REGULATION 93-101 RESPECTING DERIVATIVES: BUSINESS CONDUCT

Derivatives Act
(chapter I-14.01, s. 175, 1st par., subpar. (2), (3), (9), (11), (12), (26) and (29), and s. 177)

PART 1 DEFINITIONS AND INTERPRETATION

1. Definitions and interpretation

(1) In this Regulation,

"Canadian financial institution" means

(a) an association governed by the Cooperative Credit Associations Act (S.C. 1991, c. 48) or a central cooperative credit society for which an order has been made under section 473(1) of that Act, or

(b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

"derivatives adviser" means

(a) a person engaging in or holding himself, herself or itself out as engaging in the business of advising others as to transacting in derivatives, and

(b) any other person required to be registered as a derivatives adviser under the securities legislation of a jurisdiction of Canada;

"derivatives dealer" means

(a) a person engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives as principal or agent, and

(b) any other person required to be registered as a derivatives dealer under the securities legislation of a jurisdiction of Canada;

"derivatives firm" means a derivatives dealer or a derivatives adviser, as applicable;

"derivatives party" means

(a) in the case of a derivatives dealer,

(i) a person for which the derivatives dealer acts or proposes to act as an agent in relation to a transaction in a derivative, or

(ii) a person that is or is proposed to be a party to a derivative where the derivatives dealer is the counterparty, and

(b) in the case of a derivatives adviser, a person to which the adviser provides or proposes to provide advice in relation to derivatives;

"derivatives party assets" means any asset received or held by a derivatives firm, for or on behalf of a derivatives party;

"eligible derivatives party" means any of the following:

(a) a Canadian financial institution;

(b) the Business Development Bank of Canada incorporated under the Business Development Bank of Canada Act (S.C. 1995, c. 28);

(c) a subsidiary of a person referred to in paragraph (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of the subsidiary;

(d) a person registered under the securities legislation of a jurisdiction of Canada as at least one of the following:

(i) a derivatives dealer;

(ii) a derivatives adviser;

(iii) an adviser;

(iv) an investment dealer;

(e) a pension fund that is regulated by either the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada or a wholly-owned subsidiary of such a pension fund;

(f) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (e);

(g) the Government of Canada or a jurisdiction of Canada, or any Crown corporation, agency or wholly-owned entity of the Government of Canada or a jurisdiction of Canada;

(h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government;

(i) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;

(j) a trust company or trust corporation registered or authorized to carry on business under the Trust and Loan Companies Act (S.C. 1991, c. 45) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a managed derivatives account managed by the trust company or trust corporation, as the case may be;

(k) a person acting on behalf of a managed account that is managed by the person, if the person is registered or authorized to carry on business as an adviser or a derivatives adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction;

(l) an investment fund that is advised by an adviser registered or exempted from registration under securities or commodity futures legislation in Canada;

(m) a person, other than an individual,

(i) that has represented in writing that it has the requisite knowledge and experience to evaluate the information provided to the person about derivatives, the suitability of the derivatives for that person, and the characteristics of the derivatives to be transacted on the person's behalf, and

(ii) that has net assets of at least $25 million as shown on its most recently prepared financial statements;

(n) an individual

(i) who has represented in writing that he or she has the requisite knowledge and experience to evaluate the information provided to the individual about derivatives, the suitability of the derivatives for that individual, and the characteristics of the derivatives to be transacted on the individual's behalf, and

(ii) that beneficially owns financial assets, as defined in section 1.1 of Regulation 45-106 respecting Prospectus Exemptions (chapter V-1.1, r. 21), that have an aggregate realizable value before tax but net of any related liabilities of at least $5 million;

"investment dealer" means a person registered as an investment dealer under the securities legislation of a jurisdiction of Canada;

"managed account" means an account of a derivatives party for which a person makes the trading decisions if that person has discretion to trade securities for the account or transact in a derivative for the account without requiring the derivatives party's express consent to the transaction;

"permitted depository" means a person that is any of the following:

(a) a Canadian financial institution;

(b) a regulated clearing agency;

(c) the central bank of Canada or of a permitted jurisdiction;

(d) in Québec, a person recognized or exempted from recognition as a central securities depository under the Securities Act (chapter V-1.1);

(e) a person

(i) whose head office or principal place of business is in a permitted jurisdiction,

(ii) that is a banking institution or trust company of a permitted jurisdiction, and

(iii) that has shareholders' equity, as reported in its most recent audited financial statements, of not less than the equivalent of $100 000 000;

(f) with respect to derivatives party assets that it receives from a derivatives party, a derivatives dealer;

"permitted investment" means cash, or a security or other financial instrument with minimal market and credit risk that is capable of being liquidated rapidly with minimal adverse price effect;

"permitted jurisdiction" means a foreign jurisdiction that is any of the following:

(a) a country where the head office or principal place of business of a Schedule III bank is located, and a political subdivision of that country;

(b) if a derivatives party has provided express written consent to the derivatives dealer entering into a derivative in a foreign currency, the country of origin of the foreign currency used to denominate the rights and obligations under the derivative entered into by, for or on behalf of the derivatives party, and a political subdivision of that country;

"referral arrangement" means any arrangement in which a derivatives firm agrees to pay or receive a referral fee;

"referral fee" means any form of compensation, direct or indirect, paid for the referral of a derivatives party to or from a derivatives firm;

"registered derivatives firm" means a derivatives dealer or a derivatives adviser that is registered under securities legislation of a jurisdiction in Canada;

"registered firm" means a registered derivatives firm or a registered firm, as that term is defined in Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (chapter V-1.1, r. 10);

"regulated clearing agency" has the meaning ascribed to that term in Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives *(insert here the reference)*;

"Schedule III bank" means an authorised foreign bank named in Schedule III of the Bank Act (S.C 1991, c. 46);

"segregate" means to separately hold or separately account for a derivatives party's positions or collateral;

"transaction" means any of the following:

(a) entering into a derivative or making a material amendment to, terminating, assigning, selling or otherwise acquiring or disposing of a derivative;

(b) the novation of a derivative, other than a novation with a clearing agency;

"valuation" means the current value of a derivative.

(2) In this Regulation, "adviser" includes

(a) in Manitoba, an "adviser" as defined in the Commodity Futures Act (C.C.S.M., c. C152),

(b) in Ontario, an "adviser" as defined in the Commodity Futures Act (R.S.O. 1990, c. C.20), and

(c) in Québec, an "adviser" as defined in the Securities Act (chapter V-1.1).

(3) In this Regulation, a person is an affiliated entity of another person if one of them controls the other or each of them is controlled by the same person.

(4) In this Regulation, a person (the first party) is considered to control another person (the second party) if any of the following apply:

(a) the first party beneficially owns or directly or indirectly exercises control or direction over securities of the second party carrying votes which, if exercised, would entitle the first party to elect a majority of the directors of the second party unless the first party holds the voting securities only to secure an obligation;

(b) the second party is a partnership, other than a limited partnership, and the first party holds more than 50% of the interests of the partnership;

(c) the second party is a limited partnership and the general partner of the limited partnership is the first party;

(d) the second party is a trust and a trustee of the trust is the first party.

(5) In this Regulation, a person is a subsidiary of another person if

(a) it is controlled by

(i) that other,

(ii) that other and one or more persons, each of which is controlled by that other, or

(iii) two or more persons, each of which is controlled by that other, or

(b) it is a subsidiary of a person that is that other's subsidiary.

(6) In this Regulation, in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, "derivative" means a "specified derivative" as defined in Multilateral Instrument 91-101 Derivatives: Product Determination.

PART 2 APPLICATION

Application to registered and unregistered derivatives firms

2. This Regulation applies to a derivatives firm, whether or not it is a registered derivatives firm.

Scope of Regulation

3. This Regulation applies to

(a) in Manitoba,

(i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Manitoba Securities Commission Rule 91-506 Derivatives: Product Determination not to be a derivative, and

(ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Manitoba Securities Commission Rule 91-506 Derivatives: Product Determination not to be a security,

(b) in Ontario,

(i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Ontario Securities Commission Rule 91-506 Derivatives: Product Determination not to be a derivative, and

(ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Ontario Securities Commission Rule 91-506 Derivatives: Product Determination not to be a security, and

(c) in Québec, a derivative specified in section 1.2 of Regulation 91-506 respecting Derivatives Determination (chapter I-14.01, r. 0.1), other than a contract or instrument specified in section 2 of that regulation.

In each other local jurisdiction, this Regulation applies to a derivative as defined in subsection 1(6) of this Regulation. The text boxes in this Regulation do not form part of this Regulation and have no official status.

Affiliated entities

4. This Regulation does not apply to a person in respect of dealing with or advising an affiliated entity of the person.

Regulated clearing agencies

5. This Regulation does not apply to a regulated clearing agency.

Governments, central banks and international organizations

6. This Regulation does not apply to any of the following:

(a) the government of Canada, the government of a jurisdiction of Canada or the government of a foreign jurisdiction;

(b) the Bank of Canada or a central bank of a foreign jurisdiction;

(c) the Bank for International Settlements;

(d) the International Monetary Fund.

7. Requirements that apply when dealing with or advising an eligible derivatives party

(1) The requirements of this Regulation, other than the following requirements, do not apply to a derivatives firm in respect of a derivatives party that is an eligible derivatives party and that is not an individual:

(a) Division 1 of Part 3;

(b) Sections 24 and 25;

(c) Subsection 29(1); and

(d) Part 5.

(2) The requirements of this Regulation, other than the requirements specified in subsection (1), do not apply to a derivatives firm in respect of a derivatives party who is an eligible derivatives party and who is an individual if

(a) the individual has waived in writing the protections under the Regulation, other than as specified in subsection (1), and

(b) the individual has signed the waiver no earlier than 365 days before the derivatives firm transacts with or provides advice to the individual.

(3) Despite subsections (1) and (2), the requirements of the Regulation apply to a derivatives firm acting as an adviser in respect of a managed account of an eligible derivatives party.

PART 3 DEALING WITH OR ADVISING DERIVATIVES PARTIES

DIVISION 1 General obligations towards all derivatives parties

Fair dealing

8. (1) A derivatives firm must deal fairly, honestly and in good faith with a derivatives party.

(2) An individual acting on behalf of a derivatives firm must deal fairly, honestly and in good faith with a derivatives party.

(3) A derivatives adviser must allocate transaction opportunities fairly among its derivatives parties.

Conflicts of interest

9. (1) A derivatives firm must establish, maintain and apply policies and procedures reasonably designed to identify existing material conflicts of interest, and material conflicts of interest that the derivatives firm in its reasonable opinion would expect to arise, between the derivatives firm, including each individual acting on behalf of the derivatives firm, and a derivatives party.

(2) A derivatives firm must respond to an existing or potential conflict of interest identified under subsection (1).

(3) If a reasonable derivatives party would expect to be informed of a conflict of interest identified under subsection (1), the derivatives firm must disclose, in a timely manner, the nature and extent of the conflict of interest to the derivatives party whose interest conflicts with the interest identified.

Know your derivatives party

10. (1) For the purpose of paragraph 2(c) in Ontario, Nova Scotia and New Brunswick, “insider” has the meaning ascribed to that term in the Securities Act of these jurisdictions except that “reporting issuer”, as it appears in the definition of “insider”, is to be read as “reporting issuer or any other issuer whose securities are publicly traded”.

(2) A derivatives firm must establish, maintain and apply reasonable policies and procedures to

(a) obtain such facts as are necessary to comply with applicable federal and provincial legislation relating to the verification of a derivatives party's identity,

(b) establish the identity of a derivatives party and, if the derivatives firm has cause for concern, make reasonable inquiries as to the reputation of the derivatives party,

(c) if transacting with, for or on behalf of, or advising a derivatives party in connection with derivatives that have securities as an underlying interest, establish whether either of the following applies:

(i) the derivatives party is an insider of a reporting issuer or any other issuer whose securities are publicly traded,

(ii) the derivatives party would reasonably be expected to have access to material non-public information relating to any interest underlying the derivative, and

(d) if the derivatives firm will, as a result of its relationship with the derivatives party have any credit risk in relation to the derivatives party, establish the creditworthiness of the derivatives party.

(3) For the purpose of establishing the identity of a derivatives party that is a corporation, partnership or trust, each derivatives firm must establish both of the following:

(a) the nature of the derivatives party's business;

(b) the identity of any individual who meets either of the following:

(i) in the case of a corporation, is a beneficial owner of, or exercises direct or indirect control or direction over, more than 25% of the voting rights attached to the outstanding voting securities of the corporation;

(ii) in the case of a partnership or trust, exercises control over the affairs of the partnership or trust.

(4) A derivatives firm must take reasonable steps to keep the information required under this section current.

(5) This section does not apply if the derivatives party is a registered firm or a Canadian financial institution.

DIVISION 2 Additional obligations when dealing with or advising certain derivatives parties

The obligations in Division 2 of Part 3 do not apply if a derivatives firm is dealing with an eligible derivatives party that is not an individual or an eligible derivatives party who is an individual that has waived these protections – see section 7

Derivatives-party-specific needs and objectives

11. A derivatives firm must take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a derivatives party to transact in a derivative, or transact in a derivative for a derivatives party's managed account, it has sufficient information regarding all of the following to enable it to meet its obligations under section 12:

(a) the derivatives party's needs and objectives with respect to its transacting in derivatives;

(b) the derivatives party's financial circumstances;

(c) the derivatives party's risk tolerance;

(d) if applicable, the nature of the derivatives party's business and the operational risks it wants to manage.

Suitability

12. (1) A derivatives firm must take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a derivatives party to transact in a derivative, the transaction is suitable for the derivatives party.

(2) If a derivatives party instructs a derivatives firm to transact in a derivative and, in the derivatives firm's reasonable opinion, following the instruction would not be suitable for the derivatives party, the derivatives firm must inform the derivatives party in writing of the derivatives firm's opinion and must not transact in the derivative unless the derivatives party instructs the derivatives firm to proceed anyway.

Permitted referral arrangements

13. A derivatives firm, or an individual acting on behalf of a derivatives firm, must not participate in a referral arrangement with another person unless

(a) before a derivatives party is referred by or to the derivatives firm, the terms of the referral arrangement are set out in a written agreement between the derivatives firm and the person,

(b) the derivatives firm records all referral fees, and

(c) the derivatives firm or individual acting on behalf of the derivatives firm ensures that the information prescribed by section 15 is provided to the derivatives party in writing before the derivatives firm or individual receiving the referral either opens an account for the derivatives party or provides services to the derivatives party.

Verifying the qualifications of the person receiving the referral

14. A derivatives firm, or an individual acting on behalf of a derivatives firm, must not refer a derivatives party to another person unless the derivatives firm first takes reasonable steps to verify and conclude that the person has the appropriate qualifications to provide the services, and, if applicable, is registered to provide those services.

Disclosing referral arrangements to a derivatives party

15. (1) The written disclosure of the referral arrangement required by paragraph 13(c) must include all of the following:

(a) the name of each party to the agreement referred to in paragraph 13(a);

(b) the purpose and material terms of the agreement, including the nature of the services to be provided by each party;

(c) any conflicts of interest resulting from the relationship between the parties to the agreement and from any other element of the referral arrangement;

(d) the method of calculating the referral fee and, to the extent possible, the amount of the fee;

(e) the category of registration, or exemption from registration, of each derivatives firm and individual acting on behalf of the derivatives firm that is a party to the agreement with a description of the activities that the derivatives firm or individual is authorized to engage in under that category or exemption and, giving consideration to the nature of the referral, the activities that the derivatives firm or individual is not permitted to engage in;

(f) any other information that a reasonable derivatives party would consider important in evaluating the referral arrangement.

(2) If there is a change to the information set out in subsection (1), the derivatives firm must ensure that written disclosure of that change is provided to each derivatives party affected by the change as soon as possible and no later than the 30th day before the date on which a referral fee is next paid or received.

Disclosure regarding the use of borrowed money or leverage

16. (1) A derivatives firm must, before transacting in a derivative with or on behalf of a derivatives party, provide the derivatives party with a written statement that is substantially similar to the following:

"A characteristic of many derivatives is that you are only required to deposit funds that correspond to a portion of your total potential obligations when entering into the derivative. However, your profits or losses from the derivative are based on changes in the total value of the derivative. This means the leverage characteristic magnifies the profit or loss under a derivative, and losses can greatly exceed the amount of funds deposited. Your derivatives firm may require you to deposit additional funds to cover your obligations under a derivative as the value of the derivative changes. If you fail to deposit these funds, your derivatives firm may close out your position without warning. You should understand all of your obligations under a derivative, including your obligations where the value of the derivative declines.

"Using borrowed money to finance a derivatives transaction involves greater risk than using cash resources only. If you borrow money, your responsibility to repay the loan and pay interest as required by its terms remains the same even if the value of the derivative declines.".

(2) Subsection (1) does not apply if the derivatives firm has provided the derivatives party with the statement described under subsection (1) no earlier than the 180th day before the date of the proposed transaction.

Handling complaints

17. A derivatives firm must document and, in a manner that a reasonable person would consider fair and effective, respond to each complaint made to the derivatives firm about any product or service offered by the derivatives firm or an individual acting on behalf of the derivatives firm.

The obligations in Division 3 of Part 3 do not apply if a derivatives firm is dealing with an eligible derivatives party that is not an individual or an eligible derivatives party who is an individual that has waived these protections – see section 7

DIVISION 3 Restrictions on certain business practices when dealing with certain derivatives parties

Tied Selling

18. (1) A derivatives firm must not impose undue pressure on or coerce a person to obtain a product or service from a particular person, including the derivatives firm or any of its affiliates, as a condition of obtaining another product or service from the derivatives firm.

(2) A derivatives firm must, before the derivatives firm first transacts in a derivative with or on behalf of the derivatives party or advises the derivatives party in respect of a derivative, disclose to a derivatives party the prohibition on coercive tied selling set out in subsection (1) in a statement in writing.

Fair terms and pricing

19. (1) A derivatives firm that acts as agent for a derivatives party in connection with a transaction in a derivative must establish, maintain and apply written policies and procedures that are reasonably designed to obtain the most advantageous terms reasonably available when acting as agent for a derivatives party.

(2) When transacting in a derivative with a derivatives party, as principal, a derivatives dealer, or an individual acting on behalf of the derivatives dealer, must make a reasonable effort to provide a price for the derivatives party that is fair and reasonable taking into consideration all relevant factors.

PART 4 DERIVATIVES PARTY ACCOUNTS

DIVISION 1 Disclosure to derivatives parties

The obligations in this Division do not apply if a derivatives firm is dealing with an eligible derivatives party that is not an individual or an eligible derivatives party who is an individual that has waived these protections – see section 7

Relationship disclosure information

20. (1) A derivatives firm must deliver to a derivatives party all information that a reasonable person would consider important about the derivatives party's relationship with the derivatives firm and each individual acting on behalf of the derivatives firm that is providing derivatives-related services to the derivatives party.

(2) Without limiting subsection (1), the information delivered under that subsection must include all of the following:

(a) a description of the nature or type of the derivatives party's account;

(b) a general description of the products and services the derivatives firm offers;

(c) a general description of the types of risks that a derivatives party should consider when making a decision relating to derivatives;

(d) a description of the risks to a derivatives party of using borrowed money to finance a derivative;

(e) a description of the conflicts of interest that the derivatives firm is required to disclose to a derivatives party under securities legislation;

(f) disclosure of the fees or other charges the derivatives party might be required to pay related to the derivatives party's account;

(g) a general description of the types of transaction fees or other charges the derivatives party might be required to pay;

(h) a general description of any compensation paid to the derivatives firm by any other party in relation to the different types of products that a derivatives party may transact in through the derivatives firm;

(i) a description of the content and frequency of reporting for each account or portfolio of a derivatives party;

(j) disclosure of the derivatives firm's obligations if a derivatives party has a complaint contemplated under section 17;

(k) a statement that the derivatives firm has an obligation to assess whether a derivative is suitable for a derivatives party prior to executing a transaction for the derivative or at any other time or a statement identifying the exemption the derivatives firm is relying on in respect of this obligation;

(l) the information a derivatives firm must collect about the derivatives party under section 10 and 11 or a statement identifying the exemption the derivatives firm is relying on in respect of this obligation;

(m) a general explanation of how performance benchmarks might be used to assess the performance of a derivatives party's derivatives and any options for benchmark information that might be made available to the derivatives party by the derivatives firm.

(3) A derivatives firm must deliver the information in subsection (1), if applicable, and subsection (2) to the derivatives party in writing, before the derivatives firm

(a) transacts in a derivative with or on behalf of the derivatives party, or

(b) advises the derivatives party in respect of a derivative.

(4) If there is a significant change in respect of the information delivered to a derivatives party under subsections (1) or (2), the derivatives firm must take reasonable steps to notify the derivatives party of the change in a timely manner and, if possible, before the derivatives firm next

(a) transacts in a derivative with or on behalf of the derivatives party, or

(b) advises the derivatives party in respect of a derivative.

(5) A derivatives firm must not impose any new fee or other charge in respect of an account of a derivatives party, or increase the amount of any fee or other charge in respect of an account of a derivatives party, unless written notice of the new or increased fee or charge is provided to the derivatives party at least 60 days before the date on which the imposition or increase becomes effective.

(6) Subsections (1), (2), (3) and (4) do not apply to a derivatives dealer in respect of a derivatives party for whom the derivatives dealer transacts in a derivatives only as directed by a derivatives adviser acting for the derivatives party.

(7) A derivatives dealer referred to in subsection (6) must deliver the information required under paragraphs (2)(a) and (e) to (j) to the derivatives party in writing before the derivatives dealer first transacts in a derivative for the derivatives party.

Pre-transaction disclosure

21. (1) Before transacting in a type of derivative with or on behalf of a derivatives party for the first time, a derivatives dealer must deliver a document reasonably designed to allow the derivatives party to assess each of the following:

(a) the material risks of the type of derivative transacted, including an analysis of the derivatives party's potential exposure under the type of derivative;

(b) the material characteristics of the type of derivative, including the material economic terms and the rights and obligations of the counterparties to the type of derivative.

(2) Before transacting in a derivative with or on behalf of a derivatives party, a derivatives dealer must advise the derivatives party of all of the following:

(a) any material risks or material characteristics that are materially different from those described in the disclosure required under subsection (1);

(b) if applicable, the price of the derivative to be transacted and the most recent valuation;

(c) any compensation or other incentive payable by the derivatives party relating to the derivative or the transaction in the derivative.

Daily reporting

22. On each business day, a derivatives firm must make available to a derivatives party a valuation for each derivative that it has transacted with or on behalf of the derivatives party and with respect to which contractual obligations remain outstanding on that day.

Notice to derivatives parties by non-resident derivatives firms

23. A derivatives firm whose head office is not located in Canada must not transact in a derivative with a derivatives party in the local jurisdiction unless it has delivered to the derivatives party a statement in writing disclosing all of the following:

(a) the jurisdiction in Canada or the foreign jurisdiction in which the head office or the principal place of business of the derivatives firm is located;

(b) that all or substantially all of the assets of the derivatives firm may be situated outside the local jurisdiction;

(c) that there may be difficulty enforcing legal rights against the derivatives firm because of the above;

(d) the name and address of the agent for service of process of the derivatives firm in the local jurisdiction.

DIVISION 2 Derivatives party assets

This Division, other than Sections 24 and 25, do not apply if a derivatives firm is dealing with an eligible derivatives party that is not an individual or an eligible derivatives party who is an individual that has waived these protections – see section 7

Interaction with Regulation 94-102 respecting Derivatives: Customer Clearing and Protection of Customer Collateral and Positions

24. This Division does not apply to a derivatives firm in respect of derivatives party assets if the derivatives firm is subject to and complies with or is exempt from sections 3 through 8 of Regulation 94-102 respecting Derivatives: Customer Clearing and Protection of Customer Collateral and Positions (*insert here the reference*) in respect of those derivatives party assets.

Segregating derivatives party assets

25. A derivatives firm that holds derivatives party assets must segregate those assets from the positions and property of other persons including the positions and property of the derivatives firm.

Holding derivatives party assets

26. A derivatives firm must hold all of its derivatives party assets

(a) in one or more accounts at a permitted depository that are clearly identified as holding derivatives party assets, and

(b) in separate accounts from the property of all persons who are not a derivatives party of the derivatives firm.

Use of derivatives party assets

27. (1) A derivatives firm must not use or permit the use of derivatives party assets except in accordance with this section and section 28.

(2) A derivatives firm must not use or permit the use of derivatives party assets except to do either of the following:

(a) margin, guarantee, secure, settle or adjust the obligations of the derivatives party;

(b) secure or extend the credit of the derivatives party.

(3) Other than with respect to derivatives party assets used in accordance with paragraph (2)(b), a derivatives firm must not create or permit to exist any lien or other

encumbrance on the derivatives party assets unless the lien or other encumbrance secures an obligation in favour of the derivatives party.

Investment of derivatives party assets

28. (1) A derivatives firm must not invest derivatives party assets except in accordance with subsections (2) and (3).

(2) Subject to subsection (3), a derivatives firm may

(a) invest derivatives party assets in a permitted investment, and

(b) use derivatives party assets to purchase a permitted investment pursuant to an agreement for resale or repurchase if all of the following apply:

(i) the agreement is in writing;

(ii) the term of the agreement is no more than one business day;

(iii) written confirmation specifying the terms of the agreement is delivered to the derivatives party immediately upon entering into the agreement;

(iv) the agreement is not entered into with an affiliated entity of the derivatives firm.

(3) A loss resulting from an investment or use of a derivatives party's derivatives party assets in accordance with subsection (1) or subsection (2) by the derivatives firm must be borne by the derivatives firm making the investment and not by the derivatives party.

DIVISION 3 Reporting to derivatives parties

This Division, other than Subsection 29(1), do not apply if a derivatives firm is dealing with an eligible derivatives party that is not an individual or an eligible derivatives party who is an individual that has waived these protections – see section 7

Content and delivery of transaction confirmations

29. (1) A derivatives dealer that has transacted with, for or on behalf of a derivatives party must promptly deliver to the derivatives party or, if the derivatives party consents in writing, to a derivatives adviser acting for the derivatives party, a written confirmation of the transaction.

(2) If the derivatives dealer has transacted with, for or on behalf of a derivatives party that is not an eligible derivatives party, the written confirmation of the transaction must set out all of the following, if and as applicable:

(a) a description of the derivative;

(b) information sufficient to identify the agreement that governs the transaction;

(c) the notional value or amount, quantity or volume of the underlying asset of the derivative;

(d) the number of units of the derivative;

(e) the total price paid for the derivative and the per unit price of the derivative;

(f) the commission, sales charge, service charge and any other amount charged in respect of the transaction;

(g) whether the derivatives dealer acted as principal or agent in relation to the derivative;

(h) the date and the name of the trading facility, if any, on which the transaction took place;

(i) the name of the individual acting on behalf of the derivatives firm, if any, that provided advice relating to the derivative or the transaction;

(j) the settlement date of the transaction;

(k) the name of the regulated clearing agency, if any, where the derivative was cleared.

(3) For the purpose of paragraph (2)(i), an individual acting on behalf of a derivatives firm may be identified by means of a code or symbol if the confirmation also contains a statement that the name of the individual will be provided to the derivatives party on request of the derivatives party.

(4) The confirmation required under this section must be delivered promptly following the date of the transaction.

Derivatives party statements

30. (1) A derivatives firm must deliver a statement to a derivatives party promptly after the end of each month if either of the following applies:

(a) within the month a derivative was transacted with, for or on behalf of the derivatives party;

(b) the derivatives party has an outstanding position resulting from a transaction where the derivatives firm acted as a derivatives dealer.

(2) A statement delivered under this section must include all of the following information for each transaction made with, for or on behalf of the derivatives party by the derivatives firm during the period covered by the statement, if and as applicable:

(a) the date of the transaction;

(b) a description of the derivative transaction;

(c) information sufficient to identify the agreement that governs the transaction;

(d) the number of units of the derivative transacted and the nature of the transaction;

(e) the total price paid for the derivative and the per unit price of the derivative.

(3) A statement delivered under this section must include all of the following information about the derivatives party's account or position as at the date of the statement, if and as applicable:

(a) a description of each outstanding derivative to which the derivatives party is a party;

(b) the valuation of each outstanding derivative to which the derivatives party is a party as at the statement date;

(c) the final valuation of each derivative to which the derivatives party is a party that expired or terminated during the period covered by the statement as at the expiry or termination date;

(d) a description of all derivatives party assets held by the derivatives firm as collateral;

(e) any cash balance in the account;

(f) a description of any other derivatives party asset held by the derivatives firm;

(g) the total market value of all cash, outstanding derivatives and other derivatives party assets in the account, other than assets held as collateral.

PART 5 COMPLIANCE AND RECORDKEEPING

DIVISION 1 Compliance

Definitions

31. In this Division,

"senior derivatives manager" means, in respect of a derivatives business unit of a derivatives firm, the individual designated by the derivatives firm as responsible for directing the derivatives activities of that unit;

"derivatives business unit" means, in respect of a derivatives firm, an organizational unit that transacts in or provides advice in relation to a derivative, or a class of derivatives, on behalf of the derivatives firm.

Policies and procedures

32. A derivatives firm must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to

(a) provide reasonable assurance that the derivatives firm and each individual acting on its behalf in relation to its activities relating to transacting in or advising on derivatives complies with applicable securities legislation,

(b) manage the risks relating to its derivatives activities in accordance with prudent business practices, and

(c) ensure that individuals that perform an activity relating to transacting in or advising on derivatives have, on an ongoing basis, the experience, the education and the training that a reasonable person would consider necessary to perform that activity competently, including understanding the structure, features and risks of each derivatives that the individual transacts in or recommends.

Responsibilities of senior derivatives managers

33. (1) Each senior derivatives manager of a derivatives firm must do all of the following:

(a) supervise the activities conducted in his or her derivatives business unit that are directed towards ensuring compliance by the derivatives business unit, and each individual working in the derivatives business unit, with this Regulation, applicable securities legislation and the policies and procedures required under section 32;

(b) with respect to the derivatives activities conducted in his or her derivatives business unit, promote compliance by the derivatives business unit, and each individual working in the derivatives business unit, with this Regulation, applicable securities legislation and the policies and procedures required under section 32;

(c) take reasonable steps to prevent and respond to any non-compliance, with respect to the derivatives activities conducted in his or her derivatives business unit, with this Regulation, applicable securities legislation or the policies and procedures required under section 32.

(2) At least once per calendar year, each senior derivatives manager of a derivatives firm must, with respect to the derivatives activities conducted in his or her derivatives business unit, submit a report to the derivatives firm's board of directors, or individuals acting in a similar capacity for the derivatives firm,

(a) certifying that the derivatives business unit is in material compliance with this Regulation, applicable securities legislation, and the policies and procedures required under section 32, or

(b) specifying all circumstances where the derivatives business unit is not in material compliance with this Regulation, applicable securities legislation, or the policies and procedures required under section 32.

Responsibility of derivatives firm to respond to material non-compliance

34. If a senior derivatives manager specifies circumstances under paragraph 33(2)(b) where a derivatives business unit is not in material compliance with this Regulation, applicable securities legislation, or the policies and procedures required under section 32, the derivatives firm must,

(a) respond to the specified non-compliance in a timely manner, and document its response, and

(b) report to the regulator, except in Québec, or securities regulatory authority in a timely manner any circumstance where, with respect to the derivatives activities of the derivatives firm, the derivatives firm is not or was not in material compliance with this Regulation, applicable securities legislation, or the policies and procedures required under section 32.

DIVISION 2 Recordkeeping

Derivatives party agreement

35. (1) A derivatives firm must establish policies and procedures that are reasonably designed to ensure that the derivatives firm, before transacting in a derivative with or on behalf of a derivatives party, enters into an agreement with that derivatives party.

(2) The agreement referenced in subsection (1) must establish all of the material terms governing the relationship between the derivatives firm and the derivatives party including those relating to the rights and obligations of the derivatives firm and the derivatives party.

Records

36. A derivatives firm must keep complete records of all its derivatives, transactions and advising activities, including, as applicable, all of the following:

(a) general records of its derivatives business and activities conducted with derivatives parties, and compliance with applicable provisions of securities legislation, including

(i) records of derivatives party assets, and

(ii) evidence of the derivatives firm's compliance with internal policies and procedures;

(b) for each derivative, records that demonstrate the existence and nature of the derivative, including

(i) records of communications with derivatives parties relating to transacting in derivatives,

(ii) documents provided to derivatives parties to confirm the derivative and their terms and each transaction relating to the derivative,

(iii) correspondence relating to the derivative and each transaction relating to the derivative, and

(iv) records made by staff relating to the derivative and transactions relating to the derivative, such as notes, memos or journals;

(c) for each derivative, records that provide for a complete and accurate reconstruction of the derivative and all transactions relating to the derivative, including

(i) records relating to pre-execution activity including all communications relating to quotes, solicitations, instructions, transactions and prices however they may be communicated,

(ii) reliable timing data for the execution of each transaction relating to the derivative, and

(iii) records relating to the execution of the transaction including

(A) information obtained to determine whether the counterparty qualifies as an eligible derivatives party,

(B) fees or commissions charged, and

(C) any other information relevant to the transaction;

(d) an itemized record of post-transaction processing and events, including

(i) data reported to a trade repository, including the time and date that the report is made,

(ii) transaction confirmations,

(iii) terminations of derivatives,

(iv) novations of derivatives,

(v) amendments to derivatives,

(vi) assignment of derivatives or rights under derivatives,

(vii) netting of derivatives, and

(viii) margining and collateralization.

Form, accessibility and retention of records

37. (1) A derivatives firm must keep a record that it is required to keep under this Part, and all supporting documentation,

(a) in a readily accessible and safe location and in a durable form,

(b) in the case of a record or supporting documentation that relates to a derivative, for a period of 7 years following the date on which the derivative expires or is terminated, and

(c) in any other case, for a period of 7 years following the date on which a derivatives party's last derivative expires or is terminated.

(2) Despite subsection (1), in Manitoba, with respect to a derivatives firm or a derivatives party located in Manitoba, the time period applicable to records and supporting documentation kept pursuant to subsection (1) is 8 years.

PART 6 EXEMPTIONS

DIVISION 1 Exemptions from this Regulation

Limitation on the availability of exemptions in this Division

38. The exemptions in this Division are not available to a person if either of the following applies:

(a) the person is a registered firm in any jurisdiction in Canada;

(b) the person is registered under the securities, commodity futures or derivatives legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of registration that permits it to carry on the activities in that jurisdiction that registration as a derivatives dealer or derivatives adviser would permit it to carry on in the local jurisdiction.

Exemption for certain derivatives end-users

39. A person is exempt from the requirements of this Regulation if each of the following applies:

(a) the person does not solicit, or otherwise transact in a derivative with, for or on behalf of, a person that is not an eligible derivatives party;

(b) the person does not, in respect of transactions in derivatives, advise other persons that are not eligible derivatives parties, other than general advice that is provided in accordance with the conditions of section 43;

(c) the person does not regularly quote prices at which they would be willing to transact in a derivative or otherwise make or offer to make a market in a derivative with a derivatives party;

(d) the person does not regularly facilitate or otherwise intermediate transactions in derivatives for another person;

(e) the person does not facilitate the clearing of a transaction in a derivative through the facilities of a clearing agency for another person, other than for an affiliated entity.

DIVISION 2 Exemptions from specific requirements in this Regulation

Foreign derivatives dealers

40. (1) A derivatives dealer whose head office or principal place of business is in a foreign jurisdiction is exempt from this Regulation in respect of a transaction if

(a) the derivatives dealer does not solicit, or otherwise transact in a derivative with, for or on behalf of, a person in the local jurisdiction that is not an eligible derivatives party,

(b) the derivatives dealer is registered, licensed or otherwise authorized under the securities, commodity futures or derivatives legislation of a foreign jurisdiction specified in Appendix A to conduct the derivatives activities in the foreign jurisdiction that it proposes to conduct with the derivatives party, and

(c) the derivatives dealer complies with the laws of the foreign jurisdiction applicable to the derivatives dealer set out in Appendix A relating to the activities being conducted.

(2) Despite subsection (1), a derivatives dealer relying on the exemption set out in that subsection must comply with the provisions of this Regulation set out in Appendix A opposite the name of the foreign jurisdiction in respect of the transaction.

(3) The exemption in subsection (1) is not available to a person in respect of a transaction in a derivative unless all of the following apply:

(a) the head office or principal place of business of the person is in the foreign jurisdiction in which it is registered, licensed or otherwise authorized;

(b) the person engages in the business of a derivatives dealer in the foreign jurisdiction in which its head office or principal place of business is located;

(c) the person has delivered to the derivatives party a statement in writing disclosing all of the following:

(i) the foreign jurisdiction in which the person's head office or principal place of business is located;

(ii) that all or substantially all of the assets of the person may be situated outside of the local jurisdiction;

(iii) that there may be difficulty enforcing legal rights against the person because of the above;

(iv) the name and address of the agent for service of the person in the local jurisdiction;

(d) the person has submitted to the securities regulatory authority a completed Form 31-103F2 under Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (chapter V-1.1, r. 10);

(e) the person is not in the business of trading in derivatives on an exchange or a derivatives trading facility designated or recognized in the jurisdiction;

(f) the person undertakes to the securities regulatory authority to provide the securities regulatory authority with prompt access to its books and records upon request.

(4) A person that relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year must notify the regulator or, in Québec, the securities regulatory authority of that fact by December 1 of that year.

(5) In Ontario, subsection (4) does not apply to a person that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 Fees.

Investment dealers

41. A derivatives dealer that is registered as an investment dealer and that is a member of the Investment Industry Regulatory Organization of Canada is exempt from the requirements set out in Appendix B if the derivatives dealer complies with the corresponding conduct and other regulatory requirements of that organization in connection with the transaction or other activity.

Canadian financial institutions

42. A derivatives dealer that is a Canadian financial institution is exempt from the requirements set out in Appendix C if the derivatives dealer is subject to and complies with the corresponding conduct and other regulatory requirements of its prudential regulator in connection with the transaction or other activity.

DIVISION 3 Exemptions for derivatives advisers

Advising generally

43. (1) For the purposes of subsection (3), "financial or other interest" includes the following:

(a) ownership, beneficial or otherwise, of the underlying interest or underlying interests of the derivative;

(b) ownership, beneficial or otherwise, of, or other interest in, a derivative that has the same underlying interest as the derivative;

(c) a commission or other compensation received or expected to be received from any person in relation to a transaction involving the derivative, an underlying interest in the derivative or a derivative that has the same underlying interest as the derivative;

(d) a financial arrangement in relation to the derivative, an underlying interest in the derivative or a derivative that has the same underlying interest as the derivative;

(e) any other interest that relates to the transaction.

(2) The requirements of this Regulation applicable to a derivatives adviser do not apply to a person that acts as a derivatives adviser if the advice that the person provides does not purport to be tailored to the needs of the person receiving the advice.

(3) If the person that is exempt under subsection (2) recommends a transaction involving a derivative, a class of derivatives or the underlying interest of a derivative or class of derivatives in which any of the following has a financial or other interest, the person must disclose the interest, including a description of the nature of the interest, concurrently with providing the advice:

(a) the person;

(b) any partner, director or officer of the person;

(c) where the person is an individual, the spouse or child of the individual;

(d) any other person that would be an insider of the first mentioned person if the first mentioned persons were a reporting issuer.

Foreign derivatives advisers

44. (1) A derivatives adviser whose head office or principal place of business is in a foreign jurisdiction is exempt from this Regulation in respect of advice provided to a derivatives party if

(a) the derivatives adviser does not provide advice to a person in the local jurisdiction that is not an eligible derivatives party, other than general advice that is provided in accordance with the conditions of section 43;

(b) the derivatives adviser is registered, licensed or otherwise authorized under the securities, commodity futures or derivatives legislation of a foreign jurisdiction specified in Appendix D to conduct the derivatives activities in the foreign jurisdiction that it proposes to conduct with the derivatives party; and

(c) the derivatives adviser complies with the laws of the foreign jurisdiction applicable to the derivatives adviser set out in Appendix D relating to the activities being conducted.

(2) Despite subsection (1), a derivatives adviser relying on the exemption set out in that subsection must comply with the provisions of this Regulation set out in Appendix D opposite the name of the foreign jurisdiction in respect of the derivatives advice.

(3) The exemption under subsection (1) is not available to a person in respect of advice provided to a derivatives party unless all of the following apply:

(a) the head office or principal place of business of the person is in the foreign jurisdiction in which it is registered;

(b) the person engages in the business of a derivatives adviser in the foreign jurisdiction in which its head office or principal place of business is located;

(c) the person has delivered to the derivatives party a statement in writing disclosing the following:

(i) the foreign jurisdiction in which the person's head office or principal place of business is located;

(ii) that all or substantially all of the assets of the person may be situated outside of the local jurisdiction;

(iii) that there may be difficulty enforcing legal rights against the person because of the above;

(iv) the name and address of the agent for service of the person in the local jurisdiction;

(d) the person has submitted to the securities regulatory authority a completed Form 31-103F2 under Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (chapter V-1.1, r. 10);

(e) the person is not in the business of trading in derivatives on an exchange or a derivatives trading facility designated or recognized in the jurisdiction;

(f) the person undertakes to the securities regulatory authority to provide the securities regulatory authority with prompt access to its books and records upon request.

(4) A person that relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year must notify the regulator or, in Québec, the securities regulatory authority of that fact by December 1 of that year.

(5) In Ontario, subsection (4) does not apply to a person that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 Fees.

PART 7 EXEMPTION

Exemption

45. (1) The regulator, except in Québec, or the securities regulatory authority may grant an exemption from this Regulation, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of Regulation 14-101 respecting Definitions (chapter V-1.1, r. 3) opposite the name of the local jurisdiction.

PART 8 EFFECTIVE DATE

Effective date

46. (1) This Regulation comes into force on *(insert here the date of coming into force of this Regulation).*

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after *(insert date)*, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

(3) Despite subsection (1) and, in Saskatchewan, subject to subsection (2), [part ●] comes into force *(insert date + 6 months).*

(4) Despite subsections (1) to (3), Part ● does not apply to a transaction entered into before *(insert date)* if the derivative that is the subject of the transaction expires or terminates not later than 365 days after that day.

APPENDIX A
FOREIGN DERIVATIVES DEALERS
(Section 40)

LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS APPLICABLE TO FOREIGN DERIVATIVES DEALERS

Foreign Jurisdiction	**Laws, Regulations or Instruments**	**Provisions of this Regulation applicable to a foreign derivatives dealer despite compliance with the foreign jurisdiction's laws, regulations or instruments**

APPENDIX B
INVESTMENT DEALERS
(Section 41)

LAWS, REGULATIONS OR INSTRUMENTS APPLICABLE TO INVESTMENT DEALERS

IIROC	Laws, Regulations or Instruments	Provisions of this Regulation applicable to an investment dealer despite compliance with IIROC requirements

APPENDIX C
CANADIAN FINANCIAL INSTITUTIONS
(Section 42)

LAWS, REGULATIONS OR INSTRUMENTS APPLICABLE TO CANADIAN FINANCIAL INSTITUTIONS

Federal or provincial prudential regulator	Laws, Regulations or Instruments	Provisions of this Regulation applicable to a Canadian Financial Institution despite compliance with applicable federal or provincial regulatory requirements

APPENDIX D
FOREIGN DERIVATIVES ADVISERS
(Section 44)

LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS APPLICABLE TO FOREIGN DERIVATIVES ADVISERS

Foreign Jurisdiction	Laws, Regulations or Instruments	Provisions of this Regulation applicable to a foreign derivatives adviser despite compliance with the foreign jurisdiction's laws, regulations or instruments