



September 12, 2011

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Ontario Securities Commission
Saskatchewan Financial Services Commission

VIA ELECTRONIC MAIL

Re: Consultation Paper 91-402 on Derivatives: Trade Repositories

Dear Members of the CSA Derivatives Committee:

Direct Energy Marketing Limited (“Direct”) hereby respectfully submits comments on Consultation Paper 91-402 on *Derivatives: Trade Repositories* (“the Consultation Paper”). Direct appreciates the opportunity to submit these comments and looks forward to working with the CSA Derivatives Committee (“Committee”) as it moves forward with this derivatives regulatory reform process.

I. DIRECT ENERGY

Direct is one of North America’s largest energy and energy-related services providers with over six million residential and commercial customer relationships. A subsidiary of Centrica plc, one of the world’s leading integrated energy companies, Direct, and its affiliates, operate in 10 provinces in Canada and 46 states plus the District of Columbia in the United States. In addition to owning and operating over 4,600 wells in Alberta with total natural gas production of approximately 170 MMcfe per day, Direct’s Midstream and Trading group performs a variety of physical and financial energy management activities including production marketing and hedging, wholesale energy supply, transportation, and storage.

II. GENERAL COMMENTS

Direct commends the Committee for its approach to crafting a framework for regulation of the over-the-counter (“OTC”) derivatives market in Canada. Direct appreciates the daunting task facing the Committee. Not only must the Committee take into consideration international trends and decisions on these matters, but many of the recommendations of the Committee require provincial legislation which adds to the complexity of implementation. For those reasons, Direct respectfully submits that it would be most efficient to make no single part of this new regulatory program effective until the entire program has been adopted. Such a structure will minimize the expense to the market and market participants and should promote an efficient transition into the new regulatory regime.

The comments offered here by Direct focus on a few high level concepts. Direct encourages the Committee to integrate these high level concepts into its overall structure. We want to commend the Committee, as well, for its thoughtful questions as the nature of those questions indicates the Committee is committed to a structure/system that will provide the greatest benefit to and least disruption in the energy markets. Finally, Direct’s comments focus solely on the energy markets and

not other derivatives markets. Without more detail, it is impossible to provide a thorough response to the Consultation Paper, but Direct respectfully offers the following observations.

III. COMMENTS ON THE CONSULTATION PAPER

A. Direct requests that the Committee provide a definition of a Canadian counterparty.

Direct appreciates that there are many decisions that must be made by the Committee to develop this regulatory framework for its OTC derivatives markets. Market participants will be best able to comment on the process after key definitions are agreed upon. For example, the Committee should make clear which market participants and which OTC derivatives are to be covered by these rules. Some key questions that are generated by the Committee's approach are: Is a Canadian counterparty someone domiciled in Canada? Someone who trades on a Canadian exchange? Someone who trades from a desk located in Canada? Anyone who trades a product that has a Canadian referenced derivative – without regard to his physical location or where his trade clears? Without more clarity, it will be difficult to determine which market participants and which transactions are affected. In the absence of clear definitions, Canadian regulations may cause duplicative (and potentially conflicting) regulation for market participants who are also regulated by another country's regulator.

B. The Committee should consider that any OTC derivative reported to a qualified U. S. trade repository (SDR in U.S. parlance) need not be reported to Canadian authorities, as well.

The Consultation Paper states, “. . . the Committee feels that mandating the use of a Canadian trade repository to accept OTC derivative trade reporting from Canadian counterparties should be studied.”¹ It then goes on to recommend, “If the Committee determines that reporting to a Canadian trade repository should not be mandated, the Committee recommends permitting the reporting of transactions to trade repositories located in a foreign jurisdictions [sic] provided that they have been approved by the relevant provincial market regulators and meet all requirements applicable to a Canadian trade repository.”²

As the Committee evaluates the options available to capture the desired trade data, the Committee should give serious consideration to the use of foreign trade repositories – not simply in addition to a Canadian trade repository but as an alternative to a Canadian trade repository. Recognizing that as of December 2009, 78% of the counterparties of the six major Canadian banks are non-Canadian, Direct respectfully suggests that the Committee look to the trade repositories developed in other jurisdictions as providing a cost effective and efficient alternative for market participants.³ Furthermore, the Committee should consider any OTC derivative reported to a U. S. trade repository to have been reported properly for Canadian purposes. Coordination agreements with U.S. regulators will ensure the required data are in the proper format and accessible to regulators who need the data.

C. Direct respectfully opposes the requirement to provide full copies of the legal documents underlying the OTC derivative trades in question.

The Consultation Paper requires market participants to report not only the relevant commercial terms of their OTC derivatives transactions at the time of execution – the counterparties

¹ Canadian Securities Administrators, CSA Consultation Paper 91-402, *Derivatives: Trade Repositories* (“the Consultation Paper”), June 23, 2011, p. 19.

² *Id.* at p. 20.

³ Direct supports the observation that such trade repositories should be approved by the relevant provincial market regulators.

to the transaction, type of transaction, underlying reference, notional amounts, prices, execution and termination dates, and additional data – but also requires them to provide full copies of the legal documents underlying those trades. In addition, “continuation data” are required to be reported daily in order that regulators may be kept abreast of daily exposures. Direct submits that there is no need to require the delivery of full copies of the underlying legal documents on a routine basis.

The record keeping requirements of the proposed framework (seven years from the date the transaction expires or terminates) and the ability of regulators to request those documents at any time should provide the protection sought by this new regulatory framework. Additionally, requiring the provision of these documents to the trade repository will impose unnecessary costs for the market participants and the trade repository itself. We see no practical reason why these documents should be supplied on a routine basis and respectfully suggest that the Committee not require them to be produced except upon request.

D. Pre-existing transactions should not be reported at all.

Direct submits that pre-existing transactions should not be required to be reported once reporting commences. Direct suggests that the exemption for pre-existing trades that terminate or expire within one year of the effective date is recognition that this group of derivatives need not be reported. Because they are subject to audit by appropriate regulators, upon request, the information is available to those who need it when needed.

The cost burden of an audit is considerably less than having to report historical trades. Data capture for new trades can be structured and entered into systems in a format that meets the regulatory reporting requirements. Old trades, by contrast, may require significant re-formatting in order to provide regulators with the data they desire. Direct submits that historical trades should only be subject to record retention and full audit requirements and be exempt from the new reporting obligations.

E. Systems required, cost burden, and logistics involved in complying with these rules.

Direct appreciates that the Committee is committed to working with foreign regulators to develop rules that adhere to internationally accepted standards. Uniformity across jurisdictions will expedite the development of software and systems to report and track OTC derivatives transactions and minimize the burden for market participants of coming into compliance. The creation of an automated process to submit trades is not made cheaper simply because the number of trades to be reported is relatively small.⁴ Any difference among jurisdictions with regards to data fields to be reported, format, and frequency of reporting will require different systems and higher costs of implementation. This is especially true for transactions that may be required to be reported to more than one regulator. Without more definition by all regulators who are developing plans for regulating OTC derivatives markets, it is impossible to state with any degree of specificity what the cost and logistics will be to comply. It is certain, however, that every program that imposes a different requirement will impose greater costs on market participants. Similarly, for regulators who seek data from foreign jurisdictions, they will incur extra cost to be able to review data in a format different from one they may have prescribed. To that end, Direct supports a reporting structure which creates consistency across jurisdictions.

⁴ The Consultation Paper suggests at p. 2 that the outstanding notional value of the OTC derivative activities by the six major Canadian banks is less than 2% of all OTC transactions.

IV. CONCLUSION

Direct thanks the Committee for the opportunity to present these comments. Direct continues to believe that discussion of the various components of a comprehensive regulatory regime for Canada's OTC derivatives markets is appropriate at this time but would respectfully urge the Committee to strive for uniformity of reporting within a global framework. That will be most efficient and least burdensome for Canadian market participants. Direct looks forward to working with the Committee to craft that new comprehensive regulatory regime. If Direct can offer any assistance to the committee as it moves forward, please feel free to contact me at 1-713-877-5742.

Regards,

s/ Benjamin F. Heard

Benjamin F. Heard
Senior Counsel
Direct Energy
12 Greenway Plaza, Suite 250
Houston, Texas 77046
Benjamin.Heard@directenergy.com