

Publisher's Note

2018 — Release 2

Previous release was 2018-1

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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.

2018-2

Release 2018-2 features updates to Chapters 5 (Derivatives Documentation), 8 (Security Agreements) and the appendix material.

HIGHLIGHTS

Enforceability of Termination and Close-Out Netting Rights — Canada Deposit Insurance Corporation Act — The General Stay — The resolution order triggers limitations under s. 39.15(1) on the rights that can be exercised against the member. Most important to financial contracts are the prohibitions on (1)

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terminating, amending or claiming an accelerated payment under any agreement with the member and (2) exercising any remedy against the member or its assets, by reason only of:

- a. insolvency or deteriorated financial condition of the member or any of affiliates or its credit support providers;
- b. a pre-proceeding non-monetary default by the member or affiliates;
- c. a pre-proceeding monetary default by the member or affiliates that is remedied within 60 days of the order being made;
- d. the making of the Order or any change of control related to the making of the Order;
- e. the assignment or assumption of the agreement to or by a bridge institution or third party;
- f. the transfer to a third party of all or part of the assets or liabilities of the member or any of its affiliates; or
- g. a conversion order or a conversion under the terms of the member's shares or liabilities.

Enforceability of Termination and Close-Out Netting Rights — Canada Deposit Insurance Corporation Act — The Eligible Financial Contracts Exemption from Section 39.15(1) — Subject to certain resolution overrides, the s. 39.15(1) limitations do not prevent the following actions being taken in accordance with the provisions of the eligible financial contract, namely:

- **Termination** – the termination or amendment of the contract
- **Acceleration** – the accelerated payment or forfeiture of the term under the contract
- **Remedies for payment default** – the exercise of remedies for a failure to satisfy an obligation under or in connection with the contract, including payment or delivery obligations
- **Netting** – the netting or setting off or compensation of an amount payable under or in connection with the contract
- **Collateral Dealing** – any dealing with financial collateral to satisfy a payment or delivery obligation, for the purpose of calculating an amount payable under or in connection with the contract by way of netting or set off or compensation of the proceeds or value of the financial collateral or as a remedy for a performance failure
- **Close-out Collateral Dealings** – any other dealings with financial collateral

Security Agreements — Statutory Stay Exemptions for Dealings with Financial Collateral — Canadian Deposit Insurance Corporation Act Restructuring — The stays under s. 39.15(1) do not prevent any dealing with financial collateral for an eligible financial contract. For this purpose, the expanded definition of financial collateral in the PCSA applies (i.e. contractual rights against a clearing organization are financial collateral). However, the resolution override does affect certain rights

against financial collateral dealing in the course of closing-out or realization. It does not, however, prohibit any dealing with financial collateral to satisfy a payment or delivery obligation, for the purpose of calculating an amount payable under or in connection with the contract by way of netting or set off or compensation of the proceeds or value of the financial collateral or as a remedy for a performance failure.