Notice relating to the blanket order regarding exemption from certain requirements set out in Regulation 81-102 respecting Investment Funds

The *Autorité des marchés financiers* (the "AMF" or the "Authority") has assessed whether investment funds that are reporting issuers in Québec can rely on the provisions relating to the clearing of bilateral specified derivatives by a person recognized or exempted from recognition as a clearing agency or clearing house pursuant to the securities legislation of any jurisdiction of Canada ("regulated clearing agency in Canada"), but not recognized or exempted from recognition in Québec.

To conclude its assessment, the AMF would like to inform industry participants that it is exempting all investment funds that are reporting issuers in Québec from certain provisions of Regulation 81-102 respecting Investment Funds, CQLR, c. V-1.1, r. 39 ("Regulation 81-102"), with respect to the limits for purchasing certain securities or entering into certain derivatives, the closing out of positions in securities or derivatives under certain circumstances, the exposure limits of the investment funds, and custodial obligations, so that the funds can also rely on these provisions in the case of bilateral specified derivatives cleared by a regulated clearing agency in Canada.

1. Background

On January 3, 2019, as part of its Modernization of Investment Fund Product Regulation Project, the Canadian Securities Administrators codified, in Regulation 81-102, exemptive relief that had been frequently granted to mutual funds concerning the use of centrally cleared derivatives (the "amendments relating to cleared specified derivatives.")[1] As a result, an investment fund that is a reporting issuer in Québec can rely on the relief from certain provisions of Regulation 81-102, provided that the derivative is a bilateral specified derivative that is accepted for clearing by a person recognized or exempted from recognition as a clearing house in Québec.

2. Decision

The AMF has examined the scope of the amendments relating to cleared specified derivatives and is of the opinion that it is in the interest of certain regulated investment funds in Québec, and their investors, to be able to rely on these amendments where the derivative is a bilateral specified derivative[2] that is accepted for clearing by a regulated clearing agency in Canada.

Therefore, the AMF is issuing a blanket order regarding exemption from certain requirements in Regulation 81-102 (the "decision"). This decision extends the scope of the amendments relating to cleared specified derivatives in order to allow investment funds to rely on the exemptions set out therein as part of the clearing of bilateral specified derivatives by not only a regulated clearing house in Québec, but also any regulated clearing agency in Canada.

[1] More specifically, the amendments introduced statutory exemptions from subsections 2.7(1), (2) and (4) and section 6.1 of Regulation 81-102.
[2] As defined in section 1.1 of Regulation 81-102.

Questions

If you have any questions, please refer them to:

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[Translation]

DECISION No. 2019-PDG-0040

Blanket order regarding exemption from certain requirements set out in Regulation 81-102 respecting Investment Funds

Background

Whereas the terms defined in the *Securities Act*, CQLR, c. V-1.1 (the "Act"), Regulation 14-101 respecting Definitions, CQLR, c. V-1.1, r. 3, and Regulation 81-102 respecting Investment Funds, CQLR, c. V-1.1, r. 39 ("Regulation 81-102"), have the same meanings if used in this decision, unless otherwise defined.

Whereas "cleared specified derivative" as defined in Regulation 81-102 means "a bilateral specified derivative that is accepted for clearing by a regulated clearing agency";

Whereas "regulated clearing agency" as defined in Regulation 81-102 has the meaning ascribed to that term in Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives, CQLR, c. I-14.01, r. 0.01 ("Regulation 94-101");

Whereas "regulated clearing agency" as defined in Regulation 94-101 means "a person recognized or exempted from recognition as a clearing house" in Québec;

Whereas "cleared specified derivative in Canada" in this decision means "a bilateral specified derivative that is accepted for clearing by a regulated clearing agency in Canada";

Whereas "regulated clearing agency in Canada" in this decision means "a person recognized or exempted from recognition as a clearing agency or clearing house pursuant to the securities legislation of any jurisdiction of Canada";

Whereas subsection 2.7(1) of Regulation 81-102 states that an investment fund must not purchase an option or a debt-like security or enter into a swap or a forward contract unless, among other conditions, the option, debt-like security, swap or forward contract is a cleared specified derivative;

Whereas subsection 2.7(2) of Regulation 81-102 states that if the credit rating of an option, debt-like security, swap or forward contract, or the credit rating of the equivalent debt of the writer or guarantor of the option, debt-like security, swap or forward contract, falls below the level of designated rating while the option, debt-like security, swap or forward contract is held by an investment fund, the investment fund must take the steps that are reasonably required to close out its position in the option, debt-like security, swap or forward contract in an orderly and timely fashion, unless the option, debt-like security, swap or forward contract is a cleared specified derivative;

Whereas subsection 2.7(4) of Regulation 81-102 states that the mark-to-market value of the exposure of an investment fund under its specified derivatives positions with any one

counterparty must not exceed, for a period of 30 days or more, 10% of the net asset value of the investment fund unless the specified derivative is a cleared specified derivative;

Whereas subsection 6.1(1) of Regulation 81-102 states that all portfolio assets of an investment fund must be held under the custodianship of one custodian;

Whereas subsection 6.1(2) of Regulation 81-102 states that portfolio assets of an investment fund must be held, in Canada, by the custodian or sub-custodian of the investment fund and, outside Canada, by its custodian or sub-custodian, if appropriate to facilitate portfolio transactions of the investment fund outside Canada;

Whereas subsection 6.5(1) of Regulation 81-102 states that portfolio assets of an investment fund not registered in the name of the investment fund must be registered in the name of the custodian or a sub-custodian of the investment fund, or any of their respective nominees, with an account number or other designation in the records of the custodian sufficient to show that the beneficial ownership of the portfolio assets is vested in the investment fund;

Whereas subsection 6.8(1) of Regulation 81-102 states that an investment fund may deposit portfolio assets as margin for transactions in Canada involving clearing corporation options, options on futures, standardized futures or cleared specified derivatives with a member of a regulated clearing agency if the amount of margin deposited does not, when aggregated with the amount of margin already held by the member on behalf of the investment fund, exceed 10% of the net asset value of the investment funds as at the time of deposit;

Whereas subsection 6.8(2) of Regulation 81-102 states that an investment fund may deposit portfolio assets with a member of a regulated clearing agency as margin for transactions outside Canada involving clearing corporation options, options on futures, standardized futures or cleared specified derivatives if the member, as a member of a regulated clearing agency, is subject to a regulatory audit and the member has a net worth, determined from its most recent audited financial statements, in excess of the equivalent of $50,000,000, and if the amount of margin deposited does not, when aggregated with the amount of margin already held by the member on behalf of the investment fund, exceed 10% of the net asset value of the investment funds as at the time of deposit;

Whereas subsection 6.8(4) of Regulation 81-102 states that the agreement by which portfolio assets are deposited in accordance with subsection 6.8(1) or (2) of Regulation 81-102 must require the person holding the portfolio assets to ensure that its records show that the investment fund is the beneficial owner of the portfolio assets;

Whereas, for an investment fund that is a reporting issuer in Québec, the definitions of “cleared specified derivative” and “regulated clearing agency” limit the application of subsections 2.7(1), (2) and (4) and subsections 6.8(1) and (2) of Regulation 81-102 to bilateral specified derivatives that are cleared by a clearing house that is recognized or exempted from recognition in Québec;

In view of the interest for an investment fund that is a reporting issuer in Québec, and for its investors, in using the systems of a regulated clearing agency in Canada to clear certain additional bilateral specified derivatives;

Whereas Canada, as a member of the G20 and a participant in the September 2009 commitment of G20 nations to improve transparency and mitigate risk in derivatives markets, has expressly recognized the systemic benefits that clearing derivatives offers to market participants;

Whereas the *Autorité des marchés financiers* (the "Authority") may, pursuant to section 263 of the Act, on such conditions as it may determine, exempt a person or a group of persons from any or all of the requirements under Titles II to VI of the Act or the regulations where it considers the exemption not to be detrimental to the protection of investors;

Whereas, the *Direction principale des fonds d'investissement* has conducted an analysis and the Interim Superintendent, Securities Markets, recommends that the exemption referred to in this decision be granted on the grounds that it fosters market efficiency and is not detrimental to the protection of investors;

Therefore:

The Authority exempts any investment fund that is a reporting issuer in Québec from the following provisions:

1) subsections 2.7(1), (2) and (4) of Regulation 81-102, if the option, debt-like security, swap or forward contract referred to in these subsections is a cleared specified derivative in Canada;

2) subsections 6.1(1) and (2) and subsection 6.5(1) of Regulation 81-102 with respect to the deposit of portfolio assets as margin for transactions involving clearing corporation options, options on futures, standardized futures or cleared specified derivatives with a member of a regulated clearing agency in Canada, if;

    a. for transactions in Canada, the amount of margin deposited does not, when aggregated with the amount of margin already held by the member on behalf of the investment fund, exceed 10% of the net asset value of the investment funds as at the time of deposit;

    b. for transactions outside Canada, the member, as a member of a regulated clearing agency in Canada, is subject to a regulatory audit and has a net worth, determined from its most recent audited financial statements, in excess of the equivalent of $50,000,000, and the amount of margin deposited does not, when aggregated with the amount of margin already held by the member on behalf of the investment fund, exceed 10% of the net asset value of the investment funds as at the time of deposit.

c. the agreement by which portfolio assets are deposited must require the person holding the portfolio assets to ensure that its records show that the investment fund is the beneficial owner of the portfolio assets.

Signed on June 20, 2019.

Louis Morisset
President and Chief Executive Officer