CHAPTER I

Definitions

Article 1

For the purposes of this Decree:

1° “the Law of 6 April 1995” shall mean the Law of 6 April 1995 on the legal status and supervision of investment firms, on intermediaries and investment advisers;

2° “the Law of 2 August 2002” shall mean the Law of 2 August 2002 on the supervision of the financial sector and on financial services;

3° “the CBFA” shall mean the Banking, Finance and Insurance Commission as referred to in Chapter III of the Law of 2 August 2002;

4° “a derivatives specialist” shall mean an undertaking whose investment services consist exclusively of trading solely for its own account, on a futures or options market, or which trades for or offers prices to other members of the same market, and is covered by a guarantee from a clearing member of the market. The responsibility for carrying out the contracts concluded by this undertaking must be assumed by a clearing member of this same market.

CHAPTER II

Derivatives specialists governed by Belgian law

Section I

Access to derivatives specialists activities

Art. 2

Before commencing operations, a derivatives specialist governed by Belgian law wishing to exercise its activities in Belgium must obtain an authorization from the CBFA.
Art. 3

Requests for authorization shall be accompanied by a programme of operations complying with the conditions laid down by the CBFA and setting out *inter alia* the volume of the business proposed and the structural organization of the undertaking and any close links it has with other persons. Applicants shall provide the CBFA with all the information needed for the assessment of their request.

Art. 4

The CBFA will grant the requested authorization to derivatives specialists complying with the conditions set out in Section II. It will give its decision on the application for authorization within two months of presentation of the required information, and not later than nine months after receipt of the application.

Decisions on authorization will be communicated to the applicants within fifteen days by registered or recorded delivery letter.

Art. 5

Each year, the CBFA will draw up a list of the derivatives specialists that have been granted authorization pursuant to this Chapter. This list, and any amendments that have been made to it during the year, shall be published in the “Belgisch Staatsblad/Moniteur belge” (Belgian Official Gazette).

Section II

Authorization conditions

Art. 6

Derivatives specialists governed by Belgian law shall be established with the legal form of a commercial company.

Art. 7

In order to be granted authorization as a derivatives specialist, a minimum, fully paid up capital of EUR 50,000 shall be required.

For existing derivatives specialists that request authorization, the reserves and results brought forward shall be considered as capital for the purposes of paragraph 1.

Art. 8

The effective management of a derivatives specialist shall be carried out by one or more natural persons. The persons in charge of the effective management of a derivatives specialist shall have the necessary professional reputation and appropriate experience to carry out their functions.
Art. 9

Articles 59, 61, 62, paragraphs 1, 3 and 4, and 63 of the Law of 6 April 1995 shall apply.

Section III

Conditions governing the pursuit of the business of derivatives specialists

Art. 10

A derivatives specialist’s own funds may not fall below the amount of initial capital required in accordance with Article 7.

Article 90 of the Law of 6 April 1995 shall apply.

Art. 11

Article 67 of the Law of 6 April 1995 with regard to the changes affecting capital structure shall apply.

Art. 12

The directors, managers and managing directors who carry out functions that entail participation in day-to-day management of a derivatives specialist, may not, unless authorized to do so by the CBFA, participate, in whatever name, in day-to-day management of a listed company or a company controlled by or affiliated with a listed company.

Art. 13

Unless authorized to do so by the CBFA, a derivatives specialist may not exercise any activities other than the provision of the services covered by its authorization. In the interest of the sound and prudent management and an adequate risk management, the CBFA may impose certain conditions on the exercise of other activities.

Paragraph 1 also applies to participating interests held in commercial companies.

Art. 14

Derivatives specialists may not enter into client relationships with investors.

Art. 15

Articles 26 to 28 of the Law of 2 August 2002 shall apply to derivatives specialists.
Section IV
Supervision

Art. 16
The derivatives specialists are subject to supervision by the CBFA. Article 92, paragraphs 2 and 3, of the Law of 6 April 1995 shall apply.

Derivatives specialists shall quarterly submit the following financial statements to the CBFA:

1° the accounting position of the undertaking;
2° a detailed statement of the trading positions.

The CBFA may, by regulation, order the regular transmission of any other figures or explanations that may be required to ascertain that the provisions of this Decree and its implementing regulations have been complied with. In special cases, it may authorize dispensations from the provisions of the regulation taken in application of this Article.

The CBFA supervises compliance with the provisions of this Decree and its implementing regulations.

Section V
Withdrawal of authorization, exceptional measures and administrative sanctions

Art. 17
The following Articles of the Law of 6 April 1995 shall apply:

1° Articles 103, 104 and 107 to 109;
2° Articles 148, §§ 4 to 6, 150 and 151.

CHAPTER III
The operation of branches in Belgium by derivatives specialists governed by the law of another State

Art. 18
Derivatives specialists governed by the law of another State that actually exercise activities of derivatives specialists within the territory of that State, may also exercise those activities in Belgium through a branch. Chapter II shall apply to those branches.
Moreover, the derivatives specialists as referred to in paragraph 1 must comply with the following conditions:

1° in their home State they are subject to a supervisory regulation that is deemed adequate by the CBFA;

2° the possibilities for the CBFA and the competent authorities or other relevant bodies of the State by the law of which they are governed, to exchange information, do not hinder the exercise of an adequate supervision within the meaning of this Decree.

CHAPTER IV

The provision of services in Belgium by derivatives specialists governed by the law of another State

Art. 19

Derivatives specialists governed by the law of another State that actually exercise activities of derivatives specialists within the territory of that State, may also exercise those activities in Belgium without being established there, provided that the following conditions are complied with:

1° they previously make themselves known to the CBFA, indicating the market of which they wish to become member, the programme of their operations in Belgium and the name of the clearing member who is responsible for carrying out the contracts concluded by them;

2° they have the necessary expertise and professional reputation as well as sufficient resources for the role they play;

3° in their home State they are subject to a supervisory regulation that is deemed adequate by the CBFA;

4° the possibilities for the CBFA and the competent authorities or other relevant bodies of the State by the law of which they are governed, to exchange information, do not hinder the exercise of an adequate supervision within the meaning of this Decree.

Each year, the CBFA will draw up a list of the derivatives specialists as referred to in this Article. This list, and any amendments that have been made to it during the year, shall be published in the “Belgisch Staatsblad/Moniteur belge” (Belgian Official Gazette).

Art. 20

Articles 26 to 28 of the Law of 2 August 2002 shall apply to the derivatives specialists as referred to in this Chapter.
Art. 21

The CBFA may order the derivatives specialists as referred to in Article 19 to transmit all the information that it may require to ascertain that the provisions of this Decree are complied with. It may also order the foreign supervisory authorities of a derivatives specialist, the external auditor of that derivatives specialist or the accredited auditor who is in charge of the certification of the accounts of that derivatives specialist, to certify or to adapt that information, whereby the costs incurred for that certification or adaptation will be borne by the derivatives specialist concerned.

Art. 22

Where the CBFA ascertains that a derivatives specialist as referred to in this Chapter is not operating in Belgium in accordance with the provisions applicable in matters falling within the CBFA’s competence, it will require the derivatives specialist to take corrective action within the period it prescribes.

If, at the end of that period, the derivatives specialist concerned fails to do so, the CBFA will inform the competent authorities of the derivatives specialist’s home State accordingly.

If the derivatives specialist persists in violating the provisions to which it is subject, the CBFA may, after informing the foreign competent authorities, suspend or prohibit the continuation of all or part of the derivatives specialist’s activities in Belgium.

Art. 23

Article 108 of the Law of 6 April 1995 shall apply to the derivatives specialists as referred to in this Chapter.

Articles 148, § 4, and 150 of the Law of 6 April 1995 shall apply to anyone who contravenes the provisions of Article 19 or carries out acts or transactions in disregard of the prohibition or the suspension as referred to in Article 22.

CHAPTER V

Modifying and final provisions

Art. 24

Article 2 of the Royal Decree of 31 Mars 2003 on the reporting of transactions in financial instruments and the storing of data, is completed as follows:

« 4° the derivatives specialists governed by Belgian law as referred to in Article 45bis of the above-mentioned Law of 6 April 1995. ».
Art. 25

Until the date on which Articles 26 and 27 of the Law of 2 August 2002 come into force, the references made to those Articles must be read as references to Articles 36 upto 38 of the Law of 6 April 1995.

Art. 26

Until the date on which the decrees implementing Article 10 come into force, the definitions given in the decrees implementing Article 90 of the Law of 6 April 1995 in respect of stockbroking firms, shall apply to the concept of “own funds”.

Art. 27

Derivatives specialists who, on the date on which this Decree comes into force, already exercise activities, may continue to do so in Belgium, provided they comply with the provisions of this Decree within twelve months of its coming into force.

Art. 28

Our Minister of Finance is charged with the execution of this Decree.