph ends on the date on which the Authority agrees or refuses to grant qualification to the person so exempted.”

2. The Regulation is amended by inserting the following after section 13:

“13.1. The information related to questions 1 to 6 and 29 to 31 of the form set out in Schedule B and to questions 3 to 5, 7 and 8 of the form set out in Schedule C constitutes the information that dealers must give to clients, in accordance with the second paragraph of section 70 of the Act.

“13.2. Qualified persons must make accessible to counterparties to a derivative that they are marketing, including counterparties waiting to trade such a derivative, the information related to questions 11, 27 and 28 of the form set out in Schedule B.”.

3. This Regulation comes into force on the date of its publication in the *Gazette officielle du Québec*.

(Firm name)	(Contact name)	(Telephone) (Facsimile)	(E-mail)
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9. Auditor:

(Firm name)	(Contact name)	(Telephone) (Facsimile)	(E-mail)
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10. Fiscal year-end: _____

11. Legal status: _____

Except where the person applying for qualification is a sole proprietorship, indicate the date and place where the person applying for qualification obtained its legal status (e.g., place of incorporation, place where partnership agreement was filed or where entity was formed):

a) Date (YYYY/MM/DD): _____

b) Place: _____

c) Statute under which the person applying for qualification obtained legal status: _____

Provide a brief overview of the activities of the person applying for qualification:

12. Other names (previous and current) under which the person applying for qualification or any of its subsidiaries or affiliates was or is now doing business:

13. Name of any entity with which the person applying for qualification combined, amalgamated, entered into an arrangement or reorganized its operations in the past ten years:

14. Principal places of business of the person applying for qualification, including their relative importance, as well as the name and address of its principal officers and directors:

15. In the past ten years, has the person applying for qualification or any of its subsidiaries or affiliates declared bankruptcy, made an assignment in bankruptcy or a proposal in bankruptcy, been the subject of a petition in bankruptcy or the equivalent?

If applicable, provide the following information for each bankruptcy or assignment in bankruptcy:

Name of entity:

Reason for bankruptcy or assignment:

Date of bankruptcy, assignment or petition:

Date discharge granted, if applicable

(YYYY/MM/DD)

(YYYY/MM/DD)

Name of trustee:

If applicable, attach a copy of any discharge or equivalent document.

16. In the past ten years, has the person applying for qualification or any of its subsidiaries or affiliates ever entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, a self-regulatory organization or similar organization?

Yes _____

No _____

If yes, provide the following information for each settlement agreement:

Name of entity:

Regulator/organization:

Date of settlement
(YYYY/MM/DD):

Details of settlement:

Jurisdiction:

17. In the past ten years, has any financial services regulator, securities or derivatives exchange, self-regulatory organization or similar organization ever:

	Yes	No
a) determined that the person applying for qualification or any of its subsidiaries or affiliates violated any securities or derivatives regulations or any rules of a securities or derivatives exchange, self-regulatory organization or similar organization?	_____	_____
b) determined that the person applying for qualification or any of its subsidiaries or affiliates made a false statement or omission?	_____	_____
c) issued a warning to or requested an undertaking by the person applying for qualification or any of its subsidiaries or affiliates?	_____	_____
d) suspended or terminated any registration, licensing, receipt or authorization of the person applying for qualification or any of its subsidiaries or affiliates?	_____	_____
e) imposed conditions or restrictions on the registration, licensing, receipt or authorization of the person applying for qualification or any of its subsidiaries or affiliates?	_____	_____
f) conducted a proceeding or investigation involving the person applying for qualification or any of its subsidiaries or affiliates?	_____	_____
g) issued an order (other than an exemption order) or a sanction against the person applying for qualification or any of its subsidiaries or affiliates for securities or derivatives-related activity?	_____	_____

Provide the following information for each question to which you answered yes:

Name of entity: _____

Type of action: _____

Regulator/organization: _____

Date of action (YYYY/MM/DD):	Reason for action:
_____	_____

Jurisdiction: _____

18. Is the person applying for qualification aware of any ongoing investigations of which it or any of its subsidiaries or affiliates is the subject?

Yes

No

If yes, provide the following information for each investigation:

Name of entity:

Reason or purpose of
investigation:

Regulator/organization:

Date investigation
commenced
(YYYY/MM/DD):

Jurisdiction:

19. In the past ten years, has the person applying for qualification or any of its subsidiaries or affiliates ever been found guilty of or pleaded guilty to a criminal or penal offence?

Yes

No

If yes, provide the following information for each conviction:

Name of entity:

Type of offence:

Case name:

Case number, if
applicable:

Date of conviction
(YYYY/MM/DD):

Jurisdiction:

20. Is the person applying for qualification or any of its subsidiaries or affiliates currently the subject of any outstanding criminal or penal charges?

Yes

No

If yes, provide the following information for each charge:

Name of entity:

Type of offence:

Date of charge
(YYYY/MM/DD):

Jurisdiction:

21. In the past ten years, has the person applying for qualification or any of its subsidiaries or affiliates ever received a judgment from a civil court or has a judgment ever been rendered with respect to its securities or derivatives activities?

Yes

No

If yes, provide the following information for each conviction:

Name of entity:

Type of judgment:

Date of judgment
(YYYY/MM/DD):

Conclusions of judgment:

Jurisdiction:

STRUCTURE OF APPLICANT

22. Provide a copy of the constituting documents, including by-laws and other similar documents, and all subsequent amendments thereto.

23. Provide the following information for each subsidiary and affiliate of the person applying for qualification:
- a) Name, assumed names and addresses;
 - b) Legal status;
 - c) Location, statute and date of incorporation;
 - d) Description of the nature and extent of affiliation or contractual or other agreement with the person applying for qualification;
 - e) Description of business or functions.
24. Describe the compensation programs for directors and officers and personnel of the person applying for qualification.
25. Describe the business model of the person applying for qualification.
26. Describe any outsourcing arrangement entered into by the person applying for qualification that is related to the activities that are the subject of the application for qualification.

REGULATION AND OVERSIGHT

27. Describe the regulatory regime applicable in Canada to the person applying for qualification, including the following information:
- a) The name of the principal securities regulator of the person applying for qualification.
 - b) The registration category of the person applying for qualification and any related condition or restriction.
 - c) The name of any self-regulatory organization of which the person applying for qualification is a member.
 - d) The name of any other regulatory body to which the person applying for qualification would be subject.
28. Describe the foreign regulatory regime applicable to the person applying for qualification, including the following information:
- a) The name of the regulatory authority overseeing the person applying for qualification.
 - b) The date of registration and the registration category of the person applying for qualification and any related condition or restriction.
 - c) A description of the foreign regulatory regime, including:
 - i. Steps taken by the foreign regulatory authority to verify legal or regulatory compliance by the person applying for qualification.
 - ii. Steps taken by the foreign regulatory authority to oversee the person applying for qualification, including with respect to its internal policies and procedures.
 - iii. Continuous disclosure filing obligations.
 - iv. The foreign regulatory authority's inspection program.
 - v. Steps taken by the foreign regulatory authority to review or approve the products offered to the public by the person applying for qualification.

- d) Confirmation from the foreign regulatory authority that the person applying for qualification complies with applicable legislation and regulations.
- e) The name of any self-regulatory organization of which the person applying for qualification is a member.

DISTRIBUTION

29. Describe the product distribution methods used by the person applying for qualification.

RULES AND PROCEDURES

30. List the information that will be sent to each client of the person applying for qualification, including the following information:

- a) A copy of all documents that will be given to the client prior to doing business with the person applying for qualification.
- b) A copy of any other document that could be sent to the client regarding the activities of the person applying for qualification.
- c) A description of all costs and fees that will be charged to clients, specifying how such costs and fees will be calculated and disclosed.
- d) The manner in which risks will be disclosed to the client by the person applying for qualification, other than by delivery of the risk information document.
- e) A description of the handling of client accounts, specifying cash and open positions held by the person applying for qualification on its own behalf or on behalf of its clients, its method of account segregation and the physical location where client accounts are held.
- f) A description of the information confidentiality policy of the person applying for qualification.
- g) A description of the policies of the person applying for qualification with respect to maintaining and storing client information.
- h) The manner in which clients can obtain up-to-date information about the operations, financial performance, financial position and cash flows of the person applying for qualification, its subsidiaries and affiliates.

SYSTEMS AND OPERATIONS

31. Describe in detail the operations of the electronic platform (or electronic system) used by the person applying for qualification.

FINANCIAL VIABILITY

32. Submit the annual audited financial statements and related MD&A for the past three fiscal years.

33. Submit the most recent interim financial report, together with the related MD&A, if applicable.

34. Specify the contingency fund in which the person applying for qualification participates and the coverage offered under such fund.

CERTIFICATE OF PERSON APPLYING FOR QUALIFICATION OR QUALIFIED PERSON

The undersigned certifies that the information provided in this form is true and complete.

DATED _____
at _____ on _____ 20 _____

(Name of person applying for qualification or qualified person)

(Name of authorized director or officer – block letters)

(Title of authorized director or officer)

(Signature)

SCHEDULE C

APPLICATION FOR AUTHORIZATION TO MARKET A DERIVATIVE (Sections 82 and 83 of the Derivatives Act)

On each of the documents appended to this form, enter the name of the person applying for qualification, or the qualified person, the date of filing of the document and the date as of which the information is accurate (if different from the date of filing). Indicate any question that is not applicable.

If the person applying for qualification, or the qualified person, files an amendment to the information provided in this form and the amendment relates to a document filed with this form or a subsequent amendment, the person must, in order to comply with sections 11.25, 11.26 and 11.33 of the Derivatives Regulation, provide a description of the amendment and file a full amended version of the document.

1. Name of person applying for qualification or qualified person:

2. Full name of contact person, if different from person indicated in the application for qualification:

(Name and title) (Telephone) (Facsimile) (E-mail)

3. Derivative covered by authorization application: _____

4. Detailed description of the derivative.

5. Full description of trading method for this derivative.

6. Description of intended clientele for the derivative.

7. Outline of all risks related to the derivative.

8. Full details of all costs and fees related to the derivative and its trading.

CERTIFICATE

The undersigned certifies that the information provided in this application for authorization to market a derivative is true and complete.

DATED _____ on _____ 20____
at _____

(Name of person applying for qualification or qualified person)

(Name of authorized director or officer – block letters)

(Title of authorized director or officer)

(Signature)