AUTORITÉ DES MARCHÉS FINANCIERS

PROPOSED DERIVATIVES FRAMEWORK

August 10, 2007

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Introduction

The *Autorité des marchés financiers* (the "Authority" or "we") is publishing for comment a proposed derivatives legislation and regulation as well as proposed related policy statements (together the "Proposed Derivatives Framework"). This initiative of the Authority is intended to prepare recommendations to be submitted to the Minister of Finance for the implementation of a modern and effective regulatory framework for derivatives markets in Québec. The Proposed Derivatives Framework has therefore not been approved by any ministerial or government authority.

The final result of this initiative by the Authority may be implemented only after it has been submitted to the legislative process and the ensuing legislative provisions have been debated in and duly adopted by the National Assembly. As well, the formal process must be followed for the *Conseil exécutif* and its members with respect to the adoption or approval of the proposed regulation.

The text of the Proposed Derivatives Framework is available on the website of the Authority at:

www.lautorite.qc.ca.

The Proposed Derivatives Framework may also require consequential amendments to the *Securities Act*[1] and to the *Act respecting the Autorité des marchés financiers* as well as to existing regulations.[2]

We are publishing the Proposed Derivatives Framework for a 90-day consultation period ending on November 8, 2007.

Comments on any aspect of the Proposed Derivatives Framework, including those outlined below, are welcome.

Background

Derivatives trading has expanded significantly in Québec, Canada and around the world. Trading in exchange-traded options and futures contracts has exploded, thanks

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[1] R.S.Q. chapter V-1.1

[2] R.S.Q. chapter A-33.2

to the introduction of new products that improve risk management. New products are continuously being developed and offered to respond to ever increasing demand. Over-the-counter markets have followed the same trend, and they remain the preferred risk management venue of financial institutions.

In Québec, this situation, as well as the specialization of the Montréal Exchange in derivatives, prompted the Authority to examine the current regulatory framework for this sector. It was quickly realized that the provisions of the Québec *Securities Act* and *Securities Regulation* significantly lagged behind the regulatory framework for derivatives in force in other countries.

In May 2006, the Authority published a discussion paper on the regulation of derivatives markets in Québec.[3] Following an in-depth review of various statutes, the paper proposed a derivatives framework that is separate from that which governs securities—an approach broadly based on core principles intended to keep up with market changes. As well, our approach has several innovative proposals, particularly with respect to regulated entities (exchanges, clearing houses and associations that regulate their members). In addition, a broad-based concept of derivatives was proposed to enable the Authority to better fulfill its mission of ensuring the protection of investors and market efficiency. We received numerous comments as a result of the consultation.[4]

The discussion paper was also presented to industry participants at various gatherings. In addition, discussions were held with the *Commodity Futures Act* Advisory Committee[5] set up by the Ontario Government.

The feedback generally supported the Authority's proposals. However, those regarding the scope of the proposed legislation and the definition of a "derivative" raised concerns. It was stated that the over-the-counter market for derivatives was very fluid and that there did not seem to be any need for the market to be regulated by the Authority as it was already subject to rules or involved fully independent parties.

Other comments were made regarding the proposed regulatory orientations, rule self-certification by regulated entities and information documents for investors. As well, proposals relating to the regulation of intermediaries, dealers and advisers were the subject of specific observations from industry participants who were consulted.

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[3] Regulation of Derivatives Markets in Québec, Autorité des marchés financiers, May 1, 2006, available at http://www.lautorite.qc.ca/userfiles/File/industrie/encadrement-produits-derives/Regulation-Derivatives-Markets.pdf

[4] Comments and responses are available on the website of the Authority at the address mentioned earlier.

[5] The Committee's final report is available at: http://www.gov.on.ca/MGS/en/AbtMin/STEL02_047006.html

In pursuing its task, the Authority took into account the feedback it received, as reflected in the documents published today for comment. We also ensured that the Proposed Derivatives Framework was compatible with all relevant standards of the International Organization of Securities Commissions and the Bank for International Settlements, among other agencies.

Features of Proposed Derivatives Framework

Transparency of consultation

In order to facilitate the consultation process and maximize transparency, the proposed legislation and regulation published today are complete in and of themselves. They set out all provisions relevant to each title rather than referring to the provisions contained in either the *Securities Act* or the *Act respecting the Autorité des marchés financiers*. References used for the provisions are also indicated to facilitate their examination and review.

Proposed approach

The proposed approach promotes the use of legislative core principles, complementing the framework with regulatory provisions or policy statements. This approach seemed to be most effective in the long run. It provides the flexibility needed to respond promptly and adapt the framework to market changes. We feel this is essential for the regulation of derivatives markets.

This approach also allows various market participants to operate within the proposed framework in a manner that is more in line with their business model. In this regard, the approach promotes innovation and competition.

The principles appear primarily in the proposal document containing the proposed legislation. It is complemented by proposal documents containing the proposed regulation and policy statements. The latter play an important role in explaining how the Authority intends to interpret the principles or by giving examples of compliance with these principles.

For example, sections 23 and 24 of the proposed legislation set out obligations for regulated entities relating to the development of rules that provide unrestricted membership to any person who meets the admission criteria. From an operational point of view, they must organize and control their activities responsibly and efficiently. There are also provisions relating to the disclosure of information as well as the performance of functions. Also, more specific rules pertain to organized markets and clearing houses.

Registrants would be required to comply with rules of conduct according to recognized standards of integrity and fairness. Title III of the proposed legislation sets out provisions governing them.

Content of proposed legislation

- Scope

The proposed scope is broad but intended to give the Authority maximum flexibility in the enforcement of provisions as well as provide the leeway required by participants in the over-the-counter market. It gives a general definition of "derivative" designed to include any current or future type of product. A derivative is either exchange-traded or over-the-counter. It includes any instrument, contract or security of which the price, value or delivery/payment requirements are based on an underlying interest.

We are proposing a definition of "underlying interest" that would include a broad range of possibilities and areas of application. A list is currently proposed. We are seeking comments on the advisability of recommending a list of underlying interests, or on whether the nature of an underlying interest should even be limited by providing such a list. One option might be to list underlying interests and to provide for the possibility of adding to the list by regulation.

An institutional financial contract (contract between qualified parties) is an over-the-counter derivative that involves, for example, a bank or other Canadian financial institution, a dealer, an adviser or an accredited client. This type of contract would not be subject to the provisions of Titles III and IV of the proposed legislation relating to derivatives dealers and advisers or to the public offering of derivatives. These transactions could therefore be carried out without formality, although the Authority would still have the power to intervene in the event of fraud or manipulation.

Accredited clients include several categories of persons whose resources, situation or knowledge are such that it is not necessary to apply all provisions of the Proposed Derivatives Framework. Among them, we propose including hedgers as well as anyone with a minimum of $5 million in assets. We are seeking comments on the categories of persons currently on the list. Should the proposed criteria be changed or should certain categories of persons be added or removed?

The proposed legislation includes a list of products, contracts or instruments that are not derivatives within the meaning of the Proposed Derivatives Framework. In this respect, the following in particular are excluded: convertible securities, strip bonds, warrants or subscription rights, investment contracts within the meaning of the *Securities Act*, deposits as well as insurance or annuity contracts.

Finally, a number of definitions related to the proposed legislation that are not concepts specific to derivatives are included in the proposed regulation.

- Regulated entities

Regulated entities are exchanges, clearing houses and associations that regulate their members. We propose that these entities be required to be recognized or authorized by the Authority to carry on business in Québec, as is currently the case.

The applicable framework would nevertheless be very broadly based on principles: Regulated entities should demonstrate in particular that their governance is adequate given their activity and business model, that their technological system enables the operation of a market or activity that complies with set standards, that their financial resources are sufficient and that, if functions are outsourced, they have in place the necessary controls to maintain responsibility for how such functions were carried out. Moreover, access to the entities should be fair, allowing any person who meets the conditions to access the services or products offered.

An organized market must set up rules to ensure that it is operated fairly and with integrity. It must adopt oversight procedures for its market and be able to investigate and, when necessary, impose disciplinary measures to ensure proper transparency.

It is further proposed that the risk management functions carried out by a clearing house follow sound practices, ensuring it is operated prudently.

The principles contained in the proposed legislation are the subject of proposed policy statements that set out the Authority's expectations regarding their impacts and stipulate how regulatory entities can respect them. The proposal document containing policy statements forms part of this publication.

This type of framework relies on communications between regulated entities and the Authority that are open, frank and ongoing. It is therefore proposed that entities be required to deal with the Authority honestly and in a spirit of co-operation.

One of the most important aspects of the Proposed Derivatives Framework for regulated entities pertains to the self-certification of rules and products. We are proposing that entities, when filing with the Authority proposals for new rules, rule amendments or new products, demonstrate that their proposals comply with the principles of the proposed legislation. Proposals from entities would come into effect on the day they are filed with the Authority or on a later date specified by the entity.

This procedure has several consequences both for the entity and for the Authority. Firstly, the entity would have to *demonstrate* compliance with the principles. The analyses and other documents in support of certification must be highly detailed and without any shortcomings. It would not be sufficient to indicate, for example, that a rule substantially reiterates what exists elsewhere.

The Authority's responsibility with respect to the development of such rules would not be diminished. Staff would examine the self-certification files submitted and be able to intervene as needed where it was of the opinion that the principles were not being followed to its satisfaction. The Authority could ultimately suspend the enforcement of a

rule deemed non-compliant or take any other step under the law. We believe that these situations would be extremely rare.

- Derivatives dealers and advisers

In the discussion paper dated May 2006, we recommended that the current securities framework be maintained for specific registration categories and approvals. The comments made during our meetings with firms that are active in the derivatives market in Canada confirmed that no dealers currently practice exclusively in derivatives. We therefore propose that the regime applicable to derivatives dealers and advisers generally be that set out in draft *Regulation 31-103 respecting Registration Requirements* in connection with securities. The proposed regulation published today therefore presents only aspects that are specific to derivatives dealers and advisers.

We propose that investment dealers (or dealers with an unrestricted practice as they are currently called) who are members of the Investment Dealers Association of Canada (IDA) or portfolio managers (advisers with an unrestricted practice as they are currently called) be registered under the proposed legislation, on certain conditions. With respect to dealers, the IDA rules related to derivatives, in particular those related to the training of representatives, appear to be adequate.

The applicable conditions include adequate training for representatives and the compliance officer. The proposed regulation sets out these requirements. This would not increase the administrative burden on securities firms that trade or seek to trade in derivatives.

New firms seeking to register to carry on business in a derivatives brokerage would have to register dealers under the applicable provisions of draft Regulation 31-103 regarding securities and become members of the IDA.

We do not expect registrations for investment fund managers because these organizations issue securities. The use of derivatives by these issuers in the management of assets entrusted to them does not alter their status. They would be subject to registration under securities legislation.

- Public offering of derivatives

There are few provisions in the proposed legislation and regulation regarding the public offering of derivatives. It is proposed that derivatives offered by regulated entities be self-certified by them, according to the provisions of Title II. Institutional financial contracts are exempt from the application of Title IV, as provided for in section 12 of the proposed legislation. This leaves derivatives distributed by persons other than regulated entities which are traded by persons who do not benefit from the exemption.

For these persons, we propose a qualification procedure that essentially reiterates the current requirements of section 67 of the *Securities Act*, adjusted as necessary.

The trading of derivatives would not require the filing or delivery of a prospectus. We propose that dealers be required to provide a risk information document prior to the first trade on behalf of a client. The document would be prescribed by regulation, avoiding current issues regarding responsibility for its preparation. The approved person would have to provide basic information about himself to the client being offered products. This information would include financial statements as well as a brief description of his activities and the derivatives offered.

The approved person would be required to provide annual updates of the information and notify the Authority when he wishes to cease offering a derivative or completely cease carrying on business.

- Insider reports

We discussed whether it would be appropriate to integrate insider provisions into the Proposed Derivatives Framework to the extent that insiders trade in derivatives the underlying interest of which is a security or an index. We propose to leave the applicable regime in the securities legislation as is, including equity monetization, and only introduce in the Proposed Derivatives Framework a reporting requirement according to the provisions of securities legislation, as well as the Authority's regulatory power to determine whether such requirements apply when trading changes an insider's control.

- General civil actions

The proposed legislation incorporates by reference the provisions of Division II of Title VIII of the *Securities Act* proposed in Bill 19 that was tabled in the National Assembly last spring (to the extent that such provisions are adopted by the National Assembly) when trades involve a derivative of which the underlying interest is a security.

- Administration of the Act

These provisions were included in the proposed legislation to provide greater transparency in the overall application of the proposed regulatory regime. They cover information management, the financial management of the Authority, rules applicable to its decisions, the role of the *Bureau de décision et de révision en valeurs mobilières* and the appeal of decisions.

- Enforcement

This section of the proposed legislation covers inspections and investigations, conservatory measures such as freeze orders, provisional administration as well as remedial measures.

- Interjurisdictional arrangements and immunity

We restated the arrangements adopted by the Government of Québec for the *Securities Act*. As several Canadian jurisdictions exercise their authority over derivatives through

securities legislation, the measures relating to the delegation of powers, mutual recognition and incorporation by reference are reproduced in the proposed legislation.

The provisions pertaining to delegations and immunities granted to staff of the Authority or a recognized regulatory entity would be combined.

- Prohibitions, obligations and penal provisions

Title X of the proposed legislation sets out a list of offences related to derivatives and prohibits the use of privileged information in certain circumstances. The level of fines proposed for the various offences is the same as in the securities sector.

- Proposed regulation

The proposed legislation includes many possibilities for specifying certain obligations, setting out exceptions, adding to the list of accredited clients, determining various requirements, etc. We are seeking comments on the list of powers contained in sections 277 and following of the proposed legislation. We are also seeking observations on the criteria that should be used to determine these specifications and exceptions.

The list of powers is very broad and includes many elements that could be difficult to reconcile with the general and comprehensive approach of certain principles contained in the proposed legislation. An adequate balance must be sought between the stated principles and the regulatory provisions required to ensure the necessary transparency for persons governed by the framework. We are therefore seeking specific comments on this issue: Do the elements being presented help strike a fair balance in this regard?

- Proposed policy statements

A regulatory approach based on principles requires that the Authority give its opinion on how they may be respected. Policy statements are intended to serve this purpose. They are not binding and are not the only means to comply with the legislation but they enable both regulated entities and other interested persons to better understand the requirements.

A number of proposed policy statements explain the Authority's expectations and opinion regarding the principles set out in the proposed legislation and how to comply with them, in particular through recommended best practices.

The issues covered include, in respect of regulated entities, access, marketplace operation and governance. A policy statement also covers issues relating to the public offering of derivatives.

Next stages

The Authority intends to pursue its task, taking into account the comments received through the consultation. Our goal is to prepare recommendations for the Minister of Finance for the purpose of implementing a modern and effective regulatory framework for derivatives markets in Québec.

Request for comment

Comments on the proposed legislation and regulation as well as on the proposed policy statements are welcome.

Transmission of comments

Comments should be forwarded in writing not later than November 8, 2007. If they are not forwarded by e-mail, please also provide comments on diskette (Microsoft Word for Windows).

Comments may be forwarded to the *Autorité des marchés financiers* to the attention of:

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Questions

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August 17, 2007

PROPOSED DERIVATIVES LEGISLATION

FOR CONSULTATION

10 August 2007

PROPOSED DERIVATIVES LEGISLATION

This proposed derivatives legislation, which is being published by the Autorité des marchés financiers, is not a proposal of the Government and may be implemented only after it has been submitted to the legislative process and the ensuing legislative provisions have been debated in and duly adopted by the National Assembly.

TITLE I

GENERAL PROVISIONS

CHAPTER I

PURPOSE

1. The purpose of this proposed legislation is to ensure efficiency in the derivatives markets, maintain confidence in those markets and support their growth.

A derivative is an instrument, contract or security whose market price, value or delivery or payment obligations are derived from, referenced to or based on an underlying interest. Any other instrument, contract or security that is designated by regulation or is deemed equivalent to a derivative based on criteria determined by regulation is considered to be a derivative.

The underlying interest from, to or on which the market price, value, or any delivery or payment obligation of the derivative is derived, referenced or based may be a security, a commodity, a climatic variable, a freight rate, an emission allowance, a financial instrument, a currency, an interest rate, an exchange rate, the rate of inflation or other official economic statistic or indicator, an index, a basket, a futures contract, an agreement or any benchmark whatsoever and, if applicable, the relationship between any of the foregoing. **(Ref.: Reg. 81-102, s. 1.1; MIFID, Annex 1, section C (10))**

2. A derivative is an exchange-traded derivative or an over-the-counter derivative.

An exchange-traded derivative is a derivative that trades on an organized market, that has mandatory standardized contractual terms and whose trade is cleared and settled by a clearing house. An over-the-counter derivative that has substantially the same attributes subsequent to a matching of the terms and details of the transaction of which it is the object is also an exchange-traded derivative.

Any other derivative is an over-the-counter derivative.

3. An organized derivatives market is a person who seeks to:

(1) set up, maintain, administer or provide a market or system for bringing together buyers and sellers of exchange-traded derivatives;

(2) bring together the orders of multiple buyers and sellers;

(3) use established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade.

4. In particular, this proposed legislation seeks to:

(1) foster integrity, fairness, efficiency and transparency in the derivatives markets;

(2) protect the public against unfair, improper or fraudulent practices involving derivatives and against market manipulation;

(3) ensure access by the public, including market participants and their clients, to adequate, true and clear information, tailored to the degree of financial knowledge and experience of those for whom it is intended.

5. With a view to realizing these objectives, this proposed legislation establishes a regulatory system intended to:

(1) supervise derivatives offers and trades and administer the rules of eligibility for carrying on activities in respect thereof; **(Ref.: s. 4 (3) AMF Act; Reg. 81-102, s. 1.1, "specified derivative"; CPSS Glossary, 2003, "derivative")**

(2) supervise the activities of derivatives market professionals so as to ensure honest, loyal and responsible conduct; **(Ref.: s. 276 (4) SA; s. 1.1 (2 (2(iii) CFA))**

(3) ensure effective monitoring of regulated entities and, in particular:

(a) their activities;

(b) the exercise of powers delegated to them;

(c) the adequacy of their resources;

(d) access to their services;

(e) all of the transactions carried out on the facilities or systems operated by them; **(Ref.: s. 4 (4) AMF Act; Reg. 21-101, s. 1.1)**

(4) ensure that regulated entities and derivatives market participants:

(a) abide by the principles set forth in this proposed legislation and the regulations made thereunder;

(b) comply with the obligations imposed on them by this Act and the regulations made thereunder; **(Ref.: s. 4 (2) AMF Act)**

(5) facilitate the control of systemic risk involving derivatives, particularly as regards clearing house operations; **(Ref.: DP, p. 21)**

(6) ensure the implementation and administration of programs to examine client complaints and protect clients in matters involving derivatives. **(Ref.: s. 4 (5) AMF Act)**

For the purposes of enforcing this regulatory regime, the Autorité des marchés financiers, hereinafter referred to as the "Authority", in pursuing these objectives, exercises the powers conferred upon it by the proposed legislation.

CHAPTER II

INTERPRETATION

6. In this proposed legislation, unless the context indicates otherwise:

"**clearing house**" means a person that administers a system for netting, on a multilateral basis, derivatives trades and that, to this end, acts as central counterparty in respect of participants in an organized or over-the-counter market; **Ref.: s. 4 (4) AMF Act; Reg. 81-102, s. 1.1; CEA, s. 1a (9 (A(ii) and (III))**

"**client**" means a person:

(1) who deals with a derivatives dealer or adviser in order to obtain advice or management services, give an order, purchase, sell or otherwise trade in a derivative, or who has become a party to such a transaction through that dealer or adviser; **(Ref.: Reg. 45-106, s. 3.1)**

(2) to whom an offer to participate in a transaction or receive the services referred to in paragraph (1) has been made;

"**delegate**" means one of the following persons, to whom a function or power of the Authority has been delegated, or has been subdelegated with the authorization of the Authority and to the extent indicated by it, in accordance with the Act respecting the Autorité des marchés financiers or this proposed legislation:

(1) a superintendent referred to in the Act respecting the Autorité des marchés financiers, a member of the staff of the Authority, or another person designated by it;

(2) one of the extra-provincial regulators referred to in section 231, or a person to whom the extra-provincial regulator has subdelegated such function or power;

(3) a self-regulatory organization, or a committee thereof or a member of its staff to whom the organization has subdelegated such function or power; **(Ref.: ss. 24 and 62 AMF Act)**

"**derivatives adviser**" means any person who: **(Ref.: s. 5 SA)**

(1) advises others, personally or through printed materials or by any other means, as to the purchase or alienation of derivatives or as to becoming a party to trades in derivatives;

(2) manages a portfolio, under a mandate from his client, in accordance with an investment policy that provides for or authorizes him to use derivatives;

(3) offers to engage in, on behalf of another person, an activity described in paragraph (1) or (2), or purports to engage in such activity; **(Ref.: Reg. 31-103, s. 1.3)**

(4) is or agrees to be remunerated for an activity or trade referred to in paragraph (1), (2) or (3); **(Ref.: Notice and Request for Comment on Draft Regulation 31-103, p. 3)**

"**derivatives dealer**" means any person who, with respect to derivatives trading:

(1) carries on the activities of an intermediary; **(Ref.: s. 5 SA; Reg. 45-106, s. 3.1)**

(2) accepts orders or margin deposits for purposes of derivatives transactions, or acts as the purchasing or selling counterparty in the capacity of a derivatives market maker; **(Ref.: RS UMIR, art. 1.1, "derivatives market maker", Reg. 21-101 s. 1.1; CEA, s. 1a(20)(A) "futures commission merchants"; BCBS July 1994, p. 3)**

(3) offers to a client to participate in a trade or to engage in, on behalf of the client, an activity described in paragraph (1) or (2), or purports to participate in such trade or engage in such activity; **(Ref.: Reg. 31-103, s. 1.3)**

(4) is or agrees to be remunerated for an activity or trade referred to in paragraph (1), (2) or (3); **(Ref.: Notice and Request for Comment on Draft Regulation 31-103, p. 3)**

"**exchange**" means an organized market whose activity consists in operating and providing the facilities required for the trading of exchange-traded derivatives; **(Ref.: Reg. 81-102, s. 1.1; Reg. 21-101, s. 1.1, "recognized exchange")**

"**market participant**" means a registrant or an accredited client referred to in section 14 with direct access to trading on an organized market, a subscriber of an alternative

trading system, or any other person identified as such by regulation; **(Ref.: Reg. 21-101, s. 1.1 "marketplace participant"; PDR s. 1 "direct trading access right", "alternative trading system"; Draft Regulation to amend Regulation 23-101, s. 3, end of consultation July 19, 2007, "dealer sponsored participant"; "dealer sponsored access")**

"**person**" means, in addition to a natural person and a legal person, a partnership, a trust, a fund, an association, a syndicate, a body, an entity and any other group of persons that is not constituted as a legal person as well as any person acting as a trustee, liquidator, executor or legal representative. **(Ref.: s. 5.1 SA)**

7. If a document, a part of a document or a provision of the proposed Québec derivatives legislation or of extra-provincial derivatives or securities laws is described as being incorporated by reference in another document or in another provision of the proposed Québec derivatives legislation or Québec securities laws or extra-provincial derivatives or securities laws, it is deemed to be an integral part of that document or those laws. **(Ref.: s. 5.4 SA)**

8. In the case of a patrimony endowed with a certain degree of autonomy, such as a retirement fund, partnership, trust or group without legal personality, this proposed legislation and the regulations made thereunder apply as if the patrimony had such personality, but its observance is the responsibility of the persons in charge of the patrimony, and both civil and penal actions connected with this proposed legislation may be brought against them for acts relating to such patrimony.

In the case of a partnership, actions referred to in the first paragraph may also be brought against the partnership or against the partners, except the special partners. **(Ref.: s. 6 SA)**

9. The person owning securities entitling him to elect in all cases a majority of the directors of a company has the control of that company. **(Ref.: s. 8 SA)**

10. A company is the subsidiary of another company when it is controlled by it or by companies controlled by it.

A subsidiary of a company that is itself a subsidiary of another company is deemed to be a subsidiary of that other company.

Two companies are affiliates if one is the subsidiary of the other or if both are subsidiaries of the same company or are controlled by the same person. **(Ref.: s. 9 SA)**

For the purposes of this proposed legislation, the transfer of ownership in any purchase or disposition is deemed accomplished upon acceptance of the subscription or of the offer of sale or purchase. **(Ref.: s. 10 SA)**

11. In interpreting the provisions of this proposed legislation, unless the context indicates otherwise:

(1) the expression “derivatives clearing” includes all arrangements, processes and systems through which a clearing house, in accordance with its rules:

(a) matches positions between parties to, or participants in, derivatives;

(b) receives margin deposits or mutualizes or transfers the credit risk arising from a derivative among its members or clearing agents;

(c) substitutes the credit of the clearing house for that of parties to a derivative;

(d) nets these transactions on a multilateral basis, and settles them or, failing same, liquidates or cancels the relevant positions; **(Ref.: CEA, s. 1a(A) (II) and (III))**

(2) a party that manages a fully-managed account is deemed to be a party acting as principal;

(3) a reference to the Authority includes its delegate as regards a power or function delegated or subdelegated to the delegate.

CHAPTER III

EXCLUSIONS AND EXEMPTIONS

12. The following instruments, contracts and securities are not derivatives within the meaning of this proposed legislation:

(1) a conventional convertible security;

(2) an asset-backed security;

(3) an index participation unit;

(4) a strip bond;

(5) a capital, equity dividend or income share of a subdivided equity or fixed income security;

(6) a conventional warrant or subscription right;

(7) a special warrant;

(8) an investment contract within the meaning of section 1 of the *Securities Act*;

(9) an institutional financial product;

(10) an option or other instrument or security whose value is derived from, referenced to or based on the value or market price of a security granted under a compensation plan;

(11) an instrument, contract or security prescribed by regulation. **(Ref.: Reg. 81-102, s. 1.1)**

An institutional financial product is one of the following instruments, contracts or securities offered, distributed, issued or entered into by a Canadian bank or financial institution, or a subsidiary thereof, excluding a subsidiary that is a derivatives or securities dealer or adviser:

(1) a deposit of money or credit balance in a deposit or savings account, a certificate of deposit or a debt security;

(2) a bankers' acceptance;

(3) a letter of credit or a loan;

(4) a debit account associated with the use of a credit card;

(5) a participation in a loan that is assigned to an accredited client;

(6) an insurance or annuity contract issued by an insurer holding a licence under the Act respecting insurance, the Insurance Companies Act (Statutes of Canada, 1991, chapter 47) or the legislation of a jurisdiction of Canada;

(7) an instrument, contract or security prescribed by regulation. **(Ref.: GLB Act, s. 206 (a); s. 3 SA)**

13. The following over-the-counter derivatives are exempt from the application of the provisions of Titles III and IV:

(1) an over-the-counter derivative prescribed by regulation;

(2) an over-the-counter derivative offered, distributed, issued or entered into in accordance with the law by any of the following persons:

(a) a Canadian bank;

(b) a Canadian financial institution;

(c) a subsidiary of any person referred to in subparagraph (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities owned by directors of that subsidiary or its employees in connection with a plan established by the subsidiary; **(Ref.: Reg. 45-106, s. 1.1 "accredited investor")**

(d) a registered derivatives dealer or adviser, acting as principal or on behalf of an accredited client;

(e) an accredited client.

14. The following persons are accredited clients:

(1) the Government of Canada, of Québec or of another jurisdiction of Canada, or any Crown corporation, agency or wholly owned entity of such government; **(Ref.: Reg. 45-106, s. 1.1)**

(2) a municipality, public board or commission in Canada and a metropolitan community, a school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec; **(Ref.: Draft Reg. 31-103, s. 9.14(1), "permitted international portfolio manager client")**

(3) any national, federal, state, provincial, territorial or municipal government referred to in paragraph (2) of or in any foreign jurisdiction, or any Crown corporation, agency or wholly owned entity of such government or administration; **(Ref.: 45-106, s. 1.1; NI 14-101, s. 1.1(3); PDR, "jurisdiction", "foreign jurisdiction")**

(4) a Canadian bank; **(Ref.: Reg. 45-106, s. 1.1)**

(5) a Canadian financial institution; **(Ref.: Reg. 45-106, s. 1.1; PDR, s. 1)**

(6) the Business Development Bank of Canada incorporated under the Business Development Bank of Canada Act (Statutes of Canada, 1995, chapter 28); **(Ref.: Reg. 45-106, s. 1.1)**

(7) a subsidiary of any person referred to in paragraph (4), (5) or (6), if the person owns all of the voting securities of the subsidiary, except the voting securities owned by directors of that subsidiary or its employees in connection with a plan established by the subsidiary; **(Ref.: Reg. 45-106, s. 1.1)**

(8) a person registered as a derivatives dealer or adviser under this proposed legislation or as a dealer or adviser under the Securities Act (R.S.Q. chapter V-1.1), or a person authorized to act in an equivalent capacity under the legislation of a jurisdiction of Canada; **(Ref.: Reg. 45-106, s. 1.1)**

(9) a natural person registered or formerly registered under this proposed legislation as a representative of a person referred to in paragraph (8), or a person authorized to act in an equivalent capacity under the legislation of a jurisdiction of Canada; **(Ref.: Reg. 45-106, s. 1.1)**

(10) a pension fund that is regulated by the Office of the Superintendent of Financial Institutions (Canada), the Régie des rentes du Québec or a pension commission or similar regulatory authority in Canada and whose investment policy provides for or authorizes the use of derivatives; **(Ref.: Reg. 45-106, s. 1.1)**

(11) a person who establishes in a conclusive and verifiable manner, to the satisfaction of his derivatives dealer or adviser each time the dealer or adviser is required to verify his client's financial and personal situation and his investment goals:

(a) that he has the requisite knowledge and experience to evaluate the information on derivatives provided to him, the appropriateness to his needs of the strategies for using derivatives that are proposed to him, and the attributes of the derivatives proposed to him for trading;

(b) that, at all times, he has assets of at least $5,000,000;

(c) that, at all times, he disposes of sufficient net assets to fulfill his delivery or payment obligations under derivatives to which he is a party, in light of the positions held in his account and the orders he is seeking to have executed; **(Ref.: Reg. 45-106, s. 1.1; RRE, s. 3; GLB Act, s. 206(a); CEA, s. 1a(12) "eligible contract participant")**

(12) an investment fund that distributes or has distributed securities under a prospectus for which the Authority or, in another jurisdiction of Canada, the regulator has issued a receipt, or an investment fund that distributes or has distributed its securities only to: **Ref.: Reg. 45-106, s. 1.1; CEA s.1a (ii)(B)(ii)(I))**

(a) a person that is or was an accredited investor at the time of the distribution; **(Ref.: Reg. 45-106, s. 1.1; PDR, s. 1 "accredited investor")**

(b) a person that acquires or acquired securities in the fund in order to make a minimum investment or an additional investment under the conditions prescribed by regulation; **(Ref.: Reg. 45-106, s. 1.1)**

(c) a person described in paragraph (a) or (b) that acquires or acquired securities of the fund in order to reinvest in the fund, under the conditions prescribed by regulation; **(Ref.: Reg. 45-106, s. 1.1)**

and whose investment policy provides for or authorizes the use of derivatives; **(Ref.: Reg. 45-106, s. 1.1; PDR, s. 1 "jurisdiction of Canada")**

(13) an investment fund that is advised by a derivatives adviser registered or authorized to carry on his activities under this proposed legislation or under the legislation of a jurisdiction of Canada or a foreign jurisdiction;

(14) a derivatives adviser registered or authorized to carry on his activities under this proposed legislation or under the legislation of a jurisdiction of Canada or a foreign jurisdiction who is acting on behalf of a client who has granted him discretionary authority; **(Reg. 45-106, s. 1.1; PDR, s. 1 "jurisdiction of Canada", "foreign jurisdiction")**

(15) a charity registered under the Income Tax Act (Canada) that, in regard to the trade, has obtained advice from a derivatives adviser registered under this proposed legislation or from a person authorized to act in an equivalent capacity under the legislation of a jurisdiction of Canada; **(Ref.: Reg. 45-106, s. 1.1; PDR, s. 1 "jurisdiction of Canada")**

(16) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (4) to (8) or paragraph (10) in form and function; **(Ref.: Reg. 45-106, s. 1.1)**

(17) a person in respect of which all of the owners of interests, except the voting securities required by law to be owned by directors, are persons that are accredited investors; **(Ref.: Reg. 45-106, s. 1.1; PDR, s. 1 "accredited investor")**

(18) a hedger;

(19) a person with any of the following characteristics:

(a) the person is part of a group defined by regulation;

(b) the person's activity, degree of financial knowledge and experience or assets are deemed equivalent to those of an accredited client through the application of principles or criteria prescribed by regulation;

(c) the person has been recognized or designated as an accredited client by the Authority. **(Ref.: Reg. 45-106, s. 1.1)**

15. A hedger referred to in paragraph (18) of section 14 is a person who, as a result of his activities:

(1) becomes exposed to one or more risks related to those activities, including supply, credit, exchange and environmental risks and the risk of fluctuations in the price of an underlying interest;

(2) seeks to hedge that risk by engaging in one or more derivatives trades where the underlying interest is the underlying interest directly associated with that risk, or a related underlying interest. **(Ref.: Rule One, Montréal Exchange "hedger")**

Hedging is the entering into of a derivatives transaction, or a series of derivatives transactions, and the maintaining of the position or positions resulting from the transaction or series of transactions:

(1) if:

(a) the intended effect of the transaction, or the intended cumulative effect of the series of transactions, is to offset or reduce, in whole or in part, a risk of change in value of an underlying interest or a position, or of a group of underlying interests or positions,

(b) the transaction or series of transactions results in a high degree of negative correlation between changes in the value of the underlying interest or position, or group of underlying interests or positions, being hedged and changes in the value of the derivative or derivatives with which the value of the underlying interests or positions is hedged, and

(c) there is reasonable cause to believe that the transaction or series of transactions no more than offset the effect of price changes in the underlying interest or position, or group of underlying interests or positions, being hedged; or

(2) if the intended effect of the transaction or series of transactions is to substitute a risk to one currency for a risk to another currency, if the aggregate amount of currency risk to which the hedger is exposed is not increased by the substitution. **(Ref.: Reg. 81-102, s. 1.1, "hedging", "currency cross hedge"; PDR, s. 1 "position")**

TITLE II

REGULATED ENTITIES

CHAPTER I

SCOPE

16. This Title applies to regulated entities.

However, the provisions of Subdivision 1, Division 2 of Chapter III of this Title apply to an exchange and to any other organized derivatives market.

The following are regulated entities: an exchange, a clearing house, a regulation services provider and a self-regulatory organization.

Any other similar organization upon which the efficiency of a derivatives market depends is deemed to be a regulated entity, as determined by the Authority.

CHAPTER II

RECOGNITION OF ENTITIES

17. No person may carry on the activities of a regulated entity in Québec without being recognized by the Authority. **(Ref.: ss. 60 and 169 SA)**

18. The Authority may recognize a regulated entity on such conditions as it may determine.

In making a decision under this section, the Authority shall, if required, determine the connecting factors that are relevant for ensuring the fulfillment of the purpose of this proposed legislation. **(Ref.: s. 171 SA and Reg. 21-101 respecting Marketplace Operation)**

19. The Authority may also recognize an exchange or a clearing house as a self-regulatory organization. In that case, the exchange or clearing house is also subject to the provisions of this proposed legislation that are applicable to such an organization.

20. Despite sections 14 and 60 of the Act respecting the Autorité des marchés financiers, a recognized exchange or clearing house may supervise or regulate the professional conduct of its members or participants and their representatives. **(Ref.: s. 170 SA)**

21. No person may carry on activities in Québec as an alternative trading system or information processor in respect of derivatives without the authorization of the Authority.

The Authority may authorize a person to carry on such activities by either recognizing the person as an exchange or registering the person as a derivatives dealer, based on the attributes of the person and if the Authority considers that doing so complies with the purpose of this proposed legislation. **(Ref.: s. 171 SA and Reg. 21-101 respecting Marketplace Operation)**

In making a decision under this section, the Authority shall determine the connecting factors that are relevant for ensuring the fulfillment of the purpose of this proposed legislation.

CHAPTER III

OBLIGATIONS OF RECOGNIZED ENTITIES

Division 1

General obligations

§ 1. *By-laws and rules*

22. A recognized regulated entity must adopt appropriate procedures for drafting, adopting and amending the rules governing its activities and those of its members or participants. **(Ref.: DP p. 74)**

23. The constituting documents, by-laws and rules of such an entity must allow:

(1) unrestricted membership for any person who meets the admission criteria;

(2) equal access by members or participants to the services offered;

based on transparent criteria providing for fair and equitable competition.

They must also provide for the imposition of disciplinary measures for any contravention of the law or any violation of the by-laws or rules of the organization. **(Ref.: DP p. 59; s. 70 AMF Act)**

24. The rules of a recognized regulated entity must include a process for examining complaints that allows for a timely, fair and equitable resolution of disputes involving it. **(Ref.: DP p. 74)**

25. In establishing these rules, the costs to members and participants that may result from the application of the rules must be borne in mind.

26. Despite section 74 of the Act respecting the Autorité des marchés financiers, the rules of a recognized regulated entity may be amended in either of the following manners:

(1) in accordance with the self-certification process prescribed by regulation and subject to filing, with the Authority, a notice confirming that the amendment was made in accordance with the law;

(2) with the prior approval of the Authority, upon an application by the organization establishing that self-certification of a rule presents serious difficulties. **(Ref.: DP p. 70)**

27. The operator of a regulated entity must ensure the faithful application of its rules. **(Ref.: DP p. 74)**

28. Sections 74 and 75 of the Act respecting the Autorité des marchés financiers apply to the constituting documents and by-laws of a recognized regulated entity. **(Ref.: s. 171.1 SA)**

§ 2.- *Governance*

29. The principles of governance of a recognized entity must be clear and transparent. They must be intended to meet the needs of its members and participants while also serving the public interest. **(Ref.: DP p. 47)**

30. These principles give rise to the implementation of an accurate and informative notification system for directors and officers. **(Ref.: BCBS July 1994, p. 9)**

§3. – *Control of operations*

31. The operator of a recognized regulated entity must organize and control its affairs responsibly and effectively. **(Ref.: DP pp. 50-57)**

32. The entity must use information processing systems with a sufficient capacity, allowing it to carry out its operations effectively, safely and reliably. **(Ref.: DP p. 57)**

33. The entity must at all times have adequate financial resources.

It must also have qualified staff sufficient in number to carry out its operations and, if applicable, exercise the powers delegated to it by the Authority in an effective manner. **(Ref.: DP p. 13)**

34. A regulated entity must implement appropriate procedures to manage the risks of its operations and of the operations carried out by its members and participants through its facilities or systems, so as to ensure the security, performance and continuous accessibility thereof. **(Ref.: DP p. 57)**

§4. – *Exercise of functions, activities and powers*

35. Where a recognized entity outsources functions or activities to a third party, it shall remain fully responsible under this proposed legislation for any such outsourced function or activity.

36. Within the scope of the exercise of its functions and powers, a recognized entity must, before rendering a decision unfavourably affecting the rights of a person, give the person an opportunity to present observations.

However, the entity may, without prior notice, issue a decision or a provisional order valid for a period not exceeding 15 days if the entity is of the opinion that there is

urgency or that any period of time granted to the person concerned to present observations may be detrimental.

The decision or order must state the reasons on which it is based and becomes effective on the day it is served on the person concerned. That person may, within six days of receiving the decision or order, present observations to the entity.

The organization may revoke a decision or order issued under this section. **(Ref.: s. 81 AMF Act)**

37. A recognized entity hearing a disciplinary matter must do so at a public meeting.

However, it may, on its own initiative or on request, order an *in camera* hearing or prohibit the publication or release of information or documents indicated by it in the interest of good morals or public order. **(Ref.: s. 82 AMF Act)**

38. A recognized entity must, as soon as possible, communicate to the Authority the decisions it rendered in the exercise of its functions and powers concerning the admission of a member or participant or a disciplinary matter. **(Ref.: s. 83 AMF Act)**

§6. – *Disclosure*

39. A recognized entity must deal with the Authority truthfully and cooperatively.

40. It must disclose to the Authority any information regarding its activities that is useful for the exercise of the Authority's functions and powers under this proposed legislation.

It must also offer its members and participants access to the text of its rules and the instruments established for their application and interpretation, as well as to other useful information regarding the rights and obligations of those members and participants. **(Ref.: DP pp. 42-50)**

41. A recognized entity must make, to the extent of and in accordance with the conditions set out in its recognition decision, the regular, occasional and other disclosures regarding it. **(Ref.: s. 73 SA)**

42. It must file with the Authority, within 90 days after the end of its fiscal year, its financial statements, its auditors' report and any other information, according to the requirements set by the Authority. **(Ref.: s. 86 AMF Act)**

Division 2

Specific obligations applicable to certain regulated entities

§1. – *Recognized exchange and other organized markets*

43. This Division applies to a recognized exchange and to any other organized derivatives market.

A dealer that executes an over-the-counter trade of an exchange-traded derivative is deemed to operate an organized market for purposes of this Division. **(Ref.: Reg. 21-101, s. 1.1)**

44. An organized market must be structured so as to operate in a manner that is equitable to all market participants, and any differences in treatment among classes of participants must be clearly identified and disclosed in its rules. **(Ref.: IOSCO Principles for TS, June 1990, Principle 4)**

45. An organized market must adopt and enforce rules and procedures prohibiting market abuse and manipulation, fraud and deceptive trading in order to ensure that it operates in a fair and equitable manner. **(Ref.: DP p. 83)**

46. An organized market must ensure that its participants are able to fulfill their obligation to achieve best execution of orders when acting for a client. **(Ref.: Securities and Investment Board, Regulation of the Conduct of Investment Business, 1989 ("SIB"), Annex C, Designated Rule 10; Draft Regulation to amend Reg. 31-103, s. 3, end of consultation July 19, 2007)**

47. An organized market must establish monitoring, investigative and disciplinary procedures providing it with sufficient pre- and post-trade transparency. **(Ref.: DP p. 83)**

48. The rules or procedures of an organized market must grant it the power to suspend trading or modify trading conditions in order to ensure an orderly market. **(Ref.: DP p. 83)**

49. The Authority may require an organized market to provide it with data concerning its activities, such as its order book, trades and trade matching data, at the time and in the manner determined by the Authority.

§2. – *Clearing houses*

50. A clearing house must apply sound internal management practices in order to ensure its prudent operation. To this end, it must implement:

(1) an appropriate process for managing the risks of derivatives clearing that integrates prudent risk limits;

(2) reliable measurement procedures and information systems;

(3) comprehensive internal controls and audit procedures;

(4) continuous monitoring and frequent reporting to management;

(5) appropriate oversight by its directors. **(Ref.: BCBS pp. 1-4)**

51. A clearing house must use the necessary means to offer market participants and their clients fair, secure and efficient clearing and settlement services.

§3. – *Recognized self-regulatory organizations*

52. The competence, integrity and authority of members or participants of a self-regulatory organization must be subject to specific standards that are continuously monitored by the organization to ensure their adequacy and enforcement. **(Ref.: IOSCO Principles for TS, Principle 6)**

53. The Authority may, in accordance with sections 277 and 278 and subject to the second paragraph of section 136, delegate the exercise of all or part of the functions and powers conferred on it by this proposed legislation or the regulations to a recognized self-regulatory organization.

Such delegation is subject to Government approval, except when made to a person referred to in section 19.

54. A recognized self-regulatory organization may, with prior authorization from the Authority, subdelegate all or part of the functions and powers delegated to it to a committee formed by it or to a member of its staff. **(Ref.: s. 62 AMF Act)**

55. A self-regulatory organization may not renounce the exercise of delegated functions or powers without prior authorization from the Authority. The Authority may make its authorization subject to the conditions it considers necessary for the protection of the members and participants of the organization, or of the public. **(Ref.: s. 64 AMF Act)**

56. The Authority may, by regulation, confer on rules or standards established by a recognized self-regulatory organization, and any amendments made thereto, the force and effect of a regulation made under this proposed legislation. **(Ref.: s. 72 AMF Act)**

CHAPTER IV

SUPERVISION OF AND CONTROL OVER RECOGNIZED ENTITIES

57. The Authority may prescribe a course of action to a recognized regulated entity where it considers it necessary for the proper operation of the entity or for public protection. **(Ref.: s. 172 SA)**

58. The Authority may suspend, according to the terms and conditions it considers appropriate, the application of all or part of a provision of the by-laws or rules of a recognized regulated entity. **(Ref.: s. 76 AMF Act)**

59. The Authority may order a recognized regulated entity to amend its constituting documents, by-laws or rules where it considers that an amendment is necessary to render such texts consistent with this proposed legislation. **(Ref.: s. 77 AMF Act)**

60. The Authority may reprimand a recognized entity after having given the entity the opportunity to be heard. **(Ref.: s. 273 SA)**

61. The Authority may modify, suspend or withdraw all or part of the recognition granted to a regulated entity if it considers that:

(1) the entity has failed to comply with undertakings given to the Authority;

(2) the interests of the entity's members or participants or the interests of the public would be better served by such a measure.

The Authority may also, for the same reasons, modify, suspend or withdraw an exemption granted to a person in respect of the application of this Title. **(Ref.: s. 89 AMF Act)**

62. A recognized regulated entity that wishes to terminate its activities must apply for authorization to the Authority.

The Authority shall give the authorization on the conditions it determines where it believes the interests of the entity's members or participants and the interests of the public are sufficiently protected. **(Ref.: s. 88 AMF Act)**

63. The Authority may, by regulation, establish principles, criteria or rules applicable to a regulated entity. **(Ref.: s. 171.1.1 SA)**

TITLE III

DERIVATIVES DEALERS AND ADVISERS

CHAPTER I

REGISTRATION AND AUTHORIZED ACTIVITIES

64. No derivatives dealer or adviser may carry on business unless he is registered as such with the Authority. **(Ref.: s. 148 SA)**

65. The Authority may require that a candidate or a category of candidates it determines pursue derivatives activities for which registration is sought through a subsidiary. **(Ref.: s. 148.1 SA)**

66. Every natural person carrying on business as a derivatives dealer or adviser, or carrying on another remunerated activity prescribed by regulation on behalf of a person subject to registration under section 64, must register with the Authority under the designation determined by regulation. **(Ref.: s. 149 SA)**

67. A person is registered by right as a derivatives dealer or adviser, or as a natural person carrying on an activity referred to in section 66 on behalf of a derivatives dealer or adviser, as the case may be, if the person:

(1) is registered or registers under the Securities Act as a dealer or adviser with an unrestricted practice, or is a natural person who is registered or registers to carry on this activity or another activity prescribed by regulation on behalf of a dealer or adviser with an unrestricted practice, as the case may be;

(2) complies at all times with the conditions established under this Act for carrying on his derivatives activities;

(3) pays the fees prescribed by regulation made under this Act for carrying on such activities;

as long as the person is registered in such capacity under the *Securities Act*.

68. The categories of registration, the conditions to be met by candidates, the duration of registration and the rules governing the activities of registrants shall be established by regulation. **(Ref.: s. 150 SA)**

69. The Authority may, by regulation, exempt, with or without conditions, a person or category of persons from the obligation to register as a derivatives dealer or adviser or to register on behalf of a derivatives dealer or adviser**. (Ref.: s. 331.1(11) SA)**

CHAPTER II

OBLIGATIONS OF REGISTRANTS

Division 1

Management of business

70. A derivatives dealer or adviser must organize and control his internal affairs responsibly. To that end, he must establish procedures facilitating his compliance with the provisions of this proposed legislation and he must ensure that the information in his books, registers and files is sufficient for purposes of verification thereof. **(Ref.: SIB, Principle 10 and Designated Rule 45)**

71. A derivatives dealer or adviser must have sufficient financial resources to be able to honour his business commitments at all times and deal with the risks to which his business is exposed. **(Ref.: SIB Principles, Annex B, Principle 9)**

Division 2

CONDUCT TOWARD THIRD PARTIES

72. A derivatives dealer or adviser must comply with the rules and standards applicable to it under this proposed legislation and must ensure that its officers, representatives and employees act in accordance therewith. **(Ref.: SIB Principle 3, s. 160.2 SA)**

73. A registered natural person must maintain a sufficient level of knowledge regarding derivatives and, in general, meet the professional standards that govern his conduct with respect to honesty, integrity, fairness, due care and skill. **(Ref.: Joint Forum, Principles, January 28, 2005)**

74. A registrant must, in particular, abide by the professional standards of honest and fair conduct recognized in the derivatives industry. **(Ref.: SIB, Principle 1)**

75. A registrant must use the necessary means to obtain or verify information allowing him to: **(Ref.: Joint Forum)**

(1) properly identify his client;

(2) assess the client’s requirements;

(3) recommend a product or service that suits the client’s needs in respect of derivatives;

(4) determine whether the trade he is being asked to carry out complies with the rules and principles governing his activities. **(Ref.: BC Model, Dealers and Advisers Guide, 2003, p. 13)**

76. A registrant must refuse to act on behalf of a client if he has reasonable cause to believe that the trade in question is unlawful or is likely to bring the reputation of the derivatives market into disrepute. **(Ref.: Joint Forum)**

77. In his dealings with a client and in the execution of the mandate entrusted to him by the client, a registrant must act with all the care that may be expected of a knowledgeable professional under the same circumstances. **(Ref.: s. 160.1 SA)**

78. In determining how to conduct himself, a registrant must, to the extent possible, place the client's interests above his own and refrain from taking advantage of a client who has placed his trust in the registrant. **(Ref.: Joint Forum)**

79. When acting for a client, a derivatives dealer must make reasonable efforts to achieve best execution of orders received from the client, by using facilities providing information to that end.

This obligation does not apply to an alternative trading system registered as a derivatives dealer. **(Ref.: Draft Regulation to amend Reg. 23-101, s. 3, end of consultation July 19, 2007)**

80. A registrant must avoid being in a situation in which his ability to serve his client in an impartial manner could be seriously compromised.

In the case of a conflict of interest, before carrying out a trade on behalf of the client, the registrant must:

(1) inform the client about any conflict he has noted; **(Ref.: Joint Forum)**

(2) take measures, using the criteria of fairness, objectivity, and transparency, to ensure that the client's interests are not affected by the situation. **(Ref.: SIB, Designated Rule 30; BC Model, Dealers and Advisers Guide, 2003, p. 19)**

81. A registrant must safeguard the property entrusted to him by his client when it is under his responsibility**.** To this end, the registrant must segregate the client's property from his own and maintain separate accounting records, unless a law, a regulation or the rules governing the registrant stipulate otherwise. **(Ref.: SIB Principles, Annex B, Principle 8)**

82. A registrant must deal in an open and cooperative manner with the Authority and with any delegate exercising powers over it under this proposed legislation.

83. A derivatives dealer must supervise the conduct of accredited clients to whom he provides direct trading access to an organized market.

He must inform the market or, as the case may be, the appropriate regulation services provider, of any client conduct that seems contrary to the rules governing the client's participation. **(Ref.: Draft Regulation to amend Reg. 31-103, s. 5, end of consultation July 19, 2007)**

84. A derivatives dealer or adviser must implement a compliance program and designate an officer, or a person performing a managerial function under the officer's direction, to be responsible for its application.

A regulation made by the Authority shall set out the principles governing the content of the compliance system, the mandate and authority of the compliance officer as well as the measures ensuring his independence.

85. A derivatives dealer or adviser must provide equitable resolution of complaints filed with the dealer or adviser. To that end, he must establish a policy dealing with:

(1) the examination of complaints and claims filed by persons having an interest in a product or service he has provided;

(2) the settlement of disputes regarding such products or services. **(Ref.: s. 168.1.1 SA)**

The Government may, by regulation, prescribe the policy to be adopted or elements of the policy.

86. A derivatives dealer or adviser must inform each complainant, in writing and without delay, that the complainant may, if he is dissatisfied with the dealer's or adviser's complaint examination or its outcome, request that a copy of the complaint file be forwarded to the Authority.

Where requested by a complainant, the derivatives dealer or adviser shall forward a copy of the complaint file to the Authority.

The Authority shall examine the complaint and may, if it considers it appropriate and the parties agree, act as a mediator. It may also retain the services of a natural person to act in such capacity or, with the authorization of the Government, enter into an agreement for that purpose with a body or a legal person. **(Ref.: s. 168.1.3 SA)**

87. Notwithstanding sections 9 and 83 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q. chapter A-2.1), the Authority may not communicate a complaint file without the authorization of the derivatives dealer or adviser that has transmitted it. **(Ref.: s. 168.1.4 SA)**

88. A mediator may not be compelled to disclose anything revealed to or learned by the mediator in the exercise of his functions or to produce, before a court of justice or before a person or body of the administrative branch exercising adjudicative functions, a document prepared or obtained in the course of the mediator's exercise of his functions.

Notwithstanding section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information, no person may have access to a document contained in the mediation record. **(Ref.: s. 168.1.5 SA)**

89. Registrants must comply with the other principles and rules established by regulation in respect of their activities.

Division 3

DISCLOSURE

90. In the cases and within the time determined by regulation, a registrant shall notify the Authority of any change in the information furnished at the time of registration.

As determined by regulation, no change may be made unless the Authority approves or does not object within 30 days of receiving notice of the proposed change. If the Authority objects, it may prescribe what is to be done. **(Ref.: s. 159 SA)**

91. A derivatives dealer or adviser shall, each year, within two months of the end of its fiscal year or on any other date determined by the Authority, submit to the latter a report as at that date concerning the complaint examination policy it has established pursuant to section 85.

The report shall mention, in particular, the number and nature of the complaints filed. **(Ref.: s. 168.1.2 SA)**

CHAPTER III

SURRENDER AND SUSPENSION OF REGISTRATION

92. A registrant wishing to cease carrying on business shall apply to the Authority to surrender his registration.

The Authority may, on the conditions it determines, suspend all or part of the registration or impose conditions or restrictions on the registration during examination of the application for surrender.

The Authority may accept the surrender where, in its opinion, the interests of clients and investors are sufficiently protected, and, to the same end, it may impose conditions on the surrender.

The Authority remains competent in respect of any acts prior to the surrender. **(Ref.: s. 153 SA)**

93. At the request of the Authority or any interested person, the Bureau de décision et de révision en valeurs mobilières established under section 92 of the Act respecting the Autorité des marchés financiers (R.S.Q. chapter A-33.2), may revoke or suspend the rights granted by registration, or impose restrictions or conditions on their exercise where, in its opinion, a registrant fails to comply with this proposed legislation or the regulations made thereunder or where the protection of investors requires it. **(Ref.: s. 152 SA)**

TITLE IV

DERIVATIVES TRANSACTIONS

CHAPTER I

PUBLIC OFFERING OF DERIVATIVES

Division 1

Derivatives offered

94. No person may offer derivatives to the public except in compliance with this proposed legislation.

95. An exchange-traded derivative must be designed so as to ensure a high degree of protection against manipulation. **(Ref.: CEA Core Principle 3)**

Division 2

Public offering

§ 1. *Qualification*

96. In order to offer an exchange-traded derivative or an over-the-counter derivative to the public, a person who is not a recognized regulated entity must first be qualified by the Authority, in accordance with the conditions prescribed by regulation. **(Ref.: s. 67 SA)**

97. A qualified person wishing to cease carrying on business or cease offering a derivative shall give a prior notice of not less than 30 days to that effect to the Authority.

In that case, the Authority may impose such conditions as it considers necessary for public protection.

§ 2 *Obligations of dealers and advisers*

98. No derivatives dealer or adviser may advise a client to trade in derivatives, or carry out such trade on behalf of a client, unless he has ascertained that the client has all the information:

(1) he reasonably needs for purposes of their business relationship;

(2) allowing him to make an informed decision and give clear instructions regarding the trade;

(3) regarding the margin requirements to which the trade is subject, and the consequences for the client if he does not meet those requirements when called upon to do so.

99. A dealer trading in derivatives for the account of a client must, before the first transaction, remit to him the risk information document prescribed by regulation.

If the trades involve derivatives offered to the public by a person who is not recognized as a regulated entity, the dealer shall also remit to the client the information provided in connection with the person's qualification by the Authority. **(Ref.: s. 67 paras. 2 and 3 SA)**

This section does not apply to an accredited client.

§ 3 *Information*

100. In every document containing recommendations in respect of a derivative that has the securities of an issuer as its underlying interest, the registrant must make the statement prescribed by regulation concerning the interests that he or any of his directors or officers has in the securities. **(Ref.: s. 166 SA)**

101. The risk information document, a document permitted by the Authority for use in lieu thereof as well as any other document required to be remitted to a client under this proposed legislation or a regulation made thereunder shall be drawn up in French only or in French and English. **(Ref.: s. 40.1 SA)**

102. A person qualified under section 96 shall, each year, within the time period fixed by regulation, file the information prescribed by regulation.

CHAPTER II

INSIDER REPORTS

103. Every person who is an insider of a reporting issuer within the meaning of the Securities Act and acquires or disposes of a derivative having the securities of that issuer as its underlying interest is deemed to effect a change in his control over the securities of that issuer and is required to report the change in control over the securities of the issuer in accordance with Chapter IV of Title III of the Securities Act.

104. The Authority may, by regulation, determine that a derivatives transaction conferring the right or imposing the obligation to effect a change in control over a security is subject to the insider reporting requirement provided for in Chapter IV of Title III of the Securities Act. **(Ref.: s. 92 SA)**

CHAPTER III

GENERAL CIVIL ACTIONS

105. Transactions involving a derivative having securities as its underlying interest are subject to the obligations and sanctions provided for in Division II of Title VIII of the Securities Act, with the necessary modifications.

TITLE VII

ADMINISTRATION OF THE ACT

CHAPTER I

GENERAL PROVISIONS

§1. – *Information management*

106. Documents intended for the Authority are served on its secretary. **(Ref.: s. 294 SA)**

107. The Authority may, by regulation, determine conditions for transmitting and receiving documents referred to in this proposed legislation or a regulation made thereunder. **(Ref.: s. 293 SA)**

108. The Authority may, by regulation, prescribe that certain documents required to be filed or transmitted under this proposed legislation must be filed or transmitted in the

medium or by the technological means that satisfy the conditions for filing or transmittal specified by it. **(Ref.: ss. 10.6 and 10.7 SA)**

109. The Authority may refuse the filing of documents part or all of which were prepared or signed by a person who, during the five years preceding the date of the filing, was convicted of a disciplinary, penal or indictable offence in a matter pertaining to a derivatives transaction and for which he has not obtained a pardon. **(Ref.: s. 272 SA)**

110. The Authority may allow a document or attestation prescribed under this proposed legislation to be substituted by a document or attestation required under any other legislation or by other documents containing information that is at least equivalent. **(Ref.: s. 294.1 SA)**

111. Any attestation issued by the Authority respecting the registration of a person, the filing of a document, the time that the facts upon which proceedings may be brought came to the knowledge of the Authority and any other matter pertaining to the administration of this proposed legislation is proof of its content in any civil or penal proceedings without other proof of the signature or office of the person attesting. **(Ref.: s. 295 SA)**

112. The Authority shall furnish to the Minister any information and any report that the Minister may require on the activities of the Authority. **(Ref.: s. 303 SA)**

113. Any person may, upon written request made at least two business days in advance, have access to all documents required to be filed under this proposed legislation or the regulations, except documents filed by a registrant otherwise than pursuant to the requirements of Title III.

The Authority may waive the prior notice or, where it deems that the communication of a document could result in harm, it may declare the document inaccessible.

This section applies notwithstanding section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information. **(Ref.: s. 296 SA)**

114. Investigation reports, inspection reports and supporting evidence may be inspected only with the authorization of the Authority, notwithstanding section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information. **(Ref.: s. 297 SA)**

115. The Authority may communicate any information, including personal information, without the consent of the person concerned, to a person or body responsible, by law, for the prevention, detection or repression of crime or statutory offences outside

Québec, if the information relates to an offence under this proposed legislation or under derivatives legislation applicable in another jurisdiction.

The Authority may also communicate any information, including personal information, about a participant, a person to whom section 186 applies, a participant's auditor, a person required to be registered under Title III, an officer, a director, an insider or a person having, even indirectly, significant influence over a registrant, or a recognized regulated entity, without the consent of the person concerned, to a person, even outside Québec, acting in the derivatives regulation or monitoring field, including for the purposes of a common database containing personal information.

Likewise, the Authority may communicate any information, including personal information, without the consent of the person concerned, to a police force if there is reasonable cause to believe that the person has committed or is about to commit a criminal or penal offence under an Act applicable in or outside Québec with respect to the Authority or one of its employees or relating to a derivatives provision, and the information is required for the related investigation.

The Authority may also communicate any information, including personal information, to the Minister of Revenue, without the consent of the person concerned, if there is reasonable cause to believe that the person has committed or is about to commit an offence under this proposed legislation that may have an impact on the administration or enforcement of a fiscal law. **(Ref.: s. 297.1 SA)**

116. In a case not provided for in section 115 of the proposed legislation, the Authority may, with the authorization of a judge of the Court of Québec, communicate any information, including personal information, to a police force, without the consent of the person concerned.

The application for authorization must be made in writing and contain a sworn statement that there is reasonable cause to believe the information may serve to prevent, detect or repress the commission of an indictable offence under an Act applicable in or outside Québec.

The application and the record pertaining to the hearing are confidential. The clerk of the Court of Québec shall take the necessary measures to ensure their confidentiality.

The judge to whom the application for authorization is made shall hear the application *ex parte* and *in camera*. The judge may make any order to preserve the confidentiality of the application, the record and the personal information. The record shall be sealed and kept in a place inaccessible to the public. **(Ref.: s. 297.2 SA)**

117. The Authority may communicate any information, including personal information, without the consent of the person concerned, to a person pursuant to an agreement or treaty entered into under an Act. **(Ref.: s. 297.3 SA)**

118. The Authority may, in accordance with section 68 of the Act respecting Access to documents held by public bodies and the Protection of personal information, enter into an agreement with a department or a body for the communication of personal information to facilitate the administration or enforcement of derivatives and fiscal legislation and penal or criminal legislation relating to derivatives. **(Ref.: s. 297.4 SA)**

119. Sections 115 to 118 apply, with the necessary modifications, to any information, including personal information, relating to a person registered under this proposed legislation as well as to that person's representative or to a person acting on behalf of a representative or a registrant. **(Ref.: s. 297.5 SA)**

120. Sections 115 to 119 apply despite sections 23 and 24 and subparagraphs (5) and (9) of the first paragraph of section 28 of the Act respecting Access to documents held by public bodies and the Protection of personal information, and sections 115, 116 and 119 apply despite section 59 of the Act respecting Access to documents held by public bodies and the Protection of personal information. **(Ref.: s. 297.6 SA)**

§2. – *Publications*

121. The Authority must publish a Bulletin periodically to inform financial circles of its activities in respect of derivatives. The Bulletin must contain, in particular, applications received, decisions rendered, policy statements and information filed. **(Ref.: s. 298 SA)**

122. The Authority must, no later than 31 July each year, submit to the Minister a report of its activities related to the administration of this proposed legislation for the preceding year.

The Minister shall table the Authority's activities report in the National Assembly within 30 days of its receipt or, if the Assembly is not sitting, within 30 days of resumption. **(Ref.: s. 302 SA)**

§3. – *Agreements*

123. The Authority may, according to law, make an agreement with a person from Québec or elsewhere, with a view to fostering the application of this proposed legislation or foreign legislation in matters of derivatives. **(Ref.: s. 295.1 SA)**

124. The Authority may, with the authorization of the Government, enter into an agreement with any organization or legal person for the examination of complaints and claims filed by persons referred to in section 85 who are dissatisfied with the examination carried out by the derivatives dealer or adviser.

Such an agreement may also provide that the organization or legal person may, if it considers it appropriate, act as a mediator if the concerned parties agree. **(Ref.: s. 295.2 SA)**

CHAPTER II

FINANCIAL MANAGEMENT

125. All amounts payable to the Authority pursuant to the administration of this proposed legislation shall form part of the revenue of the Authority. Such revenue shall be applied to the payment of the costs incurred in relation to the administration of this Act.

Any amounts deposited into a contingency reserve or fund set up under section 132 in the course of a fiscal year shall be regarded as current expenditures.

Likewise, any amounts held in such a reserve or fund shall not form part of the surplus referred to in section 128. **(Ref.: s. 330.1 SA)**

126. The costs incurred by the Government for the administration of this proposed legislation, as determined each year by the Government, shall be borne by the Authority. **(Ref.: s. 330.2 SA)**

127. The Authority shall, each year, submit to the Minister estimates of the Authority related to the administration of this proposed legislation for the ensuing fiscal year in accordance with the conditions determined by the Government.

The budget estimates shall be submitted to the Government for approval. **(Ref.: s. 330.3 SA)**

128. The Authority shall enter in its budgetary estimates, as revenue, any anticipated surplus for the current fiscal year and any other accumulated surplus.

It shall enter, as expenditure, any deficit incurred in the preceding fiscal year. **(Ref.: s. 330.4 SA)**

129. All amounts collected by the Authority shall, upon collection, be deposited in a Canadian bank or in a financial services cooperative governed by the Act respecting financial services cooperatives (chapter C-7.3). **(Ref.: s. 330.5 SA)**

130. The Authority may use any part of its revenue not required for the payment of expenditures or the amounts that constitute the reserve and the fund set up under section 132, to make short-term investments:

(1) in securities issued or guaranteed by the government of Canada, of Québec, of another Canadian province or of a Canadian territory;

(2) by way of deposit with financial institutions designated by the Government, or in certificates, notes and other short-term securities issued or guaranteed by such financial institutions;

(3) by way of deposit with the Caisse de dépôt et placement du Québec, to be administered by the Caisse in accordance with the investment policy determined by the Authority. **(Ref.: s. 330.6 SA)**

131. The costs incurred by the Authority for the administration of Title II of this proposed legislation and Title III of the Act respecting the Autorité des marchés financiers in respect of an activity governed by this proposed legislation shall be borne by the regulated entities that carry on such activities.

Such costs, established for each entity by the Authority at the end of its fiscal year, shall be comprised of a minimum contribution fixed by the Authority and the amount, if any, by which actual costs exceed the contribution. The actual costs shall be established on the basis of the rate schedule established by regulation.

The certificate issued by the Authority establishing the amount to be paid by each entity is peremptory. **(Ref. s. 330.9 SA)**

132. The Authority may, in the pursuit of its mission under this proposed legislation, set up a contingency reserve or, with the authorization of the Government, a designated fund into which it may deposit part of the revenues arising from the administration of this Act. **(Ref.: s. 276.4 SA)**

CHAPTER III

RULES APPLICABLE TO DECISIONS OF THE AUTHORITY

§1. – *General provisions*

133. The Authority shall exercise the discretion conferred on it in accordance with the public interest. **(Ref.: s. 316 SA)**

134. The Authority may, of its own initiative or upon application by an interested person, take any steps to ensure compliance with the provisions of this proposed legislation and the regulations made thereunder.

It may, in particular, require changes to any document established under this proposed legislation or the regulations, prohibit circulation of a document or order circulation of any changes to an existing document or information. **(Ref.: s. 272.1 SA)**

135. The Authority may, within the scope of its powers, participate in the making of any decision by any extra-provincial regulator responsible for the supervision of the derivatives market. **(Ref.: s. 312 SA)**

136. The Authority may, on such terms and conditions as it may determine, make a decision that is general or particular in its application and that applies specifically to any matter within its jurisdiction under this proposed legislation.

However, in exercising delegated or subdelegated functions or powers, a delegate may not make a decision that is general in its application.

137. The Authority may, of its own initiative and without notice, intervene in any civil action relating to any provision of this proposed legislation or the regulations. **(Ref.: s. 269 SA)**

138. The Authority may, within its discretionary powers, draw up policy statements with respect to the application of this proposed legislation.

The policy statements are not regulations. They are indicative of how the discretionary powers conferred on the Authority for purposes of the administration of this proposed legislation could be exercised. **(Ref.: s. 274 SA; s. 314.1 of An Act respecting trust companies and savings companies (S-29.01); s. 17 Payment Clearing and Settlement Act; s. 7 AMF Act)**

139. The Authority may impose an administrative monetary penalty for an act or omission in contravention of a provision of this proposed legislation in the cases, on the conditions and up to the amounts prescribed by regulation. **(Ref.: s. 274.1 SA)**

140. The Authority may appoint any expert whose assistance it deems expedient in the pursuit of the mission conferred on it by this proposed legislation. **(Ref.: s. 292 SA)**

§2. – *Decisions*

141. A member of the staff of the Authority or a delegate who has examined a matter for the purposes of undertaking an investigation ordered under section 191 must refrain from participating in the making of any decision pertaining to the matter, unless the parties consent thereto.

The Authority shall exercise its decision-making powers according to the rules referred to in section 35 of the Act respecting the Autorité des marchés financiers. **(Ref.: s. 312.1 SA)**

Furthermore, the Authority shall determine the supplementary rules of procedure applicable to deliberations.

142. By way of exception, the Authority may suspend the making of a decision until the applicant undertakes to assume all or part of the cost of the research work that the Authority considers necessary in order to make a decision on the application filed with it.

Similarly, the Authority may require the applicant to pay the costs relating to representation of a client or, if it is in the public interest, it may assume such costs itself. **(Ref.: s. 314.1 SA)**

143. The Authority or a delegate must, before making a decision unfavourably affecting the rights of a person, give that person a 15-day prior notice of the Authority's or delegate's intention to do so. The notice must indicate the grounds on which it is based and offer the possibility for the person to present observations or produce documents to complete the person's record.

However, the Authority or the delegate may, without prior notice, make a decision valid for a period not exceeding 15 days if the Authority or delegate is of the opinion that there is urgency or that any period of time granted to the person concerned to present observations may be detrimental.

The decision must state the reasons on which it is based and is effective as of the time the Authority sends notice thereof to the person concerned. Within six days of receiving the notice, the person may present observations to the Authority or the delegate, as applicable.

The Authority or the delegate may revoke such a decision. **(Ref.: s. 318 SA)**

144. The Authority must, before making a decision or an order under section 57, 58, 59 or 61, give the regulated entity notice of its intention to do so. The prior notice must indicate the grounds on which it is based and the date on which the decision or order is to take effect and it must offer the possibility for the entity to present observations or produce documents to complete the file.

However, the Authority may, without prior notice, make a decision or a provisional order valid for a period not exceeding 15 days if the Authority is of the opinion that there is urgency or that any period of time granted to the organization concerned to present observations may be detrimental.

The decision or order must state the reasons on which it is based and becomes effective on the day it is served on the entity concerned. That entity may, within six days of receiving the decision or order, present observations to the Authority.

The Authority may revoke a decision or order made under those sections. **(Ref.: s. 90 AMF Act)**

145. Any delegate examining a matter may refer it to the Authority. **(Ref.: s. 311 SA)**

146. The Authority may call before it any matter that is before a delegate and decide on it in his stead. **(Ref.: s. 309 SA)**

147. For the purpose of rendering a decision, the Authority may, within the scope of a consultation mechanism established by regulation or an agreement under section 123, consider a factual analysis prepared by the staff of an organization pursuing similar objects. **(Ref.: s. 318.1 SA)**

148. The Authority must give reasons for every decision that adversely affects the rights of a person. **(Ref.: s. 319 SA)**

149. The Authority shall send to the person concerned the decision it has made.

A decision rendered by a delegate under a delegated power shall be sent by the delegate, and a decision rendered by a delegate under a subdelegated power shall be sent by the person having subdelegated such power. **(Ref.: s. 320 SA)**

150. Every final decision of the Authority may, at the request of the Authority, be homologated by the Superior Court or the Court of Québec, according to their respective jurisdictions, and the decision becomes executory under the authority of the court that has homologated it. **(Ref.: s. 320.1 SA)**

151. A decision made by the Authority may be rectified on the record by the Authority in order to correct any error of form, clerical error or mistake in calculation contained therein. **(Ref.: s. 320.2 SA)**

§ 3. – *Exemptions*

152. The Authority may, on its own initiative or upon application by an interested person, exempt a derivative, person, offer or transaction from any or all of the requirements of this proposed legislation or a regulation made thereunder where it considers the exemption not to be detrimental to the public interest.

The decision is without appeal. **(Ref.: s. 263 SA)**

§ 4. – *Review by the Authority or the delegate*

153. The Authority may review its decisions at any time, except by reason of an error in law.

A delegate may review his decision if justified by a new fact. **(Ref.: s. 321 SA)**

154. The Authority may, of its own initiative, review any decision made by a delegate or recognized regulated entity, after having given the delegate or recognized regulated

entity an opportunity to present observations within the time period prescribed in section 143. **(Ref.: s. 310 SA)**

155. A person directly affected by a decision of the Authority, a delegate or a recognized regulated entity may, within 30 days, apply for a review of the decision by the Bureau de décision et de révision en valeurs mobilières. **(Ref.: s. 322 SA and s. 85 AMF Act)**

A regulated entity may also apply to the Bureau de décision et de révision en valeurs mobilières for a review of a decision regarding it made under section 57, 58, 59 or 61. **(Ref.: s. 310 SA)**

CHAPTER IV

BUREAU DE DÉCISION ET DE RÉVISION EN VALEURS MOBILIÈRES

§ 1. – *General provisions*

156. At the request of the Authority or any interested person, the Bureau de décision et de révision en valeurs mobilières (hereinafter referred to as the "Board") shall exercise the powers provided for in this proposed legislation. **(Ref.: s. 93 AMF Act)**

157. The Board may deny the benefit of an exemption contained in this proposed legislation or the regulations where it considers it necessary to do so to protect the public interest.

In particular, the Board may deny the benefit of an exemption to any person who has:

(1) made improper use of such an exemption;

(2) contravened this proposed legislation or a regulation made thereunder;

(3) contravened any other provision regarding derivatives;

(4) contravened the rules of a recognized exchange. **(Ref.: s. 264 SA)**

158. The Board may order a person or group of persons to cease any activity in respect of a transaction in derivatives.

The Board may, furthermore, order any person or group of persons to cease any activity in respect of the offering or trading of a derivative. **(Ref.: s. 265 SA)**

159. The Board may also order a person or group of persons to cease carrying on business as a derivatives adviser. **(Ref.: s. 266 SA)**

160. An order made under section 158 or 159 has effect from the time the person concerned is notified or becomes aware of it.

In the case of an order concerning a group of persons, publication of the order in the Bulletin or its distribution by any other medium ordinarily available to the persons concerned in the exercise of their profession is valid as notification under the first paragraph. **(Ref.: s. 267 SA)**

161. The Board may reprimand a registrant after having given the registrant the opportunity to be heard. **(Ref.: s. 273 SA)**

162. Where the Board becomes aware of facts establishing that a market participant, a registrant, a recognized regulated entity or any person having had the benefit of an exemption under this proposed legislation has failed to comply with a provision of this proposed legislation or a regulation made thereunder, it may impose an administrative penalty on the offender and cause it to be collected by the Authority.

Where the Board becomes aware of facts establishing that a market participant, a registrant or any other person acting on their behalf has, by an act or omission, contravened or assisted a person in contravening a provision of this proposed legislation or a regulation made thereunder, it may impose an administrative penalty on the offender.

The amount of the penalty may in no case exceed $1,000,000.

The amounts, if any, collected by the Authority pursuant to this section shall be paid into a fund established under section 132 and allocated to the education of investors or the promotion of their general interest. **(Ref.: s. 273.1 SA)**

163. The Board may impose on a person referred to in section 162, in addition to a penalty provided for therein, the obligation to repay to the Authority the cost of any inspection or investigation that provided proof of the facts establishing the failure to comply with the provision concerned, according to the rate established by regulation. **(Ref.: s. 273.2 SA)**

§2. – *Procedure*

164. The Board may, in exercising its powers, hold hearings in conjunction with and consult with any other authority responsible for the supervision of the derivatives market. **(Ref.: s. 323 SA)**

165. The Board shall determine the rules of procedure applicable to its hearings. **(Ref.: s. 323.1 SA)**

166. Sections 194 and 198 to 200 apply to any hearing of the Board, with the necessary modifications. **(Ref.: s. 323.2 SA)**

167. By way of exception, the Board may suspend the holding of a hearing until the applicant undertakes to assume all or part of the cost of the research work that the Board considers necessary in order to rule on the issue submitted to it.

Similarly, the Board may require a party to pay the costs relating to representation of a client or, if it is in the public interest, it may assume such costs itself. **(Ref.: s. 323.3 SA)**

168. Any person appearing before the Board may request that the testimony be recorded, at the person's own expense. If the person causes the testimony to be recorded, the person is required, at the request of the Board, to provide it with a copy of the transcript. **(Ref.: s. 323.4 SA)**

§3. – *Decisions*

169. Subject to the third paragraph of section 93 of the Act respecting the Autorité des marchés financiers, the Board shall exercise the discretion conferred on it in accordance with the public interest. **(Ref.: s. 323.5 SA)**

170. The Board, before rendering a decision that adversely affects the rights of a person, must give the person an opportunity to be heard. **(Ref.: s. 323.6 SA)**

171.However, a decision adversely affecting the rights of a person may, where it is imperative to do so, be rendered without a prior hearing.

In such a case, the Board must give the person concerned the opportunity to be heard within 15 days. **(Ref.: s. 323.7 SA)**

172. For the purpose of rendering a decision, the Board may, within the scope of a consultation mechanism established by regulation or an agreement under section 123, consider a factual analysis prepared by the staff of an organization pursuing similar objects. **(Ref.: s. 323.8 SA)**

173. The Board must give reasons for every decision that adversely affects the rights of a person. **(Ref.: s. 323.9 SA)**

174. The Board may file an authentic copy of a decision rendered by it at the office of the clerk of the Superior Court of the district in which the residence or domicile of the person concerned is situated or, if the person has neither residence nor domicile in Québec, at the office of the Superior Court in the district of Montréal.

The decision, on being filed, becomes executory in the same way as a decision of the Superior Court, and has all the effects thereof. **(Ref.: s. 323.10 SA)**

175. A decision containing any error of form, clerical error or mistake in calculation may be rectified on the record by a member of the Board having taken part in the decision. **(Ref.: s. 323.11 SA)**

§4. – *Review*

176. The Board may, on its own initiative or upon application by an interested person, review its decisions at any time, except by reason of an error in law. **(Ref.: s. 323.12 SA)**

177. An application to the Board for a review of a decision does not suspend the execution of the decision contested, unless the Board decides otherwise. **(Ref.: s. 323.13 SA)**

CHAPTER V

APPEALS

178. Any person directly interested in a final decision of the Board may appeal therefrom to the Court of Québec. **(Ref.: s. 324 SA)**

179. The appeal is made by filing a notice to that effect with the secretary of the Board within 30 days from the date of the decision appealed from.

Filing of the notice is in lieu of service on the Board. **(Ref.: s. 325 SA)**

180. The secretary shall immediately send the notice to the office of the Court of Québec for the district of Montréal or Québec, at the option of the appellant.

The secretary shall send four copies of the decision appealed from to the office. **(Ref.: s. 326 SA)**

181. The appeal is governed by articles 491 to 524 of the Code of Civil Procedure (R.S.Q. chapter C-25), with the necessary modifications. However, the parties are required to file only four copies of the factum of their pretensions. **(Ref.: s. 327 SA)**

182. The rules of practice of the Court of Appeal in civil matters also apply, except that the secretary of the Board is substituted for the clerk of the Superior Court. **(Ref.: s. 328 SA)**

183. An appeal does not suspend the execution of the decision appealed from, unless the Board or a judge of the Court of Québec decides otherwise. **(Ref.: s. 329 SA)**

184. The final appeal judgment may be appealed to the Court of Appeal with leave of a judge of the latter court. **(Ref.: s. 330 SA)**

TITLE VIII

ENFORCEMENT

CHAPTER I

INSPECTIONS AND INVESTIGATIONS

§1. – *Inspections*

185. The Authority has the power to make an inspection of the affairs of a derivatives dealer or adviser in order to ascertain the extent to which he complies with this proposed legislation and the regulations made thereunder. **(Ref.: s. 151.1 SA)**

186. The Authority may inspect the affairs of an investment fund, a person acting as depositary, trustee or manager of such a fund or any other market participant determined by regulation to assess compliance with a provision of this proposed legislation or a regulation made thereunder.

Sections 189 and 190 apply to such an inspection, with the necessary modifications. **(Ref.: s. 151.1.1 SA)**

187. The Authority has the power to inspect the affairs of a recognized regulated entity to ascertain:

(1) the extent to which it complies with this proposed legislation, the conditions of its recognition and the decisions of the Authority;

(2) the manner in which it exercises its functions and powers as delegate. **(Ref.: s. 78 AMF Act)**

188. The Authority may, to verify compliance with this proposed legislation, designate any person who is a staff member to carry out an inspection.

The Authority may, in writing, authorize a person other than a staff member to carry out an inspection and report to it.

It may also delegate, by agreement, all or part of its inspection functions and powers to a legal person, a partnership or any other recognized entity in accordance with Title III of the Act respecting the Autorité des marchés financiers. **(Ref.: s. 9 AMF Act)**

The Authority may authorize a person referred to in this section to exercise all or part of the powers conferred on it by section 185. **(Ref.: s. 13 AMF Act)**

189. The person authorized to carry out an inspection by the Authority or by a self-regulatory organization must, on request, produce identification and show the document attesting his authorization. **(Ref.: s. 11 AMF Act)**

190. The person so authorized may:

(1) enter, at any reasonable time of day, the establishment of a person where activities governed by this proposed legislation are carried on and carry out an inspection;

(2) require from the persons present any information related to the application of this proposed legislation as well as the production of any book, register, account, contract, record or other relevant document;

(3) examine and make copies of the documents containing information that is relevant to the activities of the person**.**

Any person who has the custody, possession or control of documents referred to in this section must, on request, communicate them to the person carrying out the inspection and facilitate their examination by such person. **(Ref.: s. 10 AMF Act)**

§2. – *Investigations*

191. The Authority may, of its own initiative or upon request, order an investigation:

(1) to ascertain whether this proposed legislation and the regulations made thereunder are complied with;

(2) to repress contraventions to this proposed legislation or the regulations;

(3) to repress contraventions to the derivatives legislation of another legislative authority;

(4) within the scope of an agreement entered into pursuant to section 123;

(5) if it has reasonable cause to believe that there has been a violation of this proposed legislation. **(Ref.: s. 239 SA)**

192. The Authority may summarily dismiss any request for an investigation considered to be frivolous or clearly unfounded. If so, the applicant must be informed of the dismissal. **(Ref.: s. 17 AMF Act)**

193. The Authority shall designate a member of its staff to conduct the investigation.

The Authority may also appoint a person who is not a member of its staff to be in charge of the investigation. The appointed person must be sworn in the manner provided in section 2 of the Act respecting public inquiry commissions (R.S.Q. chapter C-37), with the necessary modifications, before a judge of the Court of Québec or before a member of the staff of the Authority empowered for such purpose. **(Ref.: s. 247 SA)**

194. The person the Authority has authorized to conduct an investigation is vested with the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions, except for the power to order imprisonment.

Moreover, the Authority has, for the purposes of the investigation, all the powers of a judge of the Superior Court, except for the power to order imprisonment. **(Ref.: s. 14 AMF Act and s. 240 SA)**

195. The person shall transmit all investigation reports to the Authority. **(Ref.: s. 15 AMF Act)**

196. The Authority or its appointed agent may require any document or information it considers expedient for the discharge of its functions to be submitted to it by any of the following persons:

(1) a registrant;

(2) a recognized regulated entity;

(3) a market participant or a member of a self-regulatory organization;

(4) a person submitting an application to the Authority, or filing with it documents required by this proposed legislation or the regulations;

(5) a person referred to in section 186.

In addition, the Authority or its agent may require such persons to confirm by a sworn statement the authenticity or veracity of submitted documents or information.

197. The Authority or its appointed agent may require any person referred to in section 196 or any officer, director or employee thereof to submit to examination under oath. **(Ref.: s. 238 SA)**

198. No person called upon to testify in the course of an investigation or being examined under oath may refuse to answer or to produce any document on the ground that he might thereby be incriminated or exposed to a penalty or civil proceedings, subject to the Canada Evidence Act (R.S.C. 1985, chapter C-5). **(Ref.: s. 241 SA)**

199. The Authority may require the submission or delivery of any document related to the object of the investigation. It may return the documents remitted to it or otherwise determine disposal thereof. **(Ref.: s. 242 SA)**

200. A person who has remitted documents to the Authority in accordance with section 199 may inspect them or copy them at his own expense, by arrangement with the Authority. **(Ref.: s. 243 SA)**

201. Investigations made under section 191 are held *in camera*. **(Ref. : s. 244 SA)**

202. The Authority may forbid a person to disclose any information relating to an investigation to anyone but his advocate. **(Ref.: s. 245 SA)**

203. A person called on to testify at an investigation or on an examination may be assisted by the advocate of his choice. **(Ref.: s. 246 SA)**

§3. – *Prohibition to communicate*

204. No member of the staff of the Authority and no agent appointed by the Authority to carry out an inspection or investigation may communicate or allow to be communicated to anyone information obtained, or allow the examination of a document remitted to him in the course of the inspection or investigation, except where permitted by the Authority.

The same applies to any information or document provided or remitted voluntarily to the Authority in accordance with a policy statement.

Notwithstanding sections 9, 23, 24 and 59 of the Act respecting Access to documents held by public bodies and the Protection of personal information, only a person generally or specially authorized by the Authority may have access to such information or such a document. **(Ref.: s. 16 AMF Act)**

CHAPTER II

CONSERVATORY MEASURES

§1. – *Freeze orders*

205. The Authority may, for the purposes of or in the course of an investigation, request the Board to issue a freeze order and thereby order:

(1) the person who is or is about to be under investigation not to dispose of sums of money, securities or other assets in his possession;

(2) the person who is or is about to be under investigation to refrain from withdrawing sums of money, securities or other assets from any other person having them on deposit, under control or in safekeeping;

(3) any other person not to dispose of the sums of money, securities or other assets referred to in paragraph (2);

(4) any person who is a party to a contract or who has control thereof to liquidate the contract and retain the proceeds of liquidation until the Board, in writing, revokes the order or consents to withdraw a particular amount from its application, or until a court orders otherwise. **(Ref.: s. 249 SA)**

206. A freeze order is effective for a renewable period of 120 days from the time the person concerned is notified thereof.

The person concerned shall be notified not less than 15 days before the hearing during which the Board is to consider extending the order. The Board may grant the extension if the person concerned does not indicate his intention to be heard or if he fails to establish, to the satisfaction of the Board, that the reasons on which the order was initially based have ceased to exist. **(Ref.: s. 250 SA)**

207. If the person named in a freeze order under paragraph (3) of section 205 has leased a safety deposit box to the person concerned or put such a box at his disposal, he must immediately notify the Authority.

At the request of the Authority, the person shall break open the safety deposit box in the presence of an agent of the Authority, draw up an inventory of the contents in triplicate, and give one copy to the Authority and to the person concerned. **(Ref.: s. 251 SA)**

208. No freeze order applies to funds or securities in a clearing house or with a transfer agent, unless the order specifically refers thereto. **(Ref.: s. 252 SA)**

209. Where an order made under paragraph (3) of section 205 concerns a Canadian bank or financial institution, it applies only to the branches or agencies mentioned therein. **(Ref.: s. 253 SA)**

210. A freeze order also applies to funds, securities and other assets received after the effective date of the order. **(Ref.: s. 254 SA)**

211. Every person directly affected by a freeze order may apply to the Board for a determination of the particular sums of money, securities or other assets to which the order applies. **(Ref.: s. 255 SA)**

212. The Authority may enter, register or publish any order made under section 191 or 205 at the registry office or at any agency of the Government of Québec or of Canada where such order may be entered, registered or published.

Once so entered, registered or published, the order may be set up against any person whose right is entered, registered or published subsequently. **(Ref.: s. 256 SA)**

CHAPTER III

REMEDIAL MEASURES

213. The Authority may, by motion, apply to the Board for one or more of the following orders for the purpose of:

(1) directing a person to comply with:

(a) any provision of this proposed legislation or a regulation made thereunder;

(b) any decision of the Authority made under this proposed legislation;

(c) any rule of a recognized regulated entity, or any decision or order made thereunder;

(2) directing a market participant to submit to an evaluation of its practices and procedures and to amend same as required by the Authority;

(3) directing a person to remedy, to the extent possible, any violation of derivatives legislation;

(4) cancelling any transaction carried out by the person with respect to derivatives trading;

(5) directing a person to offer, acquire, alienate, cancel or liquidate any derivative or derivatives position held;

(6) directing a person to refund to a party to a derivative, a sum of money paid by the latter to acquire that status;

(7) directing a person who is a party to a derivative or who has control over a derivative, to liquidate the position and dispose of the proceeds of liquidation in a given manner;

(8) directing a person to file with a court or other interested party financial statements or reports in a form consistent with accounting principles applicable to derivatives matters or in such other form as the Board may determine;

(9) requiring the correction of a person's registers or files.

214. The Authority may, by motion, apply to a judge of the Superior Court for an injunction in respect of any matter relating to this proposed legislation or the regulations.

The motion for an injunction is an action.

The procedure prescribed in the Code of Civil Procedure applies, except that the Authority is not required to give security. **(Ref.: s. 268 SA)**

215. The Authority may, where it considers it to be in the public interest, apply to the court for a declaration to the effect that a person has failed to discharge an obligation under this proposed legislation or a regulation, and a ruling ordering the person to pay damages up to the amount of the damage caused to other persons.

The court may also impose punitive damages, or order the person to repay the profits derived as a result of the failure.

A motion by the Authority under this section shall be filed in the district in which the residence or principal establishment of the person concerned is situated or, if the person has neither residence nor establishment in Québec, in the district of Montréal. **(Ref.: s. 269.2 SA)**

TITLE IX

INTERJURISDICTIONAL ARRANGEMENTS AND IMMUNITY

CHAPTER I

INTERJURISDICTIONAL CO-OPERATION

216. For the purposes of this Chapter, section 4 and paragraphs (25) to (32) of section 273, unless the context indicates otherwise:

"extra-provincial commission" means a person empowered by the laws of another province or a territory of Canada to regulate the derivatives markets in or administer and enforce the derivatives laws of that province or territory;

"extra-provincial authority" means any power or function of an extra-provincial commission under the extra-provincial derivatives laws under which that commission operates;

"Québec authority" means any power or function of the Authority or the Board under this proposed legislation;

“derivatives laws” means:

(1) this proposed legislation;

(2) any other Québec laws governing the derivatives market;

(3) regulations made under this proposed legislation or any other Québec laws governing derivatives;

(4) the decisions and orders of the Authority or the Board;

(5) the laws of an extra-provincial commission referred to in sections 227 and 228;

“extra-provincial derivatives laws” means the laws administered by an extra-provincial commission applicable to the derivatives market.

Unless otherwise provided, a reference to an extra-provincial commission includes any person to whom that commission delegates an authority and any other person that, in respect of that commission, exercises powers or performs functions substantially similar to a Québec authority. **(Ref.: s. 305.1 SA)**

§1. – *Delegation of powers*

217. The Government or, with the Government’s authorization, the Authority may, according to law, enter into an agreement with another government or an extra-provincial commission for the delegation of powers conferred upon the Authority by this proposed legislation or conferred upon a similar body by the laws of another legislative authority. The Government may, according to law, enter into an agreement with another government for the delegation of a Québec authority and for the exercise of an extra-provincial authority in accordance with this Chapter. **(Ref.: s. 306 SA)**

218. The Authority may, by regulation, delegate a Québec authority to an extra-provincial commission and agree to exercise an extra-provincial authority. **(Ref.: s. 307 SA)**

219. The Authority may also, by order or decision, to the extent and on the conditions determined by regulation, delegate a Québec authority to an extra-provincial commission and agree to exercise an extra-provincial authority. **(Ref.: s. 307.1 SA)**

220. However, the powers and functions provided for in Titles VII and VIII may not be delegated under section 217, 218 or 219, except for the powers and functions provided for in sections 151, 153, 154, 155 and 176, and those provided for in sections 272 and 273. (**Reg.: s. 307.2 SA)**

221. The Authority may delegate or subdelegate to a member of its staff or to a self-regulatory organization an extra-provincial authority that has been delegated to the Authority by an extra-provincial commission under section 217, 218 or 219, in the manner and to the extent that the Authority may delegate or subdelegate the equivalent Québec authority under Québec derivatives laws, subject to any restrictions or conditions imposed by the extra-provincial commission.

An extra-provincial commission to which a Québec authority has been delegated under section 217, 218 or 219 may delegate or subdelegate that Québec authority to a member of its staff or to a self-regulatory organization, in the manner and to the extent that it may delegate or subdelegate the equivalent extra-provincial authority under the extra-provincial derivatives laws under which it operates, subject to any restrictions or conditions imposed by the Authority. **(Ref.: s. 307.3 SA)**

222. The Authority or the Board may call before it any matter that is before an extra-provincial commission exercising or intending to exercise a Québec authority delegated to it under section 217, 218 or 219, and may exercise that Québec authority in that commission's stead. **(Ref.: s. 307.4 SA)**

223. A decision made under Québec derivatives laws by an extra-provincial commission in accordance with section 217, 218, 219 or 221 of this proposed legislation is subject to section 155 of this proposed legislation and to section 85 of the Act respecting the Autorité des marchés financiers, with the necessary modifications, as if the decision were made by the Authority or a self-regulatory organization. **(Ref.: s. 307.5 SA)**

224. Chapter V of Title VII applies to a decision made by an extra-provincial commission in the exercise of a Québec authority delegated under section 217, 218 or 219 as if the decision were made by the Board.

The extra-provincial commission that made a decision under appeal is a respondent to an appeal under this section. **(Ref.: s. 307.6 SA)**

225. A decision made by a court in the jurisdiction of an extra-provincial commission on an appeal from a decision made by that commission in the exercise of a Québec authority delegated under section 217, 218 or 219 may, if authenticated by that court, be recognized by the Superior Court on the application of an interested person. The decision becomes enforceable on being so recognized. **(Ref.: s. 307.7 SA)**

226. Chapter V of Title VII applies to a decision made by the Board in the exercise of an extra-provincial authority under section 217, 218 or 219 as if the decision were made under this proposed legislation. This section does not apply to a decision refusing to exempt a person or group of persons from a requirement of extra-provincial derivatives laws.

The right to appeal a decision under this section applies whether or not a right to appeal the same decision exists in another province or territory of Canada. **(Ref.: s. 307.8 SA)**

§2. – *Mutual recognition and incorporation by reference*

227. The Authority may, by regulation, incorporate by reference any or all provisions of extra-provincial derivatives laws. **(Ref.: s. 308 SA)**

228. Subject to conditions determined by regulation, the Authority may, by order or decision, incorporate by reference any or all provisions of extra-provincial derivatives laws to be applied to a person or class of persons whose primary jurisdiction is the extra-provincial jurisdiction in which the provisions were first adopted, or to derivatives, offers or transactions. **(Ref.: s. 308.0.1 SA)**

229. The Authority may, by order, decision or regulation under section 227 or 228, incorporate by reference a provision as amended from time to time, whether amended before or after the adoption of the order, decision or regulation, and with the necessary modifications. **(Ref.: s. 308.0.2 SA)**

230. Subject to conditions determined by regulation, the Authority, the Board or a self-regulatory organization may make a decision or order regarding a person, a group of persons, a derivative, an offer or a transaction on the basis of a decision considered to be the same or substantially similar made by an extra-provincial commission on the same matter regarding that person, group of persons, derivative, transaction, distribution or trade.

Despite any other provision of this proposed legislation, the Authority, the Board or a self-regulatory organization may make a decision referred to in the first paragraph without again giving the interested person an opportunity to be heard, except in the cases determined by regulation. **(Ref.: s. 308.0.3 SA)**

231. The Government or, with the Government's authorization, the Authority may, according to law, make an agreement with the government of another province or territory or with another government or an extra-provincial commission to allow, in the areas specifically listed in the agreement, the authority of that province or territory or such other government or extra-provincial commission in respect of derivatives to which this proposed legislation applies, to be recognized in Québec with respect to the persons or organizations subject to such authority.

The agreement shall also provide for reciprocity, allowing a Québec authority to be recognized in the jurisdiction of the extra-provincial commission in the same areas and sectors, with respect to the persons or organizations subject to such authority. **(Ref.: s. 308.1 SA)**

232. The Authority may also, by regulation, allow an extra-provincial authority to be recognized in Québec in the areas specifically listed in the regulations, with respect to the persons or organizations subject to such authority.

A regulation under the first paragraph is applicable only if the equivalent Québec authority is recognized in the jurisdiction of the extra-provincial commission with respect to the persons or organizations subject to such authority. **(Ref.: s. 308.1.1 SA)**

233. This Division is deemed to allow an agreement or regulation to stipulate, in the areas specifically listed in the agreement or regulation:

(1) that the acts or decisions of a commission having jurisdiction in a province or territory are recognized in the other province or territory;

(2) that the powers exercised or the decisions made in a province or territory are presumed or deemed, as the case may be, to have been exercised or made in the other province or territory;

(3) that the persons or bodies having fulfilled certain obligations in a province or territory are exempted from fulfilling them in the other province or territory. **(Ref.: s. 308.2 SA)**

234. The Authority may, by regulation, or to the extent and on the conditions determined by regulation, by decision or order, determine that:

(1) a person or group of persons is deemed to be authorized to carry on an activity under Title III of this proposed legislation or a regulation made thereunder, including when the person or group of persons is authorized to carry on the activity by an extra-provincial commission or under extra-provincial derivatives laws;

(2) a person or group of persons is deemed to be authorized to carry on an activity under Title II or a regulation made thereunder, including when the person or group of persons is authorized to carry on the activity by an extra-provincial commission or under extra-provincial derivatives laws;

(3) a person or group of persons is deemed to be exempted from all or part of the requirements of Québec derivatives laws when an exemption has been granted for the same purpose by an extra-provincial commission or under extra-provincial derivatives laws; and

(4) an activity in respect of transactions in derivatives or in a particular derivative is deemed to be prohibited under section 158, including when an extra-provincial commission has imposed the same prohibition under a power similar to the Authority's power under section 158. **(Ref.: s. 308.2.1 SA)**

§3. – *General provisions*

235. For the purposes of sections 218, 219, 221, 227, 228, 229 and 232, the Government shall, by order, exercise, with respect to any Québec authority of the Board, the powers and functions specified in the order, to the extent and in accordance with the conditions it determines. **(Ref.: s. 308.2.2 SA)**

236. The Government may, by regulation, make any provision for the carrying out of this Title, including provisions that differ from those set out in the proposed Québec derivatives legislation. **(Ref.: s. 308.3 SA)**

TITLE X

PROHIBITIONS, OBLIGATIONS AND PENAL PROVISIONS

CHAPTER I

USE OF PRIVILEGED INFORMATION AND MISCELLANEOUS OFFENCES

237. No person prohibited from trading in securities of a reporting issuer by the effect of section 187 or 189 of the Securities Act may use the privileged information in any other manner unless he is justified in believing that the information is generally known to the public. Thus, no such person may trade in derivatives having the securities of that issuer as their underlying interest. Nor may the person trade in derivatives once their market prices are likely to be influenced by the price fluctuations of the issuer's securities. **(Ref.: s. 189.1 SA)**

238. No person informed of the investment program established by an investment fund or by an adviser who is a portfolio manager may use the information for his own benefit in trading in derivatives included in the program. **(Ref.: s. 190 SA)**

239. In addition to the adviser, the following persons are deemed to have knowledge of the investment program of an adviser who is a portfolio manager, if they participate in formulating his investment decisions or his recommendations to the client for whom the portfolio is managed, or learn of them before they are implemented:

(1) every partner of the adviser;

(2) every legal person that is an affiliate of the adviser;

(3) every officer or director of the adviser or of a legal person that is an affiliate of the adviser;

(4) every member of the staff of the adviser or of a legal person that is an affiliate of the adviser. **(Ref.: s. 191 SA)**

240. No person may make any representation to the effect that the Authority has concluded in favour of the use of a derivative or passed upon the financial situation, fitness or conduct of any registrant or any person qualified under section 96. **(Ref.: s. 192 SA)**

241. No derivatives dealer or adviser may multiply transactions for the account of a client solely to increase his remuneration. **(Ref.: s. 193 SA)**

CHAPTER II

SPECIFIC OFFENCES

242. It is an offence:

(1) to contravene a decision of the Authority;

(2) to fail to fulfil an undertaking with the Authority;

(3) to fail to furnish, within the prescribed time, information or a document required by this proposed legislation or the regulations made thereunder;

(4) to fail to appear after summons, to refuse to testify or to refuse to send or remit any document or item required by the Authority or an agent appointed by it in the course of an investigation;

(5) to attempt, in any manner, to hinder a representative of the Authority in the exercise of his functions in the course or for the purposes of an inspection or an investigation. **(Ref.: s. 195 SA)**

243. Every registered derivatives dealer or adviser who employs in a remunerated activity referred to in section 66 a natural person who is not registered with the Authority under the appropriate designation is guilty of an offence. **(Ref.: s. 195.1 SA)**

244. Influencing or attempting to influence the market price or the value of derivatives or the underlying interest of a derivative by means of unfair, improper or fraudulent practices is an offence. **(Ref.: s. 195.2 SA)**

245. A person shall not, directly or indirectly, engage in, or participate in any transaction or series of transactions, or method of trading relating to a trade in a derivative or the acquisition of a derivative or underlying interest or any act, practice or course of conduct, if the person knows, or ought reasonably to know, that the transaction or series of transactions, or method of trading or act, practice or course of conduct:

(1) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a derivative or underlying interest; or

(2) perpetrates a fraud on any person. **(Ref.: Reg. 23-101, s. 3.1(1))**

246. Every person who makes a misrepresentation in any of the following is guilty of an offence:

(1) the risk information document provided for in section 99;

(2) the information provided to the Authority in connection with that person's qualification and remitted to the client in accordance with section 99. **(Ref.: s. 196 SA)**

247. Every person is guilty of an offence who in any manner not specified in section 259 makes a misrepresentation:

(1) in respect of the offer or trading of a derivative;

(2) in any document or information filed with the Authority or one of its agents for purposes of the administration of this proposed legislation;

(3) in any document forwarded or record kept by any person pursuant to this proposed legislation.

For the purposes of this section, a misrepresentation is any misleading information on a fact that is likely to affect the decision of a client or a reasonable investor as well as any pure and simple omission of such a fact. **(Ref.: s. 197 SA)**

248. It is an offence, in offering, trading or effecting a transaction in a derivative:

(1) to represent that all or part of a margin deposit, or a premium paid, will be reimbursed;

(2) to undertake to assume any obligation with respect to a derivative;

(3) to give an undertaking relating to the future value or price of a derivative or its underlying interest.

An offer or distribution of, or trade in a derivative may be exempted from the application of subparagraph (1) of the first paragraph with the authorization of the Authority and on the conditions that it determines. **(Ref.: s. 199 SA)**

249. Every person who, not being registered as a derivatives dealer, adviser or representative, gives out information to the public that could influence the use of derivatives by a person and derives an advantage therefrom separate from his ordinary remuneration is guilty of an offence. **(Ref.: s. 200 SA)**

250. A derivatives adviser who is a portfolio manager is guilty of an offence if, in carrying out his mandate, he knowingly participates in any of the following transactions:

(1) the making of a loan or a guarantee to an issuer in which a person referred to in section 239 or an associate of that person is an officer or director, except with the written authorization of the client for whom the portfolio is managed given with full knowledge of the facts;

(2) the purchase of derivatives having as their underlying interest the securities of an issuer referred to in paragraph (1), except with the written authorization of the client for whom the portfolio is managed given with full knowledge of the facts;

(3) the offering or distribution of, or trading in a derivative with a person referred to in section 239 or an associate of that person;

(4) the making of a loan or a guarantee to a person referred to in section 239 or an associate of that person. **(Ref.: s. 201 SA)**

251. Any person who hinders the action of the Authority or a person it has authorized in the exercise of a power under sections 185 to 187 or section 191 of this proposed legislation is guilty of an offence and is liable to a fine of not less than $500 nor more than $5,000.

The fine is doubled in the event of a second or subsequent offence. **(Ref.: s. 19 AMF Act)**

CHAPTER III

PENAL PROVISIONS

252. Unless otherwise specified, every person who contravenes a provision of this proposed legislation is guilty of an offence and is liable, in the case of a natural person, to a fine of $1,000 to $20,000 and, in other cases, to a fine of $1,000 to $50,000.

In determining the penalty, the court shall take particular account of the harm done to the investors and the advantages derived from the offence. **(Ref.: s. 202 SA)**

253. Every contravention of a regulation made under this proposed legislation is an offence subject to the same provisions as offences under this proposed legislation. **(Ref.: s. 203 SA)**

254. In the case of an offence under section 244, 246 or 247 and in the case of a distribution without the information document or the information required in contravention of section 99, the fine shall be not less than $5,000 nor more than

$5,000,000; in the case of an offence under section 237, the maximum fine shall be $5,000,000 or four times the profit that may be realized, whichever is greater, and the minimum fine shall be twice the profit but not less than $5,000.

Where the person who effected a trade relying on privileged information, profit that may be realized means the difference between the price at which the initial trade was effected and the average market price of the security in the 10 trading days following general disclosure of the information; if, however, the position is liquidated within those 10 trading days, the average market price is replaced by the price actually obtained to the extent that such price yields a greater profit than what would be obtained at the average market price.

Where the person who committed the offence communicated privileged information, profit that may be realized means the consideration received for having communicated the information. **(Ref.: s. 204 SA)**

255. Every officer, director or employee of the principal offender, including a person remunerated on commission, who authorizes or permits an offence under this proposed legislation is liable to the same penalties as the principal offender. **(Ref.: s. 205 SA)**

256. Every conspiracy to commit an offence under this proposed legislation is an offence punishable by the penalties provided in section 252 or 254, according to the offence. **(Ref.: s. 207 SA)**

257. Every person who, by act or omission, aids a person in the commission of an offence is guilty of the offence as if he had committed it himself. He is liable to the penalties provided in section 252 or 254 according to the nature of the offence.

The same rule applies to a person who, by incitation, counsel or order induces a person to commit an offence. **(Ref.: s. 208 SA)**

258. Every person who offers, trades or distributes a derivative in contravention of section 99 or who contravenes any of sections 237, 244, 245, 246, 247, 255, 256 and 257 is liable, in addition to the fine provided for in the applicable penal provision, to imprisonment not exceeding five years less one day, notwithstanding articles 231 and 348 of the Code of Penal Procedure (R.S.Q. chapter C-25.1). **(Ref.: s. 208.1 SA)**

259. Penal proceedings for an offence under a provision of this proposed legislation may be instituted by the Authority. **(Ref.: s. 210 SA)**

260. The fine imposed by a court belongs to the Authority where the Authority has taken charge of the prosecution. **(Ref.: s. 210.1 SA)**

261. Penal proceedings for an offence under a provision of section 64, 66, 99, 237, 240, 241, 242, 243, 245, 246, 247, 248, 249 or 250 shall be prescribed by five years from the date on which the investigation record relating to the offence was opened.

The certificate of the secretary of the Authority indicating the date on which the investigation record was opened constitutes, failing any evidence to the contrary, conclusive proof of such fact. **(Ref.: s. 211 SA)**

262. The Authority may recover its costs for an investigation from any person found guilty of an offence under this proposed legislation or under the derivatives legislation of another legislative authority, according to the rate established by regulation.

The Authority shall prepare a statement of costs and present it to a judge of the Court of Québec after giving the interested parties five days' advance notice of the date of presentation.

The judge shall tax the costs, and his decision may be appealed with leave of a judge of the Court of Appeal. **(Ref.: s. 212 SA)**

263. A judge of the Court of Québec may, upon satisfactory proof of the authenticity of the signature thereon, endorse a warrant of arrest issued by a judge of another province or territory against any person on a charge of contravening the securities or derivatives legislation of that province or territory.

The warrant so endorsed is sufficient authority to the bearer or any peace officer of Québec to execute it and take the person arrested to the place indicated in the warrant. **(Ref.: s. 213 SA)**

CHAPTER IV

DELEGATIONS AND IMMUNITIES

264. The Authority's president and director general may delegate, generally or specially, to any of the superintendents, any other member of the staff of the Authority or any other person he designates any function or power under this proposed legislation. The decision shall be published in the *Gazette officielle du Québec* and in the Authority's Bulletin.

The president and director general may, in the instrument of delegation, authorize the subdelegation of the functions and powers he indicates; in such a case, he shall identify the superintendent, the staff member of the Authority or the person to whom such subdelegation may be made.

265. The Authority may delegate its powers to review its decisions, order an investigation under this proposed legislation or section 12 of the Act respecting the Autorité des marchés financiers, institute court proceedings under this proposed legislation in the name of the Authority, make regulations, define a policy statement or

make a decision under Title II of this proposed legislation only to a superintendent or to another officer reporting directly to the president and director general of the Authority.

The first paragraph does not prevent the Authority from delegating its powers in accordance with Title IX of this proposed legislation. **(Ref.: s. 283.1 SA and s. 61 AMF Act)**

266. No proceeding may be brought against the Authority, a member of its staff, its appointed agent or any delegate for official acts done in good faith in the exercise of their functions. **(Ref.: s. 283 SA)**

267. No proceedings may be brought against a person authorized to carry out an inspection by the Authority, by reason of acts performed in good faith in the exercise of his functions. **(Ref.: s. 11 AMF Act)**

268. Except on a question of jurisdiction, no recourse under article 33 of the Code of Civil Procedure or extraordinary recourse within the meaning of that Code may be exercised, nor any injunction granted against:

(1) the Authority, the members of its staff, its agents acting in their official capacity or any person authorized to carry out an inspection or conduct an investigation;

(2) a delegate exercising the powers delegated to him.

Any judge of the Court of Appeal may, upon motion, summarily annul any writ, order or injunction issued or granted contrary to the first paragraph. **(Ref.: s. 18 AMF Act and s. 284 SA)**

269. A judge of the Court of Appeal may, upon motion, summarily annul any decision rendered contrary to section 268. **(Ref.: s. 286 SA)**

270. If the president and director general, a staff member or an appointed agent of the Authority is prosecuted by a third party for an act done in the exercise of the person's functions, the Authority shall assume the person's defence and shall pay any damages awarded as compensation for the injury resulting from that act, unless the person committed a gross fault or a personal fault separable from those functions

In penal or criminal proceedings, however, the Authority shall pay the defence costs of the president and director general, a staff member or an appointed agent only if the person had reasonable grounds to believe that his conduct was in conformity with the law, or was discharged or acquitted. **(Ref.: s. 32.1 AMF Act)**

271. If the Authority prosecutes the president and director general, a staff member or an appointed agent for an act done in the exercise of the person's functions and loses its case, it shall pay the person's defence costs if the court so decides.

If the Authority wins its case only in part, the court may determine the amount of the defence costs it must pay. **(Ref.: s. 32.2 AMF Act)**

TITLE XI

REGULATIONS AND TRANSITIONAL AND FINAL PROVISIONS

CHAPTER I

REGULATIONS

272. The Authority may, by regulation:

(1) establish the principles that recognized regulated entities, market participants and registrants must follow;

(2) define a criterion or the procedure to be followed in any matter relating to the application of this proposed legislation;

(3) define the exceptions to the principle that a registrant must segregate his client's property from his own property and maintain separate accounting records;

(4) confer on some of the rules or standards established by a self-regulatory organization, and any amendments made thereto, the force and effect of a regulation made under this proposed legislation;

(5) establish the rates referred to in sections 131, 163 and 262;

(6) determine the provisions of Title III of this proposed legislation the contravention of which may be sanctioned by an administrative monetary penalty, and prescribe the amounts and conditions of such a penalty for the purposes of this proposed legislation;

(7) determine, for the purposes of section 186, the other market participants likely to be the subject of an inspection;

(8) prescribe the fees payable for any formality provided for in this proposed legislation or the regulations and for services rendered by the Authority, and the terms and conditions of payment.

A regulation made under this section shall be submitted to the Government for approval, with or without amendment.

The Government may make or amend a regulation under this section if the Authority does not do so within the time specified by the Government. **(Ref.: s. 331 SA)**

273. The Authority may, by regulation:

(1) establish rules governing derivatives offers, trades and transactions, in particular for the purpose of preventing fraud and manipulation and preventing offers or trades of derivatives that are unfairly detrimental to clients and investors;

(2) determine the form and content of the documents, declarations and attestations required under this proposed legislation or the regulations;

(3) fix various time limits and periods in accordance with the provisions of this proposed legislation;

(4) add to the definition of “accredited client” and determine the conditions for derivatives offers, trades and transactions with an accredited client for purposes of this proposed legislation;

(5) establish the rules applicable to a recognized regulated entity;

(6) establish a process whereby a rule adopted by a recognized regulated entity or an amendment thereof can become enforceable through self-certification thereof;

(7) regulate derivatives transactions;

(8) prescribe the information concerning derivatives or derivatives trading that must be transmitted to the Authority, recognized regulated entities, market participants, investors, clients or the general public, and establish the management rules to be complied with by a registrant in order to safeguard the interests of clients;

(9) prescribe the requirements applicable to market participants and registrants, including the requirements related to becoming a member or participant of a self-regulatory organization and to contributions to a protection fund by registrants;

(10) determine the conditions subject to which a person resident outside Québec may apply for registration;

(11) establish categories of registration, the conditions to be met by applicants, the duration of registration and the rules governing the activities of registrants;

(12) determine the principles governing the content of the program, the mandate and powers of the compliance officer as well as the measures to ensure the compliance officer’s independence for the purposes of section 84;

(13) prohibit or impose conditions applicable to any transaction designed to fix, influence or manipulate the market price of a derivative;

(14) define, for the purposes of section 90, the changes of which the Authority must be notified and those for which approval must be obtained from the Authority;

(15) impose conditions or require an undertaking for purposes of obtaining the Authority's qualification under section 96 of this proposed legislation;

(16) determine the cases and prescribe the information to which sections 99, 100 and 101 apply;

(17) define the cases in which the Authority may refuse to qualify a person under this proposed legislation;

(18) allow, prohibit or regulate a person's use of documents or advertising material in connection with offers, trades and distributions of derivatives;

(19) determine that a derivatives transaction effecting a change in control over a security is subject to the insider reporting requirement provided for in the Securities Act;

(20) determine the conditions for transmitting and receiving documents referred to in this proposed legislation or a regulation made thereunder;

(21) determine, from among the documents referred to in this proposed legislation or a regulation made thereunder, those that must be filed or transmitted using the medium or technology it specifies in the regulation;

(22) establish a mechanism for consulting with an organization pursuing similar objects, concerning matters governed by this proposed legislation and of the legislation of the legislative authority with jurisdiction over such organization;

(23) exempt a group of persons, derivatives or transactions from any or all of the requirements of this proposed legislation or the regulations, with or without conditions;

(24) establish the rules governing an over-the-counter derivatives market;

(25) determine any Québec authority that may be delegated to an extra-provincial commission and any extra-provincial authority that may be exercised by the Authority in accordance with section 231, and the conditions for the exercise thereof;

(26) determine the extent and conditions applicable to the order and decision made by the Authority, for the purposes of section 219;

(27) incorporate by reference into Québec derivatives laws any or all provisions of extra-provincial securities or derivatives laws, determine the cases in and conditions on which provisions of extra-provincial securities or derivatives laws may be so incorporated for the purposes of section 227, and determine the conditions applicable to the order or decision made by the Authority, for the purposes of section 228;

(28) determine the conditions on which the Authority, the Board or a self-regulatory organization may make a decision or order under a Québec authority on the basis of a decision made by an extra-provincial commission and the cases in which the decision may not be made without again giving the interested person an opportunity to be heard, in accordance with section 230;

(29) allow, in accordance with sections 232 to 234, an extra-provincial authority to be recognized in Québec in the areas specifically listed in the regulations, with respect to the persons or organizations subject to such authority;

(30) determine the cases in and conditions on which a person or group of persons is deemed, under paragraphs (1) and (2) of section 234, to be authorized to carry on an activity for the purposes of Québec derivatives laws, including when the person or group of persons is authorized to carry on the activity under extra-provincial securities or derivatives laws;

(31) determine the cases in and conditions on which an exemption from Québec derivatives laws is deemed, under paragraph (3) of section 234, to be granted by the Authority, including when an exemption has been granted under extra-provincial securities or derivatives laws;

(32) determine the circumstances in which an activity in respect of an offer or trade in derivatives or in a particular derivative is deemed to be prohibited under paragraph (4) of section 234, including when an extra-provincial commission has imposed the same prohibition under a power similar to the Authority's power under section 158;

(33) define the terms and expressions used for the purposes of this proposed legislation or the regulations under this section. **(Ref.: s. 331.1 SA)**

274. Every regulation made under section 273 must be approved, with or without amendment, by the Minister.

The Minister may make a regulation under this section if the Authority does not do so within the time specified by the Minister.

A draft regulation shall be published in the Bulletin of the Authority, accompanied with the notice required under section 10 of the Regulations Act (chapter R-18.1).

A draft regulation may not be submitted for approval or be made before 30 days have elapsed since its publication.

The regulation comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation. It shall also be published in the Bulletin.

A draft regulation under Title IX and paragraphs (25) to (32) of section 273 may be submitted for approval only if accompanied by a favourable notice from the Minister responsible for Canadian Intergovernmental Affairs. The same applies if such a draft regulation is made under the second paragraph.

Sections 4 to 8, 11 and 17 to 19 of the Regulations Act do not apply to a regulation made under section 273. **(Ref.: s. 331.2 SA)**

275. The Government may, by regulation:

(1) determine the other types of derivatives subject to this proposed legislation or criteria pursuant to which any instrument, financial contract or security is deemed equivalent to a derivative;

(2) determine the remunerated business to which section 66 applies;

(3) determine the policy that derivatives dealers and advisers must establish pursuant to section 85 or elements of that policy; **(Ref.: s. 332 SA)**

(4) make any provision for the carrying out of Title IX, including provisions that differ from those set out in Québec derivatives laws.

276. In exercising their regulatory powers, the Government, the Minister or the Authority may establish various classes of persons, derivatives and transactions and prescribe appropriate rules for each class. **(Ref.: s. 333 SA)**

277. A regulation made under this proposed legislation may confer a discretionary power on the Authority. **(Ref.: s. 334 SA)**

278. Draft regulations and regulations made under section 274 shall be published in the Bulletin of the Authority. **(Ref.: s. 335 SA)**

279. The Authority shall, not later than 31 July, submit to the Minister an annual report on its regulation activities under this proposed legislation for the period ending at the end of its last fiscal year.

The report must describe regulatory amendments and their impact on the derivatives market and on investors, and contain any other information required by the Minister. **(Ref.: s. 335.1 SA)**

280. The Minister shall table the report submitted under section 292 in the National Assembly within 30 days of its receipt or, if the Assembly is not sitting, within 30 days of resumption. **(Ref.: s. 335.2 SA)**

281. The competent parliamentary committee of the National Assembly may hear the Authority at least once a year to discuss the report submitted under section 292 and the Authority's regulation activities. **(Ref.: 335.3 SA)**

CHAPTER II

TRANSITIONAL AND FINAL PROVISIONS

282. Upon the initial registration of a person referred to in section 67, the Authority shall grant a reduction in the fees payable, calculated on a monthly basis, to take into account the fees that the person has already paid for any time subsequent to the effective date of the registration. **(Ref.: AMF Act, 2002, c. 45, s. 728)**

283. As of *(insert the date of coming into force of this proposed legislation)*, an exchange or a clearing house authorized under Title VI of the Securities Act*,* or a self-regulatory organization recognized under Title III of the Act respecting the Autorité des marchés financiers, to act in respect of transactions to which this proposed legislation applies shall be authorized to continue to carry on that activity in Québec in accordance with the conditions previously determined by the Authority under those Acts or, as of the date the Authority may determine, in accordance with the new conditions set by the Authority under this proposed legislation.

The same applies to an exchange, a clearing house or a person acting as a self-regulatory organization which, on that date, carries on activities in Québec under an exemption granted by the Authority under section 263 of the Securities Act or section 73 of the Act respecting the Autorité des marchés financiers. **(Ref.: AMF Act, 2002, c. 45, s. 740)**

284. The qualifications granted under section 67 of the Securities Act shall remain in effect notwithstanding their replacement by this proposed legislation.

The same applies to other decisions made under the Act in respect of matters corresponding to those to which this proposed legislation applies.

285. The Authority may file a complaint or exercise any other recourse or disciplinary power under the Securities Act in respect of a contravention or offence under the Act or the regulations made thereunder that was committed before *(insert the date of coming into force of this proposed legislation)* by a person registered under the Act in respect of matters corresponding to those to which this proposed legislation applies. **(Ref.: AMF Act, 2002, c. 45, s. 731)**

Every proceeding for an offence instituted under the Securities Act in respect of such a matter shall be continued in accordance with the Act.

286. The Government may, by regulation made before *(insert the date that is one year after the coming into force of this proposed legislation)*, or the Authority may, by order or decision, to the extent and on the conditions determined by regulation of the Government, adopt any other transitional provision or measure that is expedient for enforcing this proposed legislation.

A regulation made under the first paragraph shall not be subject to the publication requirement provided for in section 8 of the Regulations Act and shall enter into force on the date of its publication in the *Gazette officielle du Québec* or at any later date indicated therein. The regulation may also, if it provides therefor, apply from any date not prior to *(insert the date of coming into force of this proposed legislation)*. **(Ref.: AMF Act, 2002, c. 45, s. 746)**

287. The Minister of Finance is responsible for the enforcement of this proposed legislation.

288. The Minister shall, on or before *(insert the date that is five years after the coming into force of this proposed legislation)*, and every five years thereafter, report to the Government on the implementation of this proposed legislation and on the advisability of maintaining it in force and, as the case may be, of amending it.

The report must, within the following fifteen days, be tabled before the National Assembly if it is sitting or, if it is not, be filed with the President of the Assembly.

The President shall, within one year from the tabling or filing of the report, convene such committee of the Assembly as he shall designate to examine the advisability of maintaining this proposed legislation in force or, as the case may be, of amending it, and to hear the opinions of interested individuals and organizations.

289. This proposed legislation comes into force on the date or dates to be fixed by the Government.

This proposed derivatives regulation, which is being published by the Autorité des marchés financiers, is not a proposal of the Government and may be implemented only after it has been submitted to the government process for the approval or the making of regulations and has been duly adopted or approved by the Government. As well, enabling provisions in respect of this proposed regulation have to be adopted by the National Assembly.

PROPOSED DERIVATIVES REGULATION

Made under the proposed derivatives legislation.

TITLE I

DEFINITIONS AND INTERPRETATION:

1. In the proposed derivatives legislation, the regulations adopted thereunder and the policy statements adopted by the *Autorité des marchés financiers* (hereinafter referred to as the "Authority") in its administration thereof, unless the context indicates otherwise:

"accredited investor" means an accredited investor within the meaning of the Securities Act or the securities legislation of a jurisdiction of Canada, or of a regulation made thereunder; **(Ref.: Reg. 45-106, s. 1.1)**

"alternative trading system" means an organized market that satisfies the following conditions:

(1) it is not an exchange;

(2) it does not:

(a) require a person who offers a derivative to enter into an agreement to have the derivative traded on the market;

(b) provide, directly, or through one or more subscribers, a guarantee of a selling or buying market for a derivative on a continuous or reasonably continuous basis;

(c) set requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the market;

(d) discipline subscribers other than by exclusion from participation in the market; **(Ref.: Reg. 21-101, s. 1.1)**

"asset-backed security" means a security that has the following attributes:

(1) it is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that according to their terms convert into cash within a finite time, and any rights or assets designed to assure the servicing or timely distribution of proceeds to security holders; **(Ref.: Reg. 81-102, s. 1.1)**

(2) according to its terms, it entitles an investor in that security to a return of the investment of that investor at or by a time established by or determinable by reference to a contract, except as a result of losses incurred on, or the non-performance of, the financial asset; **(Ref.: Reg. 81-102, s. 1.1)**

"associate", where used to indicate a relationship with a person, means:

(1) any company in which the person owns securities assuring him of more than 10% of a class of shares to which are attached voting rights or an unlimited right to participate in earnings and in the assets upon winding-up; **(Ref.: s. 5 SA)**

(2) any partner of that person; **(Ref.: s. 5 SA)**

(3) any trust or succession in which the person has a substantial ownership interest or to which he fulfils the functions of a trustee or testamentary executor or similar functions; **(Ref.: s. 5 SA)**

(4) the spouse of that person and his children, as well as his relatives and his spouse's relatives, if they share his residence; **(Ref.: s. 5 SA)**

"Canadian bank" means a bank or an authorized foreign bank listed in Schedules I, II or III of the Bank Act (Statutes of Canada, 1991, c. 46);

"Canadian financial institution" means a loan corporation, trust company or savings company, insurance company, federation or financial services cooperative within the meaning of the *Act respecting financial services cooperatives* (R.S.Q. c. C-67.3), La Caisse centrale Desjardins, treasury board, credit union or caisse populaire that, in each case, is authorized to carry on business in Canada or a jurisdiction; **(Ref.: Reg. 45-106, s. 1.1; NI 14-101, s. 1.1 [Reg. 81-102]; s. 3 SA)**

"clearing corporation option" means an option that is an exchange-traded derivative issued and guaranteed by a recognized clearing house; **(Ref.: Reg. 81-102, s. 1.1; Rule One, Montréal Exchange)**

“commodity” means, in an original or processed state, an agricultural product, forest product, product of the sea, mineral, gas or hydrocarbon fuel product, as well as a raw material, metal, precious stone or other gem; **(Ref.: Reg. 81-102, s. 1.1)**

“control person” means a person that, alone or with others acting in concert by virtue of an agreement, holds a sufficient number of the voting rights attached to all outstanding voting securities of a legal person to affect materially the control of the legal person and if the person, alone or with others acting in concert by virtue of an agreement, holds more than 20% of those voting rights, the person is presumed to hold a sufficient number of the voting rights to affect materially the control of the legal person; **(Ref.: s. 5.2 SA)**

“conventional warrant or right” means a security of an issuer, other than a clearing house, that gives the holder the right to purchase other securities of the issuer or securities of an affiliate of the issuer; **(Ref.: Reg. 81-102, s. 1.1)**

“director” means a director of a legal person, or a natural person acting in a similar capacity for another person;

“direct trading access right” means the right to access direct trading on an organized market, obtained and exercised in one of the following manners:

(1) the right is granted to a registrant who participates in the market and is exercised by the registrant under the market’s supervision, or the right is granted to a registrant who is a participant of the market and is exercised by the registrant under the supervision of the market or its regulation services provider;

(2) the right is granted directly by the market to an accredited client and is exercised by the client under the supervision of the market or its regulation services provider;

(3) the right is offered to an accredited client by a registrant referred to in paragraph (1) and is exercised by the client under the supervision of the registrant; **(Ref.: Reg. 21-101, s. 1.1(b), “member”; Draft Regulation to amend Regulation 23-101, s. 1, end of consultation June 19, 2007)**

“foreign jurisdiction” means a country other than Canada or a political subdivision of a country other than Canada; **(Ref.: NI 14-101, s. 1.1)**

“forward contract” means an over-the-counter contract, not traded on an organized market or cleared by a recognized clearing house, in which a party agrees to do one or more of the following on terms, at a price and at a time or by a time in the future established by or determinable by reference to the contract:

(1) make or take delivery of the underlying interest of the contract;

(2) settle in cash instead of by delivery of the underlying interest; **(Ref.: Reg. 81-102, s. 1.1, "forward contract")**

"**futures contract**" means a contract:

(1) that trades on an organized market;

(2) that has standardized contractual conditions pursuant to the constituting documents, by-laws or rules of the said market;

(3) that is cleared by a clearing house;

(4) in which a party agrees to do one or more of the following on terms, at a price and at a time or by a time in the future established by or determinable by reference to the contract:

(a) make or take delivery of the underlying interest of the contract;

(b) settle in cash instead of by delivery of the underlying interest; **(Ref.: Reg. 81-102, s. 1.1, "standardized future")**

"IDA" means the Investment Dealers Association of Canada, a self-regulatory organization recognized by the Authority; **(Ref.: Reg. 31-103, s. 1.1)**

"index participation unit" means a security traded on an exchange and issued by an issuer the only purpose of which is to:

(1) hold the securities that are included in a specified index quoted on one or more exchanges in substantially the same proportion as those securities are reflected in that index;

(2) in the case of an investment fund, invest in a manner that causes the fund to replicate the performance of that index; **(Ref.: Reg. 81-102, s. 1.1)**

"insider" means an insider within the meaning of securities legislation;

"investment fund" means a mutual fund or a non-redeemable investment fund; **(Ref.: SA, s. 5, "investment fund")**

"jurisdiction" or **"jurisdiction of Canada"** means a province or territory of Canada except when used in the term "foreign jurisdiction"; **(Ref.: NI 14-101, s. 1.1)**

"long position" means a position held that, for:

(1) an option, entitles the holder to elect to purchase, sell, receive or deliver the underlying interest or, instead, pay or receive cash; **(Ref.: Reg. 81-102, s. 1.1)**

(2) a futures or forward contract, obliges the holder to accept delivery of the underlying interest or, instead, pay or receive cash;

(3) a call option on futures contracts, entitles the holder to elect to assume a long position in the futures contracts concerned;

(4) a put option on futures contracts, entitles the holder to elect to assume a short position in the futures contracts concerned;

(5) a swap, obliges the holder to accept delivery of the underlying interest or receive cash; **(Ref.: Reg. 81-102, s. 1.1)**

"material fact" means, in respect of a derivative, any information that may reasonably be expected to have a significant effect on its attributes, including its market price or value, the terms of the contract evidencing it, the risks associated with its use and, if the derivative is an exchange-traded derivative, on the operation of the market on which it trades, but does not include, unless the proposed legislation otherwise provides, information likely to have an effect on the market price or value of its underlying interest; **(Ref.: ss. 5 and 5.3 SA)**

"mutual fund" means:

(1) an issuer whose primary purpose is to invest money provided by its security holders and whose securities entitle the holder to receive on demand or within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets, including a separate fund or trust account, of the issuer; or

(2) a mutual fund designated under section 272.2 of the Securities Act; **(Ref.: SA, ss. 5 and 272.2)**

"non-redeemable investment fund" means:

(1) an issuer whose primary purpose is to invest money provided by its security holders, that does not invest for the purpose of exercising or seeking to exercise control of an issuer or of being actively involved in the management of any issuer in which it invests and that is not a mutual fund; **(Ref.: SA, ss. 5 and 272.2)**

(2) a non-redeemable investment fund designated under section 272.2 of the Securities Act (R.S.Q. c. V.1.1);

"officer" means the chair or vice-chair of the board of directors, the chief executive officer, the chief operating officer, the chief financial officer, the president, the vice-president, the secretary, the assistant secretary, the treasurer, the assistant

treasurer or the general manager of a person, or any natural person designated as such by such person or acting in a similar capacity; **(Ref.: s. 5 SA)**

"option" means a financial contract that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price established by or determinable under the provisions of or by reference to the contract, at or by a time established by the contract:

(1) receive an amount of cash determinable by reference to a specified quantity of the underlying interest; **Ref.: Reg. 81-102, s. 1.1; MIFID, Annex 1, section C(4))**

(2) purchase and take physical delivery of a specified quantity of the underlying interest;

(3) sell and make physical delivery of a specified quantity of the underlying interest;

"order" means a firm indication by a person, acting as principal or on behalf of a client, of a willingness to buy, sell or otherwise trade a derivative; **(Ref.: Reg. 21-101, s. 1.1)**

"position" means a long position or a short position;

"registered firm" means a registered derivatives dealer or adviser;

"registered natural person" means a natural person who is registered to act on behalf of a registered firm, including a registered firm's ultimate designated person and chief compliance officer;

"registrant" means a registered firm or a registered natural person;

"regulation services provider" means an exchange or a self-regulatory organization that, in respect of derivatives, provides services including market regulation services, but excludes a person that provides all or part of such market regulation services on behalf of the exchange or organization under an outsourcing agreement with the exchange or organization; **(Ref.: Reg. 21-101, s. 1.1; BSF guideline regarding outsourcing and network agreements dated Nov. 1999)**

"regulator" means the person who, within an extra-provincial commission as defined in section 216 of the proposed derivatives legislation, is authorized pursuant to a delegation of power to exercise the power in question in the name of the extra-provincial commission; **(Ref.: NI 14-101, s. 1.1, "regulator"; s. 305.1 SA)**

"self-regulatory organization" means a person whose objectives are related to the mission of the Authority and who has been or is deemed to have been recognized by the Authority for purposes of supervising an activity governed by the proposed derivatives legislation or another Act under the administration of the Authority; **(Ref.:**

s. 59 AMF Act; s. 312 An Act respecting the distribution of financial products and services; Reg. 21-101, s. 1.1: "self-regulatory entity")

"short position" means a position held that, for:

(1) an option, obliges the holder, at the election of another, to purchase, sell, receive or deliver the underlying interest or, instead, pay or receive cash;

(2) a futures or forward contract, obliges the holder, at the election of another, to deliver the underlying interest or, instead, pay or receive cash; **(Ref.: Reg. 81-102, s. 1.1)**

(3) a call option on futures contract, obliges the holder, at the election of another, to assume a short position in the futures contracts concerned;

(4) a put option on futures contracts, obliges the holder, at the election of another, to assume a long position in the futures contracts concerned; **(Ref.: Reg. 81-102, s. 1.1)**

"special warrant" means a security that, by its terms or the terms of an accompanying contractual obligation, entitles or requires the holder to acquire another security without payment of material additional consideration and obliges the issuer of the special warrant or the other security to undertake efforts to file a prospectus to qualify the distribution of the other security; **(Ref.: Reg. 81-102, s. 1.1)**

"subscriber" means, for an alternative trading system, a person who has entered into a contractual agreement with the alternative trading system for the purpose of accessing it and effecting trades thereon, or submitting, disseminating or displaying orders thereon; **(Ref.: Reg. 21-101, s. 1.1)**

"swap" means a contract that, among other things, provides for:

(1) the obligation to make, and the right to receive, cash payments based upon the value, level or price, or on relative changes or movements of the value, level or price, of one or more underlying interests**,** which payments may be netted against each other;

(2) the right or obligation to make, and the right or obligation to receive, physical delivery of an underlying interest instead of the cash payments referred to in paragraph (1); **(Ref.: Reg. 81-102, s. 1.1)**

2. In interpreting this proposed derivatives regulation, unless the context indicates otherwise:

(1) a reference to the Act is a reference to the proposed derivatives legislation or any applicable law according to context, and terms and expressions not specifically defined in section 1 have the meaning ascribed thereto in the proposed derivatives legislation;

(2) a reference to the adoption of a new rule includes an amendment to an existing rule, and a reference to a rule includes the amendment made thereto;

(3) a “minor amendment” means:

(a) a spelling, typographical, pagination or numbering correction;

(b) a procedural or administrative amendment;

(4) the annual financial statements required to be filed with the Authority shall include the information and statements required in accordance with generally accepted accounting principles, unless the Authority decides otherwise. **(Ref.: s. 116 Securities Regulation)**

TITLE II

HYBRID PRODUCTS

3. A hybrid product is an instrument or contract that has both the attributes of an over-the-counter derivative and a security.

It is subject to the application of the Act, unless, by reason of its terms, the terms of any ancilllary agreement made in respect thereof and the circumstances of the offer, issuance or entering into thereof, it is predominantly a security within the meaning of the Securities Act, in which case it shall be considered equivalent to such a security and shall be governed by the Securities Act.

Such predominance is presumed where:

(1) the offeror obtains payment of the purchase price of the product at the same time that the hybrid product is issued or is entered into;

(2) the product has a defined term or period of validity, and the purchaser is not required to make any payment in addition to the purchase price, whether as margin, settlement payment or otherwise, upon the expiry of the term or at maturity;

(3) the offeror is not subject to any margining requirements based on the market price of the product’s underlying interest; and

(4) the product is not offered or presented to the client as a derivative. **(Ref.: CEA § 27(7)(c) and § 27c)**

TITLE III

REGULATED ENTITIES

CHAPTER I

SELF-CERTIFICATION OF RULES

4. Before a regulated entity makes a rule governing its organization, operation, market, derivatives clearing activities or market regulation services, the conditions for accessing its services or the activities of its members or participants, the regulated entity shall submit the rule to a public consultation period of not less than 30 days.

To this end, it shall send the proposed rule to the Authority, which shall publish it in the Bulletin, and inform its members or participants thereof in accordance with the second paragraph of section 40 of the Act.

5. At the end of the consultation referred to in section 4, the regulated entity may make the rule enforceable by filing, with the Authority, a notice self-certifying the rule.

6. The notice of self-certification shall include the following information:

(1) the text of the rule;

(2) a summary of the comments made to the entity in the course of the consultation process;

(3) the results of any research, studies or comparative evaluations carried out with respect to the measures proposed in the rule;

(4) a discussion of the advantages and disadvantages of these measures as well as the reasons for which the entity believes they should be adopted;

(5) a statement of the benefits expected to result from the implementation of the rule;

(6) the date of such implementation;

(7) certification confirming that, to the best of the entity’s knowledge after reasonable verification, the rule complies with the provisions of the proposed derivatives legislation.

7. The process provided for in this Chapter and in Chapter 2 of this Title does not prevent a regulated entity from availing itself of the provisions of paragraph (2) of section 26 of the proposed derivatives legislation, relating to approval of a rule upon application to the Authority, on the conditions provided for therein.

CHAPTER II

EXCEPTIONS

8. In case of an emergency, the consultation prescribed under section 4 is not required and the regulated entity is only required to file with the Authority a written notice informing it of the text of the rule adopted by it before its effective date.

Nonetheless, on the business day following the effective date of the new rule, the regulated entity must file with the Authority the notice provided for in section 6, with the necessary modifications regarding the information to be included.

The notice must be accompanied by a description of the circumstances having given rise to the emergency process.

9. The consultation provided for under section 4 is not required if the rule is subject only to a minor amendment.

However, the entity must file the text of the amended rule with the Authority before the amendment takes effect. Filing of the text is in lieu of a notice of self-certification.

10. Despite section 4, if a rule involves a new product, the regulated entity is only required to send the Authority the text of the new rule.

Nonetheless, on the business day following the effective date of the rule, the regulated entity must file with the Authority a notice containing the following information:

(1) a description of the terms of the new product, the terms of any ancilllary agreement made in respect thereof and, if applicable, the circumstances of the offer, issuance or entering into thereof;

(2) the information provided for in section 6, with the necessary modifications.

TITLE IV

DERIVATIVES DEALERS AND ADVISERS

CHAPTER I

Division 1

Registration requirements

§1. – Registered firms

11. A person who wants to carry on business as a derivatives dealer must register in this category with the Authority. **(Ref.: s. 2.1 Reg. 31-103)**

12. No person may register as a derivatives dealer unless the person is a member of the IDA. **(Ref.: s. 2.9 Reg. 31-103)**

13. A derivatives adviser must register with the Authority in the category of "portfolio manager". **(Ref.: s. 2.3 Reg. 31-103)**

§2. – Registered natural persons

14. A natural person must register with the Authority in one of the following categories in order to act on behalf of a registered firm in a corresponding capacity:

(1) dealing representative in derivatives;

(2) advising representative in derivatives;

(3) associate advising representative in derivatives;

(4) ultimate designated person;

(5) chief compliance officer. **(Ref.: s. 2.6 Reg. 31-103)**

15. No natural person may act on behalf of a registered derivatives dealer unless the natural person is an approved person under the rules of the IDA. **(Ref.: s. 2.9 Reg. 31-103)**

16. Each registered firm must designate a natural person to be responsible for developing and implementing, on behalf of the registered firm, policies and procedures for the discharge of the registered firm's obligations under the derivatives legislation.

The natural person must register with the Authority in the category of “ultimate designated person”. **(Ref.: s. 2.8 Reg. 31-103)**

17. The following natural persons may be designated under section 16:

(1) the chief executive officer of the registered firm;

(2) an officer in charge of a division of the registered firm, if the activity that requires the firm to register occurs only within the division;

(3) a natural person acting in a capacity similar to that of an officer described in paragraph (1) or (2). **(Ref.: s. 2.8 Reg. 31-103)**

18. Each registered firm must designate a natural person to be responsible for discharging the registered firm’s obligations under the derivatives legislation.

The natural person must register with the Authority in the category of “chief compliance officer”. **(Ref.: s. 2.9 Reg. 31-103)**

19. The following natural persons may be designated under section 18:

(1) an officer or partner of the registered firm;

(2) if the registered firm is a sole proprietorship, the sole proprietor. **(Ref.: s. 2.9 Reg. 31-103)**

§3. – Forms

20. An applicant for registration as a derivatives dealer or adviser must file his application on the form prescribed in Schedule A.

Division 2

Requirements

§1. – Training and experience

21. To register as an advising representative of a derivatives adviser, a natural person must fulfill one of the following conditions:

(1) the person has earned a CFA charter and has acquired 12 months of derivatives management experience in the 36-month period before applying for registration;

(2) the person has successfully passed the courses required by the IDA for the training of a dealing representative in derivatives and has acquired 48 months of relevant derivatives management experience, 12 months of which was in the 36-month period before applying for registration. **(Ref.: s. 4.9 Reg. 31-103)**

22. To register as an associate advising representative in derivatives of a portfolio manager, a natural person must fulfill one of the requirements set out in section 21 or a combination thereof deemed sufficient by the Authority.

An associate advising representative must not advise in derivatives unless, before giving the advice, the advice is approved by an advising representative. **(Ref.: s. 2.7 Reg. 31-103)**

23. To register as a chief compliance officer in derivatives of a derivatives adviser, a natural person must fulfill the requirements of one of the following paragraphs:

(1) the person has been granted registration previously as an advising representative in derivatives of such an adviser;

(2) (a) the person has obtained professional designation as a lawyer, notary or chartered accountant in a jurisdiction of Canada or the equivalent in a foreign jurisdiction and is in good standing with the appropriate self-regulatory body or regulatory agency;

(b) the person has successfully passed the courses or examinations required by the IDA for an officer of a derivatives or securities dealer;

(c) the person has been employed for three consecutive years by a registered firm or a securities dealer or adviser, or the person has been providing professional services to the derivatives industry for three consecutive years and employed by a registered firm or a securities dealer or adviser for 12 consecutive months;

(3) (a) the person has successfully passed the courses or examinations required by the IDA for an officer of a derivatives or securities dealer;

(b) the person has been employed for five consecutive years by a registered firm or a securities dealer or adviser, including three consecutive years under the supervision of the chief compliance officer, or the person has been employed for five consecutive years by a Canadian financial institution in a compliance capacity relating to portfolio management and employed by a registered firm or a securities dealer or adviser for 12 consecutive months. **(Ref.: s. 4.11 Reg. 31-103)**

24. Subject to section 25, to register in a category, a natural person must have passed the examination or successfully completed the program required for the category in the 36-month period before applying for registration.

25. If a natural person passed the examination or successfully completed the program required for a category more than 36 months before the date the person applied for registration, the person may not register in the category unless the person fulfills one of the following conditions:

(1) the person was registered in the category, or its equivalent in another Canadian jurisdiction, for any 12 months during the 36 months before the date the person applied for registration;

(2) the person gained 12 months relevant experience during the 36 months before the date the person applied for registration. **(Ref.: s. 4.2 Reg. 31-103)**

§2. – Capital requirements

26. A derivatives dealer must comply with the IDA's capital adequacy requirements.

27. A derivatives adviser must maintain excess working capital, as calculated using Schedule B, *Calculation of excess working capital*, that is not less than zero. **(Ref.: s. 4.14 Reg. 31-103)**

28. For the purpose of calculating the excess working capital referred to in section 27, the minimum capital must be $25,000. **(Ref.: s. 4.14 Reg. 31-103)**

29. A derivatives adviser must calculate its excess working capital as at the end of each month by completing the form prescribed in Schedule B within 20 business days following the end of the month. **(Ref.: s. 4.14 Reg. 31-103)**

30. A derivatives adviser whose excess working capital falls below zero must notify the Authority as soon as practicable. **(Ref.: s. 4.15 Reg. 31-103)**

§3. – Insurance

31. A registered derivatives adviser that does not hold or have access to client cash or assets must maintain a financial institution bond for $50,000 with clauses A to E as set out in Schedule C.

In all other cases, the insurance amount must be the greater of the following amounts:

(1) 1% of total client assets under management, as calculated using the derivatives adviser's most recent financial records, up to $25,000,000, whichever is less;

(2) $200,000;

(3) the amount indicated to be necessary by a resolution of the board of directors of the derivatives adviser.

32. The amount of insurance required to be maintained must be by way of a financial institution bond with a double aggregate limit or a provision for full reinstatement of coverage. **(Ref.: s. 4.17 Reg. 31-103)**

CHAPTER II

EXEMPTIONS FROM REGISTRATION

33. The derivatives dealer registration requirement does not apply to a registered derivatives adviser that acts as intermediary between its own pooled fund and a fully-managed account managed by the adviser. **(Ref.: s. 2.2 Reg. 31-103)**

34. The exemption referred to in section 33 does not apply if the fully-managed account is created or used solely to qualify for the exemption. **(Ref.: s. 2.2 Reg. 31-103)**

35. The derivatives adviser registration requirement does not apply to a registered derivatives dealer that advises a client in connection with derivatives in which it deals, if the dealer does not manage the client's investment portfolio, which portfolio includes derivatives, through discretionary authority granted by the client. **(Ref.: s. 2.4 Reg. 31-103)**

36. The derivatives adviser registration requirement does not apply to a registered derivatives dealer that manages the investment portfolio of a client, which portfolio includes derivatives, through discretionary authority granted by the client, if the dealer is a member of the IDA and complies with the rules adopted by the IDA for portfolio managers in the following by-laws, regulations and policies:

(1) Regulation 1300, *Supervision of Accounts*;

(2) Part VII, *Discretionary and Managed Account Supervision*, of Policy 2, *Minimum Standards for Retail Account Supervision*;

(3) Policy 4, *Minimum Standards for Institutional Account Opening, Operation and Supervision*;

(4) Part I, *Proficiency Requirements*, of Policy 6, *Proficiency and Education*. **(Ref. s. 2.5 Reg. 31-103)**

37. The registration requirement provided for in section 13 does not apply to a person that holds himself out, either through direct advice, publications or writings not

purporting to be tailored to the needs of specific clients, as engaging in the business of advising others as regards specific derivatives or transactions in such derivatives. **(Ref.: s. 9.12 Reg. 31-103)**

CHAPTER IV

RULES OF CONDUCT FOR REGISTRANTS

Division 1

Compliance and notification system

38. A registered firm must establish and maintain a system of controls and supervision designed to:

(1) achieve compliance with the derivatives legislation;

(2) manage the risks associated with its business in conformity with prudent business practices.

39. It must also ensure that the activities of its officers, representatives and employees are governed by this system. **(Ref.: s. 5.26 Reg. 31-103)**

40. The system of controls referred to in section 38 must be set out in written policies and procedures. **(Ref.: s. 5.26 Reg. 31-103)**

41. The chief compliance officer must report directly to the board of directors of the registered firm or to the partnership comprising the firm as necessary and at least once annually concerning the registered firm's compliance with the derivatives legislation. (**Ref.: s. 5.27 Reg. 31-103)**

42. A registered firm must permit its ultimate designated person and its chief compliance officer to directly access its board of directors or the partnership comprising the firm at such times as either of them may deem necessary or advisable in view of their responsibilities. (**Ref.: s. 5.27 Reg. 31-103)**

43. A registered firm must document each complaint made to the registered firm about one of its products or services. **(Ref.: s. 5.29 Reg. 31-103)**

Division 2

Auditor

44. A registered firm must appoint an auditor that is authorized to sign an auditor's report by the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction. **(Ref.: s. 4.20 Reg. 31-103)**

45. A registered firm must direct its auditor in writing to conduct any review or audit required by the Authority with respect to the registered firm during its registration and must deliver a copy of the direction to the Authority with its application for registration or not later than the fifth business day after the registered firm changes its auditor. **(Ref.: s. 4.20 Reg. 31-103)**

46. If the Authority requires an audit or review of a registered firm under the direction referred to in section 45, the report must be delivered to the Authority as soon as practicable. **(Ref.: s. 4.20 Reg. 31-103)**

Division 3

Use of client credit balances

47. If a registrant maintains two or more accounts for a client, one of which is a derivatives account that contains a debit balance of more than $5,000, the registrant must transfer from any account containing a free credit balance as much of the free credit balance as is necessary to eliminate, or reduce to the greatest extent possible, the debit balance in the derivatives account. **(Ref.: s. 5.16 Reg. 31-103)**

A free credit balance includes money received from, or held for the account of, clients in the following cases:

(1) for payment for securities or derivatives purchased by the clients from or through the registrant where the registrant does not own such securities or derivatives at the time of purchase or has not purchased them on behalf of the clients, pending the purchase thereof by the registrant;

(2) as proceeds of securities or derivatives purchased from clients or sold by the registrant for the account of clients where securities or derivatives have been delivered to the registrant but payment has not been made, pending payment of such proceeds to the clients;

but does not include money that is committed to be used on a specific settlement date as payment for securities or derivatives if the registrant who maintains the securities or derivatives account prepares financial statements on a settlement date basis. **(Ref.: s. 5.16 Reg. 31-103)**

48. Section 47 does not apply to a registrant if the client has given one of the following directions to the registrant in writing, or orally with subsequent written confirmation:

(1) to transfer an amount that is less than the amount otherwise required to be transferred;

(2) not to transfer any amount from a securities account to a derivatives account.

49. A registrant who maintains a securities account and a derivatives account for the same client may make a transfer of any amount of a free credit balance from the securities account to the derivatives account or from the derivatives account to the securities account of the client, if the following conditions have been met:

(1) the transfer is made in accordance with a written agreement between the registrant and the client;

(2) the transfer is not a transfer referred to in section 47 or 48. **(Ref.: s. 5.16 Reg. 31-103)**

CHAPTER V

REVOCATION AND SUSPENSION OF REGISTRATION

50. A person whose registration is suspended for failure to comply with the requirements imposed on that person under section 73 or 74 of the proposed legislation must not do any of the following:

(1) deal in securities;

(2) advise in respect of securities;

(3) manage an investment fund. **(Ref.: s. 7.1 Reg. 31-103)**

51. If a registered firm is suspended, each representative of the firm is suspended. **(Ref.: s. 7.2 Reg. 31-103)**

52. If the IDA revokes or suspends a registered firm's membership, the firm's registration is suspended. **(Ref.: s. 7.3 Reg. 31-103)**

53. If the IDA revokes or suspends a natural person's approval in accordance with its rules, the natural person's registration is suspended. **(Ref.: s. 7.3 Reg. 31-103)**

54. A registered firm is suspended on the 30th day after the day its annual fees were due if the following conditions exist:

(1) the firm has not paid its annual fees;

(2) the Authority has notified the firm of its failure to pay. **(Ref.: s. 7.4 Reg. 31-103)**

55. The registration of a registered natural person who ceases to have an employment, partnership or agency relationship with a registered firm is suspended on the date the relationship ceased. **(Ref.: s. 7.5 Reg. 31-103)**

56. The registration of a natural person suspended under a provision of this Chapter, other than section 50, is reinstated on the date the natural person submits a completed form prescribed by Schedule D, *Application for registration of natural persons and permitted natural persons*, in accordance with Regulation 31-102 respecting National Registration Database, under the following conditions:

(1) the form is submitted to the Authority not later than 90 days after the suspension;

(2) the natural person is applying to be reinstated in the same category of registration in which the natural person was registered at the time of the suspension;

(3) the registered firm sponsoring the natural person's application is registered in the same category of registration in which the natural person's former sponsoring firm was registered. **(Ref.: s. 7.6 Reg. 31-103)**

57. If a registration has been suspended under this Chapter and it has not been reinstated, the registration is revoked on the second anniversary following the suspension. **(Ref.: s. 7.6 Reg. 31-103)**

TITLE IV

PUBLIC OFFERING OF DERIVATIVES

CHAPTER I

QUALIFICATION

58. The qualification referred to in section 96 of the Act is granted upon an application containing the following information:

(1) the corporate name of the applicant, the address of its head office, and the method and date of incorporation;

(2) a description of its activities and the terms and conditions of the derivatives it wishes to offer to the public;

(3) the name of each of its directors and their main occupations;

(4) its audited financial statements for the last fiscal year. **(Ref.: s. 71 Securities Regulation)**

59. The Authority may refuse to give its qualification where it considers it necessary to do so for the protection of clients or the public.

60. A qualified person must notify the Authority of the terms and conditions of each new type of derivative it wishes to offer to the public. **(Ref.: s. 71 Securities Regulation)**

61. A qualified person may offer a new type of derivative to the public when the Authority agrees thereto or does not raise any objection within 10 business days of receiving the notice referred to in section 60. **(Ref.: s. 71 Securities Regulation)**

62. A qualified person must file with the Authority, within 120 days from the end of its fiscal year, the information required by paragraphs (1) to (4) of section 58. **(Ref.: s. 71 Securities Regulation)**

CHAPTER II

COMMUNICATIONS WITH CLIENTS

63. The risk information document that must be remitted by a derivatives dealer to a client in accordance with section 99 of the Act must reproduce the information prescribed by Schedule E. **(Ref.: Decision 2004-PDG-0143 dated 27 October 2004)**

64. A dealer who remits the document referred to in section 63 to a client must obtain from the client a written acknowledgement of receipt on the date indicated therein.

The dealer must also maintain a record of the persons to whom he has remitted the document. **(Ref.: IDA Regulation 1800, 2(e)(ii) and 2(f)(ii))**

65. Before a registrant first effects a derivatives transaction for a client or first advises the client in respect of derivatives, the registrant must remit the relationship disclosure document to the client. **(Ref.: s. 5.10 Reg. 31-103)**

66. A relationship disclosure document must include the following information in clear and plain language:

(1) a description of the nature or type of account and, if the registered firm is a derivatives adviser, the account's discretionary nature;

(2) if the registered firm is a derivatives adviser:

(a) a description of how the firm will ensure that derivatives transactions are suitable for the client, based on the information provided by the client to the firm;

(b) a statement that there is no guarantee, implied or otherwise, that the investments will be successful;

(3) if the registered firm is a derivatives dealer, a description of the nature and scope of the firm's obligation to assess whether a purchase or sale of a derivative is suitable for a client prior to executing the transaction or at any other time;

(4) a discussion that identifies which products or services offered by the registered firm will meet the client's investment objectives and how they will do so;

(5) if the registered firm is a derivatives adviser, a discussion of the risk factors and types of risks that should be considered by the client when deciding to make investments that include derivatives transactions using a derivatives adviser;

(6) a description of the conflicts of interest that the registered firm is required to disclose under securities legislation;

(7) disclosure of the service fees and charges in respect of the operation of the client's derivatives accounts;

(8) a description of the costs the client will pay in making and holding investments and the compensation payable to the registered firm in relation to the different types of products that the client may purchase through the registered firm;

(9) if the registered firm is a derivatives adviser doing business with a derivatives subadviser that is associated with a fully-managed account product or service, information about the role of the derivatives subadviser and the derivatives subadviser's relationship to the client;

(10) a description of the content and frequency of reporting for each account or portfolio;

(11) information about how to contact the firm. **(Ref.: s. 5.12 Reg. 31-103)**

67. The relationship disclosure document must also contain the information the registered firm is required to obtain or verify in accordance with section 75 of the Act. **(Ref.: s. 5.12 Reg. 31-103)**

68. If there is a material change to the information in the relationship disclosure document, the registrant must notify the client in writing of the change before the registrant next effects a derivatives transaction for the client or next advises the client in respect of derivatives. **(Ref.: s. 5.10 Reg. 31-103)**

69. A registrant may notify a client under section 68 by providing the client with one of the following documents:

(1) a revised relationship disclosure document;

(2) a written notice describing the material change. **(Ref.: s. 5.10 Reg. 31-103)**

TITLE V

MOBILITY EXEMPTIONS

70. For purposes of this Title:

“principal regulator” means the regulatory entity empowered to regulate the derivatives markets or apply derivatives legislation:

(1) for a person other than a natural person, in the jurisdiction in Canada in which the person’s head office is located;

(2) for a natural person, in the jurisdiction in which the individual’s working office is located;

“working office” has the same meaning as in Regulation 31-101;

“eligible client” means, for a person, a client who:

(1) is a natural person and was a client of the person immediately before the client became a resident of the local jurisdiction;

(2) is a spouse or child of a client referred to in paragraph (1);

“Regulation 31-101” means Regulation 31-101 respecting National Registration System;

“non-principal jurisdiction” means, for a person, each jurisdiction in Canada that is not the principal jurisdiction of the person;

“principal jurisdiction” means, for a person, the jurisdiction of the principal regulator. **(Ref.: s. 9.19 Reg. 31-103)**

71. Despite the meaning ascribed to “principal regulator” by section 70, if the person concerned receives written notice from a regulatory entity referred to in that definition that specifies a principal regulator for the person, the principal regulator specified in the notice is the principal regulator for the person as of the later of:

(1) the date the person receives the notice;

(2) the effective date specified in the notice, if any. **(Ref.: s. 9.19 Reg. 31-103)**

72. As soon as practicable after relying on an exemption under section 76 or 77, the person must file a completed Schedule F. **(Ref.: s. 9.20 Reg. 31-103)**

73. Section 72 does not apply if the person is required to file Form 31-101F1 or Form 31-101F2 under Regulation 31-101. **(Ref.: s. 9.20 Reg. 31-103)**

74. A person relying on section 76 or 77 must file a completed Form 31-103F3, as soon as practicable, in the following cases:

(1) for a person, other than a natural person, if the person changes its head office to another principal jurisdiction;

(2) for a natural person, if the location of the natural person’s working office changes to another principal jurisdiction. **(Ref.: s. 9.21 Reg. 31-103)**

75. Section 74 does not apply if the person is required to file Form 31-101F2 under Regulation 31-101. **(Ref.: s. 9.21 Reg. 31-103)**

76. If the local jurisdiction is a non-principal jurisdiction, the registration requirement does not apply to a person who satisfies the following conditions:

(1) it is registered as a derivatives dealer or adviser in its principal jurisdiction;

(2) it is carrying on activities as a dealer or adviser with an eligible client;

(3) it does not deal or advise in derivatives in the local jurisdiction other than as it is permitted to in its principal jurisdiction according to its category of registration;

(4) it has 10 or fewer eligible clients in the local jurisdiction;

(5) it complies with the provisions of section 78. **(Ref.: s. 9.22 Reg. 31-103)**

77. If the local jurisdiction is a non-principal jurisdiction, the registration requirement does not apply to a natural person who satisfies the following conditions:

(1) the natural person is registered in his principal jurisdiction as a dealing, advising or associate advising representative in derivatives;

(2) the natural person's registered firm is registered in its principal jurisdiction;

(3) the natural person is dealing or advising in derivatives with an eligible client;

(4) the natural person does not carry on activities as a dealer or adviser in the local jurisdiction other than as he is permitted to in his principal jurisdiction according to his category of registration;

(5) in the local jurisdiction, the natural person deals or advises in securities with no more than five eligible clients;

(6) the natural person complies with the provisions of section 78. **(Ref.: s. 9.23 Reg. 31-103)**

78. For the purposes of paragraph (5) of section 76 and paragraph (6) of section 77, the person must:

(1) before relying on an exemption in section 76 or 77, disclose to an eligible client that the person:

(a) is exempt from registration in the local jurisdiction;

(b) is not subject to requirements otherwise usually applicable under local securities legislation;

(2) act fairly, honestly and in good faith in the course of the person's dealings with an eligible client. **(Ref.: s. 9.24 Reg. 31-103)**

TITLE VI

BUREAU DE DÉCISION ET DE RÉVISION EN VALEURS MOBILIÈRES

79. The rules of procedure established by the Bureau de décision et de révision en valeurs mobilières, hereinafter referred to as the "Board", under the Securities Act shall apply to applications made to it and hearings held by it under the proposed legislation.

SCHEDULE A
(Section 20)

APPLICATION FOR REGISTRATION AS A SECURITIES AND (OR) DERIVATIVES DEALER OR ADVISER

(The form will be based on Form 33-109F6, with the necessary modifications)

SCHEDULE B
(SECTION 27)

CALCULATION OF EXCESS WORKING CAPITAL

_____ Firm name
Capital Calculation
(as at _____, with comparative figures as at _____)

Component	**Current period**	**Prior period**
1. Current assets		
2. Less current assets not readily convertible into cash (e.g. prepaid expenses)		
3. Adjusted current assets Line 1 minus line 2 =		
Current liabilities		
5. Add 100% of long-term related party debt unless a subordination agreement has been executed (Note: If related party debt or payables are not subordinated, lenders can request payment at any time.)		
6. Adjusted current liabilities Line 4 plus line 5 =		
Adjusted working capital Line 3 minus line 6 =		
8. Less minimum capital		
9. Less market risk		
10. Less financial institution bond deductible		
11. Less guarantees		
12. Less unreconciled differences		
13. **Excess working capital**		

Notes

Line 1. Current assets: Per GAAP except that this calculation is to be done on an unconsolidated basis.

Line 4. Current liabilities: Per GAAP except that this calculation is to be done on an unconsolidated basis.

Line 5. Related party debt: In this line, “related party” has the meaning ascribed to that term in the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time.

Line 8. Minimum capital: The amount on this line must be not less than $25,000 for a derivatives adviser.

Line 9. Market risk: For all securities and derivatives owned by the firm, margin rules are to be applied as set out in the IDA Rule Book.

Line 11. Guarantees: If the registered firm is guaranteeing the commitments of another party, the total amount of the guarantee must be included in the capital calculation.

Line 12. Unreconciled differences: Full amount of any unreconciled differences (from either firm positions or client positions) must be included in capital (e.g. if there is a shortfall of cash in the trust account or in the firm’s bank accounts). If there is a shortfall in derivatives positions, the current market value plus the applicable margin amount should be used to quantify the capital requirement.

Management Certification

Registered Firm Name: _____

We have examined the attached capital calculation and certify that the firm is in compliance with the capital requirements as at _____.

Name and Title	**Signature**	**Date**
1. _____	_____	_____
2. _____	_____	_____

SCHEDULE C
(SECTION 31)

FINANCIAL INSTITUTION BOND CLAUSES

Clause	Name of clause	Details
A	Fidelity	This clause insures against any loss through dishonest or fraudulent acts of employees.
B	On premises	This clause insures against any loss of money and derivatives or other property through robbery, burglary, theft, hold-up, or other fraudulent means, mysterious disappearance, damage or destruction while within any of the insured's offices, the offices of any banking institution or clearing house or within any recognized place of safedeposit.
C	In transit	This clause insures against any loss of money and derivatives or other property through robbery, burglary, theft, hold-up, misplacement, mysterious disappearance, damage or destruction, while in transit in the custody of any employee or any person acting as messenger, except while in the mail or with a carrier for hire other than an armoured motor vehicle company.
D	Forgery or alterations	This clause insures against any loss through forgery or alteration of any cheques, drafts, promissory notes or other written orders or directions to pay sums in money, excluding derivatives.
E	Derivatives	This clause insures against any loss through having purchased or acquired, sold or delivered, or extended any credit or acted upon derivatives or other written instruments which prove to have been forged, counterfeited, raised or altered, or lost or stolen, or through having guaranteed in writing or witnessed any signatures upon any transfers, assignments or other documents or written instruments.

SCHEDULE D
(Section 56)

APPLICATION FOR REGISTRATION OF NATURAL PERSONS AND PERMITTED NATURAL PERSONS
(The form will be based on Form 33-109F4, with the necessary modifications)

SCHEDULE E
(Section 63)

RISK INFORMATION DOCUMENT

Risk Information Document for Derivatives

This brief document does not disclose all of the risks and other significant aspects of trading in futures contracts, options or other derivatives. In light of the risks, you should undertake such transactions only if you understand the nature of the contracts (and contractual relationships) into which you are entering and the extent of your exposure to risk. Trading in derivatives is not suitable for many members of the public. You should carefully consider whether trading is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances.

Futures Contracts

1. Effect of “Leverage” or “Gearing”

Transactions in futures contracts carry a high degree of risk. The amount of initial margin is small relative to the value of the futures contract so that transactions are “leveraged” or “geared”. A relatively small market movement will have a proportionately larger impact on the funds you have deposited or will have to deposit: this may work against you as well as for you. You may sustain a total loss of initial margin funds and any additional funds deposited with the firm to maintain your position. If the market moves against your position or margin levels are increased, you may be called upon to pay substantial additional funds on short notice to maintain your position. If you fail to comply with a request for additional funds within the time prescribed, your position may be liquidated at a loss and you will be liable for any resulting deficit.

2. Risk-reducing Orders or Strategies

The placing of certain orders (e.g. “stop-loss” order, where permitted under local law, or “stop-limit” orders) which are intended to limit losses to certain amounts may not be effective because market conditions may make it impossible to execute such orders. Strategies using combinations of positions, such as “spread” and “straddle” positions may be as risky as taking simple “long” or “short” positions.

Options

3. Variable Degree of Risk

Transactions in options carry a high degree of risk. Purchasers and sellers of options should familiarize themselves with the type of option (i.e. put or call) which they

contemplate trading and the associated risks. You should calculate the extent to which the value of the options must increase for your position to become profitable, taking into account the premium and all transaction costs.

The purchaser of options may offset or exercise the options or allow the options to expire. The exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying interest. If the option is on a futures contract, the purchaser will acquire a futures position with associated liabilities for margin (see the section on Futures Contracts above). If the purchased options expire worthless, you will suffer a total loss of your investment which will consist of the option premium plus transaction costs. If you are contemplating purchasing deep-out-of-the-money options, you should be aware that the chance of such options becoming profitable ordinarily is remote.

Selling ("writing" or "granting") an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of that amount. The seller will be liable for additional margin to maintain the position if the market moves unfavourably. The seller will also be exposed to the risk of the purchaser exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a futures contract, the seller will acquire a position in a future with associated liabilities for margin (see the section on Futures Contracts above). If the option is "covered" by the seller holding a corresponding position in the underlying interest or a futures contract or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

Certain exchanges in some jurisdictions permit deferred payment of the option premium, exposing the purchaser to liability for margin payments not exceeding the amount of the premium. The purchaser is still subject to the risk of losing the premium and transaction costs. When the option is exercised or expires, the purchaser is responsible for any unpaid premium outstanding at that time.

Additional Risks Common to Derivatives

4. Terms and Conditions of Contracts

You should ask the firm with which you deal about the terms and conditions of the specific futures contracts, options or other derivatives which you are trading and associated obligations (e.g. the circumstances under which you may become obligated to make or take delivery of the underlying interest and, in respect of options, expiration dates and restrictions on the time for exercise).

Under certain circumstances the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

5. Suspension or Restriction of Trading and Pricing Relationships

Market conditions (e.g. liquidity) and/or the operation of the rules of certain markets (e.g. the suspension of trading in any contract or contract month because of price limits or “circuit breakers”) may increase the risk of loss by making it difficult or impossible to effect transactions or liquidate/offset positions. If you have sold options, this may increase the risk of loss.

Further, normal pricing relationships between the underlying interest and the derivative may not exist. This can occur when, for example, the futures contract underlying the option is subject to price limits while the option is not.

The absence of an underlying reference price may make it difficult to judge “fair” value.

6. Deposited Cash and Property

You should familiarize yourself with the protections accorded money or other property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specific legislation or local rules. In some jurisdictions, property which had been specifically identifiable as your own will be prorated in the same manner as cash for purposes of distribution in the event of a shortfall.

7. Commission and Other Charges

Before you begin to trade, you should obtain a clear explanation of all commissions, fees and other charges for which you will be liable. These charges will affect your net profit (if any) or increase your loss.

8. Transactions in Other Jurisdictions

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should inquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

9. Currency Risks

The profit or loss in transactions in foreign currency-denominated derivatives (whether they are traded in your own or another jurisdiction) will be affected by fluctuations in

currency rates where there is a need to convert from the currency denomination of the derivative to another currency.

10. Trading Facilities

Most open-outcry and electronic trading facilities are supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. Your ability to recover certain losses may be subject to limits on liability imposed by the system provider, the market, the clearing house and/or member firms. Such limits may vary; you should ask the firm with which you deal for details in this respect.

11. Electronic Trading

Trading on an electronic trading system may differ not only from trading in an open-outcry market but also from trading on other electronic trading systems. If you undertake transactions on an electronic trading system, you will be exposed to risks associated with the system, including the failure of hardware and software. The result of any system failure may be that your order is either not executed according to your instructions or is not executed at all. Your ability to recover certain losses which are particularly attributable to trading on a market using an electronic trading system may be limited to less than the amount of your total loss.

12. Off-exchange Transactions

In some jurisdictions, and only then in restricted circumstances, firms are permitted to effect off-exchange transactions. The firm with which you deal may be acting as your counterparty to the transaction. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price or to assess the exposure to risk. For these reasons, these transactions may involve increased risks.

Off-exchange transactions may be less regulated or subject to a separate regulatory regime. Before you undertake such transactions, you should familiarize yourself with applicable rules.

SCHEDULE F
(Section 72)

NOTICE OF PRINCIPAL REGULATOR

1. Date:

2. Information about person

NRD # (if applicable):
Name: _____

3. Principal regulator

The securities regulatory authority or regulator in the following jurisdiction is the principal regulator for the person:

4. Previous notice filed

If the person has previously filed a Form 31-103F1, indicate the principal regulator noted in the previous notice:

5. Reasons for principal regulator

The principal regulator for the person is its principal regulator:

(1) based on (check one)

the location of the person's head office (for a registered firm)

or

the location of the person's working office (for a registered natural person)

(2) on the following basis (provide details):

_____
_____
_____
_____

Proposed Derivatives Framework

Proposed Policy Statements

These proposed policy statements may be adopted under the authority of the proposed derivatives legislation in connection with the administration thereof, and enabling provisions in respect of this proposed legislation will also have to be adopted beforehand by the National Assembly.

CORPORATE GOVERNANCE PRACTICES OF REGULATED ENTITIES

Purpose

Corporate governance pertains to the relationships among owners, management and other interested parties, including subscribers or members of an entity and authorities representing the public interest. The main features of governance are ownership, the composition and duties of the board of directors, key board committees, the relationships between management and the board as well as the channels through which management reports on its activities.

A policy statement will set out best practices respecting the corporate governance of regulated entities, taking into account the importance, complexity and risk profile of their activities. They are intended to:

a) achieve a balance between providing protection to investors, and fostering the development and effective operation of fair and efficient derivatives markets and sustaining confidence in such markets;

b) recognize that corporate governance is evolving and take into account the impact of governance developments around the world.

Governance practices must be clear and transparent to meet the public interest requirements, while seeking to achieve the goals of shareholders and subscribers.

Meaning of independence

A director would be independent if he has not had a direct or indirect material relationship with a regulated entity, subscribers or members of the entity, or with its shareholders in the past twelve (12) months.

A material relationship means a relationship that the board of directors could reasonably expect to impair the independent judgment of a director.

Composition of board of directors

The board of directors should be made up of at least 50% independent directors, excluding the chief executive officer.

The chair of the board should be an independent director. Where this is not appropriate, an independent director should be appointed to act as “lead director.” An independent chair or an independent lead director should act as the effective leader of the board and ensure that the board’s agenda will enable him to successfully carry out his duties.

Representation on the board should reflect the diversity of shareholders as well as subscribers or members of the regulated entity, taking into account their number, size and legal structure.

A nominating committee should be set up by the board, including a majority of independent directors, with the mandate to set up, examine and ensure an efficient decision-making process for the nomination and election of directors.

The board should have written rules related to any vacancy due to the death, disability or resignation of a director.

Board mandate

The board should adopt a written mandate setting out its role and responsibilities in order in particular to:

a) satisfy itself, to the extent possible, that the chief executive officer and the other senior management members of the regulated entity are honest and create a culture of integrity throughout the entity;

b) adopt a strategic planning process;

c) identify the principal risks of the regulated entity’s business and ensure the implementation of appropriate systems to manage these risks;

d) ensure the development and implementation of internal control and information management systems for the regulated entity;

e) examine the interim financial statements and approve the audited annual financial statements;

f) ensure succession planning in respect of senior management members of the regulated entity;

g) develop a set of principles and guidelines respecting corporate governance applicable to the regulated entity;

h) formulate clear position descriptions for the chair of the board and the chair of each board committee;

i) prepare, together with the chief executive officer, a clear position description for the chief executive officer, delineating management’s responsibilities.

Orientation and continuing education of directors

The board should ensure that all new directors are given a complete orientation. They should fully understand the role of the board and its committees, as well as the contribution expected of each director. All directors should also understand the nature and operation of the regulated entity.

The board should give all its members continuing education opportunities so that they may maintain or improve their skills and abilities as directors.

Code of business conduct and ethics and management of conflicts of interest

The board should adopt a written code of business conduct and ethics, defining standards to promote and ensure integrity and to deter wrongdoing. In particular, the code should address the following issues:

a) conflicts of interest;

b) protection and proper use of corporate assets and opportunities available to the regulated entity;

c) confidentiality of information about the regulated entity, its members, subscribers or participants;

d) fair dealing with subscribers or members, shareholders, suppliers, employees and competitors of the regulated entity;

e) compliance with laws and regulations;

f) reporting of any illegal or unethical conduct.

The board should be responsible for monitoring compliance with the code. Only the board, or a board committee, should be authorized to grant any waivers from the code.

The regulated entity should promote the effective management of potential conflicts of interest with respect to its obligation to provide fair and equitable service, including by:

a) implementing a separate administrative structure for regulatory functions where the regulated entity performs regulatory functions and carries on business activities;

b) creating, in the case of an entity that performs regulatory functions and carries on business activities and in order to ensure the separation of such functions and activities, a regulatory oversight committee.

Clearing house

As each stakeholder in clearing and settlement activities does not share the same risk management interests, the governance structure of a clearing house should minimize the possibility of conflicts of interest that could hamper clearing and settlement activities or the effectiveness of the risk management policies, controls and standards of the clearing house by ensuring in particular that:

a) the persons in charge of risk management for the clearing house are sufficiently independent to perform their role;

b) the teams in charge of risk management are separate from those in charge of other activities of the clearing house, such as marketing or customer service;

c) a committee is created made up of independent members responsible for risk assessment and reporting to the board of directors.

The mandate and operating procedures of the risk management committee of the clearing house should be clearly defined.

The risk management committee should in particular be mandated to:

a) advise and assist the board of directors of the clearing house with respect to risk management policies (e.g. membership criteria, margin requirements, delivery and settlement procedures, acceptable forms of guarantees and default risk management);

b) recommend improvements to risk management measures, taking into account the costs associated with such measures and their impact on subscribers or members of the clearing house, in line with international standards.

TRANSMISSION OF INFORMATION BY REGULATED ENTITIES

Purpose

In order to adequately supervise the activities of recognized regulated entities, the Authority requires certain information for a complete description of the activities carried on by the regulated entities under its supervision and their ability to meet the requirements of their recognition.

The Authority expects that, in a spirit of co-operation, a regulated entity will communicate in a timely manner any information about which the Authority should reasonably be informed in order to demonstrate that it complies with the terms of its recognition as well as any applicable provision of the proposed legislation. This information may in particular be financial, operational or legal in nature and relate to risk management, complaints and disciplinary measures, among other matters.

Regular disclosure

A regulated entity must provide the Authority with the following documents on an ongoing basis and within the prescribed time:

a) the unaudited interim financial statements within 60 days of the end of each quarter, as well as the audited annual financial statements prepared in accordance with generally accepted accounting principles within 90 days of the end of each fiscal year; in the case of a subsidiary that is a regulated entity, annual and interim financial statements should be presented on a consolidated and unconsolidated basis;

b) any document required by the Authority to determine its financial viability;

c) the annual report provided to shareholders, members or subscribers;

d) any notice, bulletin or other written communication sent to members, participants or subscribers;

e) a list of complaints with respect to the regulated entity, including a brief description of complaints, within 60 days of the end of its fiscal year;

f) on an annual basis, the following additional documents:

   i) a list of directors and officers;

   ii) a list of the board committees of the regulated entity, stating the members, the mandate and the responsibilities of each committee;

   iii) a list of all subscribers, members or participants, as the case may be;

   iv) the fee schedule relating to the services rendered by the regulated entity.

g) in the case of a clearing house, the filing of internal audit reports and risk management reports according to a timetable prescribed by the Authority;

h) in the case of an exchange, the annual filing of a report of an independent review carried out in accordance with the audit procedures and standards set out in Part 12 of Regulation 21-101 respecting Marketplace Operation relating to the capacity, integrity and security of marketplace systems.

Occasional disclosure

A regulated entity must give the Authority prior notice of proposed material changes, including:

a) any decision to enter into an agreement, memorandum of understanding or other similar undertaking with a government or regulatory body, a self-regulatory organization, a clearing house, exchange or other market;

b) any decision, either directly or through an affiliate, to pursue a new business activity or to cease a business activity carried on by the regulated entity;

c) any material change to its organizational structure or the manner in which it performs its functions, powers and activities when such a measure could affect its services;

d) any significant agreement entered into in the normal course of business, including unanimous shareholders' agreements or agreements among members to which it is a party;

e) any change in auditor and the reasons therefor.

A regulated entity should, without delay, send the Authority notice of any material change, in particular in the following circumstances:

a) the appointment of a director or officer;

b) the effective or anticipated resignation of a director, officer or auditor, including a statement of the reasons for the resignation;

c) the fact that it is the subject of an order, directive or similar action by a government or regulatory body;

d) when it has knowledge of being the subject of a criminal or regulatory investigation;

e) when it is the subject of a significant lawsuit or learns thereof;

f) in the case of an exchange, the suspension or halting of trading;

g) when it cannot perform its functions or when there is an interruption in the performance of its functions;

h) when a regulated entity takes disciplinary measures against a participant, member or subscriber or any of their employees;

i) when a regulated entity is of the opinion that a participant, member or subscriber or any of their employees is violating the proposed legislation or any other law or regulation;

j) when a regulated entity determines that a participant, member or subscriber has failed to fulfill its obligations.

Such notice should include, where applicable, the position of the regulated entity, the steps it intends to take, the consequences for the market and any proposed change intended to avoid or overcome such a situation, as the case may be.

SELF-CERTIFICATION OF EXCHANGE-TRADED DERIVATIVES

Purpose

Under the proposed legislation, an exchange-traded derivative must be designed to ensure a high degree of protection against manipulation.

Regulated entities may certify that exchange-traded derivatives and amendments to related rules comply with the proposed legislation. They may submit to the Authority their certification for a new derivative and related rules or a rule amendment affecting an existing product before the rule amendment comes into effect. Self-certification of a new derivative and the related rules is considered to be an administrative matter. The regulated entity may therefore submit its certification in accordance with the process prescribed by the proposed regulation at the time such are distributed and come into effect.

Documentation

The documents submitted should identify the derivative, the underlying interest and the listing date. They should also give a general and technical description of the derivative, noting in particular the cash market practices for the underlying interest, the public and economic interest of the derivative, speculative and hedging limits, as well as any delivery terms.

With respect to novel derivatives, the Authority will expect regulated entities to provide a copy of market surveys, benchmarking or other reports demonstrating how the proposed derivative will comply with the proposed legislation.

The self-certification will be considered public and will be published on the website of the Authority. Regulated entities should clearly set out in the documents being filed whether they consider certain aspects of the information to be confidential or non-public.

It is not necessary to file minor amendments with the Authority before they come into effect. It is sufficient to notify the Authority at the same time as market participants. The following are examples of minor technical or administrative rule amendments relating to derivatives:

a) changes in trading hours;

b) changes respecting delivery;

c) changes to option contracts, other than those relating to last trading day, expiry date, strike price delistings and speculative position limits;

d) reductions in the minimum price change;

e) typographical corrections or numbering changes;

f) adjustments to margin rates.

The following table gives guidance as to the information the Authority would expect to receive regarding the characteristics of a derivative. It is particularly important to provide greater detail where novel products are listed, where derivatives market conditions differ materially from the underlying cash market, where cash price references are not derived from a single source, or where aggregation of positions across products is envisaged.

Term or condition	**Regulatory requirement**	**Guidance**	**Regulated entity proposal (or rule number)**
a) Characteristics of underlying interest	The derivative must have a public and economic interest; the underlying interest must be liquid with a reliable reference price.	Provide a detailed explanation of the derivative and the underlying interest for novel products.	
b) Characteristics of the option (including strike price listing procedures and increments, expiry date, type of contract, etc.)	Transparency and market efficiency.		
c) Delivery terms	Market efficiency	Where applicable, include the delivery points, quality differentials, delivery facilities, etc.	
d) Contract size or trading unit	Market efficiency and anti-manipulation	Also indicate minimum quantity thresholds for block and cross trades, and any reporting time and market exposure delays.	

e) Delivery months	Market efficiency		
f) Delivery period and last trading day	Market efficiency and anti-manipulation		
g) Minimum price change	Market efficiency and anti-manipulation		
h) Daily price limit provisions	Market efficiency and anti-manipulation	Indicate relationship to cash market price movements.	
i) Speculative position limits	Anti-manipulation	Indicate the limits for spot month, the method for calculating non-spot months (e.g. individually or combined), and spread exemptions.	
j) Reporting level for large positions	Anti-manipulation	Also describe relationship with other contracts, cash markets, netting of spread positions, etc.	
k) Aggregation policy	Anti-manipulation		
l) Procedures for calculation and dissemination of settlement price	Market efficiency and transparency	Also describe safeguards against manipulation, third party licence where applicable, fallback.	
m) Trading hours	Market efficiency		
n) Provisions for halting trading	Market efficiency	Provide details regarding discretionary and	

		automatic halts, in particular as relates to the underlying interest.	

ACCESS TO REGULATED ENTITIES

Purpose

Exchanges and clearing houses play important roles in the development of financial markets and the trading of derivatives, facilitating the process for setting prices and risk management. Regulated entities must generally promote fair and equitable access to their services in order to stimulate competition among market participants. They must also establish adequate, objective and transparent membership criteria.

The Authority believes that it is up to recognized exchanges and clearing houses to determine suitable access conditions. A policy statement will set out the Authority's expectations regarding access to a derivatives exchange or clearing house. It will also be intended to enable any regulated entity to set up adequate membership criteria to ensure sound risk management.

Basic criteria

A regulated entity should require that its participants, members or subscribers have sufficient financial resources and that they have sound operational abilities and all the necessary skills to meet the obligations resulting from their membership. It should also adopt procedures to periodically ensure compliance with its membership criteria.

Specific criteria

The conditions for access to a regulated entity could include the following, depending on the nature of the activities of the regulated entity in question:

a) obtaining a licence, registration or status to ensure initial control and ongoing management determined by a clear and transparent process, including the possibility of appealing decisions;

b) ownership of the member or participant;

c) operational ability, including a business continuity plan;

d) skills, including the training of persons directly involved and managers;

e) training requirements for persons performing the various functions of the regulated entity;

f) determination of whether or not foreign participants or members may be accepted;

g) organization of activities, including adequate financial arrangements;

h) solvency and financial resources, including warning signs;

i) adequate insurance;

j) participation in a guarantee or compensation fund;

k) appointment of an auditor;

l) preparation and filing of financial statements.

OUTSOURCING OF DUTIES AND ACTIVITIES BY A REGULATED ENTITY

Purpose

A regulated entity may outsource certain functions and activities that it is required to perform pursuant to its recognition, with the prior consent of the Authority.

Regulated entities occasionally draw on outsourcing for the purpose of meeting challenges such as those posed by technological progress, the control of expenses and the management of conflicts of interest between business and regulatory objectives. However, the Authority is of the opinion that, in some cases, outsourcing may increase the dependence of an entity on third parties and, accordingly, its risk level.

A policy statement will set out the Authority's expectations vis-à-vis regulated entities that outsource some of their functions and activities, with respect to the adoption of prudent practices, procedures or standards. The principle according to which entities remain fully liable for all outsourced activities and functions is essential. In addition, the Authority's supervisory powers must not be limited in any way, whether the activity or function is performed internally or by a third party.

Control and procedures

The outsourcing of functions and activities must not hinder the effective operation of the derivatives market under any circumstances. Regulated entities must ensure that outsourced functions and activities are performed in compliance with all applicable regulatory requirements.

The Authority recommends that regulated entities formulate and implement outsourcing risk management policies and procedures, including:

a) a risk assessment of any proposed or existing outsourcing contract, including a statement of the principles and parameters used to control outsourcing risks;

b) the preparation of a written contract with the service provider and related documentation;

c) a description of the scope of the outsourcing contract, the services to be provided and the nature of the relationship between the regulated entity and the service provider;

d) the establishment of due diligence procedures in the choosing of a service provider and an assessment of the relative importance of the outsourcing contract;

e) the identification of concentration risk when functions and activities are outsourced by different regulated entities to the same service provider;

f) the development of an oversight and supervisory procedure for critical outsourcing contracts; and

g) the development of a plan to perform outsourced functions or activities in the event the service provider is no longer able to do so.

Due diligence procedures

The Authority expects regulated entities to conduct a due diligence to determine the nature and scope of the outsourced activity, its relationship with the regulated entity's other activities and functions and the manner in which such activity or function is managed.

Regulated entities must choose a service provider with care, prudence and diligence. For example, a regulated entity should take the following into account when choosing a service provider:

a) the abilities, resources and technical skills necessary to perform and support the outsourced function or activity;

b) the financial position of the service provider;

c) the professional reputation, complaint history and degree of compliance of the service provider;

d) business recovery plans and emergency measures, including system reactivation tests;

e) insurance coverage;

f) business objectives and corporate culture of the service provider, and compatibility with regulated entity.

Regular oversight

Regulated entities should periodically review each critical outsourcing contract to ensure that the services are provided in the prescribed manner and in accordance with the terms of the contract and regulatory requirements.

Depending on the importance of the outsourcing contract, the regulated entity should from time to time assess the ability of the service provider to continue to provide the services in the manner set out in the contract.

Business continuity plan

A business continuity plan regarding the functions and activities outsourced by the regulated entity should be implemented to cover temporary or permanent situations in which the service provider is unable to continue to provide the service. The business continuity and systems recovery plan should be based on the service disruption risk.

MARKETPLACE OPERATION

Purpose

Integrity is an essential aspect of effective marketplace operation. Participants who trade must deal openly and in a loyal manner based on fair and equitable trading principles. In this regard, the Authority believes that a regulated entity, and in particular an exchange, should set up and enforce rules, policies and procedures ensuring an orderly, transparent and accessible market and prohibiting any form of activity that could impair market integrity.

A policy statement will set out the Authority's opinion on best practices regarding marketplace operation.

Moreover, Regulation 21-101 respecting Marketplace Operation as well as Regulation 23-101 respecting Trading Rules are expected to apply to regulated entities operating in derivatives.

Market integrity

An exchange must set up and enforce rules, policies and procedures to ensure the financial integrity of trades placed in its market.

The rules, policies and procedures of the exchange must clearly prohibit abuse, manipulation, deceptive trading and fraud. The following are examples of activities creating artificial prices or a misleading appearance of trading activity:

a) executing transactions in the market without a change in beneficial ownership, such as wash trading;

b) executing transactions that have the effect of artificially changing or maintaining the price of a derivative;

c) entering orders that can reasonably be expected to create an artificial appearance of participation in the market;

d) executing prearranged transactions that have the effect of creating a misleading appearance of market activity or improperly excluding other marketplace participants; or

e) entering a series of orders without the intention to execute them.

The rules, policies and procedures of a derivatives exchange in this regard should be related to those of the market for the underlying interest. The derivatives exchange and the market for the underlying interest should co-ordinate the implementation of their respective rules, policies and procedures and the oversight of their respective markets.

Market oversight

An exchange should have a dedicated and independent management that oversees its market. The oversight functions of the exchange may be outsourced to a third party, such as a regulation services provider.

To ensure the effective operation of trading activities, an exchange should set up detailed, ongoing oversight procedures intended to detect any form of market manipulation or attempted market manipulation. Increased oversight would be appropriate under circumstances such as:

a) when a contract is nearing its expiry date;

b) when holders of large positions do not liquidate their positions;

c) when the price of the contract does not move toward a price corresponding to the market price for the underlying interest; or

d) when the difference between the contract price for the expiry month and that of the following month do not reflect supply and demand in the underlying market.

In addition, special attention should be given to major market participants, as they could influence prices.

Oversight of the derivatives market should therefore cover data relating to buy and sell orders by a single client, trading volume, insider trading and the market for the underlying interest.

An exchange should also have a system to monitor large positions held by participants to identify situations that could increase the risk of manipulation. The Authority expects an exchange to adopt such a preventive oversight approach based on in-depth knowledge of the factors that determine the supply and demand for derivatives, including determining the identity of position holders, their strategies and their activities in the underlying market. This will help determine position limits as well as appropriate reporting levels for larger trader positions in listed products.

When an exchange detects an anomaly under its oversight program, it must be able to intervene and impose any necessary sanctions on the offender through disciplinary measures set out in its rules, policies or procedures.

As well, an exchange must conduct periodic oversight to ensure that the open interest in deliverable derivatives corresponds to the deliverable supply in the physical market, in order to avoid a forced liquidation at higher prices due to a squeeze on the underlying interest.

System capacity

An exchange must use appropriate systems for the effective execution of its operations, including with respect to capacity, security and reliability.

Accordingly, it must maintain sufficient operational capacity, particularly when the market is very active, so that its data processing capacity does not deteriorate. It must

be able to execute transactions in a secure and reliable manner, if possible under any circumstances.

An exchange should conduct a regular assessment of its systems by:

a) developing and implementing procedures to review and keep current the development and testing methodology of systems;

b) reviewing the vulnerability of systems to computer threats;

c) estimating current and future capacity;

d) developing recovery and business continuity plans.

An independent review of the exchange should be conducted and a report on its controls submitted to the management of the exchange in order to ensure compliance with the measures taken.

Transparency

An exchange must provide appropriate information to its members or participants. It must make any document used to enforce and interpret its rules, policies and procedures available to its members or participants. It should publish information on its website on settlement prices, price variations, volumes, open positions and any other information relating to contracts being traded and do so in a timely manner.

Trade execution

An exchange must ensure that its members or participants can fulfill their obligations toward their clients to execute orders as efficiently as possible.

An exchange should have a clearly defined methodology for order entry, order routing, execution and resolution of operational errors.

Lastly, when block trading of securities is permitted, the exchange should ensure that such transactions are not detrimental to market integrity or price discovery.

CLEARING HOUSE RISKS

Purpose

A derivatives clearing house oversees market integrity and stability by acting as a central counterparty guaranteeing the obligations attached to each contract that it is called on to clear.

A clearing house can significantly reduce the risks to which its members are exposed through controls and multilateral netting. However, as a central counterparty, it concentrates risks and risk management. For derivatives markets, it is essential that clearing houses operate effective risk control and have adequate financial resources.

A policy statement will set out the Authority's expectations relating to the prudent management of risk associated with the activities of a clearing house.

Overview of risk exposures

A clearing house is exposed to specific risks related to its activities, including:

a) the risk that a clearing member does not fulfill its obligations when due or at a subsequent date (counterparty risk) or is late in performing its obligations (liquidity risk);

b) the risk related to the inability of a clearing member to fulfill its obligations when due, thereby causing other parties to be unable to perform their own obligations when due (systemic risk);

c) the risk resulting from the taking of collateral (custody risk) and the investment of clearing house funds or cash posted by clearing members to meet margin requirements (investment risk);

d) the risk of deficiencies in systems and internal controls as well as human or management error (operational risk);

e) the risk that a party may incur losses because legislation is inconsistent with the rules of the clearing house or with any other right exercised by it (legal risk); and

f) the risk that the seller of a derivative carries out physical settlement without receiving payment therefor or that the buyer makes payment without physical settlement (principal risk).

Risk management

The Authority recommends that clearing houses develop and implement prudent practices, procedures or standards based on the risks to which they are exposed.

Counterparty and liquidity risk

A clearing house must set up procedures intended to limit the likelihood of default, losses and potential liquidity constraints in the event of default, while ensuring the availability of adequate resources to cover losses and ensure that obligations are fulfilled when due. In defining its risk management procedures, the clearing house should encourage its members to manage risks prudently. For example, the following risk management measures should be considered:

a) dealing only with members that have a high credit rating and therefore have sufficient financial resources and sound operational abilities;

b) using exposure, position or trading limits to control losses in the event of default;

c) requiring that members post collateral to cover exposures and thereby limit losses and liquidity pressures in the event of default. The liquidation of a member's position under normal market conditions would not disrupt the operations of the clearing house or expose non-defaulting members to unexpected losses;

d) maintaining sufficient financial resources to withstand, at a minimum, a default by the member to which it has the largest exposure in extreme but plausible market conditions;

e) having the ability to transfer, liquidate and quickly cover the positions of a defaulting member. Default proceedings should therefore be set up by the clearing house that clearly define what constitutes a default event and stipulate the order in which resources will be used if a default occurs.

Custody and investment risk

A clearing house should protect the assets that ensure the performance of member obligations toward it by setting up procedures for the custody of such assets.

Operational risk

A clearing house should identify and analyze sources of operational risk and define clear policies and procedures for its management. Robust internal controls are essential for managing operational risk. It should also ensure that all key systems are reliable, secure and able to handle volumes under stress conditions.

Legal risk

A clearing house should manage legal risk by carefully reviewing relevant law and the design of member contracts and rules both when they are drafted and on an ongoing basis.

Principal risk

When a clearing house intervenes in the settlement of contracts requiring future delivery, it should clearly define its obligations with respect to the delivery of physical instruments. In particular, it should specify whether it is required to carry out or take delivery and to compensate participants in the event of loss during the process.

DISTRIBUTION OF DERIVATIVES

Remittance of risk information document

The risk information document contemplated in Schedule 1 of the Regulation presents only certain aspects relating to derivatives trading. It is important that dealers and their representatives properly complete such information and comply in all respects with their know-your-client and client suitability requirements.

When a dealer gives a client a risk information document, it must ensure that the client understands what derivatives trading is all about, in particular with respect to his rights and obligations.

The risk information document recommends that clients ask for information on the terms of the derivatives under consideration. Ideally the dealer would send this information systematically and review with its client the various characteristics of the derivatives under consideration, including the procedure for delivering the underlying interest, where applicable.

Public offering of derivatives

Any person who is not a regulated entity and who wishes to offer derivatives to the public is required to be issued the qualification set out in the proposed legislation for such purpose. This requirement applies in respect of exchange-traded or over-the-counter derivatives.

Qualification is a process whereby the Authority obtains certain basic information about the person as well as detailed information about the derivatives that the person intends to distribute. The information required for qualification must also be given to the client. Although information such as that contained in a prospectus is not required, sufficient information must be given to clients so they can determine whether or not to accept the offering.

To describe the derivatives that he intends to offer, the person subject to qualification may use the list of characteristics provided in the policy statement on self-certification of derivatives by regulated entities. The list can help in preparing a complete and systematic description of the product, its characteristics and the obligations to which it gives rise. This information should also be made available to clients at the same time as the risk information document.

Qualification requirement

The fact that an over-the-counter derivative is settled by a clearing house does not give rise by itself to the qualification requirement. The requirement is conditional on a public offering. For instance, trading in over-the-counter derivatives between accredited clients that would subsequently result in the intervention of a clearing house would not contain the elements of a public offering and therefore not require qualification.

Finally, the Authority reminds persons who wish to distribute derivatives and intend to contact clients for such purpose that carrying on activities as a derivatives dealer normally requires registration, unless such person may rely on an exemption.

Abbreviations Used in Proposed Derivatives Framework

AMF Act	An Act respecting the Autorité des marchés financiers (Québec)
BC Model	Dealers and Advisers Guide, 2003
BCBS	"Risk management guidelines for derivatives," Basel Committee on Banking Supervision
CEA	Commodity Exchange Act (USA)
CFA	Commodity Futures Act (Ontario)
CPSS	Bank for International Settlements: Committee on Payment and Settlement Systems
DP	Discussion Paper: Regulation of Derivatives Markets in Québec (*Autorité des marches financiers*, May 2006)
GLB Act	Gramm-Leach-Bliley Act 1999 (USA)
IOSCO	Principles for the oversight of screen-based trading systems, International Organization of Securities Commissions, Report of the Technical Committee
Joint Forum	Joint Forum of Financial Market Regulators, Principles
MIFID	Directive of the European Parliament on markets in financial instruments amending Council Directives
PDR	Proposed derivatives regulation
RRE	Regulation respecting the rules of ethics in the securities sector (An Act respecting the distribution of financial products and services)
RS UMIR	Universal Market Integrity Rules
SA	Securities Act (Québec)
SIB	Securities and Investments Board, Regulation of the Conduct of Investment Business, 1989