



Quebec AMF to revoke derivatives blanket exemption decision effective September 5, 2015

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The **Autorité des marchés financiers** (AMF), Quebec's financial services regulator, issued an important decision yesterday which provides for the revocation effective September 5, 2015 of Decision No. 2009-PDG-0007 *General Decision Respecting the Exemption from the Application of Sections 54, 56 and the First Paragraph of Section 82 of the Derivatives Act* (the Blanket Decision). The decision can be found beginning on page 413 of the **April 30, 2015 Bulletin**.

The AMF had issued the Blanket Decision on January 22, 2009 in conjunction with the enactment of the Quebec **Derivatives Act** (QDA) to provide transitional relief for transactions and other activities in relation to certain specified derivatives, subject to certain conditions. Canadian and foreign market participants which have relied on this exemption should review their current derivatives markets activities in Quebec and determine whether any other statutory relief may be available, whether there may be a basis to apply for focused discretionary relief under the QDA or whether any current client arrangements with Quebec counterparties should be discontinued by the September 5, 2015 deadline.

Significantly, the revocation of the Blanket Decision does not affect the statutory exemptions under Quebec derivatives legislation for OTC and exchange-traded derivatives transactions with “accredited counterparties” undertaken under the terms of those exemptions.

The Blanket Decision provides exemptions, subject to certain terms and conditions, from the derivatives dealer and adviser registration requirements and the derivatives qualification requirement in relation to trades in specified categories of derivatives previously regulated under the Quebec **Securities Act** prior to the enactment of the QDA.

Among other conditions, the Blanket Decision requires that a person seeking the benefit of these exemptions “carry out their derivatives activities solely with accredited investors within the meaning and according to the conditions set forth in **Regulation 45-106** [respecting Prospectus and Registration Exemptions]”.

The AMF had issued a Staff Notice on May 24, 2012 confirming that (1) the Blanket Decision remained in effect notwithstanding the terms of section 11.37 of the Quebec **Derivatives Regulation** (QDR) which purports to revoke discretionary exemptions from the derivatives qualification requirement previously granted by the AMF, and (2) the exemption from the derivatives qualification requirement under the Blanket Decision also implied an exemption from the derivatives authorization requirement enacted following the issuance of the Blanket Decision. (**See Notice Regarding Application of Section 11.37 of the Derivatives Regulation, R.R.Q.. C. I-14.01, R. 1 and Certain Issues Pertaining to the Qualification and Authorization Obligation in Respect of Marketing a Derivative**, May 24, 2012.)

The revocation decision No. 2015-PDG-0066 (the Revocation Decision) cites, in support of the decision, the fact that, as a result of legislative amendments in other Canadian jurisdictions, transactions in the specified derivatives covered by the Blanket Decision may no longer be undertaken on the basis of the “accredited investor” exemption under **National Instrument 45-106 Prospectus and Registration Exemptions**.

The Revocation Decision also provides transitional exemptive relief from the requirement to deliver a risk acknowledgement form (RAF) to individual “accredited investors” in connection with transactions in the specified derivatives covered by the Blanket Decision. The RAF-related exemptive relief applies effective as of May 5, 2015 (when the RAF requirement comes into force) until the revocation of the Blanket Decision effective September 5, 2015. (For further information on the RAF requirement, see **our post** of April 17, 2015).

The Blanket Decision was last extended by way of a Notice of the AMF on September 24, 2010 in which the AMF specified that it would give “appropriate” notice of its intention to make any changes to the exemption. The general market expectation was that the decision would be revoked in conjunction with the adoption by the Canadian Securities Administrator (CSA) of harmonized derivatives registration rules. Rulemaking in this area, however, is still ongoing following publication in April 2013 of **CSA Consultation Paper 91-407** – Derivatives: Registration on which we **reported** at the time. Release by the CSA of a harmonized derivatives registration instrument is currently not expected for another several months.

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