Grottenthaler & Henderson

The Law of Financial Derivatives in Canada

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 Chapters 2 (Derivatives Documentation), 10 (Regulatory Issues Affecting Derivatives Trading) and the appendix material.

HIGHLIGHTS

Regulations”). The legislation “aims to ensure benchmarks are robust and reliable, and to minimize conflicts of interest in benchmark-setting processes.” To that end, the new regulations have an impact on those who administer and contribute data to benchmarks, but it also affects end-users. The EU Benchmark Regulations require supervised entities that use benchmarks to have written plans in place to respond to a benchmark change or cessation. The regulation requires, where possible, that the entities identify alternative benchmarks. The plans must be incorporated into client contracts.

**Regulatory Issues Affecting Derivatives Trading — Regulation of OTC Derivatives — Dealer and Adviser Registration — Status of Registration — Eligible Derivative Parties** — The proposed Registration Rule introduces a new legislative term — the “eligible derivatives party (EDP).” EDPs are sophisticated market players, or entities that have the resources to obtain professional advice or otherwise protect themselves in contract negotiations. Different requirements apply to transacting with EDPs than those applicable to a retail client or investor. For example, a derivatives dealer is prohibited from transacting with an individual who is not an EDP unless that dealer is also an IIROC dealer member.

**Regulatory Issues Affecting Derivatives Trading — Regulation of OTC Derivatives — Dealer and Adviser Registration — Status of Registration — Requirements for Dealers and Advisors** — Firms must establish the roles of Derivatives Chief Compliance Officers and Derivatives Chief Risk Officer and Derivatives Ultimate Designated Persons. Financial requirements for registrants include regulatory audit, delivery of financial statements, and capital requirements, which will be published in the next version of the rule. A firm must have written risk management policies and procedures. In addition, it must have processes in place for portfolio reconciliation, perform portfolio compression and have written agreements for determining the value of derivatives, resolving disputes and confirming material trade terms.