

NOTICE REGARDING APPLICATION OF SECTION 11.37 OF THE DERIVATIVES REGULATION, R.R.Q., C. I-14.01, R. 1 AND CERTAIN ISSUES PERTAINING TO THE QUALIFICATION AND AUTHORIZATION OBLIGATION IN RESPECT OF MARKETING A DERIVATIVE

Référence : Bulletin de l'Autorité : Non disponible

On April 13, 2012, the *Autorité des marchés financiers* (the "Authority" or the "AMF") published in its Bulletin (Vol. 9, No. 15, section 6.2.2) the *Regulation to amend the Derivatives Regulation* (the "Regulation"), which sought to establish the regulatory framework relating to the implementation of certain provisions of Title IV of the *Derivatives Act*, R.S.Q., c. I-14.01 (the "Act") pertaining to qualified persons.

A number of issues were raised by industry participants regarding the interpretation of the transitory provision in section 11.37 of the Regulation. The section stipulates as follows:

Sections 82 and 83 of the Act do not apply to persons who were exempt, up to 13 April 2012, from the application of section 82 pursuant to a decision of the Authority, provided that such persons satisfy the conditions specified in the decision and that they have filed an application for qualification within 30 days after 13 April 2012.

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

In this regard, the AMF wishes to state that section 11.37 of the Regulation is a transitory provision intended to avoid a legal vacuum by extending the effect of specific decisions rendered by the AMF allowing exemptions from the application of section 82 of the Act, and which stipulated that these decisions would end on April 13, 2012, that is, the date on which the Regulation came into force. Section 11.37 of the Regulation allows persons required to be qualified under the first paragraph of section 82 of the Act who carried on business in derivatives up to that date, in accordance with their exemption decision, to continue to do so until their application for qualification is granted or refused, as the case may be.

As for persons relying on general decision No. 2009-PDG-0007, which grants an exemption from, among other things, the obligation of being qualified by the AMF to persons who carry on activities in derivatives mentioned in that decision, such persons are not covered by section 11.37 of the Regulation, as the general decision did not end on April 13, 2012. This decision will therefore continue to produce its effects until it is amended or revoked by the AMF.

As well, the AMF considers that the persons covered by the general decision do not have to apply for authorization to market derivatives traded with accredited investors since the obligation to obtain such authorization, which is provided for in the 2nd paragraph of section 82 of the Act and came into force on April 13, 2012, must be satisfied before the derivative is offered to the public. Accordingly, any decision to authorize the marketing of a derivative will be made by the AMF in connection with the qualification process. The qualification exemption therefore includes the exemption from the obligation to obtain authorization to market the derivative referred to in the 2nd paragraph of section 82 of the Act.

Finally, the AMF considers that the same interpretation is applicable to persons benefiting from special qualification exemptions issued before the provisions of the Act and the Regulation regarding qualification came into force and whose decisions did not include an end date. These persons continue to benefit from the effects of these decisions, for both the qualification and authorization to market a derivative, as long as they comply with the terms thereof and their activities continue or the said decisions are not revoked or revised by the AMF.

Additional information

Further information is available from the following:

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