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**COMPILED TEXT** of Circular 4/2012 published in the Official Gazette of the federation on March 2, 2012, including the amendments reported by [Circular 9/2012](#) and [Circular 8/2015](#) published in the referred to Official Gazette on June 15, 2012, and April 17, 2015, respectively.

### **CIRCULAR 4/2012**

Mexico, Federal District on February 24, 2012.

**TO CREDIT INSTITUTIONS, SECURITIES FIRM,  
INVESTMENT COMPANIES, LIMITED SCOPE  
FINANCIAL INSTITUTIONS AND THE RURAL FINANCIAL  
INSTITUTIONS<sup>1</sup>:**

#### **ISSUE: DERIVATIVE TRANSACTIONS**

Banco de México, to continue promoting the sound development of the financial system, considers it appropriate to standardize the regulation concerning the derivatives transactions that can be performed by the financial institutions of the country, and to compile this regulation in one single statute. .

Due to the foregoing, based on articles 28 of the Political Constitution of the United Mexican States, paragraphs sixth and seventh; 24, 26, 27 and 36 of the Banco de México Law; 46 subsection XXV, 46 Bis 5 subsection II and 103 penultimate paragraph of the Credit Institutions Law; 176 of the Securities Market Law; 15 paragraph second of the Investment Companies Law; 22 of the Law for the Transparency and Regulation of the Financial Services; 9 of the National Financial Institution Organizational Law; 6 of the Federal Mortgage Corporation Organizational Law; 9 of the National Savings and Financial Services Bank Organizational Law; 9 of the National Bank of Foreign Trade Organizational Law; 10 of the National Bank of Public Works and Services Organizational Law; 8 of the National Bank of the Army, Air Force and Navy Organizational Law; 7 subsection X and 19 of the Rural Financial Institute Organizational Law;

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<sup>1</sup> Based on what is set forth in article twenty-first of the "Executive Order through which diverse provisions in financial matters are amended, added, and repealed and the Financial Groups Law", published in the Official Federal Gazette on January 10, 2014, by referencing the Rural Financial Institution it shall be understood that the reference to the *Financiera Nacional de Desarrollo Agropecuario, Rural, Forestal y Pesquero*, Development Bank.

4 paragraph first, 8 paragraphs fourth and seventh, 10 paragraph first, 12 paragraph first in relation to 19 subsection VII, 14 Bis paragraph first in relation to 17 subsection I and 14 BIs 1 paragraph first in relation to articles 25 BIs 1 subsection IV and 25 Bis 2 subsection II of the Internal Regulations of Banco de México, which grants the powers and duties to issue provisions through the Directorate General of Central Banking Operations, the Directorate General of Legal Affairs, and the Directorate General of Financial Systems Issues, respectively, as well as Article Second of the Appointment Decree of the Administrative Units of Banco de México, subsections III, VII, and XI, Banco de Mexico has resolved to issue the following:

## **RULES TO CARRY OUT DERIVATE TRANSACTIONS**

### **1. GENERAL PROVISIONS** (Amended by Circular 8/2015)

1.1 For purposes of these Rules, in singular or plural, the following shall be understood as: (Amended by the Circular 8/2015)

**Risk Asset:** asset whose Credit Risk is transferred, in whole or in part, from the Protection Buyer to the Protection Seller.

**Reference Asset:** Is repealed. (Repealed by Circular 8/2015)

**General Deposit Warehouses:** legal entities authorized to operate as such, pursuant to the Law of Credit Organizations and Auxiliary Activities. (Added by Circular 8/2015)

**Securities Firms:** legal entities authorized to operate as such, pursuant to the Securities Market Law.

**Protection Buyer:** person that by virtue of his/her participation in a Credit Derivative Transaction is protected, in whole or in part, from the Credit Risk of a Risk Asset.

**CNBV:** (for the acronym in Spanish): the National Banking and Securities Commission.

**Confirmation:** the physical or electronic document, featuring the characteristics of the Derivative Transaction, that one party of the transaction sends or puts at the disposal of the other party. This will also refers to the physical or electronic document through which the relevant party manifests its conformity with the terms of that Derivative Transaction sent by its counterparty. (Added by the Circular 8/2015)

**(Swaps) Agreements:** Is repealed. (Repealed by Circular 8/2015)

**Credit Default Swaps:** transactions in which the Protection Buyer commits to pay a premium to the Protection Seller, in exchange for the latter delivering the agreed compensation if the Event of Default occurs.

**Total Return Swaps:** transactions in which the Protection Buyer commits to pay the Protection Seller the flows that arise from a Risk Asset, as well as the changes due to increases in the value of said Risk Asset; and the seller commits to pay the other an interest rate plus the resulting balance of the downward changes in the value of the Risk Asset, with the possibility of agreeing,



if the Event of Default occurs, that the Protection Buyer shall deliver the Risk Asset and the Protection Seller the agreed amount. (Amended by Circular 8/2015)

**Business Day:** a day that is a business day both in the United Mexican States in terms of the general provisions issued to that effect by the CNBV, and in the jurisdiction (or jurisdictions) in which the Settlement of the respective Derivative Transaction takes place. (Amended by Circular 8/2015)

**Foreign Currency:** the dollar of the United States of America, as well as any other currency that is freely transferable and immediately convertible into the forementioned currency.

**Entities:** Credit Institutions, Securities Firms, and the Rural Financial Institution, jointly or separately. (Amended by Circular 8/2015)

**Foreign Financial Entities:** those authorized to operate as financial entities by the competent authorities of the countries in which they are incorporated.

**Event of Default:** event that refers to the debtor's payment capacity including but not limited to: default of payment restructuring of the debt, request for or statement of insolvency or bankruptcy, moratorium or downgrade in their credit rating given by a credit rating agency and that, if it were to take place, would obligate the parties of a Credit Derivative Transaction to comply with what is stipulated in the contract in the agreed terms. (Amended by Circular 8/2015)

**Settlement Date:** Business Day on which the fulfillment of the obligations agreed in the Derivative Transactions are enforceable.

**Rural Financial Institution:** the decentralized agency of the Federal Public Administration regulated in the Organizational Law of the National Agriculture, Rural, Forestry and Fisheries Sectors Development Bank (Ley Orgánica de la Financiera Nacional de Desarrollo Agropecuario, Rural, Forestal y Pesquero) (Amended by Circular 8/2015)

**Investment Funds:** companies authorized to be organized and operate as such in terms of the Investment Funds Law. (Added by Circular 8/2015)

**Legal Division.** Legal authorizations, Consultation and Regulatory Control Division of Banco de México. **Credit Institutions:** legal entities authorized to operate as such in pursuant to the Credit Institutions Law.

**Institutional Investors and Qualified Investors:** persons that have such nature pursuant to the Securities Market Law. (Added by Circular 8/2015)

**Settlement:** the fulfillment of the agreed obligations by the parties in a Derivate Transaction.

**Markets:** Recognized Markets and over-the-counter markets.

**Recognized Markets:** the stock exchange incorporated in terms of the "Rules that the derivatives contracts market participants must adhere to", published in the Official Gazette of the Federation on December 31, 1996, and its amendments. Also, the derivative exchanges



established in countries of the European Union, members of the Organization for Economic Co-operation and Development (OCDE for its initials in Spanish), and countries whose financial authorities are appointed as members of the Board of the International Organization of Securities Commissions (IOSCO). (Amended by Circular 8/2015)

**Forward Transactions:** any contract, agreement, or transaction to purchase or sell an Underlying Asset at a future date in the over-the-counter market, pursuant to which the parties agree to fulfill the respective obligations attributable to them, at specific price agreed for said Underlying Asset on the date of the agreement to the transaction. The Forward Transactions shall mature on a date later than the fourth Business Day following the transaction date... (Added by Circular 8/2015)

**Futures Transactions:** any contract, agreement, or transaction to purchase or sell an Underlying Asset at a future date executed in Recognized Markets, pursuant to which the parties agree to fulfill the respective obligations attributable to them. The former, at the price agreed for said Underlying Asset on the transaction date. (Amended by Circular 8/2015)

**Credit Derivative Transactions/Swaps:** Credit Default Swaps, Total Return Swaps, Credit linked Securities and any other Derivative Transaction or Structured Transaction in which the exercise of a right or the fulfillment of an obligation stipulated when an Event of Default takes place. (Amendment by Circular 8/2015)

**Swaps Transactions:** any contract, agreement, or transaction in which the parties agree to exchange between them, in future dates or during a given period, cash flows, calculated based on the value of one or more interests or on the level of other interest rates or of any other concept, as well as in the value of foreign currencies, commodities, securities, instruments, or indexes. (Added by Circular 8/2015)

**Option Transactions:** transactions in which the buyer, through the payment of a premium to the seller, acquires the right, but not the obligation, to buy, sell, or receive a specific amount, in one or various future dates, one or various Underlying Assets, and the seller commits to sell, buy, or deliver a determined amount, as the case may be, said Underlying Assets at the agreed price or the result of the variation in the value of said Underlying Assets. (Amendment for Circular 8/2015)

**Derivative Transactions:** indistinctly, (i) the Futures Transactions, the Forward Transactions, the Option Transactions, the Swaps Transactions, the Credit Derivative Transactions, or any combination of these, as well as (ii) those other that, in the given case, Banco de México authorizes in terms of section 3.4 of these Rules. (Amended by Circular 8/2015)

**Standardized Derivative Transactions:** Swap Transactions pursuant to which one of the parties commits to carry out payments denominated in pesos, in periods of 28 days or in those that substitute them in case of non-business days, of an amount calculated as the result of applying a determined interest rate fixed to a determined amount, not able to be amortized, and the other party commits to make payments, in the same periods, of amounts denominated in the same currency, equal to the result of applying the TIIE to the same amount that may not be amortized, and whose minimum tenor of the Swap Transaction is greater or equal to 56 days and the maximum tenor less than or equal to 30 years. (Added by Circular 8/2015)



Structured Transactions: to those instruments in which a principal contract exists, which contain a part referred to assets or liabilities that are not Derivative Transactions, including but not limited to the credit transactions, bond issuances or other debt instruments and another part represented by one or more Derivative Transactions, such as Option Transactions or Swap Transactions. Among these transactions, those documented through the securities issued on its own or through a trust are included, but not limited to the structured bank securities that are issued by the Credit Institutions pursuant to what is set forth by Title Second, Chapter I, Section I, Part G, and Section III, Part E, of the Circular 3/2012 of Banco de México and the indexed trust stock exchange certificates and optional securities that article 63 Bis 1, subsection III and 66 of the Securities Market Law refers to. (Added by Circular 8/2015)

Credit Risk: the possibility of incurring in a loss when an Event of Default occurs.

SHCP (for its initials In Spanish): the Ministry of Finance. (Added by Circular 8/2015)

Investment Companies: Is repealed. (Repealed by Circular 8/2015)

Sofomes: the multiple purpose financial companies, considered as such pursuant to the Law of Credit Organizations and Auxiliary Activities that keeps economic relations with a commercial bank. (Added by Circular 8/2015)

Sofoles: Is repealed. (Repealed by Circular 8/2015)

Underlying Assets: the interest rates, assets, securities, prices, indexes, commodities or transactions indicated in section 2.1 as well as those authorized in the given case, pursuant to section 3.4 of these Rules, that may be subject to a Derivative Transaction. (Amended by Circular 8/2015)

TIIE: the Interbank Equilibrium Interest Rate in domestic currency at a term of 28 days published by Banco de México pursuant to Title Third, Chapter IV, Section I, of the Circular 3/2012 of Banco de México. (Added by Circular 8/2015)

Credit-Linked Securities: the instruments or securities that pay a yield and whose value is referenced to the performance of a Risk Asset and that, if a Credit Event occurred, the instrument or title issuer delivers the Risk Asset or the agreed amount to the investor. (Amended by Circular 8/2015)

UDIS: to the account units, whose value in domestic currency is published by Banco de México in the Federal Official Gazette, pursuant to articles Third of the "Executive Order through which the obligations that may be denominated in investment units are established and various provisions of the Federal Fiscal Code and of the Income Tax Law are amended and added" published in the Federal Official Gazette on April 1, 1995 and 20 Ter of the Federal Fiscal Code. (Amended by Circular 8/2015)

Protection Seller: the person that by participating in a Derivative Credit Transaction covers its counterparty, in whole or in part, of the Credit Risk of a Risk Asset.

1.2 Entities, Investment Funds, General Deposit Warehouses and the Sofomes may only enter into the Derivative Transactions that these Rules refer to. As such, they must adhere to the terms and conditions that these Rules provide. [\(Added by Circular 8/2015\)](#)

1.3 For effects of these Rules, any group of transactions, contracts, or agreements that individually or in combination produce the same economic effects as any of the Derivative Transactions provided in section 1.1, will be subject to the provisions that are applicable to the equivalent Derivative Transactions. [\(Added by Circular 8/2015\)](#)

## 2. UNDERLYING ASSETS

2.1 Entities may only carry out Derivative Transactions with the following Underlying Assets: [\(Amended by Circular 8/2015\)](#)

- a) Shares, a group or basket of shares, or securities tied to shares, that are listed in a stock exchange;
- b) Price indexes of shares that are listed in a stock exchange;
- c) Domestic currency, Foreign Currency and UDIS;
- d) Price indexes tied to inflation;
- e) Nominal or real interest rates, surcharges, rates tied to any debt security and indexes based on said rates;
- f) Loans and credits;
- g) Any of the following commodities: [\(Amended by Circular 8/2015\)](#)
  - i. Gold and silver;
  - ii. Corn, wheat, soybeans, sugar, sorghum, cotton, oats, coffee, orange juice, cocoa, yeast, milk, canola, soybean oil, and soybean meal;
  - iii. Pork meat, pork livestock and bovine livestock;
  - iv. Natural gas, heating fuel, diesel fuel, gasoline, and crude oil, and
  - v. Aluminum, copper, nickel, platinum, lead, and zinc, and
- h) Future Transactions, Forward Transactions, Option Transactions, Credit Derivative Transactions, and Swap Transactions, regarding the Underlying Assets referred to in the above subparagraphs.

[\(Amended by Circular 9/2012 and Circular 8/2015\)](#)

2.2 Securities Firms may only enter into Credit Derivative Transactions on behalf of third parties pursuant to section 8.

2.3 Investment Funds, General Deposit Warehouses, and Sofomes may only enter into Derivative Transactions with the Underlying Assets included in section 2.1 of these Rules when, in accordance with their charters and, where appropriate, investment regime, these subjects are authorized to operate. (Amended by Circular 8/2015)

### 3. AUTHORIZATIONS

#### 3.1 ENTITIES

3.1.1 Entities must obtain authorization from Banco de México to enter into Derivative Transactions on their own account.

For such purpose, the forementioned Entities must present an authorization request to the Legal Division that specifies the following:

- a) Type of Derivative Transactions that they intend to enter into;
- b) Markets in which they intend to operate, and
- c) Underlying Assets, including a detailed description when the Derivative Transactions include other Derivative Transactions as their Underlying Asset. (Amended by Circular 8/2015)

Furthermore, the request must be accompanied by a written statement issued by the audit committee declaring that the relevant Entity complies with the requirements included in the Annex of these Rules, in relation to the Derivative Transactions and the Underlying Assets in respect to which they request authorization to operate on their own account.

3.1.2 Entities that obtain authorization to enter into Derivative Transactions on their own account may enter into other kinds of Derivative Transactions, operate in other Markets or enter into Derivative Transactions with the Underlying Assets provided in subparagraphs a) to f) and h) of section 2.1, different from those indicated in said authorization, provided that:  
(Amended by Circular 8/2015)

- a) They present written notice to the Legal Division as least 15 calendar days before the date on which they intend to enter into the transactions in question, regarding the following:
  - i. The kind of Derivative Transaction that they intend to enter into on their own account;
  - ii. The Markets in which they intend to perform, and/or
  - iii. The Underlying Assets referred to in subparagraphs a) to f) and h) of the aforementioned section 2.1 over which they intend to enter into Derivative Transactions on their own account. (Amended by Circular 8/2015)

- b) Attach a new communication in terms of what is indicated in the third paragraph of section 3.1.1.

As an exemption to the requisites established in subparagraphs a) and b) above, the Entity that has been authorize by Banco de México to enter into one or more Derivative Transactions, without requesting a new authorization, may enter into Derivative Transactions related to indexed trust certificates, options, and securities similar to those mentioned above, listed in the International Quotation System, provided: (i) they comprise indexed trust certificates that only represent rights with respect to any of the Underlying Assets provided in section 2.1 over which the entity has received authorization from Banco de México; (ii) in the case of options or their equivalent listed in the International Quotation System, the Entity has been previously authorized by Banco de México to enter into: Options over the Underlying Assets that the Options are tied to, their equivalent or on Options whose Underlying Assets are shares of the stock of issuing Entity or negotiable instruments that represent said shares. [\(Added by Circular 8/2015\)](#)

What is established in this section shall not be applicable to the additional Credit Derivative Transactions that the Entities intend to enter into and that have been previously authorized by Banco de México. In any case, the Entities that meet this requirement, in order to celebrate Credit Derivative Transactions or other Derivative Transactions with the Underlying Assets provided in subparagraph g) of section 2.1, must obtain the authorization from Banco de México in terms of section 3.1.1. [\(Added by Circular 8/2015\)](#)

3.1.3 All Credit Institution and, when applicable, Rural Financial Institution that have been authorize to enter into Derivative Transactions on their own account in terms of these Rules must send the Legal Division, every year during the month of March, a written communication issued by their respective audit committees stating that said Entities comply with the requirement included in the Annex of these Rules, regarding those Derivative Transactions that they enter into and the Underlying Assets subject to said transactions. In this respect, the subjects must attach to the referred communication the audit report that was presented to the audit committee and that demonstrates compliance with the content provided for in the Annex of these Rules; also, said report must clearly indicate the audited areas and processes, as well as the different procedures carried out to verify the fulfillment of said requirements. [\(Amended by Circular 8/2015\)](#)

The Securities Firms that are authorized to enter into Derivative Transactions on their own account must send the written communication referred to in the preceding paragraph during the month of May of each year.

Exceptionally, deemed appropriate, Banco de México may request the Entities to present the aforementioned written communication on different dates from those indicated in the above paragraphs.

3.1.4 The Entities may enter into Forward Transactions on their own account, without requiring an authorization when the Underlying Assets in question are Federal Development Bonds of the United Mexican States, with a fixed interest rate, in domestic currency, and the Settlement is carried out within eight Business Days counting from the transaction date. [\(Amended by Circular 8/2015\)](#)





3.1.5 The Entities may enter into Derivative Transactions on their own, without the need to fulfill the requirements provided in sections 3.1.1, 3.1.2, and 3.1.3 when said transactions have the exclusive purpose of hedging the Entity's risks.

For effects of the foregoing, the Entities must: i) have a risk management and control unit responsible for assessing, measuring, and following-up on the relevant risks, ii) have an adequate assessment of said Derivative Transactions and counterparty risk and determine the effectiveness of the hedging accordingly with the accounting criteria applicable to each Entity, and submit these Derivative Transactions to the respective risk committees for their approval prior to their execution, and iii) every semester, inform their board of directors or their executive board, as the case may be, about those Derivative Transactions and their limits, including the calculations regarding the effectiveness of the hedging coverage. (Amended by Circular 8/2015)

3.1.6 Banco de México may grant the authorization that section 3.1.1 of these Rules refers to, without the need for the Entities in question to include the communication that the last paragraph of said section 3.1.1 refers to, provided the Derivative Transactions carried out by said Entities on their own account correspond to others of the same kind, but of opposite nature, for the same amount and term, as well as in respect to the same Underlying Assets.

For such effect, the Entities must present the authorization request referred to in the second paragraph of section 3.1.1 refers to at least 15 calendar days prior to the date on which the trading of Derivative Transactions is intended to begin.

Likewise, said Entities must send the written statement referred to in the last paragraph of section 3.1.1. within a year following the date on which the authorization request mentioned in the above paragraph was presented to Banco de México. If the Entities do not comply with this requirement, the authorization granted by Banco de México shall become ineffective as of the day following the end of the year that this paragraph refers to, therefore the relevant Entities must abstain from trading and entering into new Derivative Transactions for which they would have requested authorization pursuant to the previous paragraph and may not request a new authorization for entering into such Derivative Transactions afterwards, pursuant to this section.

3.1.7 The Entities and the Sofomes that intend to acquire and issue, on their own account, securities that document Structured Transactions, must obtain the authorization that section 3.1.1 of these Rules refers to in order to enter into Derivative Transactions and the Underlying Assets that these refer to. (Added by Circular 8/2015)

### **3.2 INVESTMENT FUNDS** (Amended by Circular 8/2015)

Investment Funds may only enter into Derivative Transactions, that adhere to the general provisions issued by the CNBV and do not require authorization from Banco de México. These transactions may be performed in any Market. (Amended by Circular 8/2015)

### **3.3 SOFOMES AND GENERAL DEPOSIT WAREHOUSES** (Amended by Circular 8/2015)

Sofomes and General Deposit Warehouses may only enter into Derivative Transactions, without the need to comply with the requirements provided in sections 3.1.1, 3.1.2, and 3.1.3, when the purpose of said transactions is to hedge their risks.

For the purpose of the foregoing, the Sofomes and the General Deposit Warehouses must: i) have a risk management and control unit responsible for assessing, measuring, and following-up on the relevant risks, ii) have an adequate assessment of the Derivative Transactions and of the counterparty risk and determine the effectiveness of the hedging given the applicable accounting criteria, and submit these Derivative Transactions to the respective risk committees or equivalent bodies for approval prior to execution, and iii) every semester, inform their board of directors about these transactions and their limits, including the resulting calculations regarding the effectiveness of the hedging coverage. These transactions may be performed in any Market. (Amended by Circular 8/2015)

### **3.4 OTHER DERIVATIVE TRANSACTIONS OR TRANSACTIONS WITH OTHER UNDERLYING ASSETS**

Banco de México may authorize Entities, Investment Funds, General Deposit Warehouses, and Sofomes to enter into Derivative Transactions apart from those provided in subparagraph (i) of the definition of Derivative Transactions, as well as with Underlying Assets different from those provided in section 2.1 of these Rules. For such purpose, the interested parties must present a written authorization request to the Legal Division where they describe the Derivative Transaction that they intend to enter into, as well as its structure or combination of Derivative Transactions and the respective Underlying Asset, as the case may be. In this respect, the subject must include a written statement issued by the audit committee pursuant to the last paragraph of section 3.1.1 as well as the audit report that was presented to the audit committee or equivalent body, that states compliance with the content of the Annex of these Rules and that must indicate the audited areas and processes, as well as the different procedures that were performed for the verification of the fulfillment of said requirements. (Amended by Circular 8/2015)

## **4. AUTHORIZED COUNTERPARTIES**

Entities may enter into Derivative Transactions with any person.

Entities may only enter into Derivative Transactions in over-the-counter markets to hedge their risks, pursuant to section 3.1.5 of these Rules, with other Entities authorized by the Banco de México to perform Derivative Transactions on their own account and with Foreign Financial Entities. Likewise, in the cases of transactions in Recognized Markets, the counterparty of the Derivative Transaction must be the clearing house or, whenever applicable, the foreign institution that acts as central counterparty, recognized by Banco de México in terms of section 7.6.

The Credit Institutions and the Rural Financial Institution may only enter into Credit Derivative Transactions with other Credit Institutions authorized by Banco de México to perform said Derivative Transactions on their own account, with other Mexican financial entities authorized to enter into said transactions or with Foreign Financial Entities.

Investment Funds, General Deposit Warehouses, and Sofomes may only enter into Derivative Transactions in over-the-counter markets with Entities authorized by Banco de México to perform Derivative Transactions on their own account and with Foreign Financial Entities. Likewise, in the cases of transactions with Recognized Markets, the counterparty of the Derivative Transaction must be the clearing house or, in the given case, the foreign institution that acts as central counterparty, recognized by Banco de México in terms of section 7.6. (Amended by Circular 8/2015)

## 5. INSTRUMENTATION AND NEGOTIATION [\(Amended by Circular 8/2015\)](#)

5.1 Derivative Transactions, except for the Credit Linked Securities, that are carried out by: (i) the Entities among themselves, as well as with other national or foreign financial entities and with Institutional Investors and Qualified Investors, and (ii) the Investment Funds, the General Deposit Warehouses and the Sofomes with their authorized counterparties, shall be documented in master agreements. These documents must reflect guidelines and principles included in contracts recognized in international markets, such as those approved by the Recognized Markets or by the entity denominated "International Swaps and Derivatives Association, Inc.", provided it does not contravene the applicable national legal provisions.

In the case of Credit Linked Securities and Structured Transactions, these must be documented in a prospectus, in a contract or in a security pursuant to the applicable provisions. [\(Added by Circular 8/2015\)](#)

The Derivative Transactions that the Entities enter into with different customers from those provided in the first paragraph of this section, shall be performed according to master agreements agreed between the parties.

Derivative Transactions, except for Credit Linked Securities, and their characteristics may be agreed in the form that the corresponding master agreement establishes. The Entities, Investment Funds, General Deposit Warehouses and Sofomes must record said transactions and invariably send or place the Confirmation at their counterparty's disposal, on the same day on which the respective Derivative Transaction is executed. Likewise, in case of not receiving Confirmation from its counterparty on that same date, the Entity must comply with the applicable requirements. [\(Amended by Circular 8/2015\)](#)

The obligation of the Entities, Investment Funds, General Deposit Warehouses and Sofomes to issue the Confirmation provided in the preceding paragraph shall not be applicable when the Derivative Transactions are negotiated in Recognized Markets adhering to the procedures that said markets have in place for such effects. [\(Added by Circular 8/2015\)](#)

In the event that, to reach an agreement on or issued Confirmation of Derivative Transactions, the parties agree to the use of electronic means, computers or telecommunications, they must provide the reciprocal identification keys and agree on the responsibilities that this use carries. [\(Amended by Circular 8/2015\)](#)

The Entities, Investment Funds, General Deposit Warehouses, and Sofomes that enter into Derivative Transactions in over-the-counter markets, whose clearing and settlement are not performed through clearing houses or foreign institutions that act as central counterparties, should implement for this kind of Derivative Transactions, among other requisites, the following risk mitigating techniques:

- a) Procedures to verify with their counterparties (reconciliation), the form and conditions pursuant to which the valuation of the Derivative Transactions executed with said counterparties shall be performed on a periodic basis;

b) Mechanisms for resolution of the disputes that occurs with their counterparties regarding the performance of the verification processes referred to in the previous subparagraph , and

c) Procedures to periodically assess the possibility of engaging in portfolio compression on a regular basis for this type of Derivative Transactions performed with their counterparties.

*(Added by Circular 8/2015. In accordance with article Third Transitory of Circular 8/2015, this requirement shall become effective on April 1, 2016.)*

5.2 The Standardized Derivative Transactions between Entities, or between an Entity and a Foreign Financial Entity that in its respective jurisdiction provides services of the same kind as any of the relevant Entities, as well between an Entity and a national or foreign Institutional Investor, must be traded : (i) in Recognized Markets, (ii) through electronic trading platforms authorized by the CNBV, or (iii) through foreign institutions that perform similar functions to those carried out by the electronic trading platforms mentioned in subparagraph (iv) above and that are recognized by the CNBV. *(Added by Circular 8/2015. In accordance with article Second Transitory of Circular 8/2015, this section shall take effect; i) on April 1, 2016 for the Standardized Derivative Transactions entered into between the Entities or between an Entity and a national Institutional Investors, and ii) on November 1, 2016 for the Standardized Derivative Transactions executed between an Entity and a Foreign Financial Entity that in its respective jurisdiction provides services of the same kind as any of the relevant Entities, as well as between an Entity and a foreign Institutional Investor.)*

## 6. GUARANTEES /MARGIN

Entities, Investment Funds, General Deposit Warehouses and Sofomes may guarantee the performance of the Derivative Transactions through cash deposits, credit rights in their favor or securities in their portfolio.

In the case of Forward Transactions, Options Transactions, Swaps Transactions, Credit Derivative Transactions, as well as those others that may be authorized by Banco de México authorizes in terms of section 3.4 of these Rules, that the Entities, Investment Funds, General Deposit Warehouses, and Sofomes trade in over-the-counter markets, the guarantees mentioned in the paragraph above may only be granted when the counterparties are Credit Institutions, Securities Firms, Foreign Financial Entities, Investment Funds, Retirement Fund Investment Companies, Sofomes, or any other counterparty authorized by Banco de México.

In no case shall the Entities and Investment Funds receive subordinated debentures as guarantee (margin) of the performance of the Derivative Transactions that they enter into. Likewise, the Entities may not collect shares in guarantee (margin) issued by financial entities or holding companies of financial groups. *(Amended by Circular 8/2015)*

## 7. FORMS OF SETTLEMENT

7.1 Settlement of Derivative Transactions may be performed through the delivery of the Underlying Assets previously determined or the payment of an amount of money in a bank deposit account, pursuant to the nature of the transaction as agreed by the parties agree. *(Amended by Circular 8/2015)*

7.2 Entities that enter into Derivative Transactions on their own on account with the Underlying Assets indicated in subparagraph g) of section 2.1, shall be prohibited from physically settling them. *(Amended by Circular 8/2015)*

7.3 Securities Firms must carry out the Settlement of Derivative Transactions traded in over-the-counter markets with the Underlying Assets indicated in subparagraph a) of section 2.1 pursuant to the following: i) the transactions must not be physically settled,, and ii) they must be liquidated within the four Business Days after the agreement date of the transaction.

7.4 Settlement of Derivative Transactions shall be performed within the four Business Days counting from the corresponding expiration date or exercise date. (Added by Circular 8/2015)

7.5 Standardized Derivative Transactions between Entities, or between an Entity and a foreign financial entity that in its respective jurisdiction provides services of the same kind as any of the Entities, as well as between an Entity and a national or foreign Institutional Investor, must be settled through: i) clearing houses incorporated in terms of the “*Rules that the derivatives contract market participants must adhere to*”, issued jointly by Banco de México, the SHCP, and the CNBV or ii) foreign institutions acting as central counterparties in derivatives stock exchanges and/or foreign over-the-counter markets, and that have been recognized by Banco de México in this capacity, pursuant to section 7.6 of these rules and adhering to the internal regulations that said clearing houses or foreign institutions have in place for the acceptance, clearing, and settlement of Standardized Derivatives Transactions.

Entities that enter into Standardized Derivative Transactions on their own account with another Entity that is part of the same financial group in Mexico or with a Foreign Financial Entity that is part of the same financial group may request an exemption from the requirements provided in section 5.2 and the preceding paragraph, provided they present to Banco de México and the latter approves that: i) they are subject to adequate and centralized procedures to assess, measure, and control risks; ii) they are included in a consolidation scheme at the level of the financial group in Mexico or the financial consortium and iii) whenever applicable, Banco de México has determined that the jurisdiction where the Foreign Financial Entity belonging to the same consortium is located has an equivalent regulatory regime regarding the negotiation and settlement of Derivative Transactions. For effects of these Rules, it shall be understood that a Foreign Financial Entity belongs to a financial consortium when it forms part of a group of financial entities in which the one legal entity exercises control, in similar terms to those indicated in article 2, subsection III of the Securities Market Law. (Added by Circular 8/2015. In accordance with article Second Transitory of Circular 8/2015, this section shall take effect: i) on April 1, 2016 for the Standardized Derivative Transactions executed between Entities or between an Entity and a national Institutional Investor, and ii) on November 1, 2016 for the Standardized Derivative Transactions executed between an Entity and a Foreign Financial Entity that in its respective jurisdiction provides services of the same kind as any of the relevant Entities, as well as between an Entity and a foreign Institutional Investor.)

7.6 Banco de México may recognize foreign institutions that act as central counterparties, for the transactions carried out in foreign derivatives stock exchanges and over-the-counter markets considering the following elements:

- a) That the foreign institutions are authorized by the financial authorities of the jurisdiction in which they act as central counterparties and are subject to effective supervision and oversight that ensure their compliance with the applicable regulation, performed either by the authorities of said jurisdiction or by Banco de México or the CNBV in cooperation with the respective local authorities;
- b) That the regulatory framework applicable to said foreign institutions ensures similar or equivalent results to those achieved by the provisions issued by the Mexican authorities



applicable to entities that provide clearing house services for Derivative Transactions in Mexico and that said framework is compliant with the Principles for Financial Market Infrastructures issued by the Committee on Payment and Settlement Systems of the Bank for International Settlements and the International Organization of Securities Commissions in 2012 or those that may substitute them, including but not limited to the principles related to i) effectively measuring monitoring, and managing credit, liquidity, business, legal, and operative risks; ii) effective and clearly defined rules and procedures to manage a default by a participant, also known as a clearing members of the clearing house; iii) governance arrangements that are clear and transparent; iv) access and participation requirements, and v) efficiency and transparency, and

- c) That Banco de México or the CNBV has signed a memorandum of understanding with the foreign financial authorities that regulate and supervise said foreign institution, pursuant to the applicable provisions.

Banco de México may revoke the abovementioned recognition, in those cases in which it judges that any of the requirements or elements for granting said recognition are no longer being complied with. [\(Added by Circular 8/2015\)](#)

7.7 The recognition that Banco de México grants to the foreign institutions in terms of the above section may be approved at the request of the interested foreign institution or of any Entity or, by initiative of Banco de México itself based on the information that it acquires to this effect.

[\(Added by Circular 8/2015\)](#)

## **8. TRANSACTIONS ON BEHALF OF THIRD PARTIES**

Entities may enter into Derivative Transactions on behalf of third parties through a power of attorney, commercial commission, or specific instruction to enter into Derivative Transactions. Under these assumptions, the Entities must adhere to what is set forth in Circular 1/2005 which contains the “Rules that credit institutions; securities firms; insurance companies; bonding companies; limited purpose financial companies and the Rural Financial Institution must adhere to in trust transactions”. [\(Amended by Circular 8/2015\)](#)

Additionally, when entering into Derivative Transactions under the terms and conditions set forth in a power of attorney or commission, Securities Firms must adhere to the dispositions of the Securities Market Law, as well as other relevant applicable provisions.

## **9. RELATED PARTY TRANSACTIONS**

Commercial Banks and Securities Firms that enter into Derivative Transactions with related parties or over Underlying Assets whose issuers or borrowers are related parties, must comply with the relevant provisions of the Credit Institutions Law and the Securities Market Law, respectively.

## **10. PROHIBITIONS**

10.1 Repealed. [\(Repealed by Circular 8/2015\)](#)

10.2 Entities must not collect fees for the Derivative Transactions that they enter into, except for the cases in which they act on behalf of third parties pursuant to section 8 of these Rules.

10.3 Entities must not offer the possibility of entering into Derivative Transactions at the counters of their branches.

10.4 Entities must not enter into Derivative Transactions when the relevant Underlying Asset does not have an interest rate or market reference price, except when the relevant Underlying Assets are those indicated in subparagraph f) of section 2.1 of these Rules. [\(Amended by Circular 8/2015\)](#)

10.5 Securities Firms shall not enter into Credit Derivative Transactions on their own account. Investment Funds, General Deposit Warehouses and Sofomes shall not enter into Credit Derivative Transactions. [\(Amended by Circular 8/2015\)](#)

10.6 In Credit Derivative Transactions, the Protection Buyer and the Protection Seller may not assign their rights or obligations to third parties, unless the terms of the assignment are provided in the contracts in which these transactions are previously documented.

## **11. LIMITING, SUSPENSION, OR REVOCATION OF TRANSACTIONS**

Banco de México may limit, suspend, or revoke the authorizations previously granted to the Entities in terms of these Rules to enter into Derivative Transactions when the Entities:

- a) Infringe on the provisions applicable to the transaction in question;
- b) Cease to comply with any requirement in the Annex of these Rules;
- c) Do not comply with the applicable capital requirements pursuant to the relevant provisions; [\(Amended by Circular 8/2015\)](#)
- d) Do not provide information as requested by Banco de México in terms of section 12 of these Rules, whether such information is regarding the Entity itself or it is related to one of the companies listed in the second paragraph of said section 12; or the information provided is submitted late, overdue inaccurate, or incomplete;
- e) Perform financial transactions against the sound uses or practices that correspond to said transactions, or
- f) So request it.

## **12. INFORMATION**

12.1 Entities, Investment Funds, General Deposit Warehouses and Sofomes that enter into Derivative Transactions, including those that are part of Structured Transactions documented in the securities that they issued or acquire, must report to the Financial System Information Department of Banco de México on the information of said transactions. The subjects must do so in the terms, form, and with the periodicity that Banco de México establishes. [\(Amended by Circular 8/2015\)](#)



Furthermore, Entities must report on the information that this section refers to regarding the Derivative Transactions executed by the financial entities of which they own directly or indirectly representative securities of capital stock with a right to vote and that represent at least fifty one percent of the subscribed capital stock or in which they may exercise control, pursuant to article 2, subsection III, of the Securities Market Law. [\(Added by Circular 8/2015\)](#)

Likewise, pursuant to the resolution issued by Banco de México and subject to what is set out in the following section 12.3, subjects referred to in the first paragraph of this section shall report the information indicated in said paragraph to any of the clearing houses referred to in section 7.5 of these Rules that provide trade data registration and repository services for information of Derivate Transactions, as well as to any of the foreign Institutions recognized by Banco de México as trade repositories, pursuant to section 12.2. [\(Added by Circular 8/2015\)](#)

In the resolutions issued by Banco de México for purposes set out in the preceding paragraph, Banco de Mexico may determine in which cases the entities mentioned in the first paragraph of this section will not be obligated to report the information referred to in said paragraph to Banco de México. In any case, said exception granted by Banco de México is without prejudice of its powers to request from the Entities, Investment Funds, General Deposit Warehouses, and Sofomes any other additional information different from what these subjects already report to clearing houses or foreign entities, as well as any other information of the relevant Derivative Transactions for the oversight matters in particular cases. [\(Added by Circular 8/2015\)](#)

12.2 Banco de México may recognize foreign Institutions that perform trade data registration and repository functions, considering the following elements: [\(Added by Circular 8/2015\)](#)

- a) That the foreign institutions are authorized by the financial authority of the jurisdiction in which they act as a trade repository and are subject to effective supervision and oversight that ensures their compliance with the applicable regulation, performed either by the authorities of said jurisdiction or by Banco de México or the *CNBV* in cooperation with the respective local authorities; [\(Added by Circular 8/2015\)](#)
- b) That the regulatory framework applicable to said foreign institutions ensures similar or equivalent results to those achieved by the provisions issued by the Mexican authorities, applicable to entities that provide trade repository services for Derivative Transactions in Mexico, and that said framework is compliant with the Principles for Financial Market Infrastructures issued by the Committee on Payment and Settlement Systems of the Bank for International Settlements and the International Organization of Securities Commissions in 2012 or those that may substitute them; including but not limited to the principles related to i) effectively measuring monitoring, and managing credit, liquidity, business, legal, and operative risk; ii) disclosure of accurate and timely information to relevant public authorities as needed iii) governance arrangements that are clear and transparent; iv) access and participation requirements, and v) efficiency and transparency; [\(Added by Circular 8/2015\)](#)
- c) That Banco de México has signed a memorandum of understanding with the foreign financial authorities that regulate and supervise said foreign institution, pursuant to the applicable provisions, and [\(Added by Circular 8/2015\)](#)





d) That Banco de México has access whether from the foreign institution or, as appropriate, from the regulating and supervising foreign financial authorities, to the information reported by Entities, Investment Funds, General Deposit Warehouses and Sofomes regarding the Derivative Transactions that they enter into. [\(Added by Circular 8/2015\)](#)

Banco de México may revoke the abovementioned recognition, in those cases in which it judges that any of the requirements or elements for granting said recognition are no longer being complied with. [\(Added by Circular 8/2015\)](#)

12.3 Entities, Investment Funds, General Deposit Warehouses and Sofomes that have agreements in place with any of the clearing houses indicated in section 7.5, to report to said clearing houses on the information regarding Derivative Transactions referred to in section 12.1 above, shall obtain the previous written consent of their counterparties. Such consent shall be granted so as to assure that subjects do not contravene applicable confidentiality and secrecy provisions. [\(Added by Circular 8/2015\)](#)

12.4 For purposes of the informational reports, the transaction, product and parties involved in each transaction must be identified, using unique identifiers that comply with the standards established by Banco de México for this purpose. [\(Added by Circular 8/2015\)](#)

### **13. SANCTIONS**

Banco de México in accordance with the Banco de México Law and other applicable regulations shall penalize Entities, General Deposit Warehouses, and Sofomes that fail to comply with the provisions contained in these Rules.

Investment Funds that fail to comply with the provisions contained in these Rules shall be sanctioned by the *CNBV* in accordance with the Investment Funds Law. [\(Amended by Circular 8/2015\)](#)

## **ANNEX**

### **REQUIREMENTS FOR THE ENTITIES THAT INTEND TO CARRY OUT DERIVATIVE TRANSACTIONS**

#### **I. ADMINISTRATION REQUIREMENTS**

1. - The Top Management shall establish, and the Board of Directors or the Executive Board, as the case may be, shall specifically approve:

- a) The general objectives, goals, and procedures for carrying out the transactions with customers and other intermediaries in the market.
- b) The maximum tolerance of market risk, credit risk and any other risks considered acceptable for the Entity in the market, and
- c) The approval procedures for new financial products related to these products.

2. - The Top Management shall appoint, and the Board of Directors or the Executive Board, as the case may be, shall approve, the creation of a risk department, separate from the areas taking the risks; said department shall be directly dependent on the Top Management or the risk committee. Its purpose shall be:

- a) To measure, evaluate, and follow up on the market, credit (counterparty), liquidity and operational risks that arise from these instruments;
- b) To communicate to the Top Management, as soon as it is known, any deviation in the limits established for transactions to be done that eliminate the risks, and
- c) To report daily to Top Management or the Board of Directors, as the case may be, and systematically to the Executive Board, regarding the operation of the Entity in the market.

3. The Top Management and a special committee appointed by the Board of Directors or the Executive Board, as the case may be, must participate in a systemic and prompt manner in following up on the management of market risks, credit risks, liquidity risks and any other risks associated with the market conditions considered relevant.

Additionally, said subjects must establish a program to review objectives, goals, and operative and control procedures, as well as risk tolerance levels, at least every semester or whenever market events call for it.

4. The Top Management must have a contingency action procedure that allows it to react whenever is detected that policies, procedures, internal controls, managerial information system or levels of risk tolerance are deficient, or whenever violations of the applicable laws, norms, or Circulars occur.

Additionally, an operative contingency plan must be in place to ensure the continuity of operations in case of unexpected events.

5. The Top Management and a committee appointed by the Board of Directors must establish a Professional Code of Ethics to regulate the conduct of the relevant personnel.

6. The Top Management shall establish an ongoing training program for operators, support employees, risk-monitoring areas, and in general to all the personnel involved in the handling and control of these instruments.

## **II. OPERATION REQUIREMENTS**

7. The different areas responsible for market operation and supervision must have in place operation and control objectives, goals, and particular procedures, as well as the maximum acceptable risk tolerance per area; said indicators must be congruent with the general guidelines established by the Top Management.

8. The Entity must have at least two competent operators, duly trained; and as an additional requisite, at least one of them shall have recognized experience in the market. Also, the operators must be familiar with the policies and procedures of operation and control, as well as with the ethical standards that regulate the Entity.

9. The Entity must have a system to enable the risk monitoring area and the personnel responsible for the operations division to supervise the activity of the operators and promoters of the market transactions in a systemic and timely manner.

10. The Entity must have a system to enable the operators to follow up on the positions assigned to them and to verify the non-compliance of their market limits, credit limits, and any other limits established by the Entity.

11. The Entity must have systems that enable processing of transactions, valuation and risk control, preferably in real time, both at the operational level and in the support area.

12. The operations area, along with the risk monitoring area, must establish valuation models in accordance with the technology developed to date, which must be known by the support area and most importantly by the operators.

The risk committee of the Entity must authorize these models. The amendments to the models and to their parameters shall be authorized by the risk committee and must be recorded along with the corresponding justification.

### **III. INTERNAL CONTROL REQUIREMENTS**

#### **III.1 General Provisions.**

13. The activities and responsibilities of the operative personnel and the support employees must be adequately defined and assigned to the corresponding internal departments.

Conflicts of interests must be avoided in the areas directly in charge of the transactions and in the operations support areas, as well.

14. Operation and control manuals must be established in writing, and shall be divulged to the relevant personnel of the operations area and the support personnel. The former in such a way so as to ensure the correct fulfillment of the workers' duties in each of the internal areas involved, such as: credit, promotion, operation, registration, confirmation, valuation, settlement, accounting, and monitoring of all the agreed transactions.

15. The Entity must establish internal criteria for an adequate analysis, evaluation, selection, and approval of the clients limits that wish to participate in Derivative Transactions.

16. Procedures shall be established to ensure that all the agreed transactions are covered by a signed framework contract (master agreement), and are duly documented, confirmed, and registered.

17. Procedures shall be established to ensure that these financial transactions and their related operations approved by the Directorate General have adequate operational support for their functioning and control.

18. Notwithstanding the guidelines established by the Entity itself, an audit/compliance area must be established that shall revise, at least once a year, the fulfillment of the policies and procedures of operation and internal control, as well as the adequate documentation of the transactions.

19. The data processing systems, risk administration systems and valuation models systems, must have adequate backup and control mechanisms that include data recovery.

### III.2. Follow up

20. The risk monitoring area must have daily access to the operation system and to the support system in order to measure and evaluate the risks arising from the transactions. This area must also present duly verified reports that show the risks taken by the Entity correctly and promptly. Said reports shall be presented daily to the Top Management and also systematically to the General Management.

### III.3 Operation, registration and verification

21. The operation manuals shall establish policies, procedures, and control mechanisms, such as those relative to telephone recordings and reciprocal confirmations in writing of every transaction term, as agreed between the parties. This, to ensure the truthfulness and authenticity of what was agreed between the parties.

The transactions that are not confirmed, as well as those not registered by the operators within a maximum term of twenty-four hours, must be investigated immediately, systematically and promptly in order to register and report them, as well as to determine corrective actions. Likewise, corrective actions necessary to avoid the recurrence of these kinds of irregularities must be taken.

22. All confirmations must be performed by the support employees, and these employees must be the only ones that receive the confirmations from the counterparties. Said confirmations must be duly crosschecked daily with the operation personnel reports and, in case of doubt, with the recording of the day.

23. The Entity shall establish procedures to verify, at least every semester, that the transactions are duly documented, registered, accounted for, confirmed, and included in all the applicable reports.

### III.4 Valuation

24. All risk valuation and risk measurement models must be validated at least once a year by experts that are independent from the developers of said models and from the operation personnel.

25. The risk monitoring area must directly collect information from trustworthy external sources to perform the valuation of the current portfolio transactions.

#### III.5 Accounting.

26. The accounting area must daily verify the operational records and the general accounting.

27. The transactions must be accounted for in accordance with the norms issued by the competent authorities.

28. The Settlement of the transactions must be performed by support employees under duly authorized instructions, verified amounts and with the confirmation of the counterparties.  
(Amended by Circular 9/2012)

29. The operation and control manuals must contain written procedures to investigate the transactions that are not covered by the Entity and/or by its customers and report the results to the Top Management, for corrective actions and to keep records regarding its systematic investigation.

#### III.6. Guarantees.

30. The operation and control manuals must establish procedures that allow the subject to define, control, and ensure the sufficiency of the guarantees or lines of credit that may be granted.

#### III.7 Legal

31. The Entity must have the procedures to verify the master contracts, forms, and other formats that obligate the Entity and its counterparty to the due fulfillment of their obligations before they are signed by the parties.

### TRANSITORY

**FIRST.** This Circular shall take effect on June 1, 2012.

**SECOND.** Starting when this Circular takes effect, the “Rules that the commercial banks, securities firms, investment companies, and limited purpose financial companies must adhere to when carrying out derivative transactions,” included in Circular 4/2006, published in the Official Gazette of the Federation on December 26, 2006, shall be repealed.

**THIRD.** The authorizations to perform Derivative Transactions granted by Banco de Mexico to the development banks before this Circular takes effect shall no longer be effective as of March 31, 2013, therefore said institutions interested in continuing to carry out Derivative Transactions after



that date pursuant to what is set forth in sections 3.1.1 and 3.1.2 of these Rules, must send the corresponding documentation during February of 2013.