

## REGULATION TO AMEND THE DERIVATIVES REGULATION

Derivatives Act

(chapter I-14.01, s. 175, par. 1, subpars. (1), (2), (3), (9), (11), (12), (16), (22), (26) and (29))

1. The Derivatives Regulation (chapter I-14.01, r. 1) is amended by inserting the following after section 1:

### “DIVISION I.1

#### HEDGER CERTIFICATION

1.1. The hedger referred to in paragraph 12 of the definition of accredited counterparty in section 3 of the Act who relies on the exemption provided in section 7 must deliver to the Authority, either in writing or electronically, the certification set out in Schedule D when it enters into a derivatives transaction or a series of derivatives transactions.

The initial certification must be delivered to the Authority within 30 days after the hedger entered into a derivatives transaction or a series of derivatives transactions and annually thereafter.

The first paragraph does not apply to a hedger who is, in another capacity, an accredited counterparty.

1.2. The hedger referred to in section 1.1 must keep transaction records for the duration of each derivatives transaction or series of derivatives transactions and for a further 7 years after the date on which the derivatives transaction or series of derivatives transactions expires or terminates.

Such records must be kept in a safe location and in a durable form.”.

2. Section 11.6 of the Regulation is amended by replacing paragraphs (1) and (2) with the following:

“(1) have at least 2 years of relevant experience with respect to the derivatives for which he wishes to act; and

“(2) have at least one of the following education and training with respect to the derivatives for which he wishes to act:

(a) have passed all required exams of the Investment Industry Regulatory Organization of Canada for a dealing representative with respect to the derivatives for which he wishes to act;

(b) have earned a CFA charter as defined in section 3.1 of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations; or

(c) have earned a Chartered Alternative Investment Analyst charter through the Chartered Financial Analyst program prepared and administered by the Chartered Alternative Investment Analyst Association and so named on the (*indicate here the date of coming into force of this Regulation*), 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.”.

3. The Regulation is amended by inserting the following after section 11.6:

**“11.6.1.** An advising representative or the associate advising representative can only act with respect to the derivatives for which he has the relevant experience, education and training referred to in section 11.6.”

**4.** Section 11.13 of the Regulation is amended by replacing paragraphs (1) and (2) with the following:

“(1) have at least 3 years of relevant experience with respect to the derivatives for which he wishes to act; and

“(2) have at least one of the following education and training with respect to the derivatives for which he wishes to act:

(a) have passed all required exams of the Investment Industry Regulatory Organization of Canada for a dealing representative with respect to the derivatives for which he wishes to act; or

(b) have earned a CFA charter as defined in section 3.1 of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations; or

(c) have earned a Chartered Alternative Investment Analyst charter through the Chartered Financial Analyst program prepared and administered by the Chartered Alternative Investment Analyst Association and so named on the (*indicate here the date of coming into force of this Regulation*), 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.”

**5.** The Regulation is amended by inserting the following after section 11.13:

**“11.13.1.** A chief compliance officer of a derivatives portfolio manager can only act with respect to the derivatives for which he has the relevant experience, education and training referred to in section 11.13.”

**6.** Section 11.14 of the Regulation is amended:

(1) by inserting, after the words “Title III”, the words “and IV”;

(2) by inserting, after the words “exercise similar functions”, the words “and to a person authorized to create or market a derivative or authorized to carry on similar activities”.

**7.** Section 11.36 of the Regulation is amended by adding the following after paragraph (3):

“(4) all other information related to question 35 of the form set out in Schedule B.”

**8.** Section 13.2 of the Regulation is amended by replacing “and 28” with “, 28 and 35(d)”.

**9.** Schedule B of the Regulation is amended:

(1) by inserting the following after question 6:

**“6.1.** Legal entity identifier, if eligible to receive one, assigned to the person applying for qualification in accordance with the standards set by the Global Legal Entity Identifier System as defined in section 1 of Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting (chapter I-14.01, r. 1.1).”;

(2) by replacing the words “, pour les trois dernières années” in the French text of question 32 with the words “des 3 derniers exercices”;

(3) by adding the following after question 34:

**“BUSINESS ACTIVITIES**

**35.** Provide the following information regarding the activities of the person applying for qualification in the previous fiscal year:

- a) the number of Québec clients;
- b) the number of client account closures;
- c) the number of contracts entered into in Québec and the notional value for all such contracts;
- d) the percentage of client accounts that were profitable for the counterparties;
- e) the applicable interest rate per currency at fiscal year-end differentiating lending and deposit rates;
- f) the number of closed positions from margin calls to clients;
- g) the number of price corrections (slippage) with client impact assessment performed.”.

**10.** The Regulation is amended by adding the following after Schedule C:

**“SCHEDULE D**

**HEDGER CERTIFICATION**

I, *<identify (i) the certifying officer, (ii) his or her position at the hedger, (iii) the name of the hedger, and (iv) the legal entity identifier of the hedger, if eligible to receive one, assigned to it in accordance with the standards set by the Global Legal Entity Identifier System as defined in section 1 of Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting (chapter I-14.01, r. 1.1)>*, certify the following:

*<Include at least one of the following:>*

(1) Based on my knowledge, having exercised reasonable diligence, the intended effect of the derivatives transaction or series of derivatives transactions the hedger engaged into was:

- a) to offset or reduce the risk related to fluctuations in the value of an underlying interest or a position, or of a group of underlying interests or positions; or
- b) to substitute a risk to one currency for a risk to another currency, provided the aggregate amount of currency risk to which the hedger is exposed is not increased by the substitution.

(2) Based on my knowledge, having exercised reasonable diligence, the transaction or series of transactions the hedger engaged into resulted in a high degree of negative correlation between changes in the value of the underlying interest or position or group of underlying interests or positions being hedged and changes in the value of the derivatives with which the value of the underlying interests or positions is hedged.

(3) Based on my knowledge, having exercised reasonable diligence, there are reasonable grounds to believe that the transaction or series of transactions the hedger engaged into no more than offsetted the effect of price changes in the underlying interest or position, or group of underlying interests or positions, being hedged.

Date: *<insert date>*

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[Signature]

[Title]”.

**11.** This Regulation comes into force on (*indicate here the date of coming into force of this Regulation*).