

## Notice and Request for Comment

# Proposed Amendments to Multilateral Instrument 91-101 *Derivatives: Product Determination* and Proposed Changes to Companion Policy 91-101CP *Derivatives: Product Determination*

June 30, 2016

### Introduction

The Financial and Consumer Affairs Authority of Saskatchewan (FCAA) is publishing for a 60 day comment period:

- proposed amendments (the **Product Determination Rule Amendments**) to Multilateral Instrument 91-101 *Derivatives: Product Determination* (the **Product Determination Rule**), and
- proposed changes to Companion Policy 91-101 *Derivatives: Product Determination* (the **Product Determination CP**)

### Substance and Purpose

#### *Product Determination Rule Amendments*

The Product Determination Rule Amendments clarify the definition of “derivative” for the purpose of the Product Determination Rule in British Columbia<sup>1</sup>, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Yukon, in order to better harmonize the definition of “specified derivative” among the jurisdictions participating in the rule (collectively, the **MI Jurisdictions**).

The Product Determination Rule Amendments also reflect the revocation, effective September 30, 2016, of a designation order of the Alberta Securities Commission that is no longer necessary as a result of recent amendments to the Securities Act (Alberta).

#### *Product Determination CP Changes*

The changes to the Product Determination CP reflect the Product Determination Rule Amendments, and clarify certain guidance relating to: (i) physically-settled commodity derivatives, settlement by delivery except where impossible or commercially unreasonable; and (ii) investment contracts in New Brunswick, Nova Scotia and Saskatchewan.

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<sup>1</sup> The British Columbia Securities Commission expects to implement the Product Determination Rule Amendments in the near future.

## **Background**

On January 22, 2016, the securities regulatory authorities in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon announced implementation of the Product Determination Rule with an effective date of May 1, 2016, subject in certain participating jurisdictions to Ministerial approval and legislative amendments.

In Saskatchewan, the Product Determination Rule was implemented on May 13, 2016.

Today, FCAA is publishing proposed amendments to the Product Determination Rule. Also today, the securities regulatory authorities in Alberta, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon are publishing the same amendments for implementation. British Columbia Securities Commission (BCSC) staff anticipate publishing notice of implementation subject to receipt of ministerial approval.

FCAA is unable to make the proposed amendments to the Product Determination Rule without publishing for comment.

The proposed amendments clarify the application of the Product Determination Rule in a number of the jurisdictions but do not change the law in Saskatchewan.

The proposed changes to the Product Determination CP are consequential changes reflecting the proposed amendments to the Product Determination Rule.

## **Authority**

The following provisions of *The Securities Act, 1988* (Saskatchewan) (the Act) provide the Financial and Consumer Affairs Authority of Saskatchewan (the Authority) with the authority to implement the amendments:

- Paragraph 154(1)(j.1) of the Act authorizes the Authority to make regulations regulating the trading of derivatives on a derivatives trading facility, including prescribing requirements for keeping records;
- Paragraph 154(1)(k.2) of the Act, authorizes the Authority to make regulations regulating exchanges, self-regulatory organizations, quotation and trade reporting systems, clearing agencies, derivatives trading facilities and trade repositories;
- Paragraph 154(1)(l.1) of the Act authorizes the Authority to make regulations regulating the trade of derivatives;
- Paragraph 154(1)(l.3) of the Act authorizes the Authority to make regulations prescribing the circumstances in which a contract or instrument or contract or instrument within a class of contracts of instruments is a derivative or class of derivatives;
- Paragraph 154(1)(ee) of the Act authorizes the Authority to make regulations respecting the designation or recognition of any person, company or jurisdiction considered advisable for the purposes of the Act, including recognizing exchanges, derivatives trading facilities, self-regulatory organizations, trade repositories and clearing agencies;
- Paragraph 154(1)(ee.11) of the Act authorizes the Authority to make regulations with respect to any matter necessary to regulate self-regulatory organizations, exchanges, derivatives trading facilities, quotation and trade reporting systems, clearing agencies and trade repositories;

- Paragraph 154(1)(oo) of the Act authorizes the Authority to make regulations exempting any person, company, trade, security or derivative from all or any provision of the Act or the regulations, including prescribing any terms or limitations on an exemption and requiring compliance with those terms or limitations;

### **Request for comments**

We welcome all comments on the proposed amendments to the Product Determination Rule and the proposed changes to the Product Determination CP on or before August 29, 2016.

Please submit your comments in writing. If you are not sending your comments by email, please send a CD containing the submission (in Microsoft Word format).

Please note that we cannot keep submissions confidential because securities legislation requires publication of a summary of the written comments received during the comment period. You should not include personal information directly in comments. It is important that you state on whose behalf you are making the submission. Thank you in advance for your comments.

Please address your submission as follows and deliver your comments only to the email address below:

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### **Questions**

Please refer your questions to:

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### **Contents of Annexes**

The following annexes form part of this Notice:

- Annex A Proposed amendments to Multilateral Instrument 91-101 *Derivatives: Product Determination*
- Annex B Proposed changes to Companion Policy 91-101 *Derivatives: Product Determination*
- Annex C Blackline of Multilateral Instrument 91-101 *Derivatives: Product Determination* showing the proposed amendments
- Annex D Blackline of Companion Policy 91-101 *Derivatives: Product Determination* showing the proposed changes