

SUPP S-1—EXHIBIT E

Request: With respect to each relevant regulatory regime or authority governing the clearing organization, attach the following:

- (1) A description of the regulatory regime/authority's structure, resources, staff and scope of authority.
- (2) The regulatory regime/authority's authorizing statutes, including the source of its authority to supervise the clearing organization.
- (3) A description of and, where applicable, copies of the laws, rules, regulations and policies applicable to:¹
 - (i) The authorization, licensure or registration of the clearing organization.
 - (ii) The financial resource requirements applicable to the authorization, licensure or registration of the clearing organization and the continued operations thereof.
 - (iii) The regulatory regime/authority's program for the ongoing supervision and oversight of the clearing organization and the enforcement of its clearing rules.
 - (iv) The extent to which the current RCCPs are used or applied by the regulatory regime/authority in its supervision and oversight of the clearing organization or are incorporated into its rules and regulations and the extent to which the regulatory regime/authority reviews the clearing systems for compliance therewith.
 - (v) The extent to which the regulatory regime/authority reviews and/or approves the rules of the clearing organization prior to their implementation.
 - (vi) The regulatory regime/authority's inspection, investigation and surveillance powers; and the program pursuant to which the regulatory regime/authority uses those powers to inspect, investigate, sanction, and enforce rules applicable to the clearing organization.
 - (vii) The financial protection afforded customer funds.

Response:

1. A description of the regulatory regime/authority's structure, resources, staff and scope of authority.

Please see description in Form FBOT Exhibit F.

¹ To the extent that any such laws, rules, regulations or policies were provided as part of Exhibit A-4, they need not be duplicated. They may be cross-referenced.

2. The regulatory regime/authority’s authorizing statutes, including the source of its authority to supervise the clearing organization.

The AMF was established and authorized by *An Act respecting the Autorité des marchés financiers*, R.S.Q., c. A-33.2.² The *Derivatives Act*, R.S.Q., c. I-14.01,³ authorizes the AMF’s regulation of derivatives markets and institutions, while some of the AMF’s powers with respect to this regulation are specified in the *Securities Act*, R.S.Q., c. V-1.1.⁴

An Act respecting the Autorité des marchés financiers establishes the AMF and confers its powers and authority over Québec’s financial markets. It dissolved Québec’s previous financial regulators, and consolidated their authority into a single new entity.⁵ Among other things, the *Act* authorizes inspection and investigations,⁶ receivership for regulated persons or entities,⁷ and self-regulatory organizations.⁸

Under the *Derivatives Act*, no “regulated entity” may carry on derivatives activity in Québec unless the AMF recognizes it as an exchange, a published market, a clearing house, an information processor, a trade repository or a self-regulatory organization.⁹ Both exchanges and clearing houses are included within the *Act*’s definition of a “regulated entity.”¹⁰ The *Act* defines the obligations of recognized regulated entities,¹¹ rules for dealers and advisers,¹² rules for the administration of the *Act*,¹³ prohibitions and penalties,¹⁴ and the scope of the AMF to issue relevant regulations.¹⁵

3. Laws, rules, regulations and policies

A. Authorization, licensure or registration of the clearing organization.

A clearing organization must be recognized by the AMF in order to carry on derivatives activity in Québec.¹⁶ Title II of the *Derivatives Act* covers the recognition of regulated entities such as exchanges. A clearing organization must submit an application for recognition.¹⁷ Upon recognition, a clearing organization becomes subject to certain obligations, such as instituting operating rules, and becomes subject to monitoring.¹⁸

² Attachment 10.

³ Attachment 11.

⁴ Attachment 12.

⁵ AMF Act at §§ 707-710.

⁶ *Id.* at §§ 9-19.

⁷ *Id.* at §§ 19.1-19.17.

⁸ *Id.* at §§ 59-91.

⁹ *Derivatives Act*, R.S.Q. c-I-14.01, § 12.

¹⁰ *Id.* at § 3.

¹¹ *Id.* at §§ 19-53.

¹² *Id.* at §§ 54-81.

¹³ *Id.* at §§ 86-143.

¹⁴ *Id.* at §§ 144-171.

¹⁵ *Id.* at §§ 174-179.

¹⁶ *Id.* at § 12.

¹⁷ *Id.* at § 14.

¹⁸ *Id.* at §§ 19-53.

B. Financial resource requirements applicable to the authorization, licensure, or registration of the clearing organization and its continued operations

To be recognized by the AMF, a clearing organization must have adequate financial and human resources to carry on its activities and exercise any powers delegated to it by the AMF.¹⁹

C. The regulatory authority's program for the ongoing supervision and oversight of the clearing organization and the enforcement of its clearing rules.

Under the Derivatives Act, CDCC must institute operating rules governing its activities and those of its participants.²⁰ Amendments to these rules are subject to a self-certification process, in which proposals go through a period of public consultation.²¹ Where it believes it is necessary, the AMF may order an exchange to amend the exchange's rules to conform with the Derivatives Act.²²

CDCC also has a number of disclosure obligations. It must periodically release disclosures to the AMF, in accordance with its recognition order.²³ Within 90 days of the end of its fiscal year, CDCC must file its financial statements and an audit report with the AMF.²⁴ The AMF may also require that CDCC give it any information or document considered useful for the pursuit of its mission,²⁵ and CDCC must communicate to the AMF any information relating to its activities that may be useful to the AMF in exercising its functions and powers, and that the AMF might reasonably expect to receive.²⁶

The AMF may inspect CDCC's affairs to verify compliance with the Derivatives Act or any AMF decision.²⁷ It may also conduct inspections to verify how CDCC exercises functions and powers delegated to it by the AMF.²⁸

The *Bureau de decision et de revision* can prescribe a course of conduct to CDCC if it considers that it is necessary for the proper operation of exchange or for the protection of the public.²⁹

D. The extent to which the current RCCPs are used or applied by the regulatory regime/authority in its supervision and oversight of the clearing organization or are incorporated into its rules and regulations and the extent to which the regulatory regime/authority reviews the clearing systems for compliance therewith.

The RCCPs have not been formally adopted by the AMF. Nevertheless, as noted elsewhere in the Application, the AMF is an active member of IOSCO and it strives to adhere to

¹⁹ *Id.* at § 30.

²⁰ *Id.* at § 19.

²¹ *Id.* at § 22; *Derivatives Regulation*, R.S.Q. c. I-14.01, r. 1 §§ 2-11.

²² *Derivatives Act* at § 51.

²³ *Id.* at § 36.

²⁴ *Id.* at § 38.

²⁵ *Id.* at § 90.

²⁶ *Id.* at § 37.

²⁷ *Id.* at § 115.

²⁸ *Id.*

²⁹ *Id.* at § 49.

IOSCO statements and guidance, including not only the Statement of Principles for the Oversight of Screen-Based Trading systems for Derivative Products but the RCCPs as well.

In this regard, however, it should also be noted that CDCC has conducted a self-assessment of its adherence to the RCCPs (see Attachment 45) as part of the Bank of Canada's designation review of CDCC under the *Payment Clearing and Settlement Act* (Canada), as a "designated clearing and settlement system", i.e. a system that may pose a systemic risk.

E. The extent to which the regulatory regime/authority reviews and/or approves the rules of the clearing organization prior to their implementation.

Amendments to CDCC's rules are subject to a self-certification process, in which proposals are subject to a period of public consultation.³⁰ Where it believes it is necessary, the AMF may order a clearing house to amend its rules to conform with the *Derivatives Act*.³¹

F. The regulatory regime/authority's inspection, investigation and surveillance powers; and the program pursuant to which the regulatory regime/authority uses those powers to inspect, investigate, sanction, and enforce rules applicable to the clearing organization.

An Act respecting the Autorité des marchés financiers authorizes the AMF to inspect and investigate clearing organizations.³²

The AMF can appoint a staff member or other designated person to inspect a person or entity regulated under the *Derivatives Act*.³³ This inspector is authorized to enter the establishment of a regulated person or entity, require from persons present information related to the Act and the production of relevant documents, and examine and copy relevant documents.³⁴

If it has reasonable grounds to believe that there has been a violation of the *Derivatives Act*, the AMF may investigate.³⁵ It may appoint a staff member or other designated person,³⁶ and this person is vested with the powers and immunity of public inquiry commissioners, except the power to order imprisonment.³⁷ These investigations are conducted in private.³⁸ The AMF may communicate certain information or documents obtained during an investigation to police, securities authorities, or other Canadian regulators.³⁹ Investigators must report back to the AMF.⁴⁰

³⁰ *Id.* at § 22; *Derivatives Regulation*, R.S.Q. c. I-14.01, r. 1 §§ 2-11.

³¹ *Derivatives Act* at § 51.

³² See AMF Act at §§ 9-19.

³³ *Id.* at § 9.

³⁴ *Id.* at § 10.

³⁵ *Id.* at § 12.

³⁶ *Id.* at § 13.

³⁷ *Id.* at § 14.

³⁸ *Id.* at § 12.

³⁹ *Id.* at § 15.6.

⁴⁰ *Id.* at § 15.

G. The financial protection afforded customer funds.

Please see the RCCP Self-Assessment (Attachment 45) with respect to Recommendation 7—“Custody and Investment Risk” for a discussion of the manner in which CDCC custodies and invests property, including cash and collateral relating to trading positions.

Though it is not required to segregate customer funds, CDCC has the capacity to segregate customer and clearing member assets for some asset classes, and does so upon the instruction of a clearing member.