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Via e-mail only

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**Re: Canadian Securities Administrators (“CSA”) Consultation Paper 91-301
– Model Provincial Rules – Derivatives Product Determination and Trade
Repositories and Derivatives Data Reporting**

Dear members of the CSA Derivatives Committee:

This letter sets out the comments of BP Canada Energy Group ULC and its affiliates ("BP Canada") with respect to the Model Provincial Rules.

BP Canada buys and sells hydrocarbon production and requirements for the BP Group. As such, it is a major purchaser, marketer and trader of Canadian natural gas and power, and is a major trader of crude oil and purchaser of Canadian crude oil for BP's refineries in the United States. We look forward to providing comments on future regulation related to over-the-counter ("OTC") derivatives.

1. *Definition of Excluded Derivatives and Guidance*

BP Canada supports the CSA's view that instruments that require physical delivery of an underlying commodity should be excluded from the requirements attaching to derivatives contracts. However BP Canada is concerned that the exclusionary language of the Model Provincial Rule – Derivatives: Product Determination ("Scope Rule") is in contradiction to the related Model Explanatory Guidance ("Scope Guidance").

The Scope Rule would definitively exclude from the derivatives exemption those contracts for delivery of a physical commodity that allow for cash settlement in place of physical delivery. Conversely, the Scope Guidance sets out the CSA's position that standardized contracts allowing for cash settlement where physical delivery is impossible would not be interpreted by the CSA as contracts allowing cash settlement in case of physical delivery. While BP Canada agrees with the CSA's position that standardized contracts allowing for cash settlement in lieu of physical delivery as a result of certain triggering events should not be excluded from the "physical commodity contract" exemption, we are uncomfortable with draft legislation that appears on its face to contradict this position.

BP Canada seeks clarification on the force and effect of the Scope Guidance on provincial securities regulation. We understand that the intent of the Scope Rule is to provide a template that various provinces will adopt as part of their securities acts, but we are unclear on the intent of the provinces regarding the Scope Guidance. It is BP Canada's understanding that if a Canadian regulator chose to apply a strict interpretation of the language of the Scope Rule, and applied derivatives requirements to energy transactions based on standardized physical commodity contracts, energy industry participants would not be able to argue that the Scope Guidance exempted them from such requirements, as legislation supersedes guidance. Given the apparent contradiction between the Scope Guidance and the Scope Rule, and uncertainty as to the role and effect of the Scope Guidance, BP Canada suggests that the Scope Rule be tailored to better reflect the CSA's views on cash settlement options for physical commodity contracts.

Further, BP Canada believes that the Scope Guidance does not take into consideration the many circumstances set out in standardized industry contracts that may lead to cash settlement rather than physical delivery. The Scope Guidance contemplates "obligations in the case of breach or frustration of the contract or instrument, force majeure, or similar events occurring outside of the control of the parties that render physical deliver impossible" and "provisions that permit cash settlement in place of physical delivery in

the context of termination rights arising as a result of the breach of the terms of the contract or instrument.” However, standard industry contracts, such as the Gas Electronic Data Interchange Base Contract for Sale and Purchase of Natural Gas (“GasEDI”) and North American Energy Standards Board Base Contract for the Purchase and Sale of Natural Gas (“NAESB”) agreements, contemplate a cash settlement in place of physical delivery for reasons other than breach of contract, termination, or impossibility of delivery.

Where an event of default has occurred under a GasEDI or a NAESB agreement, the non-defaulting party may choose to suspend physical delivery, liquidate outstanding transactions and calculate a final liquidation amount owing between the parties. An “Event of Default” in both master agreements includes several events other than a failure to make physical delivery: non-payment of a monthly invoice, insolvency or bankruptcy, failure to provide and maintain Performance Assurance, a default under any credit annex, or failure to perform any material obligation under the GasEDI. Payment is available as a remedy by a party that fails to deliver or receive gas without termination of the contract.

BP Canada is concerned that if the language of the Scope Rule is adopted into provincial securities legislation as drafted, a strict interpretation of the rule would include all standardized market contracts for physically settled commodities in the definition of “derivative”, and further that even if the Scope Guidance were adopted in each jurisdiction, the Scope Guidance could still act to potentially exclude standardized industry contracts for the purchase and sale of physical commodities. Revisions of existing long-term standardized contracts would be complicated, cumbersome and time-consuming to such an extent that energy trading by Canadian counterparties would be severely adversely impacted by any attempt to make industry-wide modifications.

To address the above concern, BP Canada proposes that the description of “physical commodity contract” be modified as follows in order to ensure standardized energy industry physical commodity contracts are included in the exemption from those requirements attaching to derivatives:

- (d) a contract or instrument for immediate or deferred delivery of a physical commodity other than cash or a currency
 - (i) that requires the counterparties to make or take physical delivery
 - (ii) that is intended by the counterparties to be physically settled, and
 - (iii) that only allows for full or partial cash settlement in lieu of physical delivery upon the occurrence of certain events contractually agreed to between the parties, and where such cash settlement is not the ordinary course method of settlement for such contract;

BP Canada asks that the CSA provide further guidance on how counterparties’ intent to deliver will be determined. Is the entering into of a standard-form contract for the purchase and sale of a commodity sufficient evidence of intent?

2. Reporting of Derivatives Transactions

BP Canada understands that the Trade Repository ("TR") Rule is intended to address the proposed requirements for the operations and regulation of recognized trade repositories, and the reporting of derivative transaction data by market participants. BP Canada does not intend to comment on the TR Rule relative to the operations and regulation of trade repositories. The focus of the BP Canada comments that follow is the proposals related to Data Reporting and Data Dissemination and Access to Data.

In the TR Rule, the proposals regarding reporting are intended to improve transparency into the derivatives market for the regulators with derivative market oversight responsibilities, and to provide additional information for the public. BP Canada supports open and transparent markets, and it is supportive of developing reporting requirements that achieve that goal in the most efficient and cost effective manner, not only for the regulator but also for the market participants.

Also, BP Canada believes it is critical to establish clear rules and guidance regarding which entities are required to report, which instruments and/or contracts are to be reported, which jurisdictional repository is acceptable, what is the timing and frequency of the required reporting, what specific information is to be reported, the formatting and classification of the information that is to be reported and the time frame.

BP Canada believes there is a need for clear rules and guidance regarding how the market data information that is reported to the trade repository is to be used and communicated to others, and who has access to the transactional data

It is from this perspective that BP Canada has reviewed the TR Rule and related Model Explanatory Guidance ("TR Guidance"), and has identified several areas of concern. Specifically, BP Canada wishes to comment on the following aspects of the TR Rule:

Duty to Report

Under Section 25 of the TR Rule, the primary party responsible for reporting is described as a "local counterparty". In Section 1 of the TR Rule, a local counterparty is defined by several parameters described in Parts (a) to (f). In (e), it states "the party negotiates, executes, settles, writes or clears any part of the transaction in [Province x]". If the local counterparty is to have the obligations written into Section 25 of the TR Rule and further described in the TR Guidance, then for clarity and for certainty of compliance, BP Canada believes Part (e) of the local counterparty definition should be substantially clarified to eliminate the potential confusion that will result from the multiple activities listed. As presently defined, it has the potential to apply to even the most tenuous of connections of a counterparty to a transaction in the province.

Real-time Reporting

In Section 28 of the TR Rule, the reporting counterparty must report the execution of a transaction "in real time unless it is not technologically practicable to do so". BP Canada understands from the TR Guidance that in determining what is technologically practicable, the jurisdictional regulator will take into account the "prevalence of implementation and use of technology by comparable market participants in Canada and

foreign jurisdictions”, may conduct independent reviews, and require designated trade repositories to conform to internationally accepted regulatory standards that are presently under development by the Committee on Payment and Settlement Systems (“CPSS”) and the International Organization of Securities Commissions (“IOSCO”).

BP supports the direction in the TR Guidance. It would be concerned if any interpretation of the real-time reporting definition did not allow for the jurisdictional regulators to respect the differences that exist, not only in the state of readiness and sophistication of the various market participants, but also the different standards used by the different types of businesses (e.g. banks vs. energy companies). Further, BP Canada wishes to reiterate comments it has made in its other submissions to the CSA concerning the importance of regulators allowing market participants sufficient time to make the necessary modifications to their technology and systems. Also, it is important to know first what exactly is required, since the development of systems and changes to systems are very expensive endeavors for industry, at a time when US requirements associated with the Dodd-Frank Wall Street Reform and Consumer Protection Act are still being worked and completed.

To this end, it is critical that reporting identifiers (Sections 29 to 32) and data fields (Appendix A) are harmonized in accordance with international standards and practice, so that synergies from the substantial and continuing investments made by potential reporting counterparties for US and European regulatory requirements can be maximized.

Further, while BP Canada supports in principle the reporting of pre-existing derivatives as defined in Section 26 of the TR Rule, it wishes to highlight a potential inconsistency with Section 33 whereby not all creation data will be available for such transactions. For example, in many cases, timestamps will not be available for pre-existing transactions.

Data Dissemination and Access to Data

Data available to regulators

The move to bring OTC derivative transactions under a regulatory framework to improve transparency, mitigate systemic risk and protect against market abuse has driven the need for regulators to have better information. In that regard, BP Canada believes the new regulatory framework for OTC derivatives in Canada – and specifically the present TR Rule – should be harmonized to the greatest extent possible between not only the various Canadian jurisdictions, but also to accord with international reporting standards.

BP Canada understands from the TR Rule and Guidance that it is recommended to be acceptable for a market participant to report to a jurisdictionally recognized foreign trade repository, and that to the extent that the transaction has been reported to that repository by the relevant counterparty, then there is no further need to report. BP Canada supports the use of common, approved trade repositories to avoid unnecessary and costly duplication of reporting by market participants, and the establishment of Memoranda of Understanding among jurisdictional regulators to enable the appropriate regulators to access the trade data they need to fulfill their oversight responsibilities and transparency objectives.

Data available to public

BP Canada understands that as part of the undertaking to regulate the OTC derivatives market, one of the broad objectives is to increase transparency through public disclosure by market participants or trade repositories, and that the TR Rule is intended to meet that objective. In this regard, BP Canada wishes to direct the CSA back to the August 2011 Consultative Report of CPSS and the Technical Committee of IOSCO on OTC derivatives data reporting and aggregation requirements. Section 3.4 addresses the dissemination of OTC derivatives data to the public, and describes the type of information that should be made available "where appropriate". The "where appropriate" caveat is very important because it goes directly to the need to ensure confidentiality and transaction anonymity.

In Section 3.4.1 – Objectives, it is stated:

- "The nature of the data disclosed should meet applicable confidentiality requirements and take due regard of concerns about revealing individual firm positions or providing the public with sufficient information to indirectly infer these positions. Accordingly, public dissemination of a trade repository's data could be done in aggregate form as long as confidentiality requirements are met."

BP Canada supports these very important caveats, and therefore it is concerned that Section 39 of the TR Rule, which addresses specifically data available to the public, does not go far enough to ensure confidentiality and anonymity of the data being provided to and disseminated by the trade repository.

Effective Date

BP Canada supports adoption/implementation of the TR Rule with an effective date that is concurrent with the implementation of similar rules in other Canadian jurisdictions, and to provide market participants with reasonable notice in advance of implementation. Also, BP Canada encourages consistency with other Canadian jurisdictions when enacting the TR Rule, as inconsistency can adversely impact market participants

Safe Harbour

Given the reality of the multiple Canadian jurisdictions and agencies that will have oversight responsibility for the OTC derivatives market, and the complexity of the changes and rules that are being developed and which will be implemented in a dynamic process, BP Canada raises a concern that it is exposed to new risk as a market participant. The Scope Rule is both responsive and flexible, and is subject to change as other elements of the new OTC regulatory framework are finalized. BP Canada suggests that as part of the final TR Rule, a "safe harbour" provision be added that would protect market participants from sanction providing there is a demonstration of intent to comply.


3. Conclusion

In summary, BP Canada supports tailored, fit-for-purpose rules that ensure market transparency and regulatory certainty as appropriate to the Canadian markets. We appreciate the balance that the CSA must strike between effective regulation and not hindering OTC derivative markets. BP Canada recommends that the CSA continue to consult market participants, and allow them to stay engaged in the process as rules continue to be developed by the CSA.

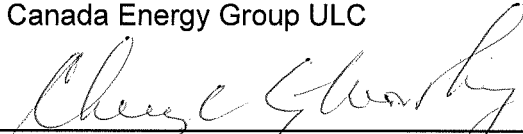
BP Canada respectfully requests that the CSA consider its comments set forth herein regarding Model Provincial Rules.

If you have any questions, or if we may be of further assistance, please contact the undersigned.

Respectfully submitted,



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