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**The New Québec *Derivatives Act*:
Overview and Comments**

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Introduction

- First legislation administered by a Canadian securities authority to cover both exchange-traded and OTC derivatives
- Separate from the *Securities Act*
- Principle-based legislation
- « Prudential » legislation

Purposes of the QDA

- *Anti-Fraud* Legislation
- Govern derivatives offering and trading in Quebec
- Oversight of the activities of derivatives market professionals
- Monitoring of *regulated entities*
- Facilitate the control of systemic risk in derivatives trading (both regulated and non regulated entities)

Administration of the QDA

- The AMF: *An integrated* regulator
 - Market regulations
 - Prudential regulations

Scope of the QDA

- The “*Derivative*”
- The “*Hybrid Product*”
- Section 6 Exemption
- Section 7 Exemption
- The “*Accredited Counterparty*”

Scope of the QDA

■ The “*Derivative*”

DEFINITION

“derivative” means an option, a swap, a futures contract or any other contract or instrument whose market price, value, or delivery or payment obligations are derived from , referenced to or based on an underlying interest, or any other contract or instrument designated by regulation or considered equivalent to a derivative on the basis of criteria determined by regulation;

Scope of the QDA

- The “*Hybrid Product*”
an instrument, contract or security that **combines elements of derivatives and securities.**

Ex: Index Linked Note

If hybrid product shows that it is **predominantly a security** within the meaning of the *Securities Act* it is considered to be a security and is governed by that Act.

Scope of the QDA

- 3 conditions:
 1. the offeror receives payment of the purchase price **on the delivery of the hybrid product;**
 2. the purchaser is under no obligation to make any **additional payment beyond the purchase price as a margin deposit**, margin, settlement or other such amount during the life of the hybrid product or at maturity; and
 3. the terms of the hybrid product **do not include margin requirements** based on a market value of its underlying interest.

Ex: Index Linked Note

Scope of the QDA

- The Section 6 exemption

QDA does not apply to the following instruments:

1. a **warrant or subscription right**;
2. an **investment contract** within the meaning of the second paragraph of section 1 of the Securities Act (chapter V-1.1);
3. an **insurance or annuity contract** issued by an insurer holding a licence under the Act respecting insurance (chapter A-32) or under other insurance legislation in Canada;

Scope of the QDA

- The Section 6 exemption *(continued)*
 4. an option or other non-traded derivative whose value is derived from, referenced to or based on the value or market price of a security, granted as **compensation or as payment for a good or service**; and
 5. any other instrument **specified by regulation.**

Scope of the QDA

- The Section 7 Exemption
 - *Accredited Counterparty*
 - *OTC Derivatives*

Scope of the QDA

- *Accredited Counterparty*
 - *Institutions*
 - *Individuals*
 - *31-103 test (“permitted client”)*
 - *45-106 test (“accredited investor”)*

Who is regulated under the QDA?

- *Regulated Entities* (and the self-certification process)
- *Dealers and Advisers*
- *Qualified Persons*
- (Designated) *Market Participants*

Conclusion

- CSA OTC Derivatives Harmonization Efforts
- OSC Staff Notice on OTC Derivatives
- OSC Order (October 8, 2009) re: CMC Markets
- Online FX = a derivative? a security?
- Interim = Legal Uncertainty