

**Nova Scotia Securities Commission**

**Rule 91-101 (Amendment)**  
***Derivatives: Product Determination***

**- and-**

**Amendments to Multilateral Instrument 91-101**  
***Derivatives: Product Determination***

**- and-**

**Changes to Companion Policy 91-101**  
***Derivatives: Product Determination***

**WHEREAS:**

1. Pursuant to section 150 of the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended (the Act), the Nova Scotia Securities Commission (the Commission) has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
3. Amendments to Multilateral Instrument 91-101 *Derivatives: Product Determination* (the Rule) and Changes to Companion Policy 91-101 *Derivatives: Product Determination* (the Companion Policy), copies of which are attached hereto, have been made a rule by one or more of the Canadian securities regulatory authorities; and
4. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

**NOW THEREFORE the Commission hereby:**

- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule and makes the same a rule of the Commission;
- (b) pursuant to the authority contained in section 19 of the Act and subject to publication on the Commission's website, issues the Companion Policy as a policy statement of the Commission; and


- (c) declares that the rule approved and made pursuant to clause (a) and the policy statement issued pursuant to clause (b) shall take effect on **September 30, 2016**, unless the Minister disapproves the rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the rule and the policy shall not become effective until the rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair of the Commission and a Commissioner, being the members of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the 30<sup>th</sup> day of June, 2016.



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Paul Radford, Q.C.,  
Chair



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Shirley P. Lee, Q.C.,  
Commissioner

Attachments

**Amendments to  
Multilateral Instrument 91-101 *Derivatives: Product Determination***

1. ***Multilateral Instrument 91-101 Derivatives: Product Determination is amended by this Instrument.***
2. ***Paragraph 1(4)(b) is replaced with the following:***
  - (b) it is a “security”, as defined in securities legislation, solely by reason of it being one or more of the following:
    - (i) a document evidencing an option, subscription or other interest in a security;
    - (ii) in British Columbia and Newfoundland and Labrador, a futures contract;
    - (iii) an investment contract;
    - (iv) in British Columbia and Newfoundland and Labrador, an option;
    - (v) in Northwest Territories, Nunavut, Prince Edward Island and Yukon, a derivative..
3. ***Subsection 2(1) is amended by***
  - (a) ***adding the following paragraph:***
    - (h.1) in Alberta, a contract or instrument that is a derivative and is a security unless the contract or instrument is a security only by reason of it being an investment contract or an option;, **and**
  - (b) ***inserting “Alberta” before “British Columbia” in subsection (i).***
4. ***Subsection 3(2) is amended by inserting the words “British Columbia and” before the word “Saskatchewan”.***
5. This Instrument comes into force on September 30, 2016.

**Changes to  
Companion Policy 91-101 *Derivatives: Product Determination***

1. *Companion Policy 91-101 Derivatives: Product Determination is changed by this Instrument.*

2. *Section 1 is changed by inserting the following subsection:*

(4) Section 1(4) establishes a common definition of “derivative” in British Columbia, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Yukon that is exclusive of the definition of “security” in the securities legislation of those jurisdictions for the purposes of the Instrument..

2. *Paragraph 2(1)(d) is changed by replacing the first sentence after the underlined subheading “Settlement by delivery except where impossible or commercially unreasonable (subparagraph 2(1)(d)(ii))” with the following:*

Subparagraph 2(1)(d)(ii) requires that, to be excluded from the definition of “specified derivative”, a contract must not, other than as described above under subparagraph 2(1)(d)(i), permit cash settlement in place of delivery unless physical settlement is rendered impossible or commercially unreasonable as a result of an intervening event or occurrence not reasonably within the control of the counterparties, their affiliates or their agents..

3. *Paragraph 2(1)(h) is replaced with the following:*

**(h) Securities in New Brunswick, Nova Scotia and Saskatchewan and (h.1) Securities in Alberta**

Some types of contracts traded over-the-counter, including some types of foreign exchange contracts and contracts for difference, meet the definition of “derivative” (because their market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest) in the securities legislation of the local jurisdiction, but also meet the definition of “security” (because they are investment contracts or options) in the securities legislation of the local jurisdiction.

In New Brunswick, Nova Scotia and Saskatchewan, these contracts would meet the definition of “security” (because they are investment contracts) but for the exclusion of derivatives from the definition of “security”. Paragraph 2(1)(h) provides that, in New Brunswick, Nova Scotia and Saskatchewan, these contracts are not excluded from the definition of “specified derivative”; as a result, these contracts are subject to certain requirements relating to OTC derivatives.

In Alberta, these contracts would meet the definition of “derivative” and the definition of “security” (because they are investment contracts or options). Paragraph 2(1)(h.1) provides that, in Alberta, these contracts are not excluded from the definition of “specified derivative”; as a result, these contracts are subject to certain requirements relating to OTC derivatives..

4. *The heading to paragraph 2(1)(i) is changed by adding “Alberta” before “British Columbia”.*
5. *The Policy is changed by deleting the guidance under the heading “Investment contracts and options, stock options, warrants and similar instruments in Alberta”.*
6. These changes become effective on September 30, 2016.