

**Companion Policy 91-501CP**  
***Derivatives and Strip Bonds***

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**PART 1 INTRODUCTION, DEFINITIONS AND INTERPRETATION**

**1. Introduction**

**Purpose of this Companion Policy**

This Companion Policy sets out how the Authority interprets or applies the provisions of CMRA Regulation 91-501 *Derivatives and Strip Bonds* (the Regulation).

**Numbering system**

Except for Part 1, the numbering of Parts and sections in this Companion Policy correspond to the numbering in the Regulation. Any general guidance for a Part appears immediately after the Part name. Any specific guidance on sections in the Regulation follows any general guidance. If there is no guidance for a Part or section, the numbering in this Companion Policy will skip to the next provision for which there is guidance.

**2. Definitions**

Unless defined in the Regulation, terms used in the Regulation and in this Companion Policy have the meaning given to them in the Act, CMRA Regulation [11-501 *Definitions, Procedure, Civil Liability and Related Matters*], or National Instrument 14-101 *Definitions* (NI 14-101).

**Exchange contract**

A derivative will meet the definition of “exchange contract”, which is in NI 14-101, only if it is traded on an exchange. Derivatives trading facilities are not considered “exchanges” for purposes of the definition of “exchange contract”. A derivatives trading facility means a person that constitutes, maintains, or provides a facility or market that brings together buyers and sellers of OTC derivatives, brings together the orders of multiple buyers and multiple sellers, and uses methods under which the orders interact with each other and the buyers and sellers agree to the terms of trades (see CSA Consultation Paper 92-401 *Derivatives Trading Facilities*).

For example, the following would not be considered an exchange for purposes of the definition of “exchange contract”:

- a “swap execution facility” as defined in the Commodity Exchange Act 7 U.S.C. §(1a)(50);
- a “security-based swap execution facility” as defined in the Securities Exchange Act of 1934 15 U.S.C. §78c(a)(77);
- a “multilateral trading facility” as defined in Directive 2014/65/EU Article 4(1)(22) of the European Parliament; and

- an “organized trading facility” as defined in Directive 2014/65/EU Article 4(1)(23) of the European Parliament.

Therefore, derivatives traded on these facilities would not be exchange contracts.

### **Qualified party – paragraph (o)**

Paragraph (o) of the definition of “qualified party” in section 1 of the Regulation is intended to apply to a person that deals in a commodity and enters into an OTC derivative where a material component of the underlying interest is, directly or indirectly, the commodity in which the party deals, or a related, affecting or correlating commodity, security or variable. The Authority’s intention is to provide an exemption for persons that enter into OTC derivatives for the purpose of commercial hedging.

Paragraph (o) provides for hedging by way of OTC derivatives based on a variety of underlying interests. For example, a producer of apples could enter into OTC derivatives based on:

- apples (sub-paragraph (i) of the definition);
- apple juice (sub-paragraph (ii) – a related commodity);
- the weather in apple growing regions (sub-paragraph (iii) – a variable that affects the production of apples);
- farm income in apple-growing regions (sub-paragraph (iv) – a variable having a high degree of correlation with the price of apples); or
- another OTC derivative based on any of the above.

Similarly, a gold producer could enter into OTC derivatives based on gold (sub-paragraph (i)) or gold producer shares (sub-paragraphs (ii) or (iv)). A ski hill operator could enter into OTC derivatives based on average temperatures or snowfall in a geographic area (sub-paragraph (iii)).

These examples are provided for illustration only. The parties to an OTC derivative must determine in their particular circumstances whether the definition applies and, if so, must decide whether entering into the OTC derivative is an appropriate hedging strategy.

## **3. Interpretation**

### **OTC derivatives prescribed to be securities**

In section 2(2) of the Regulation, the Authority prescribes under section 41 of the Act OTC derivatives that are not otherwise securities to be securities for the purpose of Part 5 [Prospectus Requirements] of the Act and related Regulations. The Authority is treating OTC derivatives as securities for the purpose of the prospectus requirement as a transitional measure. Accordingly, in Regulations that relate to prospectus requirements or exemptions, references to “security” should be read to include “OTC derivative”, unless the context

otherwise requires. The Authority will consider applications for discretionary exemptions from the prospectus requirement on a case-by-case basis.

#### **PART 4      OVER-THE-COUNTER DERIVATIVES**

The purpose of Part 4 [Over-the-Counter Derivatives] of the Regulation is to enable certain parties to enter into OTC derivatives in a CMR Jurisdiction without being subject to the registration and prospectus requirements of the Act. This exemption is being provided on the basis that qualified parties, as defined in the Regulation, and permitted clients, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, will be able to determine for themselves, without assistance from a registrant or any mandated disclosure under the Act, whether entering into an OTC derivative is appropriate in the circumstances. Similarly, it is assumed that qualified parties and permitted clients can assess the creditworthiness of their counterparties and the risks inherent in entering into OTC derivatives.