REGULATION 93-101 RESPECTING DERIVATIVES: BUSINESS CONDUCT

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

PART 1 DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1. (1) In this Regulation

"Canadian financial institution" means any of the following:

(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;

(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;

"collateral" means all cash, securities and other property that is

(a) received or held by the derivatives firm from, for or on behalf of a derivatives party, and

(b) intended to or does margin, guarantee, secure, settle or adjust one or more derivatives between the derivatives firm and the derivatives party;

"commercial hedger" means a person that carries on a business and that transacts a derivative that is intended to hedge risks relating to that business if those risks arise from potential changes in value of any of the following:

(a) an asset that the person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

(b) a liability that the person incurs or anticipates incurring;

(c) a service which the person provides, purchases, or anticipates providing or purchasing;

"derivatives adviser" means

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

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

"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 securities legislation;

“derivatives firm” means a derivatives dealer or a derivatives adviser, as applicable;

“derivatives party” means

(a) in relation to a derivatives dealer, any of the following:

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

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

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

“derivatives party assets” means any asset, including collateral, received or held by a derivatives firm from, for or on behalf of a derivatives party;

“derivatives position” means the economic interest of a counterparty in an outstanding derivative at a point in time;

“eligible derivatives party” means, for a derivatives party of a derivatives firm, 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, chapter 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 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 the pension fund;

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

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

(h) the government of a 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, chapter 45) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a managed account managed by the trust company or trust corporation, as the case may be;

(k) a person that is acting on behalf of a managed account if the person is registered or authorized to carry on business as one of the following:

(i) an adviser or a derivatives adviser;

(ii) the equivalent of an adviser or a derivatives adviser under the securities legislation of a jurisdiction of Canada or of a foreign jurisdiction;

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

(m) a person, other than an individual, that has represented to the derivatives firm in writing, that

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

(ii) it has net assets of at least $25 000 000 as shown on its most recently prepared financial statements;

(n) a person, other than an individual, that has represented to the derivatives firm, in writing, that

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

(ii) it has net assets of at least $10 000 000 as shown on its most recently prepared financial statements, and

(iii) it is a commercial hedger in relation to the derivatives that it transacts with the derivatives firm;

(o) an individual that has represented to the derivatives firm, in writing, that

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

(ii) he or she 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 $5 000 000;

(p) a person, other than an individual, that has represented to the derivatives firm, in writing, that its obligations under derivatives that it transacts with the derivatives firm are fully guaranteed or otherwise fully supported, under a written agreement, by one or more eligible derivatives parties, other than a person that only qualifies as an eligible derivatives party under paragraph (n) or under paragraph (o);

(q) a person, other than an individual, that has represented to the derivatives firm, in writing, that all of the following apply:

(i) the person is a commercial hedger in relation to the derivatives that it transacts with the derivatives firm;

(ii) the obligations of the person, under derivatives that it transacts with the derivatives firm, are fully guaranteed or otherwise fully supported, under a written agreement, by one or more eligible derivatives parties that qualifies as an eligible derivatives party under paragraph (n);

(r) a qualifying clearing agency;

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

"IIROC" means the Investment Industry Regulatory Organization 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 transact derivatives 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 qualifying clearing agency;

(c) the Bank of Canada or the central bank 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 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;

"qualifying clearing agency" means a person if any of the following applies:

(a) it is recognized or exempted from recognition as a clearing agency or a clearing house, as applicable, in a jurisdiction of Canada;

(b) it is regulated by an authority in a foreign jurisdiction that applies regulatory requirements that are consistent with the *Principles for market infrastructures* applicable to central counterparties, as amended from time to time, and published by the Bank for International Settlements' Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions;

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

"referral fee" means any compensation, regardless of its form, whether made directly or indirectly, 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 the securities legislation of a jurisdiction in Canada as a derivatives dealer or a derivatives adviser;

"registered firm" means a registered derivatives firm or a registered securities firm;

"registered securities firm" means a person that is registered as a dealer, an adviser or an investment fund manager in a category of registration specified in Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (chapter V-1.1, r. 10);

"Schedule III bank" means an authorized 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 related to derivatives or derivatives party assets;

"specified commercial hedger" means a person described in paragraph (n) or (q) of the definition of "eligible derivatives party";

"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 qualifying clearing agency;

"valuation" means the value of a derivative as at a certain date determined in accordance with applicable accounting standards for fair value measurement using a methodology that is consistent with industry standards.

(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, chapter 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) all of the following apply:

(i) the second party is a limited partnership;

(ii) the first party is a general partner of the limited partnership referred to in subparagraph (i);

(iii) the first party has the power to direct the management and policies of the second party by virtue of being a general partner of the second party;

(d) all of the following apply:

(i) the second party is a trust;

(ii) the first party is a trustee of the trust referred to in subparagraph (i);

(iii) the first party has the power to direct the management and policies of the second party by virtue of being a trustee of the second party.

(5) In this Regulation, a person is a subsidiary of another person if one of the following applies:

(a) it is controlled by

(i) the other person,

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

(iii) 2 or more persons each of which is controlled by the other person;

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

(6) For the purpose of this Regulation, a person described in paragraph (k) of the definition of "eligible derivatives party" is an adviser acting on behalf of a managed account owned by another person.

(7) For the purpose of determining whether a derivatives party is an eligible derivatives party, a derivatives firm must not rely on a written representation if reliance on that representation would be unreasonable.

(8) 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 persons

2. This Regulation applies to a person whether or not the person is a registered derivatives firm or an individual acting on behalf of a registered derivatives firm.

Application - 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(8) of this Regulation. The text boxes in this Regulation do not form part of this Regulation and have no official status.

Application - affiliated entities

4. A person is exempt from the requirements of this Regulation in respect of dealing with or advising an affiliated entity of the person, other than an affiliated entity that is an investment fund.

Application - qualifying clearing agencies

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

Application - 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.

Exemptions from the requirements of this Regulation when dealing with or advising an eligible derivatives party

7. (1) A derivatives firm is exempt from the requirements of this Regulation if a derivatives party is an eligible derivatives party and is neither an individual nor a specified commercial hedger, except for the following requirements,

(a) Division 1 of Part 3;

(b) sections 23 and 24;

(c) subsection 27(1);

(d) Part 5.

(2) A derivatives firm is exempt from the requirements of this Regulation in respect of a derivatives party that is an eligible derivatives party and that is an individual or a specified commercial hedger, if the eligible derivatives party has waived in writing its right to receive some or all of the protections provided under those requirements in relation to all derivatives, a class of derivatives or a specific derivative.

(3) The exemption in subsection (2) does not apply in respect of the requirements in the provisions identified in paragraphs (1)(a) to (d).

PART 3 DEALING WITH OR ADVISING DERIVATIVES PARTIES

DIVISION 1 General obligations towards all derivatives parties

Fair dealing

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

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

Conflicts of interest

9. (1) A derivatives firm must establish, maintain and apply reasonable policies and procedures 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 a 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 facts necessary to comply with applicable 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 a derivative that has one or more 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, a derivatives firm must establish 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 (i) an eligible derivatives party that is neither an individual nor a specified commercial hedger or (ii) an eligible derivatives party who is either an individual or a specified commercial hedger 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 transacts 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, or an individual acting on behalf of 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 transacts in a derivative for a derivatives party's managed account, both the derivative and the transaction are suitable for the derivatives party.

(2) If a derivatives party instructs a derivatives firm, or an individual acting on behalf of a derivatives firm, to transact in a derivative and, in the derivatives firm's reasonable opinion, following the instruction would result in a transaction or derivative that is not 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 in respect of a derivative with another person unless all of the following apply:

(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;

(c) the derivatives firm, or the 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 the 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 relied upon, 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.

Handling complaints

16. A derivatives firm must document and, in a manner that a reasonable person would consider fair and effective, promptly 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.

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

The obligations in Division 3 of Part 3 do not apply if a derivatives firm is dealing with (i) an eligible derivatives party that is neither an individual nor a specified commercial hedger or (ii) an eligible derivatives party who is either an individual or a specified commercial hedger that has waived these protections – see section 7.

Tied selling

17. (1) A derivatives firm, or an individual acting on behalf of the derivatives firm, must not impose undue pressure on or coerce a person to obtain a derivatives-related product or service from a particular person, including the derivatives firm or any of its affiliated entities, as a condition of obtaining another product or service from the derivatives firm.

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

PART 4 DERIVATIVES PARTY ACCOUNTS

DIVISION 1 Disclosure to derivatives parties

The obligations in this Division 1 of Part 4 do not apply if a derivatives firm is dealing with (i) an eligible derivatives party that is neither an individual nor a specified commercial hedger or (ii) an eligible derivatives party who is either an individual or a specified commercial hedger that has waived these protections – see section 7.

Relationship disclosure information

18. (1) Before transacting with, for or on behalf of a derivatives party for the first time, or advising a derivatives party for the first time, 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, including all of the following:

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

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

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

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

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

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

(g) disclosure of the derivatives firm's obligations if a derivatives party has a complaint contemplated under section 16;

(h) 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 or at any other time or a statement identifying the exemption the derivatives firm is relying on in respect of this obligation;

(i) the information a derivatives firm must collect about the derivatives party under section 10 and 11;

(j) 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 available to the derivatives party from the derivatives firm;

(k) in the case of a derivatives firm that holds or has access to derivatives party assets, a general description of the manner in which the assets are held, used or are invested by the derivatives firm and a description of the risks and benefits to the counterparty arising from the derivatives firm holding or having access to use or invest the derivatives party assets in that manner.

(2) A derivatives firm must deliver the information in subsection (1) to the derivatives party in writing before the derivatives firm does either of the following:

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

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

(3) If there is a significant change in respect of the information delivered to a derivatives party under subsections (1), 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 does either of the following:

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

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

(4) 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.

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

(6) A derivatives dealer referred to in subsection (5) must deliver the information required under paragraphs (1)(a) to (g) to the derivatives party in writing before the derivatives dealer first transacts in a derivative for the derivatives party.

Pre-transaction disclosure

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

(a) a general description of the type of derivatives and services related to derivatives that the derivatives firm offers;

(b) a document reasonably designed to allow the derivatives party to assess each of the following:

(i) the types of risks that a derivatives party should consider when making a decision relating to types of derivatives that the derivatives dealer offers, including the material risks relating to the type of derivatives transacted and the derivatives party's potential exposure under the type of derivatives;

(ii) 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;

(c) a statement in writing 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. We 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, we 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) Before transacting in a derivative with, for 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.

Daily reporting

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

(2) On a monthly basis, a derivatives adviser must make available to a derivatives party a valuation for each derivative that it has transacted for or on behalf of the derivatives party, unless a derivatives adviser and a derivatives party agree otherwise.

Notice to derivatives parties by non-resident derivatives firms

21. A derivatives firm whose head office or principal place of business 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 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 23 and 24, does not apply if a derivatives firm is dealing with (i) an eligible derivatives party that is neither an individual nor a specified commercial hedger or (ii) an eligible derivatives party who is either an individual or a specified commercial hedger that has waived these protections – see section 7.

Definition – initial margin

22. In this Division, "initial margin" means any derivatives party assets delivered by a derivatives party to a derivatives firm as collateral to cover potential changes in the value of a derivative over an appropriate close-out period in the event of a default.

Interaction with other regulations

23. A derivatives firm is exempt from the requirements in this Division in respect of derivatives party assets if any of the following apply:

(a) the derivatives firm is subject to and complies with or is exempt from sections 3 to 8 of Regulation 94-102 respecting Derivatives: Customer Clearing and Protection of Customer Collateral and Positions (chapter I-14.01, r. 0.001) in respect of the derivatives party assets;

(b) the derivatives firm is subject to and complies with securities legislation relating to margin and collateral requirements or Regulation 81-102 respecting Investment Funds (chapter V-1.1, r. 39) in respect of the derivatives party assets.

Segregating derivatives party assets

24. A derivatives firm must segregate derivatives party assets and derivatives positions from the property and derivatives positions of the derivatives firm and other persons.

Holding initial margin

25. A derivatives firm must hold initial margin in an account at a permitted depository.

Investment or use of initial margin

26. (1) A derivatives firm must not use or invest initial margin without receiving written consent from the derivatives party.

(2) A loss resulting from an investment or use of a derivatives party's initial margin 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 27(1), does not apply if a derivatives firm is dealing with (i) an eligible derivatives party that is neither an individual nor a specified commercial hedger or (ii) an eligible derivatives party who is an individual or a specified commercial hedger that has waived these protections – see section 7.

Content and delivery of transaction information

27. (1) A derivatives dealer that has transacted with, for or on behalf of a derivatives party must promptly deliver a written confirmation of the transaction to

(a) the derivatives party, or

(b) if the derivatives party consents or has given a direction in writing, a derivatives adviser acting for the derivatives party.

(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 required under subsection (1) must include all of the following, if and as applicable:

(a) a description of the derivative;

(b) a description of the agreement that governs the transaction;

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

(j) the date of the transaction;

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

Derivatives party statements

28. (1) A derivatives firm must make available a statement to a derivatives party, at the end of each quarterly period, if either of the following applies:

(a) within the quarterly period the derivatives firm transacted a derivative with, for or on behalf of the derivatives party;

(b) the derivatives party has an outstanding derivatives 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 transaction, including the number of units of the transaction, the per unit price and the total price;

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

(3) A statement delivered under this section must include all of the following information 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, as at the statement date, of each outstanding derivative referred to in paragraph (a);

(c) the final valuation, as at the expiry or termination date, of each derivative that expired or terminated during the period covered by the statement;

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

(e) any cash balance in the derivatives party's account;

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

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

PART 5 COMPLIANCE AND RECORDKEEPING

DIVISION 1 Compliance

Definitions

29. In this Division,

"chief compliance officer" means the officer or partner of a derivatives firm that is responsible for establishing, maintaining and applying written policies and procedures to monitor and assess compliance, by the derivatives firm and individuals acting on its behalf, with securities legislation relating to derivatives;

"derivatives business unit" means, in respect of a derivatives firm, a division or 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;

"senior derivatives manager" means, in respect of a derivatives business unit of a derivatives firm, an individual designated by the derivatives firm under section 30(2).

Policies, procedures and designation

30. (1) A derivatives firm must establish, maintain and apply policies, procedures, controls and supervision sufficient to provide reasonable assurance that all of the following are satisfied:

(a) the derivatives firm and each individual acting on its behalf in relation to transacting in, or providing advice in relation to, a derivative, comply with securities legislation relating to trading and advising in derivatives;

(b) the risks relating to its derivatives activities within the derivatives business unit are managed in accordance with the derivative's firms risk management policies and procedures;

(c) each individual who performs an activity on behalf of the derivatives firm relating to transacting in, or providing advice in relation to, derivatives, prior to commencing the activity and on an ongoing basis,

(i) has the experience, education and training that a reasonable person would consider necessary to perform the activity competently,

(ii) without limiting subparagraph (i), has the understanding of the structure, features and risks of each derivative that the individual transacts in or advises in relation to, and

(iii) has conducted themselves with integrity.

(2) A derivatives firm must designate a senior derivatives manager in respect of each derivatives business unit;

(3) A derivatives firm must identify to the regulator, except in Québec, or the securities regulatory authority, upon request, each individual designated as the senior derivatives manager in respect of each derivatives business unit.

Responsibilities of senior derivatives managers

31. (1) A senior derivatives manager must do all of the following:

(a) supervise the derivatives-related activities conducted in the derivatives business unit 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 30;

(b) respond, in a timely manner, to any material non-compliance by an individual working in the derivatives business unit with this Regulation, applicable securities legislation or the policies and procedures required under section 30.

(2) At least once per calendar year, the senior derivatives manager in respect of each derivatives business unit must,

(a) prepare a report stating, as applicable, either of the following:

(i) each incidence of material non-compliance with this Regulation, securities legislation relating to trading and advising in derivatives and the policies and procedures required under section 30 by the derivatives business unit or an individual in the derivatives business unit and the steps taken to respond to each such incidence of material non-compliance;

(ii) the derivatives business unit is in material compliance with this Regulation, securities legislation relating to trading and advising in derivatives and the policies and procedures required under section 30;

(b) submit the report referred to in paragraph (a) to the board of directors of the derivatives firm.

(3) The senior derivatives manager may not delegate its obligation under paragraph (2)(b) except to the derivatives firm's chief compliance officer.

Responsibility of derivatives firm to report material non-compliance

32. The derivatives firm must report to the regulator, except in Québec, or the securities regulatory authority in a timely manner any circumstance in which the derivatives firm is not or was not in material compliance with this Regulation or securities legislation relating to trading and advising in derivatives and one or more of the following applies:

(a) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to a derivatives party;

(b) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to capital markets;

(c) the non-compliance is part of a pattern of non-compliance.

DIVISION 2 Recordkeeping

Derivatives party agreement

33. (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, for 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 the rights and obligations of the derivatives firm and the derivatives party.

Records

34. 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 the derivatives party relating to transacting in the derivative,

(ii) documents provided to the derivatives party to confirm the derivative, the terms of the derivative 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 each transaction relating to the derivative, including 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 for each transaction 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,

(C) any other information relevant to the transaction, and

(D) information used in calculating the derivative's valuation;

(d) an itemized record of post-transaction processing and events, including a record in relation to the calculation of margin and exchange of collateral;

(e) the price and valuation of the derivative.

Form, accessibility and retention of records

35. (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 the derivatives firm's last outstanding derivative with the derivatives party 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 Exemption from this Regulation

Limitation on the availability of the exemption in this Division

36. The exemption in this Division is not available to a person if either of the following applies:

(a) the person is a registered derivatives firm or a registered securities firm in any jurisdiction of Canada or is registered under the commodity futures legislation of any jurisdiction of Canada;

(b) the person is registered under the securities, commodity futures or derivatives legislation of a foreign jurisdiction in which its head office or principal place of business is located in a category of registration 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

37. (1) A person is exempt from the requirements of this Regulation if all of the following apply:

(a) the person does not solicit or otherwise transact 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 any transaction, advise a person that is not an eligible derivatives party, other than general advice that is provided in accordance with the conditions of section 42;

(c) the person does not regularly 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 for another person other than an affiliated entity that is not an investment fund;

(e) the person does not facilitate clearing of a derivative through the facilities of a qualifying clearing agency for another person.

(2) In determining whether a person satisfies the conditions in subsection (1), a person is not required to consider activities conducted with an affiliated entity, other than an affiliated entity that is an investment fund.

DIVISION 2 Exemptions from specific requirements in this Regulation

Foreign derivatives dealers

38. (1) A derivatives dealer whose head office or principal place of business is in a foreign jurisdiction specified in Appendix A is exempt from this Regulation in respect of a transaction if all of the following apply:

(a) it 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) it 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;

(c) it is subject to and complies with the laws of the foreign jurisdiction applicable to the derivatives dealer set out in Appendix A relating to the activities being conducted;

(d) it reports to the regulator, except in Québec, or the securities regulatory authority in a timely manner any circumstance in which, with respect to the derivatives activities of the derivatives firm, the derivatives firm is not or was not in material compliance with the laws of the foreign jurisdiction or securities legislation relating to trading in derivatives that is listed in Appendix A and if any of the following applies:

(i) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to a derivatives party located in Canada;

(ii) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to capital markets;

(iii) the non-compliance is part of a pattern of non-compliance.

(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 unless all of the following apply:

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

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

(i) the foreign jurisdiction in which the derivatives dealer’s head office or principal place of business is located;

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

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

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

(c) the derivatives dealer has submitted to the regulator, except in Québec, or the securities regulatory authority a completed Form 93-102F1;

(d) the derivatives dealer undertakes to the regulator, except in Québec, or the securities regulatory authority to provide the regulator or the securities regulatory authority with prompt access to its books and records upon request.

(4) A derivatives dealer that relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year must notify the regulator, except in Québec, or 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.

(6) A person is exempt from the requirements in subsections (4) and (5) if the person is registered as a derivatives dealer in the local jurisdiction.

(7) In determining whether a person satisfies the conditions in subsection (1), a person is not required to consider activities conducted with an affiliated entity, other than an affiliated entity that is an investment fund.

(8) The requirement in paragraph (3)(b) does not apply if the derivatives party is an affiliated entity that is not an investment fund.

Investment dealers

39. A derivatives dealer that is a dealer member of IIROC is exempt from the requirements set out in Appendix B if all of the following apply:

(a) the derivatives dealer complies with the corresponding conduct and other regulatory requirements of IIROC in connection with a transaction or other related activity;

(b) the derivatives dealer promptly notifies the regulator, except in Québec, or the securities regulatory authority of each instance of material non-compliance with a requirement or guideline

(i) to which it is subject, and

(ii) that is specified in Appendix B.

Canadian financial institutions

40. A derivatives dealer that is a Canadian financial institution is exempt from the requirements set out in Appendix C if all of the following apply:

(a) the derivatives dealer is subject to and complies with the corresponding conduct and other regulatory requirements of its prudential regulator in connection with a transaction or other related activity;

(b) the derivatives dealer promptly notifies the regulator, except in Québec, or the securities regulatory authority of each instance of material non-compliance with a requirement or guideline

(i) to which it is subject, and

(ii) that is specified in Appendix C.

Derivatives traded on a derivatives trading facility that are cleared

41. A derivatives firm is exempt from sections 10 and 27 in respect of a transaction to which all of the following apply:

(a) the execution of the transaction is on and subject to the rules of a derivatives trading facility;

(b) as soon as technologically practicable following the transaction,

(i) the derivative is submitted for clearing to a qualifying clearing agency that provides clearing services in respect of the type of derivative, and

(ii) the derivative is accepted for clearing by the qualifying clearing agency;

(c) the derivatives firm does not know the identity of the derivatives party prior to execution of the transaction;

(d) at the time of the transaction, the derivatives party to the derivative that is submitted for clearing is an eligible derivatives party.

DIVISION 3 Exemptions for derivatives advisers

Advising generally

42. (1) For the purpose 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, 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) A person that acts as a derivatives adviser is exempt from the requirements of this Regulation applicable to 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 person were a reporting issuer.

Foreign derivatives advisers

43. (1) A derivatives adviser whose head office or principal place of business is in a foreign jurisdiction specified in Appendix D is exempt from this Regulation in respect of advice provided to a derivatives party if all of the following apply:

(a) it 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) it 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;

(c) it is subject to and complies with the laws of the foreign jurisdiction applicable to the derivatives adviser set out in Appendix D relating to the activities being conducted; and

(d) it reports to the regulator, except in Québec, or the securities regulatory authority in a timely manner any circumstance in which, with respect to the derivatives activities of the derivatives firm, the derivatives firm is not or was not in material compliance with the laws of the foreign jurisdiction or securities legislation relating to advising in derivatives, if any of the following applies:

(i) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to a derivatives party located in Canada;

(ii) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to capital markets;

(iii) the non-compliance is part of a pattern of non-compliance.

(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 unless all of the following apply:

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

(b) the derivatives adviser has delivered to the derivatives party a statement in writing disclosing the following:

(i) the foreign jurisdiction in which the derivatives adviser’s head office or principal place of business is located;

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

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

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

(c) the derivatives adviser has submitted to the regulator, except in Québec, or the securities regulatory authority a completed Form 93-102F2;

(d) the derivatives adviser undertakes to the regulator, except in Québec, or the securities regulatory authority to provide the regulator or the securities regulatory authority with prompt access to its books and records upon request.

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

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

(6) A person is exempt from the requirements in subsections (4) and (5) if they are registered as a derivatives adviser in the local jurisdiction.

(7) In determining whether a person satisfies the conditions in subsection (1), a person is not required to consider activities conducted with an affiliated entity, other than an affiliated entity that is an investment fund.

(8) The requirement in paragraph (3)(b) does not apply if the derivatives party is an affiliated entity that is not an investment fund.

PART 7 GRANTING AN EXEMPTION

Granting an exemption

44. (1) The regulator 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

45. (1) This Regulation comes into force on (*insert date of publication + 1 year*).

(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 subsections (1) and (2), and except section 8, section 20 and section 28, the requirements of this Regulation do not apply in respect of a transaction if all of the following apply:

(a) the transaction was entered into before (*insert date of publication + 1 year*);

(b) the derivatives firm has taken reasonable steps to determine that the derivatives party is one or more of the following:

(i) a permitted client, as that term is defined in Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (chapter V-1.1, r. 10);

(ii) an accredited counterparty, as that term is defined in the Derivatives Act (chapter I-14.01);

(iii) a qualified party, as that term is defined in any of the following:

(A) Alberta Blanket Order 91-507 Over-the-Counter Derivatives;

(B) British Columbia Blanket Order 91-501 Over-the-Counter Derivatives;

(C) Manitoba Blanket Order 91-501 Over-the-Counter Trades in Derivatives;

(D) New Brunswick Local Rule 91-501 Derivatives;

(E) Nova Scotia Blanket Order 91-501 Over-the-Counter Trades in Derivatives;

(F) Saskatchewan General Order 91-908 Over-the-Counter Derivatives.

APPENDIX A
FOREIGN DERIVATIVES DEALERS
(Section 38)

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
IIROC DEALER MEMBERS
(Section 39)

APPENDIX C
CANADIAN FINANCIAL INSTITUTIONS
(Section 40)

APPENDIX D
FOREIGN DERIVATIVES ADVISERS
(Section 43)

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**