

Draft Regulation

Derivatives Act

(R.S.Q., c. I-14.01, s. 175, subpars. (2), (3), (12), (18), (21), (21.1), (22), (22.1), (26) and (29); 2009, c. 58, s. 177; 2011, c. 26, s. 61)

Regulation to amend the Derivatives Regulation

Notice is hereby given by the *Autorité des marchés financiers* (the "Authority" or the "AMF") that, in accordance with section 175 of the *Derivatives Act*, R.S.Q., c. I-14.01 (the "Act"), the following draft Regulation, the text of which is published hereunder, may be made by the Authority and subsequently submitted to the Minister of Finance for approval, with or without amendment, after 30 days have elapsed since its publication in the Bulletin of the Authority:

- *Regulation to amend the Derivatives Regulation.*

The draft Regulation is intended to implement certain provisions of Title IV of the Act which pertains to qualified persons. More particularly, this draft Regulation sets out the conditions for qualification by a person who creates or markets a derivative and for authorization to market the derivative. This draft Regulation also sets out the rules that a qualified person must comply with in the course of business.

The principal rules relate to the following:

- capital requirements;
- the obligation to complete the applications for qualification and for authorization to market a derivative set out in Schedules B and C;
- various obligations to notify the AMF and counterparties to the derivative the qualified person is marketing of any material change in the information provided in the application for qualification, such as any change that could affect the trading of a derivative or cause a capital deficiency;
- the obligation to send certain information annually to the AMF, including the audited financial statements for the qualified person's latest fiscal year;
- the information that dealers must give to clients under the second paragraph of section 70 of the Act if a trade is in a derivative created and marketed by a qualified person.

It is important to note that these obligations are in addition to those provided under new sections 82.1 to 82.7 of the Act, to which this draft Regulation relates, and which have been introduced by section 43 of Bill 7, *An Act to amend various legislative provisions mainly concerning the financial sector*, S.Q., 2011, c. 26, an excerpt of which is appended to this Notice.

Bill 7 therefore enhances the regulation of qualified persons by setting out, in particular, additional rules that qualified persons must comply with, such as maintaining a corporate and organizational structure enabling them to carry on activities effectively, having good governance practices, and taking the necessary measures to ensure the security and reliability of their transactions and activities.

Consultation

Comments regarding the above may be made in writing before **February 1, 2012**, to the following:

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Further information

Further information is available from:

Derek West, Director
Centre of Excellence for Derivatives
Autorité des marchés financiers
Tel.: 514-395-0337, ext. 4491
Toll-free: 1-877-525-0337
E-mail: derek.west@lautorite.qc.ca

December 16, 2011

APPENDIX – EXCERPT FROM SECTION 43 OF BILL 7

43. The Act is amended by inserting the following sections after section 82:

“82.1. A qualified person must maintain a corporate and organizational structure enabling the person to carry on activities effectively and must have adequate human, financial and technological resources to that end.

“82.2. A qualified person must have appropriate business policies and procedures in place and good governance practices, especially as regards the independence of directors and the auditing of financial statements.

“82.3. A qualified person must take the necessary measures to ensure the security and reliability of the person’s transactions and activities.

“82.4. A qualified person must offer derivatives to the public through a dealer, or register with the Authority as a dealer.

“82.5. A qualified person must notify the Authority, in accordance with the rules prescribed by regulation, of any change in the information submitted when applying for qualification.

“82.6. A qualified person must notify the Authority and the person’s counterparties, including those waiting to trade in a derivative, within the time prescribed by regulation, of any change that may affect the trading of a derivative or existing transactions in a derivative.

“82.7. A qualified person is responsible for the property entrusted to the person by counterparties, and must segregate the counterparties’ property from the person’s own property and maintain separate accounting records.”