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THE LAW OF FINANCIAL DERIVATIVES IN CANADA

Grottenthaler & Henderson

Release No. 1, June 2022

This service is the only Canadian reference book for derivative lawyers and learning tool for novices. It provides a detailed review of the significant legal issues affecting derivatives transactions in Canada, including an introduction to the different types of derivatives transactions, an introduction to derivatives documentation, a detailed review of enforceability issues (including enforceability against insolvent counterparties), collateralization of transactions, regulatory issues (including securities law issues), duties owed in derivatives relationships and the tax treatment of various types of transactions with Canadian counterparties.

This release features updates to Chapter 10 (Regulatory Issues Affecting Derivatives Trading) and Appendix C (Select Securities Regulatory Authority Instruments).

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Highlights

Regulatory Issues Affecting Derivatives Trading — Regulation of OTC Derivatives — NI 94-101 Mandatory Central Counterparty Clearing — Counterparty Criteria — Amendments to the rule that are scheduled to come into force September 1, 2022, redefine local counterparty thresholds so that if an entity:

- (i) During the previous 12 months, has a month-end gross notional for all derivatives outstanding of more than CAD 500 Billion (this number combines all local counterparty affiliated entities) AND,
- (ii) During the months of March, April and May of the preceding reference period for which the transaction was executed, the entity itself has an average month-end gross notional for all derivatives outstanding of more than CAD 1 Billion.

it is subject to mandatory clearing.

The amended rule requires an annual review of outstanding derivative notional for the reference period, which is the period beginning on September 1 and ending on August 31 of the following year. Therefore the first calculation period will be March, April and May for 2022.

Entities are affiliated entities if one of them controls the other or each of them is controlled by the same person or company. Amendments to the rule that are scheduled to come into force September 1, 2022, redefine affiliated entities, removing the concept of control. The amended version defines an affiliated entity with respect to (i) parties that prepare consolidated financial statements under US GAAP or IFRS or (ii) the parties would be consolidated if financial statements were prepared in accordance with US GAAP or IFRS (iii) the parties are both prudentially regulated and consolidated for that purpose. The later criteria is not applicable in British Columbia. In that province, the parties are affiliate entities if they are prudentially regulated entities that are required to report on a consolidated basis information related to capital requirements, financial soundness and risk management. The proposed amendments to the instrument also clarify the treatment of investment funds for the purpose of affiliated entity status, excluding funds with specific investment purpose and the limited recourse of debt holders to the assets of the fund.

ProView Developments

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- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView

- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages