

MODEL PROVINCIAL RULE
DERIVATIVES: PRODUCT DETERMINATION

Application

1. This Rule applies to Model Provincial Rule – *Trade Repositories and Derivatives Data Reporting*.

Excluded derivatives

2. A contract or instrument is prescribed under the definition of “derivative” in subsection X [Definitions] of the Act not to be a derivative if it is

- (a) regulated by gaming control legislation of Canada or a province,
- (b) an insurance or annuity contract issued by an insurer holding a license under insurance legislation of Canada or a province,
- (c) a spot market contract or instrument for the purchase and sale of currency,
 - (i) that requires the counterparties to make or take physical delivery of the currency within two business days and does not allow for the contract or instrument to be rolled over,
 - (ii) that does not allow for cash settlement in place of physical delivery of the foreign currency, and
 - (iii) that is intended by the counterparties to be physically settled,
- (d) a contract or instrument for immediate or deferred delivery of a physical commodity other than cash or a currency
 - (i) that requires the counterparties to make or take physical delivery,
 - (ii) that does not allow for cash settlement in place of physical delivery, and
 - (iii) that is intended by the counterparties to be physically settled,
- (e) a contract or instrument that is a derivative under subsection X [Definitions] of the Act and is evidence of a deposit issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada), by an association to which the *Cooperative Credit Associations Act* (Canada) applies or by a company to which the *Trust and Loan Companies Act* (Canada) applies, or
- (f) a contract or instrument that is a derivative under subsection X [Definitions] of the Act and is evidence of a deposit issued by a credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* or a similar statute of a province (other than Ontario) or territory of Canada applies or by a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or a similar statute of a province (other than Ontario) or territory of Canada.

Investment contracts and over-the-counter options

3. All contracts or instruments (other than any contract or instrument to which section 2 applies) that are derivatives, and that are otherwise securities solely by reason of being an investment contract under paragraph X of the definition “security” in subsection X [Definitions] of the Act or being an option described in paragraph X of that definition that is not described in section 5, are prescribed not to be securities.

Derivatives that are securities

4. All contracts or instruments (other than any contract or instrument to which any of sections 2 and 3 apply) that are securities and otherwise derivatives are prescribed not to be derivatives.

Derivatives prescribed to be securities

5. All contracts or instruments that would otherwise be derivatives (other than any contract or instrument to which any of sections 2 to 4 apply), are prescribed not to be derivatives if such contract or instrument is used by an issuer or an affiliate of an issuer solely to compensate an employee or service provider or as a financing instrument and whose underlying interest is a share or stock of that issuer or its affiliate.