



**NOTICE OF REPEAL OF
LOCAL RULE 91-501 *DERIVATIVES***

AND

**NOTICE OF ADOPTION OF
LOCAL RULE 91-501 *OVER-THE-COUNTER TRADES IN DERIVATIVES***

Introduction

On 23 June 2021, the Financial and Consumer Services Commission (“**Commission**”) approved the repeal of existing Local Rule 91-501 *Derivatives*. At the same meeting, the Commission approved the making of new Local Rule 91-501 *Over-the-Counter Trades in Derivatives* (“**LR 91-501**”) as set out in Annex A. LR 91-501 will come into effect on 2 September 2021 subject to Ministerial Approval.

Background

On 4 February 2021, the Commission published notice of the proposal to repeal existing Local Rule 91-501 *Derivatives* and replace it with the new proposed LR 91-501. The consultation period ended on 5 April 2021. No comment letters were received. The Commission has not made any material changes to LR 91-501.

Substance and Purpose of the Amendments

The purpose of LR 91-501 is to provide an exemption from the registration requirement in New Brunswick securities laws for derivatives dealers who trade only with qualified counterparties. The current changes are intended to harmonize the local rule with similar blanket orders and local rules in other Canadian jurisdictions, including by:

- Updating the definition of “qualified party” to be consistent with other jurisdictions;
- Adding an exemption from the registration requirement for parties trading in physical commodity contracts;
- Limiting application of the instrument to over-the-counter trades in derivatives; and
- Removing certain provisions that are no longer necessary due to amendments to the New Brunswick *Securities Act*, SNB 2004, c. S.5.5, and the adoption of other national and multilateral instruments, such as Multilateral Instrument 91-101 *Derivatives Product Determination*.

Questions

If you have any questions, please refer them to:

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SCHEDULE “A”

FINANCIAL AND CONSUMER SERVICES COMMISSION LOCAL RULE 91-501 *OVER-THE-COUNTER TRADES IN DERIVATIVES*

PART 1 DEFINITIONS AND INTERPRETATION

Definitions

1. In this Instrument

“physical commodity contract” means a derivative to which all of the following apply:

- (a) it is not an exchange contract;
- (b) it contains an obligation to make or take future delivery of a commodity, other than cash or a currency;
- (c) at the time it is traded, it is intended by the counterparties to be settled by physical delivery of the commodity or by delivery of evidence of a legal title to the commodity;

“over-the-counter trade” means a trade in a derivative, other than a trade in an exchange contract;

“qualified party” means

- (a) the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly-owned entity of the Government of Canada or a jurisdiction of Canada,
- (b) a municipality, municipal corporation, public board or commission in Canada or other similar municipal administration, metropolitan community or school board in Canada.
- (c) a national, federal, state, provincial, territorial or municipal government of or in a foreign jurisdiction, or an agency of that government,

- (d) 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;
- (e) an authorized foreign bank in Schedule III of the *Bank Act* (Canada);
- (f) an association governed by the *Cooperative Credit Associations Act* (Canada),
- (g) the Business Development Bank of Canada, established under the *Business Development Bank of Canada Act* (Canada),
- (h) a pension fund regulated by the Office of the Superintendent of Financial Institutions (Canada), or by a pension commission or similar regulatory authority of a jurisdiction of Canada, or a wholly-owned subsidiary of the pension fund.
- (i) a person organized in another jurisdiction of Canada or a foreign jurisdiction that is analogous to any of the persons referred to in paragraphs (d) to (h),
- (j) a person registered under the securities legislation of a jurisdiction of Canada as an adviser or investment dealer,
- (k) an investment fund if one or more of the following apply:
 - (i) each investor in the fund is a qualified person;
 - (ii) The fund is managed by a person registered as an investment fund manager under the securities legislation of a jurisdiction of Canada;
 - (iii) The fund is advised by a person authorized to act as an adviser under the securities legislation of a jurisdiction of Canada,
- (l) a person to which, with its affiliates, either of the following applies:
 - (i) the person has executed one or more over-the-counter trades in derivatives with counterparties that are not its affiliates, provided that each of the following applies:
 - (A) the trades had a total gross value of at least \$1 billion in notional principal amount;
 - (B) any of the derivatives relating to one of these trades was outstanding on any day within the 15 months prior to the trade;
 - (ii) the person had on any day since the date that is 15 months prior to the trade total gross marked-to-market positions of at least \$100 million aggregated across counterparties, in one or more over-the-counter trades in derivatives,
- (m) an individual who, either alone or with their spouse, has net assets of at least \$5 million,

- (n) a person, unincorporated association, organization or trust, other than an individual or an investment fund, that has total assets of at least \$25 million as shown on their most recent prepared annual financial statements or interim report,
- (o) a person that buys, sells, trades, produces, markets, brokers or otherwise uses a commodity in its business and that executes an over-the-counter trade in a derivative provided that a material component of the underlying interest of the derivative is any of the following:
 - (i) a commodity that the person buys, sells, trades, produces, markets, brokers or otherwise uses in its ordinary course of business;
 - (ii) a commodity, security or variable that directly or indirectly affects the commodity that the person buys, sells, trades, produces, markets, brokers or otherwise uses in the ordinary course of its business;
 - (iii) a commodity, security or variable for which there is a high degree of correlation between the movement in its value and the movement in the value of the commodity that the person buys, sells, trades, produces, markets, brokers or otherwise uses in its ordinary course of its business;
 - (iv) another derivative which is not listed for trading on an exchange, where a material component of the underlying interest of that other derivative is a commodity, security or variable referred to in any of subparagraphs (i) to (iii),
- (p) a person that is directly or indirectly wholly owned (not taking into account securities required by law to be held by directors) by one or more qualified parties,
- (q) a person that directly or indirectly wholly owns (not taking into account securities required by law to be held by directors) a qualified party,
- (r) a person that is directly or indirectly wholly owned (not taking into account securities required by law to be held by directors) by a person referred to in paragraph (q),
- (s) a person whose obligations under the derivative that is being traded are fully guaranteed by one or more qualified parties.

Interpretation

- 2. (1)** Unless otherwise defined, terms used in this Instrument that are defined in the *Securities Act (Act)* or in National Instrument 14-101 *Definitions* have the same respective meaning ascribed to those terms in the *Act* and that Instrument.

- (2)** For the purposes of this Instrument:
- (a) a party is a qualified party if that party is a qualified party at the time the party enters into the over-the-counter trade;
 - (b) a party entering into an over-the-counter trade with a party who claims to be a qualified party is entitled to rely on a representation by that party that the party is a qualified party, unless the first party has reasonable grounds to believe that the representation is false;
 - (c) a party referred to in clauses (d) or (j) of the definition of qualified party is deemed to be acting as a principal when it acts as an agent or trustee for accounts that it fully manages.

PART 2
EXEMPTION TO DEALER REGISTRATION REQUIREMENT

- 3. (1)** The dealer registration requirement does not apply to an over-the-counter trade in a derivative if either of the following applies:
- (a) each counterparty to the trade is a qualified party acting as principal;
 - (b) the trade is in a physical commodity contract.
- (2)** A person relying on subsection (1) must comply with the requirements that the Executive Director may impose on such person in respect of a trade or class of trades, including one or more of the following:
- (a) that the trade or class of trades be reported to a trade repository recognized or exempted from recognition by the Commission;
 - (b) that the trade or class of trades be made on an exchange recognized or exempted from recognition by the Commission;
 - (c) that the trade or class of trades be cleared, or cleared and settled, through a clearing agency that is recognized or exempted from recognition by the Commission;
 - (d) that in respect of a trade or class of trades not cleared, or cleared and settled, through a clearing agency, the person have at least a prescribed minimum excess working capital.
- (3)** The Executive Director may at any time revoke the exemption set out in subsection (1) or impose any terms and conditions that the Executive Director considers appropriate.

PART 3
EFFECTIVE DATE

Effective date

4. This rule comes into force on 2 September 2021.