

NEW BRUNSWICK SECURITIES COMMISSION NOTICE 91-701

FREQUENTLY ASKED QUESTIONS REGARDING NEW BRUNSWICK SECURITIES COMMISSION LOCAL RULE 91-501 *DERIVATIVES*

Introduction

On 28 September 2009, subject to Ministerial approval, Local Rule 91-501 *Derivatives* and Form 91-501F1 *Risk Information Document* (LR 91-501) and related amendments to the *Securities Act*, S.N.B. 2004, c. S-5.5 (*Act*) are effective in New Brunswick. New Brunswick Securities Commission (Commission) staff are issuing this notice to provide interpretive guidance for certain provisions of LR 91-501.

Frequently Asked Questions

Question 1: Can each qualified party rely on the declaration of the other in relation to its status as a qualified party, and therefore be subject to the exemptions found in sections 2(4) and 3(2) of LR 91-501?

A: A qualified party that engages in a derivatives transaction is responsible for determining whether the other party is also a qualified party, and whether the transaction thus benefits from the exemptions set out in sections 2(4) and 3(2) of LR 91-501. To do so, the qualified party may rely on the factual statements made by the other party, provided it does not have reasonable grounds to believe that such statements are false. However, the qualified party is nonetheless responsible for determining whether, on the basis of the facts, the exemptions are applicable. Usually, the person conducting such a transaction should retain all documents necessary to establish that it has rightly availed itself of the exemption.

For example, under paragraph (l) of the definition of “qualified party” in section 1(1) of LR 91-501, a person will be considered a qualified party if that person has the requisite knowledge and experience, and has minimum net assets. Such person must establish that the requisite conditions have been met. The establishment of compliance with these conditions may vary significantly based on a person's particular circumstances. The parties concerned should be satisfied that they are able to evaluate the information obtained.

Question 2: Is there a transition period for financial sector participants to implement new derivatives-related compliance measures once LR 91-501 comes into force?

A: Yes. Although LR 91-501 is effective on 28 September 2009, Commission staff are aware that many financial sector participants may have to implement new derivatives-related compliance measures. An example may be for the purpose of establishing that a person meets the conditions under paragraph (l) of the definition of “qualified party” in section 1(1) of LR 91-501. As such, during the first six months following the coming into

force of LR 91-501, Commission staff expect market participants to phase in compliance obligations arising from the new requirements in the rule.

Question 3: Does LR 91-501 apply to Principal Protected Notes (PPNs)?

A: A PPN is an investment product that offers an investor potential returns based on the performance of an underlying investment and a guarantee that the investor will receive, on maturity of the PPN, not less than the principal amount invested. For further information on PPNs, please refer to Canadian Securities Administrators' (CSA) Staff Notice 46-303 *Principal Protected Notes*, CSA Staff Notice 46-304 *Update on Principal Protected Notes*, and CSA Staff Notice 46-305 *Second Update on Principal Protected Notes*.

Question 4: Does LR 91-501 apply to spot foreign exchange contracts (spot forex)?

A: LR 91-501 does not apply to spot foreign exchange transactions involving the purchase or sale of a currency (for example, transactions such as changing money at a currency exchange or withdrawing cash at a foreign ATM¹).

Question 5: Does the registration exemption in s. 3(2) of LR 91-501 apply to a qualified party when it acts as an agent or trustee for accounts that are fully managed by it?

A: The registration exemption in s. 3(2) of LR 91-501 applies to a party referred to in paragraphs (d), (f), (j) and (k) of the definition of qualified party in LR 91-501 (other than an individual referred to in paragraph (k) who has ceased to be registered within the last three years), when it acts as an agent or trustee for accounts that are fully managed by it.

Questions

If you have any questions, please refer them to:

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¹ This FAQ was amended on 13 July 2010 by replacing "i.e." with "for example".