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And to:

Alberta Securities Commission
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Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission

Dear Sirs/Mesdames:

RE: CSA Consultation Paper 91-407, "Derivatives: Registration"

SaskEnergy Incorporated ("SaskEnergy") and TransGas Limited ("TransGas") welcome the opportunity to comment on CSA Consultation Paper 91-407, "Derivatives: Registration", published on April 18, 2013.

As we understand the proposed registration regime, certain persons would be required to register, and there will be a number of additional regulatory requirements associated with that registration requirement. The registration requirements are designed to:

- "protect participants in the derivatives markets from unfair, improper and fraudulent practices";
- "protect the soundness of our financial markets by ensuring that key market participants manage risks relating to their participation in derivatives markets, including counterparty risk";
- "impose specific requirements on registrants when trading with counterparties and trading on behalf of clients"; and

- "reduce risks, including systemic risks, resulting from the derivatives activities of key market Participants".

We are again pleased that some thought will be given to targeting the scope of said regulation, so as to obtain the greatest benefit, with the least harm and collateral impact. As noted previously, these changes are being considered at a time when Saskatchewan provincial agencies are being asked to streamline or eliminate regulatory burden and costs. A "one size fits all approach" may simplify the rules, but does not limit unnecessary regulatory burden if it is overbroad in application.

Selected Summary of Proposed Changes

Three categories of registrant would exist. The first category would be derivatives dealers, persons carrying on the business of trading in derivatives or holding themselves out to be carrying on that business. The second would be the derivatives advisors, persons carrying on the business of advising others in relation to derivatives, or holding themselves out to be doing so. The third would be large derivatives participants, persons other than derivatives dealers that have a substantial aggregate derivatives exposure above a threshold to be defined.

A "person" includes legal entities. An individual would be required to register, where the individual is the ultimate designated person, chief compliance officer, or chief risk officer of the registrant. Individuals involved in providing clients with advice relating to derivatives, or involved in providing trading services to clients as an intermediary to a trade, would be required to register. Finally an individual involved in a trade with a counterparty that is a non-qualified party, and that is not represented by an independent derivatives adviser would be required to register.

Registration would have a minimum proficiency requirement for all directors, partners, officers, employees or agents of a derivatives registrant involved in trading or advising on derivatives. All registrants would be subject to financial and solvency requirements, including capital, margin, insurance and financial record and reporting requirements. There would be requirements related to compliance systems and internal business conduct, honest dealing, and care of collateral. Finally derivatives dealers and derivatives advisors would be required to carry out an information gathering and "gatekeeper" requirement with respect to their clients, and know your client/counterparty, product suitability, conflict of interest, and fair dealing requirements.

Provincial Crown corporations whose obligations are guaranteed by the provincial government would not generally be required to register, except when dealing with other than qualified parties and when intermediating trades for clients.

Persons that would be subject to registration as either a derivatives dealer or a derivatives adviser solely because of activities with their affiliates would be exempt from the requirement to register as a derivatives dealer or adviser.

About SaskEnergy

SaskEnergy is a Saskatchewan Crown corporation governed by *The SaskEnergy Act*. SaskEnergy owns and operates a distribution utility, and has the exclusive legislative mandate to distribute natural gas within the province of Saskatchewan. With the exception of the City of Lloydminster, SaskEnergy is effectively the sole provider of natural gas distribution service in the Province. SaskEnergy delivers natural gas to more than 365,000 residential, commercial and industrial customers throughout Saskatchewan. SaskEnergy purchases substantially all of its natural gas from independent suppliers and transports it through its 68,100 kilometer distribution system to 93% of Saskatchewan communities.

Approximately 355,000 of SaskEnergy's 365,000 delivery customers currently purchase their natural gas commodity supply directly from SaskEnergy, and SaskEnergy is one of the largest purchasers of natural gas supply in the Province.

SaskEnergy is primarily a natural gas delivery or distribution business, and its core natural gas purchases are for resale to its customers on a tariff basis. SaskEnergy also sells natural gas to industrial users on a contract basis and natural gas transactions are also executed to generate incremental corporate income from physical assets, including storage facilities.

In setting its commodity tariff rate, SaskEnergy follows the standard Canadian natural gas utility regulatory practice, which is to pass through the cost of gas sold to customers without applying any margin or additional costs. No profit or loss should be incurred by the utility on the sale of natural gas.

SaskEnergy utilises both physically and financially settled natural gas derivatives. Financially settle derivatives are used for price hedging, and risk management. Physically settled derivatives take the form of natural gas commodity purchase and sale agreements.

About SaskEnergy's Subsidiaries

TransGas is a wholly owned subsidiary of SaskEnergy. It has the exclusive legislated franchise to transport natural gas within the Province of Saskatchewan. Natural gas transport involves the use of transmission pipelines to move gas long distances to a point where it can be delivered to large customers, another transporter or to the distribution utility.

TransGas also owns and operates a natural gas storage business as well as gathering and processing facilities, which are integrated with the transmission pipeline system.

SaskEnergy has a number of other subsidiaries, carrying on business primarily in the energy services or natural gas production, storage, transportation or processing areas.

SaskEnergy's subsidiaries may purchase or sell gas as part of their operations, but all commodity derivatives are physically settled, including derivative transactions with SaskEnergy.

It is the expectation of TransGas that its gas transport and storage contracts will not be classified as derivatives, but that issue has arisen in the United States, and has resulted in a fairly complex interpretation. For the purpose of these submissions, the exclusion of transport and storage contracts is assumed.

SaskEnergy's Derivative Trading Experience

Natural gas is sold on a forward basis for practical reasons inherent in the natural gas sector. Almost all purchases and sales are going to be "derivatives", as commonly defined, and the financially versus physically settled distinction is really an artificial one from a price risk perspective. Our price "risk" and price "speculation" is occurring largely in circumstances where physical delivery must occur. The financially settled transaction is actually the mechanism by which SaskEnergy reduces its price risk.

SaskEnergy utilizes financially settled natural gas commodity derivatives to hedge the price of natural gas, in circumstances where fixed priced commodity purchase contracts are not available or competitive, to enable fixed price commodity sale contracts with certain customers, and to enable yearly or bi-annual rate changes to our tariff rates, through a rate review panel process.

Historically, SaskEnergy has freely transacted with counterparties in Europe and the United States.

At this time, SaskEnergy has effectively withdrawn from new American counterparty transactions. Given that SaskEnergy makes no profit from the sale of gas, if something similar or more onerous to the United States model is planned for Canada, and it is not done well, the feasibility of providing stable gas prices to consumers might come into question.

SaskEnergy is currently trading financially settled transactions exclusively with Canadian banks.

Comments

SaskEnergy and TransGas are pleased to comment on the following queries. We have eliminated queries which are not of particular interest to SaskEnergy, to which we have limited insight, or which would elicit the same answer as a previous inquiry.

Q2: What is the appropriate standard for determining whether a person is a qualified party? Should the standard be based on the financial resources or the proficiency of the client or counterparty? If the standard is based on financial resources should it be based on the net assets of the client or counterparty, gross annual revenues of the client or counterparty, or some other factor or factors?

A standard based on financial resources, likely net worth, seems the most practical test as it can be readily ascertained. In this sense, a qualified party is simply one that can afford to absorb a loss, and to protect its interest through knowledge acquisition or otherwise. However, if there are alternative means of substantially addressing the mischief perceived, such as experience, knowledge or proficiency requirements, then there should be some consideration of alternative tests (rather than a single test or cumulative tests).

SaskEnergy suggests that the rules error, initially, in favour of a broad definition of qualified party. Derivative transactions do add a benefit and do add value. SaskEnergy itself needs to meet the test to carry on business in a manner close to the manner in which it has historically, and we have some concern that these requirements will discourage market participation.

One of the consequences of not meeting a qualified party standard may be the necessity of engaging a dealer or advisor in some way. We do acknowledge something of a self-fulfilling mechanism here, wherein the creation of rules creates the need for proficient people to interpret the rules. However, SaskEnergy itself does not feel an immediate need or desire to be represented by a third party "derivatives dealer" or "derivatives adviser", in addition to existing staff.

Q3: Should registration as a derivatives dealer be subject to a de minimis exemption similar to the exemption adopted by U.S. regulators? Please indicate why such an exemption is appropriate.

The Committee believes that participants should be subject to the same protections regardless of the size or the total derivatives exposure of the dealer. SaskEnergy respectfully disagrees.

From our own experience, the first thing an advisor will look to is the *de minimis* test. It is a relatively quick and (hopefully) straightforward way of ascertaining whether or not the registration rules apply to an entity. It is likely more certain than a "holistic" analysis of whether you are "in the business of dealing derivatives", particularly if no other exemption clearly applies. There is some value in certainty.

Secondly, a *de minimis* test places the greater burden on the parties who (arguably) are best able to meet it.

Third, the *de minimis* test likely addresses the "too big to fail" effect on the market. If participant protection is desired, the choice always exists to deal only with a derivatives dealer, and derivatives dealers can advertise that. Participant protection should be secondary, and you can impose participant protection to the point there is no market.

From the perspective of SaskEnergy's best interest, registration and registration requirements are not beneficial. Registration requirements promise to be administratively expensive, for both the registrant and the counterparty, and even if SaskEnergy itself is exempt, it threatens to limit liquidity and available counterparties.

If the mischief perceived can be substantially addressed with a *de minimis* exemption, with high notional exposure thresholds as in the United States, then a *de minimis* exemption seems to be one way of balancing cost and benefit.

Alternatively, some consideration might be given to starting with a *de minimis* test. If it is not working, steps can be taken to change it. Changing too much all at once (i.e. making registration applicable to all "derivatives dealers") may do more harm than good.

Q5: Are the factors listed the correct factors that should be considered in determining whether a person is in the business of trading derivatives? Please explain your answer.

SaskEnergy does not take issue with the test proposed, assuming physically settled derivatives are out of scope. SaskEnergy does enter into physically settled transactions with small producers, small retailers and small consumers of gas who may or may not meet a qualified party test, and which may or may not otherwise trigger this test.

The factors as we understand them are acting as a market maker, trading with the intention of being remunerated or compensated, soliciting trades (directly or indirectly), providing clearing services to a third party, trading with a non-qualified party that is not represented by a derivatives dealer or advisor on a repetitive basis, or engaging in activities similar to a derivatives dealer.

Q6: The Committee is not proposing to include frequent derivatives trading activity as a factor that we will consider when determining whether a person triggers registration as a derivative dealer. Should frequent derivatives trading activity trigger an obligation to register where an entity is not otherwise subject to a requirement to register as a derivatives dealer or a LDP? Should entities that are carrying on frequent derivatives trading activity for speculative purposes be subject to a different registration trigger than entities trading primarily for the purpose of managing their business risks?

SaskEnergy likely agrees with the current approach. Frequent derivatives trading should only be a factor, if there are clear reasons for believing that frequent trading in itself aggravates systemic risk, the potential for market abuse, etc.

If such risk is perceived, and can be substantially managed by regulating the speculative trader only, then we would advocate limiting the scope to speculative trades. Assuming physically delivered commodity is not captured, SaskEnergy will not be directly impacted as, by policy, SaskEnergy's financially settled trades are limited to hedging activities.

Q8: Are the factors listed the correct factors that should be considered in determining whether a person is in the business of advising on derivatives?

Yes. It is not SaskEnergy's intent to enter into business as a derivatives advisor, and the risk of SaskEnergy inadvertently meeting this test is small assuming physically settled transactions are out of scope.

We understand the factors to be considered to be directly or indirectly providing advice about derivatives trading activity with repetition, regularity or continuity, being, or expecting to be, remunerated or compensated, soliciting business relating to advising in derivatives trades (directly or indirectly), or engaging in activities similar to a derivatives adviser.

Q9: Are the factors listed for determining whether an entity is a LDP appropriate? If not what factors should be considered? What factors should the Committee consider in determining whether an entity, as a result of its derivatives market exposures, could represent a serious adverse risk to the financial stability of Canada or a province or territory of Canada?

Yes. A prescribed threshold approach, without differentiation between hedging and speculation, or by business activity, is fine.

Q10: Is the Committee's proposal to only register derivative dealer representatives where they are dealing with clients or when dealing with counterparties that are non-qualified parties appropriate?

Yes. We think this is an appropriate balance between the need to protect the interests of derivative market participants and the costs of having registrants register.

Q15: Should derivatives dealers dealing with qualified parties be subject to business conduct standards such as the ones described in part 7.2(b)(iii) above? If so, please explain what standards should apply.

Not necessarily. Qualified parties should be more sophisticated than non-qualified parties. Imposing these requirements on derivatives dealers has some "trickle-down" effect on customers of derivatives dealers, and financial institutions and others will likely respond with a multitude of protocols, "boilerplate" representations, forms, and agreements. These "know your customer" and other requirements are financially

burdensome to everyone involved, at least initially, and in determining the needed scope, timing and number of these requirements, some though should again be given to the benefit to be achieved in proportion to those costs.

Q16: Do you have a preference between the two proposals relating to the regulation of a derivatives dealer trading with counterparties that are non-qualified parties? Is there another option to address the conflict of interest that the Committee should consider? Please explain your answer.

Yes, the second option.

The first alternative precludes a derivatives dealer from entering into trades with counterparties that are non-qualified parties unless those counterparties receive advice from an independent registered derivatives adviser in relation to that transaction.

The second alternative requires that a derivatives dealer inform counterparties that are non-qualified parties that there is a conflict of interest, in writing. In addition, the dealer would be required to advise the counterparty that they have the right to obtain independent advice before entering into the transaction, and to obtain a signed acknowledgment.

SaskEnergy is convinced that the first alternative would in fact drive some people out of the market. The second option will do one of two things. First, it could do very little. A party signs what it needs to sign, and accepts the conflict "boilerplate" as standard, and as a cost of doing business. A less sophisticated counterparty may still depend very heavily on the dealer for guidance. Alternatively, it will increase administration and advice costs for both the derivatives dealer and the counterparty, as each party attempts to independently achieve due diligence. For those counterparties who can justify neither approach, it will drive them from the market.

In any event, the market should not be significantly jeopardized in the interests of protecting parties from the market, and the first approach seems to carry more risk. The second alternative almost seems to be enhancing what dealers will already being doing for fear of civil or other liability. Documentation certainly protects the counterparty, but there is a bit of a sense of dealer protection to it as well. It should have less of a chilling effect.

Q19: The Committee is recommending that foreign resident derivative dealers dealing with Canadian entities that are qualified parties be required to register but be exempt from a number of registration requirements. Is this recommendation appropriate? Please explain.

The requirement for parties to register in each Canadian province in which it conducts business is troubling, because it assumes that counterparties are adequately motivated to conduct business in a province.

SaskEnergy is aware that existing electronic trading platforms, for example, have been slow, or disinclined, to meet Saskatchewan application requirements, presumably because of the relatively small customer base. Whether or not the same will be true in this instance, whether for Saskatchewan alone or Canada altogether, is unknown.

This may have adverse consequences for parties operating in smaller provinces.

Q22: Is the proposal to exempt crown corporations whose obligations are fully guaranteed by the applicable government from registration as a LDP and, in the circumstances described, as a derivatives dealer appropriate? Should entities such as crown corporations whose obligations are not fully guaranteed, foreign governments or corporation owned or controlled by foreign governments benefit from comparable exemptions? Please provide an explanation for your answer.

SaskEnergy would suggest that further analysis is necessary. Whether a guarantee exists, in the literal sense, seems to be a rather blunt test as to whether the exception should apply. Many Crown corporations do not exist separately from the Crown in the same way as a typical corporation would, and may be agents of the Crown by legislation, with assets that are deemed assets of the Crown by legislation. Further, they are confined in their powers and mandates, may already have derivative related oversight built in by statute, and presumably exist for some meritorious reason that may in itself warrant consideration in this context. (All "capital market activities" performed by SaskEnergy, including commodity swaps and futures, require the prior approval of the Finance Minister under Section 46 of *The Financial Administration Act.)*

Q23: Are the proposed registration exemptions appropriate? Are there additional exemptions from the obligation to register or from registration requirements that should be considered but that have not been listed?

SaskEnergy supports the affiliate exemption. SaskEnergy is a provincial Crown corporation, and exercises its powers through several subsidiaries. SaskEnergy supports exemptions for inter-affiliate trades as, in the case of SaskEnergy, each subsidiary has the same owner, essentially the same executive, and effectively the same Board. Other Crown corporations in Saskatchewan are less closely connected to SaskEnergy, but do share a common owner, and in many instances report to the same holding company.

Most or all "derivative" transactions, wherein SaskEnergy is involved with an affiliate, are physically settled sales of commodity. There is arguably no need to protect one affiliate from the other, and any effect on the market should be limited.

Exempting a clearing house from registration is helpful, considering the concern described in Q19 above.

SaskEnergy takes no further position on the Crown corporation exemption, except to state the observations in Q22 above.

Conclusion

SaskEnergy and TransGas are thankful for the opportunity to provide these comments.

Increased regulatory burden ultimately increases costs for our customers. Even the prospect of new regulation in Canada is drawing on staff resources, and affecting the way we do business, as are the new regulations elsewhere. The Committee should ensure the benefit of any mischief to be avoided justifies the cost to the ultimate consumer.

If the mischief perceived can be substantially addressed with a *de minimis* exemption, in particular, then a *de minimis* exemption seems to be one way of balancing cost and benefit. The reasoning behind this exemption in the United States might again be examined.

Where any doubt exists that the benefits of the new regulatory regime will not warrant its cost, direct and indirect, SaskEnergy would argue for some caution, some care, and potentially a narrower scope. A public interest exemption or exemptions specific to the utility or Crown corporations should also be considered.

Respectfully submitted,

SASKENERGY INCORPORATED

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