



***I, Véronique Long, the duly appointed Secretary of the Financial and Consumer Services Commission of New Brunswick, hereby certify that the following Designation Order was approved by Members of the Commission at a meeting held on 8 September 2020, with an effective date of 8 September 2020:***

**IN THE MATTER OF THE *SECURITIES ACT*, S.N.B. 2004, C. S-5.5 (the Act)**

**AND**

**IN THE MATTER OF**

***DESIGNATING OVER-THE-COUNTER (OTC) DERIVATIVES TO BE SECURITIES***

**Designation Order 91-503  
Subparagraph 1.1(2)(b)(i)**

#### **Definitions**

1. Terms defined in the *Act*, National Instrument 14-101 *Definitions* and Local Rule 91-501 *Derivatives* (LR 91-501) have the same meaning in this Designation Order unless otherwise defined herein.
2. In this Designation Order:

“OTC derivative” means a derivative that is not an exchange contract.

#### **Background**

3. The Commission is working with other members of the Canadian Securities Administrators to develop a harmonized regulatory regime for OTC derivatives. The Commission anticipates that the regime will include regulations relating to registration and business conduct for persons in the business of trading OTC derivatives.
4. OTC derivatives are currently defined as derivatives under the *Act*. Persons that trade these derivatives are subject to the registration requirements in Part 5 of the *Act*. LR 91-501 contains an exemption from the registration requirements with respect to a trade in a derivative where each party to the trade is a qualified party acting as principal. The prospectus requirements in Part 6 of the *Act* do not apply to derivatives. As such, a person trading a derivative where the trade would be a distribution is not subject to the prospectus requirements in the *Act*.

5. The current proposals relating to registration and business conduct for OTC derivatives contemplate that persons in the business of trading OTC derivatives with counterparties that are not sophisticated will be required to register as dealers and provide those counterparties with disclosure outlining the risks that result from entering into OTC derivatives. Until such proposals are implemented, the Commission considers it in the public interest that OTC derivatives be subject to prospectus requirements in the *Act*.
6. Under subparagraph 1.1(2)(b)(i) of the *Act*, if the Commission is of the opinion that it is in the public interest, the Commission may make an order, subject to the terms and conditions that it considers appropriate, designating, for the purposes of New Brunswick securities law, a contract or instrument or a class of contracts or instruments to be a security.
7. The Commission considers that it would be in the public interest to make the following order.

### **Designation**

**IT IS ORDERED** pursuant to subparagraph 1.1(2)(b)(i) of the *Act* that each OTC derivative, other than an OTC derivative that is traded where each party to the trade is a qualified party acting as principal, is designated as a security for the purpose of Part 6 (Prospectus and Distribution) of the *Act*.

8. This Designation Order takes effect on 8 September 2020.

**Dated** at Saint John, New Brunswick, this 8<sup>th</sup> day of September 2020.

***“original signed by”***

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Véronique Long  
Corporate Secretary