

POLICY STATEMENT

RESPECTING ACCREDITED COUNTERPARTIES DERIVATIVES ACT

Purpose

Section 3 of the *Derivatives Act* (the "Act") sets out the definition of "accredited counterparty." Derivatives transactions of an accredited counterparty are exempted from many provisions of the Act. This Policy Statement is intended to specify, for greater certainty, certain components of this definition.

Financial institutions

Paragraph 3 of the definition of accredited counterparty includes Canadian and foreign financial institutions, as well as supranational financial institutions.

Under paragraphs 1 and 2, the definition also includes any government and public board.

Accreditation of certain counterparties

The criteria of the definition of an accredited counterparty should be applied at the time a derivative is entered into. A counterparty is not required to ensure that the other counterparty continues to be accredited during the life of the derivative.

An accredited counterparty that engages in a derivatives transaction is responsible for determining whether the other party is also accredited and whether the transaction thus benefits from the exemption set out in section 7 of the Act. To do so, the counterparty may rely on the factual statements made by the other party, provided that it does not have reasonable grounds to believe that such statements are false. However, the counterparty is nonetheless responsible for determining whether, on the basis of the facts, the exemption is applicable. Usually, the person conducting such a transaction should conserve all documents necessary to establish that it has rightly availed itself of the exemption.

Under paragraph 7 of the definition of accredited counterparty, a person will be considered an accredited counterparty if that person has the requisite knowledge and experience, and has the minimum assets provided for in section 1 of the Derivatives Regulation. Such person must establish in a conclusive and verifiable manner that the requisite conditions have been met. The establishment of compliance with these conditions may vary significantly based on a person's particular circumstances. The counterparties concerned should be satisfied that they are able to evaluate the information obtained.

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