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Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission

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Dear Sirs/Mesdames:

RE: Updated Model Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting

Capital Power Corporation ("**CPC**") CP Energy Marketing LP ("**CPEM**") and CP Energy Marketing (US) Inc. ("**CPEMUS**") and their other affiliates and subsidiaries (collectively, "**Capital Power**") make this submission to comment on the Canadian Securities Administrators' ("**CSA**") proposed provincial rules and updated model rules published on June 6, 2013, relating to the reporting of derivatives transactions to trade repositories ("**TRs**").- *Updated Model Rules- Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting* ("**Updated Model Rules**").

Capital Power commends the CSA for considering and being informed by comments it received on the initial CSA Staff Consultation Paper 91-301, published in December 2012, based on which the CSA states that it has now developed these Updated Model Rules aimed to achieve a harmonized derivatives reporting regime across Canada. Capital Power also thanks the CSA for providing Appendix B to the Updated Model Rules in which the CSA summarizes the comments and the CSA's response to the comments. This provides transparency into the CSA rulemaking process and further clarification to market participants such as Capital Power.

Capital Power is an independent power producer that owns more than 3600MW of power generation capacity across 15 facilities in Canada and the United States, with an additional 595MW of generation currently under construction or in advanced development. Capital Power operates and optimizes power generation from a variety of fuel sources including coal, natural gas, bio-waste and wind. In Alberta, Capital Power's portfolio, including interests in joint venture facilities, comprises approximately 1000MW of merchant generation capacity. Assuming an Alberta electricity pool price of $60/MWh, Capital Power's Alberta portfolio represents an annual notional value of approximately half a billion dollars for which the commodity price exposure is actively managed and optimized.

Capital Power optimizes and hedges its portfolio using physical forward contracts for electricity, natural gas, environmental commodities and USD/CDN currency exchange, and financial derivative transactions based on those same commodities. Capital Power's trading counterparties include other independent power producers, utility companies, banks, hedge funds and other energy industry market participants. Trading activities take place through electronic exchanges, such as ICE (Intercontinental Exchange) and NGX (Natural Gas Exchange), brokered transactions and directly with counterparties.

Capital Power appreciates the opportunity to further comment on the Updated Model Rules and we applaud the CSA Derivatives Committee's (the "**Committee**') effort in seeking to achieve a harmonized derivatives trade reporting regime across Canada. Capital Power respectfully urges the Committee, following this comment period to develop regulation of derivatives trading in Canada that on one hand would strike a balance between proposing regulation that does not unduly burden market participants in the derivatives market, while at the same time addressing the need to introduce effective regulatory oversight of derivatives and derivatives market activities.

SPECIFIC COMMENTS

Capital Power has the following specific substantive comments regarding the Updated Model Rules:

Derivatives Production Determination (the "Scope Rule")

Capital Power commends the Committee on some the changes it has made regarding the Scope Rule as follows:

- we commend the Committee for the changes it made to Section 2(d) reclassifying "physical commodities" to "commodities other than cash or currency" and the accompanying clarification that the Committee considers environmental commodities to be non-financial commodities;

- we commend the Committee for the guidance it provided that recognizes the possibility of cash settlement in place of physical delivery in Section 2(d)(ii) and for specifically acknowledging that normal-course "book-outs", netting arrangements and liquidated damages provisions should not automatically make a transaction a derivative. This is aligned with the U.S. Commodity Futures Trading Commission's (CFTC) approach regarding book-outs in the context of the forward contract exclusion from the "swap" definition and it harmonizes the regulatory treatment of such cross-border transactions; and

- we also commend the Committee for explicitly excluding exchange-traded derivatives under the new Section 2 (g).

As stated above, we appreciate that the Committee considered the comments it received on the Scope Rule during the first round of consultations and the changes it made to the revised Scope Rule in the Updated Model Rules. However, we urge the Committee to enlarge the scope of the definitions beyond just the TR Rule (defined below) and apply the same definitions for all purposes of the CSA's pending regulation of over-the-counter derivatives ("**OTC Derivatives**"). In particular, we respectfully submit that the proposed Scope Rule definitions should apply in the context of any potential registration requirements for key derivatives market participants.

We respectfully ask that the Committee make the logical connection between the Scope Rule and the proposed registration rule in CSA Staff Consultation Paper 91-407 (the "**Registration Rule**"). Specifically, we ask that the Committee consider and clarify how contracts for delivery of a commodity that are deemed not to be derivatives (under Section 2(d) of the Scope Rule) could trigger a requirement for a person or company engaging in or holding itself out as engaging in the business of trading such contracts (as principal or agent), to register as a "dealer" or "large derivatives participant" under the proposed registration requirements? In other words, even if a person or a company meets the "in the business" test, but the person or company is trading a commodity that is deemed not be a derivative, would they be deemed to be caught by the registration requirement business trigger? We respectfully submit that no registration requirement should be triggered unless a person or company is clearly in the business of trading "derivatives". To ensure regulatory certainty on this point the proposed definitions and exclusions in the Scope Rule should also apply for purposes of the proposed registration requirements. Alternatively, this could be achieved by the addition of an interpretation provision in the Registration Rule.

Trade Repositories and Derivatives Data Reporting (the "TR Rule")

Capital Power commends the Committee on some the changes it has made regarding the TR Rule as follows:

- we commend the Committee for reducing the reporting requirements for pre-existing derivatives; and
- we commend the Committee for the change and clarification of Section 36(1) that only imposes record keeping obligations on reporting counterparties.

Nevertheless, we respectfully make the following comments regarding the TR Rule:

- We ask the Committee to further clarify the interaction between the duty to report described in Section 25(1) and the reporting hierarchy described in Section 27(1), which is still unclear. Section 25(1) states that section 25(1) is "subject to subsection (2), section 26 and Part 5", but it is not clear if section 25(1) should also be subject to Section 27? Capital Power believes that the Committee should make a drafting amendment to section 25(1) since, under section 27, there may be instances when the local counterparty does not report. Capital Power believes that this should be a very simple clarification but it is also an important one.
- We find that the Committee's change to Section 35(1) is not positive at all. In the initial Model Rules, the TR Rule required that valuation data should be reported to a TR by the "reporting counterparty". This principle is supported by the explanatory guidance given with respect to

Subsection 27(3) under which, "the reporting counterparty for a transaction must ensure that all reporting obligations are fulfilled. This includes ongoing requirements such as the reporting of life-cycle events and valuation". The new language of Section 35(1) requires reporting of valuation data "by both the clearing agency and the local counterparty". This significantly increases the burden on a local counterparty who may not otherwise be a reporting party. We ask that the Committee please explain the rationale for this change? We also suggest that the Committee revert to the earlier draft language, which was less burdensome and also more consistent with the approach under the U.S. Dodd-Frank Act. To address this, a compromise may be to require the local counterparty to only report valuation data to the extent there is a material discrepancy between the local counterparty's valuation and that of the clearing agency.

- We find the new Section 37(3) of the TR Rule to be too broad, in particular with the words "take any action necessary to ensure". Firstly, Capital Power believes that "any action necessary" appears to go far beyond a "reasonable efforts" standard and possibly also beyond a "best efforts" standard. Secondly, in instances where a party is a local counterparty but not necessarily the reporting counterparty, how can the local counterparty "ensure" that the Alberta Securities Commission, for example, has access to all derivatives data held by the reporting counterparty with respect to transactions involving that local counterparty? We recommend that the standard here should simply be one of "reasonable efforts".

- We find that the explanation the Committee has provided in Part 5 of the explanatory guidance document is helpful, i.e. that the exclusions are intended to apply to physical commodity transactions that are not excluded as derivatives (e.g. cash settlement allowed instead of delivery) and we commend the Committee for this. However, we find that the continued use of the term "physical commodity transaction" is still confusing. At a minimum, we suggest that the language should now be a "commodity other than cash or currency" to be consistent with the change in Section 2 (d) in the updated Scope Rule. It appears that the Committee's intention, in Section 40, is that cash and currency derivatives must always be reported, regardless of any *de minimis* thresholds, but that other commodity transactions, if they don't fall within the Section 2(d) or 2(g) exceptions (i.e. they remain reportable "derivatives"), only need be reported after the $500,000 threshold is exceeded. If that is the Committee's intention, Capital Power recommends that Section 40 should be reworded to say that clearly.

- Lastly, Capital Power believes that the $500,000 reporting threshold remains unreasonably low and will result in many derivatives end-users being unnecessarily caught by the reporting requirement. As the Committee is aware, the Monetary Authority of Singapore ("**MAS**") published a consultation paper at the end of June 2013 "*Consultation Paper on Draft Regulations Pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts*" to implement derivatives reporting obligations in a manner that does not impose undue burden on smaller non-financial entity derivatives market participants. MAS proposes to subject non-financial specified entities to the reporting obligation only when such entity's aggregate gross notional amount of specified derivatives contracts traded in Singapore, or aggregate gross notional amount of specified derivatives contracts booked in Singapore, exceeds the reporting threshold. The proposed reporting threshold for such a non-financial specified entity is **$8 billion**; however, MAS states, this will be subject to periodic review to ensure that the threshold remains relevant. Capital Power respectfully urges the CSA to follow similar principles to those adopted by MAS and to implement the reporting obligation in a manner which does not impose undue burden on smaller non-financial entities and end-users. A crucial first step in such implementation should be for the CSA to first develop a methodology for determining an appropriate and justifiable de minimis threshold.

Capital Power thanks the CSA for the opportunity to comment on these Updated Model Rules and continues to support the Committee and the CSA's efforts to regulate the OTC Derivatives market in Canada.

Capital Power respectfully requests that the Committee consider its comments. Capital Power looks forward to further consultation papers prior to the creation of legislation and regulations to govern the Canadian OTC Derivatives markets. If you have any questions, or if we may be of further assistance, please contact Mr. Zoltan Nagy-Kovacs, Senior Counsel, at 403-717-4622 (znagy-kovacs@capitalpower.com)

Yours Truly,

"***CAPITAL POWER***"

Per: Z. Nagy-Kovacs

Zoltan Nagy-Kovacs
Senior Counsel