

# POLICY STATEMENT

## RESPECTING SELF-CERTIFICATION DERIVATIVES ACT

### Self-certification

Under the *Derivatives Act* (the "Act"), a recognized regulated entity (the "entity") must make operating rules to govern its activities and the activities of its members or of market participants. It must also, in its internal by-laws, include appropriate procedures for making and amending those rules. In establishing its rules, the entity must consider the costs to its members and to market participants that may result from their application. In addition, the entity must comply with the other principles set out in the Act, in particular concerning co-operation with the *Autorité des marchés financiers* (the "Authority"), governance and controls.

Under section 22 of the Act, to make an amendment to an operating rule, the entity must follow the self-certification process, set out under Division II of the *Derivatives Regulation* (the "Regulation"). Under the self-certification process, the proposed rule amendment must be submitted for public consultation for not less than 30 days.

Where an entity wishes to make or amend a rule, it must send the proposed rule or rule amendment to every member and participant and to the Authority accompanied by a notice of publication indicating the information necessary for understanding the purpose of the rule, which includes the text of the rule and any other supporting documents the entity deems significant. Under the Regulation, the notice of publication must indicate in particular the time period during which interested parties may send comments and the persons designated by the entity and the Authority to receive such comments.

The Authority is mindful that the rule will have previously been submitted to an internal approval process, and therefore expects to receive any research, studies and reports carried out with respect to the rule or the resolution or decision approving the rule.

The entity should clearly indicate in the documents filed with the Authority if some aspects of the filing are considered to be confidential and governed by section 93 of the Act.

The notice of compliance provided under the first paragraph of section 22 of the Act will be published in the Authority's Bulletin.

### Rules not subject to public consultation

Under the Regulation, rules with a minor impact (section 7), emergency rules (section 9) or rules pertaining to new derivatives (section 10) are not subject to public consultation.

### Classification of rules

Where an entity self-certifies a rule with a minor impact or an emergency rule, the Authority will analyze such rule to determine whether it was correctly classified. Should the Authority not be in agreement with the classification, it will contact the entity within 21 days following receipt of the rule. With respect to emergency rules, the Authority will notify the entity of its disagreement, insofar as possible, within 5 days of receipt of the rule.

In cases of disagreement, the Authority will require the publication of the rule for public comment. The Authority may also determine that the rule is to be repealed or amended if it is of the opinion that the rule does not comply with the Act or the Regulation or is not in the public interest.

## **Rules with minor impact**

Under the Regulation, public consultation is not required where a rule meets any of the following conditions:

- 1) its impact on the entity, a member or a subscriber thereof or on a market participant is minor;
- 2) it pertains to an issue related to a routine operational process or an administrative practice;
- 3) it is intended for purposes of harmonization or compliance with an existing rule or with legislation; or
- 4) it corrects an error of form, a clerical error or a mistake in calculation or makes stylistic changes, such as an amendment to a title or to paragraph numbering.

With respect to rules governing listed products, the Authority would normally consider the following amendments to have a minor impact and therefore they need not be submitted to public consultation:

- changes in trading hours;
- changes in delivery facilities;
- changes in option contracts other than those relating to last trading day, expiry date, strike price de-listings, and speculative position limits;
- reductions in the minimum price change;
- adjustments to the margin rate.

## **Emergency rules**

An entity may implement an emergency rule where deemed necessary due to a significant and imminent risk of prejudice to itself, its members or subscribers, other market participants or the capital markets.

Under the Regulation, an emergency rule may only become effective after a written notice has been filed with the Authority informing it of the approved text. No later than the business day following the effective date of the rule, the reasons for the emergency must be given to the Authority together with the notice of self-certification provided for in the Regulation, with the necessary modifications regarding the information to be included.

The Authority expects the entity to submit the information required under section 6 of the Regulation, except for the information under paragraph 2, namely, the summary of comments made in connection with the consultation process.

## **Derivatives**

Under the Act, an entity must list only derivatives designed to ensure a high degree of protection against manipulation and develop rules and procedures to comply with the Act.

New derivatives, namely, derivatives that have not been listed or cleared by the entity, are not subject to public consultation, primarily to avoid placing the entity at a competitive disadvantage.

Where an entity approves a rule in respect of a new derivative, it must, no later than the effective date of the rule, send the approved text to the Authority together with information on the product, namely:

- 1) a description of all the terms related to the new product, of any ancillary agreement made in respect thereof and, if applicable, of the circumstances surrounding the offer or trading thereof; and
- 2) any other information required in the notice of self-certification provided for in the Regulation, with the

necessary modifications.

The submission will describe the derivative and the underlying interest, identify the listing date and provide a general and technical description of the derivative, noting in particular cash market practices for the underlying interest, the economic and public interest of the product, speculative and hedging limits and delivery mechanisms where applicable.

The Authority will expect the entity to provide copies of market surveys, benchmarking or other reports that demonstrate that the proposed product will meet the requirements of the Act.

The chart in the attached appendix further explains the information the Authority would expect to receive. It is particularly important to provide greater detail where innovative derivatives 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 intended.

### Approval of products or rule amendments by the Authority

Notwithstanding the process provided for in the Regulation and more fully outlined above, an entity may ask the Authority to approve a derivative or a rule amendment, but only where self-certification proves to be highly difficult. In such circumstances, the entity must submit, with its application for approval, justification why self-certification was not appropriate or feasible.

### Appendix A - Information regarding a derivative

Aspect	Objectives	Explanations
Characteristics of the underlying commodity or instrument	Economic and public interest; anti-manipulation	Provide a detailed description of the derivative and underlying instrument to demonstrate economic and public interest. The market of the underlying interest should be liquid with a reliable reference price.
Option characteristics (including strike price listing procedures and increments, option expiry, contract type, etc.)	Transparency and market efficiency	
Delivery terms	Market efficiency	Include where applicable delivery points, quality differentials, delivery facilities, etc.
Contract size or trading unit	Market efficiency and anti-manipulation	Indicate minimum quantity thresholds for block and cross trades, and any reporting time or market exposure delays.
Delivery months	Market efficiency	
Delivery period and last trading day	Market efficiency and anti-manipulation	
Minimum price change	Market efficiency and anti-manipulation	
Daily price limit provisions	Market efficiency and anti-manipulation	Indicate relationship to cash market price movements.
Speculative position limits	Anti-manipulation	Provide limits for spot month, method for calculating non-spot months (e.g., individually or combined), spread exemptions.
Reporting level for large positions	Anti-manipulation	Also describe relationship with other contracts, cash markets, netting of spread positions, etc.
Aggregation policy	Anti-manipulation	
Procedures for calculation and dissemination of settlement price	Market efficiency and transparency	Also describe safeguards against manipulation, third party licence where applicable, fallback.
Trading hours	Market efficiency	
Provisions for halting trading	Market efficiency	Provide details regarding both discretionary and automatic halts, in particular as relates to the underlying instrument.

