

REGULATION 93-102 RESPECTING DERIVATIVES: REGISTRATION

Derivatives Act

(chapter I-14.01, s. 175, 1st par., subpar. (2), (3), (11), (12), (13), (14), (16), (26) and (29))

PART 1 DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1. (1) In this Regulation,

“Canadian counterparty” means a derivatives party to which either of the following applies:

(a) the derivatives party is a person, other than an individual, organized under the laws of Canada or a jurisdiction of Canada or that has its head office or principal place of business in Canada;

(b) the derivatives party is an affiliated entity of a person described in paragraph (a) and the person is responsible for the liabilities of that affiliated entity;

“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;

“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 one or more 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, one 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;

“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, 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 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, c. 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 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 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 about derivatives that has been provided to the person 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, the suitability of the derivatives for that 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, the suitability of the derivatives for that 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 other than a person that only qualifies as an eligible derivatives party under paragraph (o);
- (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;

“non-eligible derivatives party” means a derivatives party that is not an eligible derivatives party;

“notional amount” has the meaning set out in Appendix A;

“principal regulator” means

(a) for a registered derivatives firm that has its head office in Canada, the securities regulatory authority or regulator in the jurisdiction in which the firm’s head office is located,

(b) for a registered derivatives firm that has its head office in a jurisdiction of Canada where the firm is exempt from the requirement to register as a derivatives dealer or as a derivatives adviser, the securities regulatory authority or regulator in the jurisdiction of Canada where the firm is required to register as a derivatives firm and where the firm expects to conduct most of its activities that require registration as a derivatives firm as at the end of its current financial year, or conducted most of its activities that require registration as a derivatives firm as at the end of its most recently completed financial year, and

(c) for a derivatives firm that has its head office in a foreign jurisdiction, the securities regulatory authority or regulator in the jurisdiction of Canada the firm identified in one of the following:

(i) item 2.2(b) of its most recently submitted Form 33-109F6 under Regulation 33-109 respecting Registration Information (chapter V-1.1, r. 12);

(ii) its most recently submitted Form 33-109F5 under Regulation 33-109 respecting Registration Information, if the change noted in that form relates to item 2.2(b) of Form 33-109F6;

“qualifying clearing agency” means a person if either 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 and published by the Bank for International Settlements' Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions in April 2012, as amended from time to time;

“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 derivatives individual” means an individual who is registered on behalf of a derivatives firm as any of the following:

(a) a derivatives dealing representative;

(b) a derivatives advising representative;

- (c) a derivatives ultimate designated person;
- (d) a derivatives chief compliance officer;
- (e) a derivatives chief risk officer;

“registered securities firm” is 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);

“sponsoring derivatives firm” means the registered derivatives firm in a jurisdiction of Canada on whose behalf an individual acts as a derivatives advising representative, a derivatives dealing representative, a derivatives ultimate designed person, a derivatives chief compliance officer or a derivatives chief risk officer;

“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 current value of a derivative 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.

Information may be given to the principal regulator

2. (1) For the purpose of a requirement in this Regulation to report or notify the regulator, except in Québec, or the securities regulatory authority or to deliver or submit a document to the regulator or the securities regulatory authority, a person may report or notify or deliver or submit the document to the person's principal regulator.

(2) Subsection (1) does not apply to a derivatives firm relying on the exemptions in either of the following:

- (a) section 52;
- (b) section 59.

PART 2 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. This text box does not form part of this Regulation and has no official status.

Qualifying clearing agencies

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

Governments, central banks and international organizations

5. 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) a crown corporation or agency, the accounts of which are consolidated for accounting purposes with those of the Government of Canada or with the government of a jurisdiction of Canada;

(d) the Bank for International Settlements;

(e) the International Monetary Fund.

PART 3 REQUIREMENT TO REGISTER AND CATEGORIES OF REGISTRATION FOR DERIVATIVES FIRMS

DIVISION 1 Firm registration and categories of registration

Derivatives dealer registration – additional registration triggers

6. In addition to the registration requirement that applies under other provisions of securities legislation, a person must register as a derivatives dealer if one or more of the following applies:

(a) the person transacts with, for or on behalf of a non-eligible derivatives party;

(b) the person solicits or initiates contact with a non-eligible derivatives party for the purpose of encouraging that person to transact in a derivative or to offer a service relating to a transaction or transactions;

(c) the person, on behalf of another person, other than an affiliated entity, facilitates the clearing of one or more derivatives through a clearing agency or a clearing house, as applicable.

Derivatives dealer registration categories

7. (1) The following are the categories of registration for a person that is required to be registered under securities legislation as a derivatives dealer:

- (a) derivatives dealer;
- (b) restricted derivatives dealer.

(2) A person registered in the category of

(a) derivatives dealer may act as a derivatives dealer in respect of any derivative, and

(b) restricted derivatives dealer may act as a derivatives dealer in accordance with the terms, conditions, restrictions and requirements applied to its registration.

Derivatives adviser registration categories

8. (1) The following are the registration categories for a person that is required to be registered under securities legislation as a derivatives adviser:

- (a) derivatives adviser;
- (b) restricted derivatives adviser.

(2) A person registered in the category of

(a) derivatives adviser may act as a derivatives adviser in respect of any derivative, and

(b) restricted derivatives adviser may act as a derivatives adviser, in respect of any derivatives, in accordance with the terms, conditions, restrictions and requirements applied to its registration.

IIROC membership for certain derivatives dealers

9. A registered derivatives dealer must not transact derivatives with a derivatives party who is an individual and who is not an eligible derivatives party unless the derivatives dealer is a dealer member of IIROC, as defined under the rules of IIROC.

DIVISION 2 Suspension and revocation of registration – derivatives firms

Failure to pay fees

10. (1) In this section, “annual fees” means

(a) in Alberta, the fees required under section 5 of ASC Rule 13-501 Fees,

(b) in British Columbia, the annual fees required under section 22 of the Securities Regulation, B.C. Reg. 196/97,

(c) in Manitoba, the fees required under paragraph 1.(2)(a) of the Manitoba Fee Regulation, M.R 491\88R,

(d) in New Brunswick, the fees required under section 2.2 (c) of Local Rule 11-501 Fees,

(e) in Newfoundland and Labrador, the fees required under section 143 of the Securities Act,

(f) in Nova Scotia, the fees required under Part XIV of the regulations made pursuant to the Securities Act,

(g) in the Northwest Territories, the fees required under sections 1(c) and 1(e) of the Securities Fee regulations, (R-066-2008);

(h) in Nunavut, the fees required under section 1(a) of the Schedule to R-003-2003 to the Securities Fee regulation, (R.R.N.W.T. 1990, c.20),

(i) in Prince Edward Island, the fees required under section 175 of the Securities Act R.S.P.E.I., Cap. S-3.1,

(j) in Québec, section 5 of the Tariffs for Costs and Fees Payable in respect of Derivatives (chapter I-14.01, r. 2),

(k) in Saskatchewan, the annual registration fees required to be paid by a registrant under section 176 of The Securities Regulations (R.R.S. c. S-42.2 Reg. 1), and

(l) in Yukon, the fees required under O.I.C. 2009\66, pursuant to section 168 of the Securities Act (SY 2007, c. 16).

(2) If a registered derivatives firm has not paid the annual fees by the 30th day after the date the annual fees were due, the registration of the registered derivatives firm is suspended until reinstated or revoked under securities legislation.

If IIROC membership is revoked or suspended

11. If IIROC revokes or suspends a registered derivatives firm's membership, the registered derivatives firm's registration is suspended until reinstated or revoked under securities legislation.

Activities not permitted while a firm's registration is suspended

12. If a registered derivatives firm's registration in a category is suspended, the registered derivatives firm must not act as a derivatives dealer or a derivatives adviser, as the case may be, under that category.

Revocation of a suspended registration – firm

13. If a registration has been suspended under this Division and it has not been reinstated, the registration is revoked on the 2nd anniversary of the suspension.

Exception for firms involved in a hearing or proceeding

14. Despite section 13, if a hearing or proceeding concerning a suspended registered derivatives firm is commenced under securities legislation or under the rules of IIROC, the firm's registration remains suspended.

Application of Division 2 in Ontario

15. Other than section 12, this Division does not apply in Ontario.

In Ontario, measures governing suspension are in section 29 of the Securities Act and are similar to those in Division 2 of Part 3.

PART 4 CATEGORIES OF REGISTRATION FOR INDIVIDUALS

Individual registration categories

16. (1) The following are the categories of registration for an individual who is required, under securities legislation, to be registered to act on behalf of a registered derivatives firm:

- (a) derivatives dealing representative;
- (b) derivatives advising representative;
- (c) derivatives ultimate designated person;
- (d) derivatives chief compliance officer;
- (e) derivatives chief risk officer.

(2) An individual registered in the category of

(a) derivatives dealing representative may act as a dealer in respect of any derivative that the individual's sponsoring derivatives firm is permitted to transact,

(b) derivatives advising representative may act as an adviser in respect of any derivative that the individual's sponsoring derivatives firm is permitted to advise on,

(c) derivatives ultimate designated person must perform the functions set out in section 27,

(d) derivatives chief compliance officer must perform the functions set out in section 28, and

(e) derivatives chief risk officer must perform the functions set out in section 29.

(3) An individual is exempt from the requirement to register as a derivatives dealing representative of a registered derivatives dealer if either of the following applies:

(a) the individual would otherwise only be required to register as a derivatives dealing representative as a result of transacting with or on behalf of an affiliated entity, other than an affiliated entity that is an investment fund, of the registered derivatives dealer;

(b) the individual does not solicit or transact with, for or on behalf of, a non-eligible derivatives party.

(4) An individual is exempt from the requirement to register as a derivatives advising representative of a registered derivatives adviser if either of the following applies:

(a) the individual would otherwise only be required to register as a derivatives advising representative as a result of advising an affiliated entity, other than an affiliated entity that is an investment fund, of the registered derivatives adviser;

(b) if both of the following apply:

(i) the individual does not advise a non-eligible derivatives party;

(ii) the individual does not act as an adviser for a managed account of any derivatives party.

PART 5 REGISTRATION REQUIREMENTS FOR INDIVIDUALS

DIVISION 1 Individual proficiency requirements

Definitions

17. In this Part,

“Canadian Investment Manager designation” means the designation earned through the Canadian investment manager program prepared and administered by CSI Global Education Inc. and so named on the day this Regulation comes into force, and every program that preceded that program, or succeeded that program, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned program;

“CPH Course Exam” means the examination prepared and administered by CSI Global Education Inc. and so named on the day this Regulation comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

“Chief Compliance Officers Qualifying Exam” means the examination prepared and administered by CSI Global Education Inc. and so named on the day this Regulation comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

“CFA Charter” means the charter earned through the Chartered Financial Analyst program prepared and administered by the CFA Institute and so named on the day this Regulation comes into force, and every program that preceded that program, or succeeded that program, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned program;

“Derivatives Fundamentals Course Exam” means the examination prepared and administered by CSI Global Education Inc. and so named on the day this Regulation comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

“Risk Manager Designation” means a designation qualifying an individual as a financial risk manager by the Global Association of Risk Managers or professional risk manager by The Professional Risk Managers’ International Association, each so named on the day this Regulation comes into force, and every designation that preceded that designation, or succeeded that designation, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned designation;

“Futures Licensing Course Exam” means the examination prepared and administered by CSI Global Education Inc. and so named on the day this Regulation comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

“National Commodity Futures Exam” means the examination prepared and administered by the Financial Industry Regulatory Authority in the United States of America and so named on the day this Regulation comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

“PDO Exam” means any of the following:

(a) the Officers’, Partners’ and Directors’ Exam prepared and administered by the IFSE Institute and so named on the day this Regulation comes into force, and every

examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

(b) the Partners, Directors and Senior Officers Course Exam prepared and administered by CSI Global Education Inc. and so named on the day this Regulation comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination.

Initial and ongoing proficiency requirements

18. (1) A registered derivatives firm must not allow an individual to perform an activity on its behalf that requires registration unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently, including understanding the structure, features and risks of each derivative that the individual transacts or recommends.

(2) In addition to the requirement in subsection (1), a registered derivatives firm must not designate an individual to act as its derivatives chief compliance officer unless either of the following applies:

(a) all of the following apply:

(i) the individual has earned a CFA Charter or a professional designation as a lawyer or a Chartered Professional Accountant in a jurisdiction of Canada, a notary in Québec, or the equivalent in a foreign jurisdiction;

(ii) the individual has passed the PDO Exam or the Chief Compliance Officers Qualifying Exam;

(iii) the individual has either

(A) gained at least 36 months of relevant derivatives experience while working at a registered securities firm, a derivatives dealer, a derivatives adviser, or a person that conducts the activities of a derivatives dealer or derivatives adviser in a foreign jurisdiction;

(B) provided professional services related to derivatives for at least 36 months and also worked at a derivatives dealer or a derivatives adviser for 12 months;

(b) the individual has passed either the PDO Exam or the Chief Compliance Officers Qualifying Exam and one or more of the following applies:

(i) the individual has worked at a registered securities firm, at a derivatives dealer, at a derivatives adviser or at a person that conducts the activities of a derivatives dealer or derivatives adviser in a foreign jurisdiction specified in Column 1 of Appendix B, for 5 years, including for 36 months in a compliance capacity;

(ii) the individual has worked for 5 years at a Canadian financial institution in a compliance capacity relating to derivatives.

(3) In addition to the requirement in subsection (1), a registered derivatives firm must not designate an individual to act as its derivatives chief risk officer, unless one or more of the following applies:

(a) the individual has earned a CFA Charter, has received a Risk Manager Designation or has received equivalent certification as a risk manager;

(b) the individual has passed the CPH Course Exam, and one or more of the following applies:

(i) the individual has gained 36 months of relevant derivatives experience while working at a registered securities firm, a derivatives dealer, a derivatives adviser or at a person that conducts the activities of a derivatives dealer or derivatives adviser in a foreign jurisdiction specified in Column 1 of Appendix B;

(ii) the individual has provided professional services related to derivatives for 36 months and also worked at a registered securities firm, a derivatives dealer or a derivatives adviser for 12 months;

(c) the individual has passed the PDO Exam and either of the following applies:

(i) the individual has worked at a derivatives dealer or a derivatives adviser for 5 years, including for 36 months in a risk management capacity;

(ii) the individual has worked for 5 years at a Canadian financial institution in a risk management capacity relating to derivatives.

(4) In addition to the requirement in subsection (1), a registered derivatives firm must not allow an individual to act, on its behalf, as a derivatives dealing representative unless either of the following applies:

(a) the individual has passed the Derivatives Fundamentals Course Exam;

(b) the individual has passed the Futures Licensing Course Exam and the National Commodity Futures Exam.

(5) Despite subsection (4), a registered derivatives firm may allow an individual to act on its behalf as a derivatives dealing representative without meeting the requirements in that subsection if the individual is exempt from the requirement to register under subsection 16(3).

(6) In addition to the requirement in subsection (1), a registered derivatives firm must not allow an individual to act on its behalf as a derivatives advising representative unless one or more of the following applies:

(a) the individual has earned a CFA Charter and has gained 12 months of relevant investment management experience, including experience relating to derivatives, in the 36-month period before applying for registration;

(b) all of the following apply:

(i) the individual has received the Canadian Investment Manager Designation;

(ii) the individual has passed the Derivatives Fundamentals Course Exam;

(iii) the individual has gained 48 months of relevant investment management experience, including experience relating to derivatives, at least 12 months of which was gained in the 36-month period before applying for registration.

(7) Despite subsection (6), a registered derivatives firm may allow an individual to act on its behalf as a derivatives advising representative without meeting the requirements in that subsection if the individual is exempt from the requirement to register under subsection 16(4).

(8) For the purpose of this section, an individual is deemed to have not passed an examination unless the individual passed the examination not more than 36 months before the date of his or her application for registration.

(9) Subsection (8) does not apply if the individual passed the examination more than 36 months before the date of his or her application and has met one of the following conditions:

(a) the individual was registered in the same category in any jurisdiction of Canada at any time during the 36-month period before the date of his or her application;

(b) the individual has gained 12 months of relevant industry experience during the 36-month period before the date of his or her application.

(10) For the purpose of paragraph (9)(a), an individual is not considered to have been registered during any period in which the individual's registration was suspended.

DIVISION 2 Suspension and revocation of registration - individuals

If individual ceases to have authority to act for the derivatives firm

19. If a registered derivatives individual ceases to have authority to act as a registered derivatives individual on behalf of his or her sponsoring derivatives firm because of the end of, or change in, the individual's employment, partnership, or agency relationship with the firm, the individual's registration with the firm is suspended until reinstated or revoked under securities legislation.

If IIROC approval is revoked or suspended

20. If IIROC revokes or suspends a registered individual's approval in respect of a registered derivatives dealer, the individual's registration as a derivatives dealing representative of the registered derivatives dealer is suspended until reinstated or revoked under securities legislation.

If sponsoring derivatives firm is suspended

21. If a registered derivatives firm's registration in a category is suspended, the registration of each registered derivatives dealing representative or derivatives advising representative acting on behalf of the firm in that category is suspended until reinstated or revoked under securities legislation.

Dealing and advising activities suspended

22. If an individual's registration in a category is suspended, the individual must not act as a derivatives dealer or a derivatives adviser, as the case may be, under that category.

Revocation of a suspended registration – individual

23. If a registration of an individual has been suspended under this Division and it has not been reinstated, the registration is revoked on the 2nd anniversary of the suspension.

Exception for individuals involved in a hearing or proceeding

24. Despite section 23, if a hearing or proceeding concerning a suspended individual is commenced under securities legislation or under the rules of IIROC, the individual's registration remains suspended.

Application of this Division in Ontario

25. Other than section 22 this Division does not apply in Ontario.

In Ontario, measures governing suspension are in section 29 of the Securities Act and are similar to those in Division 2 of Part 5.

**PART 6 DERIVATIVES ULTIMATE DESIGNATED PERSON,
DERIVATIVES CHIEF COMPLIANCE OFFICER AND DERIVATIVES CHIEF
RISK OFFICER**

Requirement to designate a derivatives ultimate designated person, a derivatives chief compliance officer and a derivatives chief risk officer

26. Each registered derivatives firm must designate an individual who is registered under securities legislation in the applicable category as

(a) a derivatives ultimate designated person responsible for performing the functions set out in section 27,

(b) a derivatives chief compliance officer responsible for performing the functions set out in section 28, and

(c) a derivatives chief risk officer responsible for performing the functions set out in section 29.

Derivatives ultimate designated person

27. (1) The derivatives ultimate designated person must be one of the following:

(a) the chief executive officer of the registered derivatives firm, or if the registered derivatives firm does not have a chief executive officer, an individual acting in a capacity similar to that of a chief executive officer;

(b) a partner or the sole proprietor of the registered derivatives firm;

(c) if the registered derivatives firm has other significant business activities, the officer in charge of the division of the registered derivatives firm that conducts the activities that require the firm to be registered as a derivatives dealer or as a derivatives adviser.

(2) If the individual registered as a registered derivatives firm's derivatives ultimate designated person ceases to meet the conditions specified in subsection (1), the registered derivatives firm must designate an individual who does meet these conditions to act as its derivatives ultimate designated person.

(3) The derivatives ultimate designated person of a registered derivatives firm must do all of the following:

(a) supervise the activities of the registered derivatives firm that are directed towards ensuring compliance with securities legislation relating to derivatives by the registered derivatives firm and each individual acting on the registered derivatives firm's behalf;

(b) promote compliance with securities legislation relating to derivatives by the registered derivatives firm and individuals acting on its behalf;

(c) report, on a timely basis, to the board of directors, or individuals acting in a similar capacity for the registered derivatives firm, any circumstance that the derivatives ultimate designated person becomes aware of, indicating that the registered derivatives firm, or any individual acting on its behalf, may be in non-compliance with this Regulation, securities legislation relating to derivatives or the firm's risk management policies and procedures required under section 39 and any of the following apply:

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

(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;

(d) report, on a timely basis, to the regulator or, in Québec, the securities regulatory authority any circumstances where, with respect to the derivatives activities of the registered derivatives firm, the registered derivatives firm is not or was not in compliance with this Regulation or securities legislation relating to derivatives and one or more 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;

(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.

Derivatives chief compliance officer

28. (1) The derivatives chief compliance officer must be one of the following:

(a) an officer or partner of the registered derivatives firm;

(b) the sole proprietor of the registered derivatives firm.

(2) If the individual registered as a registered derivatives firm's derivatives chief compliance officer ceases to meet the conditions specified in subsection (1), the registered derivatives firm must designate an individual who does meet these conditions to act as its derivatives chief compliance officer.

(3) The derivatives chief compliance officer of a registered derivatives firm must do all of the following:

(a) establish, maintain and apply written policies and procedures reasonably designed to assess compliance, by the registered derivatives firm and individuals acting on its behalf, with securities legislation relating to derivatives;

(b) monitor and assess compliance, by the registered derivatives firm and individuals acting on its behalf, with securities legislation relating to derivatives;

(c) report to the derivatives ultimate designated person of the registered derivatives firm, as soon as possible after the derivatives chief compliance officer becomes aware of any circumstances indicating that the registered derivatives firm, or any individual acting on its behalf, may be in non-compliance with securities legislation relating to derivatives and one or more 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;

(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;

(d) submit an annual report to the registered derivatives firm's board of directors, or individuals acting in the same capacity for the registered derivatives firm, for the purpose of assessing compliance, by the registered derivatives firm and individuals acting on its behalf, with securities legislation relating to derivatives that must, at a minimum

(i) identify the policies and procedures referenced in paragraph (a),

(ii) provide an assessment of the effectiveness of the policies and procedures referenced in paragraph (a),

(iii) discuss where the policies and procedures referenced in paragraph (a) need to be improved and identify potential changes to address the needs for improvement,

(iv) list any material changes to the policies and procedures referenced in paragraph (a) during the coverage period of the report, and

(v) describe any circumstance reported to the derivatives ultimate designated person under paragraph (c) and the corresponding action taken.

Derivatives chief risk officer

29. (1) The derivatives chief risk officer must be one of the following:

- (a) an officer or partner of the registered derivatives firm;
- (b) the sole proprietor of the registered derivatives firm.

(2) If the individual registered as the registered derivatives firm's derivatives chief risk officer ceases to meet the conditions specified in subsection (1), the registered derivatives firm must designate an individual who does meet these conditions to act as its derivatives chief risk officer.

(3) The derivatives chief risk officer of a registered derivatives firm must do all of the following:

(a) establish, maintain and apply the policies and procedures for assessing and managing risks related to the registered derivatives firm, including policies and procedures reasonably designed to ensure compliance with section 39;

(b) monitor and assess compliance, by the registered derivatives firm and individuals acting on its behalf, with the firm's risk management policies and procedures;

(c) report to the derivatives ultimate designated person of the registered derivatives firm, as soon as possible after the derivatives chief risk officer becomes aware of any circumstances indicating that the registered derivatives firm, or any individual acting on its behalf, may be in material non-compliance with the registered derivatives firm's risk management policies and procedures required under section 39;

(d) submit an annual report to the registered derivatives firm's board of directors, or individuals acting in a similar capacity for the registered derivatives firm, for the purpose of assessing compliance with the firm's risk management policies and procedures, identifying the firm's material risks and assessing the effectiveness of the firm's risk management policies and procedures.

Providing access to the board of directors

30. A registered derivatives firm must ensure that its derivatives ultimate designated person, its derivatives chief compliance officer and its derivatives chief risk officer have reasonable access to the firm's board of directors, or individuals acting in a similar capacity for the firm, at such times as the derivatives ultimate designated person, the derivatives chief compliance officer or the derivatives chief risk officer may consider necessary or advisable in view of his or her responsibilities.

PART 7 FINANCIAL REQUIREMENTS

DIVISION 1 Capital requirements

Capital requirements

31. A registered derivatives firm must maintain excess working capital in accordance with the requirements set out in Appendix C.

DIVISION 2 Audits

Direction by the regulator or securities regulatory authority to conduct an audit or review

32. A registered derivatives firm must direct its independent auditor in writing to conduct any audit or review required by the regulator or, in Québec, the securities regulatory authority during its registration and must deliver a copy of the direction to the regulator or the securities regulatory authority

- (a) with its application for registration, and
- (b) no later than the 10th business day after the registered derivatives firm changes its auditor.

Co-operating with the auditor

33. A registered derivatives firm must not withhold, destroy or conceal any information or documents or otherwise fail to cooperate with a reasonable request made by an auditor of the registered derivatives firm in the course of an audit.

DIVISION 3 Financial reporting

Annual financial statements

34. (1) Annual financial statements delivered to the regulator or, in Québec, the securities regulatory authority under this Division must include the following:

- (a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows, each prepared for the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;
- (b) a statement of financial position, signed by at least one director of the registered derivatives firm, as at the end of the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;
- (c) notes to the financial statements.

(2) The annual financial statements delivered to the regulator or, in Québec, the securities regulatory authority under this Division must be audited.

Interim financial statements

35. (1) Interim financial statements delivered to the regulator or, in Québec, the securities regulatory authority under this Division for interim periods may be limited to the following:

- (a) a statement of comprehensive income for the 3-month period ending on the last day of the interim period and for the same period of the immediately preceding financial year, if any;
- (b) a statement of financial position, signed by at least one director of the registered derivatives firm, as at the end of the interim period and as at the end of the same interim period of the immediately preceding financial year, if any.

(2) The interim financial statements delivered to the regulator or, in Québec, the securities regulatory authority under this Division must be prepared using the same accounting principles that the registered derivatives firm uses to prepare its annual financial statements.

Delivering financial statements

36. (1) A registered derivatives firm must deliver its audited annual financial statements to the regulator or, in Québec, the securities regulatory authority no later than the 90th day after the end of its financial year.

(2) A registered derivatives firm must deliver its interim financial statements to the regulator or, in Québec, the securities regulatory authority no later than the 30th day after the end of the first, second and third interim period of its financial year.

(3) Despite subsection (1), a registered derivatives firm is not required to deliver its audited annual financial statements if the registered derivatives firm has filed its annual financial statements in compliance with section 4.1 of Regulation 51-102 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24).

(4) Despite subsection (2), a registered derivatives firm is not required to deliver its interim financial statements if the registered derivatives firm has filed its interim financial statements in compliance with section 4.3 of Regulation 51-102 respecting Continuous Disclosure Obligations.

Delivering financial information

37. (1) A registered derivatives firm must deliver to the regulator or, in Québec, the securities regulatory authority, no later than the 90th day after the end of its financial year, a completed Form 93-102F1, showing the calculation of the registered derivatives firm's excess working capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any.

(2) A registered derivatives dealer must deliver, to the regulator or, in Québec, the securities regulatory authority, no later than the 30th day after the end of the first, second and third interim periods of its financial year, a completed Form 93-102F1, showing the calculation of the dealer's excess working capital as at the end of the interim period and as at the end of the immediately preceding interim period, if any.

PART 8 COMPLIANCE AND RISK MANAGEMENT

Compliance policies and procedures

38. A registered derivatives firm must establish, maintain and apply written policies and procedures that are reasonably designed to establish a system of controls and supervision sufficient to ensure that the registered derivatives firm and each individual acting on its behalf in respect of its activities relating to transacting in or advising on derivatives complies with applicable securities legislation.

Risk management policies and procedures

39. (1) A registered derivatives firm must establish, maintain, and apply written policies and procedures that are reasonably designed to establish a system of controls and supervision to monitor and manage the risks associated with its derivatives related activity.

(2) The policies and procedures referred to in subsection (1) must be approved by the registered derivatives firm's board of directors, or individuals acting in a similar capacity for the firm.

(3) The risk management policies and procedures referred to in subsection (1) must, at a minimum

(a) identify material risks to the registered derivatives firm, including risks from affiliated entities and from specific derivatives or types of derivatives,

(b) establish risk tolerance limits,

(c) establish requirements for the registered derivatives firm to appropriately manage risks,

(d) provide for the periodic review of the registered derivatives firm's risks and risk tolerance limits to ensure they reflect the firm's derivatives related activity,

(e) permit the derivatives chief risk officer and other senior management to monitor compliance with risk management requirements and risk tolerance limits in order to detect and address non-compliance,

(f) provide for periodic reports to the registered derivatives firm's derivatives ultimate designated person and its board of directors, or individuals acting in a similar capacity for the firm, on the registered derivatives firm's material risks, risk tolerance limits, compliance with risk management requirements, compliance with risk tolerance levels and recommendations for changing risk management policies and risk tolerance limits, and

(g) when there is a material change to the registered derivatives firm's risk exposures or a material breach of a risk limit, require an immediate report to the firm's

(i) derivatives ultimate designated person,

(ii) the chief executive officer, or if the registered derivatives firm does not have a chief executive officer, an individual acting in a similar capacity, if different from the derivatives ultimate designated person, and

(iii) its board of directors, or individuals acting in a similar capacity for the firm.

(4) A registered derivatives firm must conduct an independent review of its risk management systems on a reasonably frequent basis and not less than once every 2 calendar years.

Confirmation of material terms

40. A registered derivatives firm must confirm the material terms of each derivative transacted with or for a derivatives party as soon as feasible after completion of the transaction.

Agreement for process of determining the value of a derivative

41. A registered derivatives firm must, in relation to each transaction with a derivatives party, enter into a written agreement with the derivatives party that establishes a process for determining the value of the derivative.

Agreement for process relating to disputes

42. (1) A registered derivatives firm must, in relation to each derivative transacted with a derivatives party, enter into a written agreement with the derivatives party that establishes

(a) when a discrepancy relating to material terms or valuations between the registered derivatives firm and the derivatives party is a dispute, and

(b) a process for resolving a dispute as soon as possible.

(2) A registered derivatives firm must establish, maintain and apply written policies and procedures that are reasonably designed to, within a reasonable period of time, resolve a dispute with a derivatives party relating to the material terms or valuation of a derivative.

(3) A registered derivatives firm must report a dispute referred to in subsection (1), that has not been resolved within a reasonable period of time, to its board of directors, or individuals acting in a similar capacity for the firm.

(4) If a dispute has not been resolved within 30 days of reporting the dispute to its board of directors, or individuals acting in a similar capacity for the firm, as required under subsection (3), the derivatives firm must report the dispute to the regulator or, in Québec, the securities regulatory authority.

Business continuity and disaster recovery

43. (1) A registered derivatives firm must establish, maintain and apply a written business continuity and disaster recovery plan that is reasonably designed to allow the registered derivatives firm to minimize disruption and allow the registered derivatives firm to continue its business operations.

(2) The business continuity and disaster recovery plan must outline the procedures to be followed in the event of an emergency or other disruption of the registered derivatives firm's normal business activities.

(3) A registered derivatives firm must conduct independent tests of its business continuity and disaster recovery plan on a reasonably frequent basis and not less than annually.

Portfolio reconciliation

44. (1) A registered derivatives firm must conduct portfolio reconciliation for all derivatives to which the registered derivatives firm is a counterparty.

(2) The portfolio reconciliation required under subsection (1) must be conducted for each portfolio of the registered derivatives firm at least once each calendar year.

(3) A registered derivatives firm must establish, maintain and apply written policies and procedures to resolve discrepancies in materials terms and valuations identified as a result of the portfolio reconciliation as soon as possible after they are identified.

(4) A registered derivatives firm must enter into a written agreement with each derivatives party that describes the terms of the portfolio reconciliation required to be conducted under subsection (1).

Portfolio compression

45. (1) A registered derivatives firm must establish, maintain and apply written policies and procedures that are reasonably designed to do all of the following:

(a) terminate fully offsetting derivatives with a derivatives party that is a derivatives firm in a timely fashion;

(b) terminate fully offsetting derivatives with a derivatives party that is not a derivatives firm, at the request of that derivatives party, in a timely fashion;

(c) engage in bilateral portfolio compression exercises with each of its derivatives parties that is a derivatives firm, when appropriate;

(d) engage in a multilateral portfolio compression exercise with each of its derivatives parties that is a derivatives firm, when appropriate;

(e) evaluate portfolio compression exercises involving the registered derivatives firm that were initiated by a third-party.

(2) Despite subsection (1), the policies and procedures required in that subsection do not need to apply to a derivative that is cleared through a qualifying clearing agency.

PART 9 RECORDS

Records

46. (1) A registered derivatives firm must keep complete records of all its derivatives, transactions and derivatives advising activities, including, as applicable, all of the following:

(a) general records of its derivatives business and activities, financial affairs and compliance with applicable provisions of this Regulation, including

(i) financial statements,

(ii) calculation of its excess working capital, and

(iii) evidence of its compliance with policies and procedures required under this Regulation;

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

(i) derivatives portfolio reconciliation including records of reconciliation discrepancies and valuation disputes and the name of the third party that performed the portfolio reconciliation,

(ii) derivatives portfolio compressions including the derivatives included in the compression, the identity of the counterparties participating in the compression, results of the compression and the name of the third party performing the compression,

(iii) valuation of each derivative,

(iv) central clearing of each derivative,

(v) the name of any third-party responsible for sending trade data to a designated trade repository, and

(vi) matching and confirmation of each derivative.

(2) A registered derivatives firm must keep complete records of all business activities relating to transacting in or advising in respect of derivatives, including

(a) minutes of meetings of its board of directors, or of meetings of individuals acting in a similar capacity for the firm,

(b) records of its organizational structure,

(c) audit, compliance and risk management reports,

(d) business and strategic plans, and

(e) financial records.

Form, accessibility and retention of records

47. (1) A registered derivatives firm must keep all records required under section 46,

(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) if paragraph (b) does not apply, for a period of 7 years following the date on which the record was created.

(2) Despite subsection (1), in Manitoba, with respect to a registered 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 10 EXEMPTIONS FROM THE REQUIREMENT TO REGISTER AND EXEMPTIONS FROM SPECIFIC REQUIREMENTS IN THIS REGULATION

DIVISION 1 Exemptions from the requirement to register as a derivatives dealer

Persons not in the business of trading in British Columbia, Manitoba and New Brunswick

48. In British Columbia, Manitoba and New Brunswick, a person is exempt from the requirement to register as a derivatives dealer if all of the following apply:

(a) the person is not engaged in the business of trading derivatives, as principal or agent;

(b) the person does not solicit or otherwise transact a derivative with, for or on behalf of a non-eligible derivatives party;

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

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

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

Exemption for certain derivatives end-users

49. (1) The exemption in subsection (2) 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.

(2) A person is exempt from the requirement to register as a derivatives dealer if all of the following apply:

(a) the person does not solicit or otherwise transact a derivative with, for or on behalf of, a non-eligible derivatives party;

(b) the person does not, in respect of any derivative or transaction, advise non-eligible derivatives parties, other than general advice that is provided in accordance with the conditions of section 57;

(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;

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

Derivatives dealers with a limited notional amount under derivatives

50. (1) The exemption in subsection (2) 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 registered under the commodities futures legislation of any jurisdiction of Canada;

(b) the person is registered under the securities, commodity futures or derivatives legislation of a foreign jurisdiction specified in Column 1 of Appendix B, 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;

(2) A person is exempt from the requirement to register as a derivatives dealer if all of the following apply:

(a) the person does not solicit or otherwise transact a derivative with, for or on behalf of, a non-eligible derivatives party;

(b) the person does not, in respect of derivatives or transactions, advise non-eligible derivatives parties, other than general advice that is provided in accordance with the conditions of section 57;

(c) either of the following applies:

(i) if the person has its head office or principal place of business in a jurisdiction of Canada, the person, together with each affiliated entity of the person, and excluding derivatives between these affiliated entities, has not had, in the previous 24 calendar months, an aggregate month-end gross notional amount under outstanding derivatives, exceeding \$250 000 000;

(ii) if the person has its head office and principal place of business in a foreign jurisdiction, the person, together with each affiliated entity of the person, and excluding derivatives between these affiliated entities, has not had, in the previous 24 calendar months, an aggregate month-end gross notional amount under outstanding derivatives that have a Canadian counterparty, exceeding \$250 000 000.

Commodity derivatives dealers with a limited notional amount under commodity derivatives

51. (1) In this section:

“commodity” means

(a) any good, article, service, right or interest of which any unit is, from its nature or by mercantile custom, treated as the equal of any other unit, except

(i) the currency of Canada or of any foreign jurisdiction or a right to or interest in the currency of Canada or any foreign jurisdiction,

(ii) a cryptocurrency, and

(iii) a security, and

(b) any other prescribed good, article, service, right or interest or any class of those;

“commodity derivative” means a derivative that has, as its only underlying asset, a commodity.

(2) The exemption in subsection (3) 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 registered under the commodities futures legislation of any jurisdiction of Canada;

(b) the person is registered under the securities, commodity futures or derivatives legislation of a foreign jurisdiction specified in Column 1 of Appendix B, 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;

(3) A person is exempt from the requirement to register as a derivatives dealer if all of the following apply:

(a) the person does not solicit or otherwise transact a derivative with, for or on behalf of a non-eligible derivatives party;

(b) the person does not, in respect of derivatives or transactions, advise non-eligible derivatives parties, other than general advice that is provided in accordance with the conditions of section 57;

(c) the person, and each affiliated entity of the person, is only a derivatives dealer in respect of commodity derivatives;

(d) either of the following applies:

(i) if the person has its head office or principal place of business in a jurisdiction of Canada, the person, together with each affiliated entity of the person, and excluding derivatives between affiliated entities, has not had, in the previous 24 calendar months, an aggregate month-end gross notional amount under outstanding commodity derivatives, exceeding \$1 000 000 000;

(ii) if the person has its head office and principal place of business in a foreign jurisdiction, the person, together with each affiliated entity of the person, and excluding derivatives between affiliated entities, has not had, in the previous 24 calendar months, an aggregate month-end gross notional amount under outstanding commodity derivatives that have a Canadian counterparty, exceeding \$1 000 000 000.

Foreign derivatives dealers – exemption from registration

52. (1) A person whose head office or principal place of business is in a foreign jurisdiction specified in Column 1 of Appendix B is exempt from the requirement to register as a derivatives dealer if all of the following apply:

(a) the person does not solicit or transact in a derivative with, for or on behalf of a non-eligible derivatives party;

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

(c) the person is subject to and complies with each of the requirements or guidelines of the foreign jurisdiction that are specified in Column 2 of Appendix B;

(d) the person promptly notifies the regulator or, in Québec, the securities regulatory authority of each instance of material non-compliance with a requirement or guideline of the foreign jurisdiction

(i) to which the person is subject, and

(ii) that are specified in Column 2 of Appendix B.

(2) The exemption under subsection (1) is not available unless all of the following apply:

(a) 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;

(b) one of the following applies in relation to each derivatives party of the person:

(i) the derivatives party is a registered derivatives dealer in any jurisdiction of Canada, a registered derivatives adviser in any jurisdiction of Canada or a derivatives dealer that is exempt from the requirement to register under section 50 or section 51;

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

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

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

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

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

(c) the person has submitted to the securities regulatory authority a completed Form 93-102F2;

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

(3) 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.

(4) In Ontario, subsection (3) 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.

Affiliated entities – exemption from registration as a derivatives dealer

53. (1) A person is exempt from the requirement to register as a derivatives dealer if the person would only be required to register as a derivatives dealer as a result of dealing with an affiliated entity.

(2) The exemption in subsection (1) is not available if the person is required to register as a derivatives dealer as a result of dealing with an affiliated entity that is an investment fund.

DIVISION 2 Exemptions from specific requirements for derivatives dealers

Foreign derivatives dealers - exemption from specific requirements that apply to registered derivatives dealers

54. (1) A registered derivatives dealer whose head office or principal place of business is in a foreign jurisdiction specified in Column 1 of Appendix D is exempt from a requirement specified in Column 2 of that appendix if all of the following apply:

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

(b) it is subject to and complies with the corresponding requirement or guideline of the foreign jurisdiction that is specified in Column 3 of Appendix D;

(c) it promptly notifies the regulator, in Québec, the securities regulatory authority of each instance of material non-compliance with a requirement or guideline of the foreign jurisdiction

(i) to which it is subject, and

(ii) that is specified in Column 3 of Appendix D.

(2) The exemption in subsection (1) is not available unless all of the following apply:

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

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

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

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

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

Investment dealers

55. A registered derivatives dealer that is a dealer member of IIROC is exempt from the requirement specified in Column 1 of Appendix E if the registered derivatives dealer complies with the corresponding IIROC requirement specified in Column 2.

Canadian financial institutions

56. A registered derivatives dealer that is a Canadian financial institution regulated by a regulatory authority specified in Column 1 of Appendix F is exempt from a requirement specified in Column 2 of that appendix if all of the following apply:

(a) it is subject to and complies with the requirement and guideline specified in Column 3 of Appendix F that correspond to the applicable requirement in Column 2;

(b) it promptly notifies the regulator or, in Québec, 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 Column 3 of Appendix F.

DIVISION 3 Exemptions from the requirement to register as a derivatives adviser

Advising generally

57. (1) For the purposes of subsection (3), “financial or other interest” includes any of 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 is exempt from the requirement to register 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 for a derivative, for a class of derivatives or for 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) if 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.

Derivatives dealer without discretionary authority

58. A registered derivatives dealer, or a registered derivatives dealing representative acting on behalf of the dealer, that provides advice to a derivatives party is exempt from the requirement to register as a derivatives adviser or a derivatives advising representative if the advice is

(a) in connection with a transaction for which the individual providing the advice has the necessary proficiency under section 18, and

(b) not in respect of a managed account of the derivatives party.

Foreign derivatives advisers – exemption from registration

59. (1) A person whose head office or principal place of business is in a foreign jurisdiction specified in Column 1 of Appendix G is exempt from the requirement to register as a derivatives adviser if all of the following apply:

(a) the person does not, in respect of derivatives or transactions, advise non-eligible derivatives parties, other than general advice that is provided in accordance with the conditions of section 57;

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

(c) the person is subject to and complies with each of the requirements or guidelines of the foreign jurisdiction that are specified in Column 2 of Appendix G;

(d) the person promptly notifies the regulator or, in Québec, the securities regulatory authority of each instance of material non-compliance with a requirement or guideline of the foreign jurisdiction

(i) to which the person is subject, and

(ii) that are specified in Column 2 of Appendix G.

(2) The exemption under subsection (1) is not available unless all of the following apply:

(a) 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;

(b) one of the following applies in relation to each derivatives party of the person:

(i) the derivatives party is a registered derivatives dealer in any jurisdiction of Canada, a registered derivatives adviser in any jurisdiction of Canada or a derivatives dealer that is exempt from the requirement to register under section 50 or section 51;

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

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

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

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

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

(c) the person has submitted to the securities regulatory authority a completed Form 93-102F2;

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

(3) 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.

(4) In Ontario, subsection (3) 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.

Affiliated Entities – exemption from registration as a derivatives adviser

60. (1) A person is exempt from the requirement to register as a derivatives adviser if the person would only be required to register as a derivatives adviser as a result of advising an affiliated entity.

(2) The exemption in subsection (1) is not available if the person is required to register as a derivatives adviser as a result of advising an affiliated entity that is an investment fund.

DIVISION 4 Exemptions from specific requirements for derivatives advisers

Foreign derivatives advisers – exemption from specific requirements that apply to registered derivatives advisers

61. (1) A registered derivatives adviser whose head office or principal place of business is in a foreign jurisdiction specified in Column 1 of Appendix H is exempt from a requirement specified in Column 2 of that appendix if all of the following apply:

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

(b) it is subject to and complies with the corresponding requirement or guideline of the foreign jurisdiction that is specified in Column 3 of Appendix H;

(c) it promptly notifies the regulator or, in Québec, the securities regulatory authority of each instance of material non-compliance with a requirement or guideline of the foreign jurisdiction

(i) to which it is subject, and

(ii) that is specified in Column 3 of Appendix H.

(2) The exemption in subsection (1) is not available unless all of the following apply:

(a) the registered 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 registered derivatives adviser has delivered to each derivatives party a statement in writing disclosing all of the following:

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

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

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

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

PART 11 GRANTING AN EXEMPTION

Granting an exemption

62. (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 12 TRANSITION

[intentionally left blank]

Provisions relating to implementation will be included in a future version of the Regulation, as appropriate.

PART 13 EFFECTIVE DATE

Effective date

63. (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.

APPENDIX A
NOTIONAL AMOUNT

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Please see the CSA Notice of consultation for a discussion of the alternatives being considered for defining “Notional Amount” in this Appendix.

APPENDIX B
FOREIGN DERIVATIVES DEALERS – EXEMPTION FROM REGISTRATION
(Section 52)

Column 1	Column 2
Foreign jurisdiction	Equivalent requirement(s) and guideline(s) of foreign regulatory authority

A completed version of Appendix B will be published for comment in a future version of the Regulation.

APPENDIX C
CAPITAL REQUIREMENTS
(Section 37)

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A completed version of Appendix C will be published for comment in a future version of the Regulation.

**APPENDIX D
FOREIGN DERIVATIVES DEALERS – EXEMPTION FROM SPECIFIC
REQUIREMENTS
(Section 54)**

Column 1	Column 2	Column 3
Foreign regulatory authority	Requirements of Regulation 93-102 respecting Derivatives: Registration	Equivalent requirement(s) and guideline(s) of foreign regulatory authority

A completed version of Appendix D will be published for comment in a future version of the Regulation.

APPENDIX E
EXEMPTIONS FOR IIROC DEALER MEMBERS
(Section 55)

Column 1	Column 2
Requirements of Regulation 93-102 respecting Derivatives: Registration	Equivalent IIROC requirement(s)

A completed version of Appendix E will be published for comment in a future version of the Regulation.

APPENDIX F
EXEMPTIONS FOR CANADIAN FINANCIAL INSTITUTIONS
(Section 56)

Column 1	Column 2	Column 3
Regulatory authority	Requirements of Regulation 93-102 respecting Derivatives: Registration	Equivalent requirement(s) and guideline(s) of regulatory authority
Office of the Superintendent of Financial Institutions	Section 31 - Capital requirements	[this section will be included once specific capital requirements are proposed in the Regulation]
	Section 33 – Co-operating with the auditor	1. OSFI Guideline – Corporate Governance, section V
	Section 37 – Delivering financial information	1. OSFI Reporting Requirements
	Section 38 – Compliance policies and procedures	1. OSFI Guideline E13 Regulatory Compliance Management, section IV(i) 2. OSFI Guideline B-7 Derivatives Sound Practices, section titled “Regulatory Compliance Risk”
	Section 39 – Risk management policies and procedures	1. OSFI Guideline – Corporate Governance, section IV 2. OSFI Guideline B-7 Derivatives Sound Practices
	Section 40 – Confirmation of material terms	1. OSFI Guideline B-7 Derivatives Sound Practices, section titled “Trade Confirmation”
	Subsection 42(1) – Agreement for process relating to disputes	1. OSFI Guideline E-22 Margin Requirements for Non-Centrally Cleared Derivatives, section 34
	Subsection 42(2) – Agreement for process relating to disputes	1. OSFI Guideline E-22 Margin Requirements for Non-Centrally Cleared Derivatives, section 28
	Section 43 – Business continuity and disaster recovery	1. OSFI Guideline B-7 Derivatives Sound Practices 2. OSFI Guideline B-10 Outsourcing of Business Activities, Functions and Processes, section 7.2.3
	Section 44 – Portfolio reconciliation	1. OSFI Guideline B-7 Derivatives Sound Practices, section titled “Portfolio Reconciliation”
	Section 45 – Portfolio compression	1. OSFI Guideline B-7 Derivatives Sound Practices, section titled “Portfolio Compression”
Section 46 – Records – as	1. OSFI Guideline E13	

	those records relate to compliance with sections 31, 33, 37, 38, 39, 42(1), 42(2), 43, 44 and 45.	Regulatory Compliance Management, section IV(vii) 2. Bank Act (S.C., 1991, c. 46), sections 238 and 597
Autorité des marchés financiers	Section 31 – Capital requirements	1. AMF Capital Management Guideline 2. AMF Liquidity Adequacy Guideline 3. AMF Adequacy of capital base
	Section 33 – Co-operating with the auditor	1. AMF Governance Guideline, sections 7.1 and 7.2
	Section 37 – Delivering financial information	1. AMF Instructions afférentes au formulaire de divulgation Ligne directrice sur les normes relatives à la suffisance du capital de base 2. Act respecting financial services cooperatives (chapter C-67.3)
	Section 38 – Compliance policies and procedures	1. AMF Compliance Guideline
	Section 39 - Risk management policies and procedures	1. AMF Integrated Risk Management Guideline 2. AMF Governance Guideline
	Section 43 - Business continuity and disaster recovery	1. AMF Business Continuity Management Guideline
	Section 46 – Records – as those records relate to compliance with sections 31, 33, 37, 38, 39, 42(1), 42(2), 43, 44 and 45.	1. Act respecting financial services cooperatives 2. AMF Derivatives Risk Management Guidelines

**APPENDIX G
 FOREIGN DERIVATIVES ADVISERS – EXEMPTION FROM REGISTRATION
 (Section 59)**

Column 1	Column 2
Foreign jurisdiction	Equivalent requirement(s) and guideline(s) of foreign regulatory authority

A completed version of Appendix G will be published for comment in a future version of the Regulation.

**APPENDIX H
FOREIGN DERIVATIVES ADVISERS – EXEMPTION FROM SPECIFIC
REQUIREMENTS
(Section 61)**

Column 1	Column 2	Column 3
Foreign regulatory authority	Requirements of Regulation 93-102 respecting Derivatives: Registration	Equivalent requirement(s) and guideline(s) of foreign regulatory authority

A completed version of Appendix H will be published for comment in a future version of the Regulation.

**FORM 93-102F1
CALCULATION OF EXCESS WORKING CAPITAL**

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A completed version of Form 93-102F1 will be published for comment in a future version of the Regulation.

FORM 93-102F2

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

1. Name of person ("International Firm"):
2. Jurisdiction of incorporation of the International Firm:
3. Head office address of the International Firm:
4. The name, e-mail address, phone number and fax number of the International Firm's derivatives chief compliance officer.

Name:

E-mail address:

Phone:

Fax:

5. Section of Regulation 93-102 respecting Derivatives: Registration (*insert reference*) the International Firm is relying on:

Section 52

Section 59

6. Name of agent for service of process (the "Agent for Service"):
7. Address for service of process on the Agent for Service:
8. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.
9. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.
10. Until 6 years after the derivatives firm ceases to rely on section 52 or section 59, the derivatives firm must submit to the securities regulatory authority

a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated; and

b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service.

11. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

(Signature of the International Firm or authorized signatory)

(Name and Title of authorized signatory)