



January 25, 2012

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 91-403 *Derivatives: Surveillance and Enforcement*

Dear Members of the Canadian Securities Administrators Derivatives Committee:

Direct Energy Marketing Limited (“Direct”) hereby respectfully submits comments on the Canadian Securities Administrators (“CSA”) Consultation Paper 91-403 *Derivatives: Surveillance and Enforcement* (“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 its 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 in crafting a framework for regulation of the over-the-counter (“OTC”) derivatives market in Canada. Direct appreciates the daunting task facing the Committee. Direct has previously submitted Comments on Consultation Paper 91-403 *Derivatives: Surveillance and Enforcement* and will endeavor not to repeat the suggestions previously provided.

Although this Consultation Paper is at a very high level, Direct expects that more detailed proposals will be forthcoming from the Committee. Direct stands ready to work with the Committee and the provincial regulatory bodies in moving forward with comments and recommendations regarding subsequent detailed proposals governing the regulation of the OTC derivatives market. Ultimately, it is the details of the proposed rules that will be the most challenging for both the regulated entities and the regulated to deal with. Hence, detailed proposals are essential to move this project forward. Direct looks forward to working with the Committee on subsequent detailed proposals that we assume will be forthcoming.

The comments offered here by Direct focus on higher level concepts with a focus on the energy portion of the OTC derivatives market. Direct encourages the Committee to integrate these high level concepts into its overall structure. Direct respectfully offers the following observations.

III. COMMENTS ON THE CONSULTATION PAPER

A. Comments on the Overall Scope of the Proposal

Direct appreciates that the CSA represents the various Securities Regulatory bodies across all of the Canadian provinces. As such, the Consultation Paper speaks in terms of setting up provincial-level surveillance and monitoring, market rules and enforcement programs.

Surveillance and monitoring of OTC derivatives markets is a critical function in light of the G20 commitments to implement certain regulatory reforms for the OTC derivatives market, such as exchange trading, central clearing, trade reporting and capital requirements. Thus, Direct recommends that the Committee sponsor comprehensive legislation in Canada that provides regulators with the proper tools to monitor OTC derivatives markets, prevent disruptive and manipulative trading practices, and enforce laws to maintain orderly markets. Specifically, the Committee should consider delegation of surveillance and monitoring responsibilities to agents, such as designated data repositories and/or a centralized self-regulatory organization (“SRO”).

B. Importance of a Common Regulatory Framework.

A common reporting framework and a limited number of data repositories or a designated SRO (collectively, “data repositories”) that receives the data serves the interests of both the regulated and the regulators. As a potential reporting entity, Direct submits that it is neither constructive nor cost-effective to be required to report information to multiple data repositories with differing reporting and recordkeeping rules. Likewise, consistency among Canadian jurisdictions in both the definition of market rules and the application of those rules is also important for the continued success of the Canadian markets. For example, it may be difficult for smaller market participants to participate in multiple provincial markets if the essential terms defining trading of derivatives differ by province. Further, a consistently applied cross-province approach will be much less likely to produce different and potentially conflicting results in application, reporting and enforcement of the rules.

Additionally, from a regulatory perspective, data repositories with a centralized reporting framework would benefit all regulatory agencies by presenting data in a uniform and consistent manner. From the regulator’s perspective, information sharing via a single data repository would also serve to reduce the burdens on the individual provincial regulatory bodies. A centralized reporting process that makes data available to all regulators in a consistent manner eliminates the need to reconcile data and thus reduces the burden on individual provincial regulatory bodies.

Uniformity in recordkeeping requirements will expedite the development of software and systems and minimize the compliance burdens market participants will encounter in order to comply with the requirements. In earlier comments (in response to Consultation Paper 91-402 on Derivatives: Trade Repositories), Direct did not take an affirmative position on the seven (7) year record retention requirement. However, given that the U.S. Commodity Futures Trading Commission (“CFTC”) has now established a five (5) year retention period from the termination of the swap, Direct would strongly encourage the Committee to adopt the same five (5) year record retention requirement for all entities except the data depository. In addition, a requirement that such documents be produced in a reasonable period of time upon request by the appropriate regulators coupled with the above retention requirement provides regulators with the assurance that the data will be available following the termination of any

OTC derivative transaction. Having to produce records on a real-time or even daily basis adds considerable costs and increases computer infrastructure requirements for all market participants, especially since some of the technology for such recordkeeping is in the early stages of development.

C. Confidentiality of Information

Confidentiality of transaction-level detailed information is important to the market participants. With the data repositories and individual provincial agencies monitoring OTC derivative transactions, maintaining confidentiality of the information is essential. Knowledge of a participant's position in the market is extremely sensitive commercial information. Third party market participants with information as to another party's position would be able to take advantage of that knowledge in a number of ways to gain an advantage in subsequent commercial dealings. Hence, any regulatory oversight program must recognize the confidential nature of the dealings of the various market participants and develop appropriate confidentiality and market conduct rules that prohibit the sharing of such commercially sensitive information.

D. Market Manipulation and Fraud

Direct understands the Committee's recommendation to adopt anti-manipulation and anti-fraud rules comparable to existing provincial securities laws and national legislation. As the Committee points out, the United States ("U.S.") has adopted new anti-manipulation and anti-fraud rules which broaden the authority of both the CFTC and the Securities and Exchange Commission. In the Consultation Paper, the Committee summarized the U.S. CFTC Rules as follows:

Rule 180.1 broadly prohibits manipulative and deceptive devices and contrivances, employed intentionally or recklessly, regardless of whether the conduct in question was intended to create or did create an artificial price. Rule 180.2 codifies the CFTC's long-standing authority developed in case law to prohibit price manipulation by making it unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of a registered entity.

In giving consideration to implementing anti-fraud and anti-manipulative behavior in the OTC derivatives markets in Canada, the Committee should be careful to distinguish between market manipulation and fraud directed toward the OTC derivatives market and the securities market. Second, the Committee needs to consider establishing the appropriate level of scienter or intent in establishing the threshold for market manipulation. Direct encourages the Committee to establish a clear scienter threshold in addition to safe harbor provisions that the derivatives markets may rely upon. In the U.S., the CFTC established an intentional and reckless behavior standard as the threshold for market manipulation. The Committee needs to recognize that there could be instances of miscommunication leading to inadvertent execution of transactions that result in market manipulation allegations. In such instances, the market participants should be given a safe harbor for good faith mistakes. Regardless of the level of scienter established, the Committee should provide as much detail about the scienter requirements with specific examples and/or provide parallel examples from other Canadian agencies.

E. Enforcement

Direct agrees with the Committee that the provincial market regulators must have the ability to investigate and enforce regulations proscribing improper market conduct. Once again, Direct encourages the Committee to facilitate a coordinated and consistently applied approach in the implementation of any enforcement agenda. Doing so will ensure that there are not differing standards and applications across the Canadian provinces. Consistent application of the enforcement of rules adopted will serve the interests of both the regulated and the regulator.

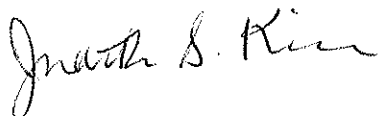
F. Position Limits

The Committee is following the appropriate path in addressing the question of position limits. Before establishing position limits, it is necessary for the Committee to be cognizant of the level of trading in the currently unregulated OTC derivatives market. Once the size and liquidity of the market are better known and understood, then the issue of position limits would be subject to consideration. Moving to address the issue of position limits without first knowing and understanding the size of and activity in the OTC derivative markets runs the risk of imposing limits that do damage to that very market. Direct supports the path chosen by the Committee in regard to position limits.

IV. CONCLUSION

Direct thanks the Committee for the opportunity to present these comments. Direct believes that the Committee's approach to regulatory reform – with enforcement at the provincial level consistently applied and interpreted throughout Canada – will result in an effective regulatory approach. 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 in the development and application of market conduct rules and surveillance. Such a coordinated and consistent approach will be the 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 1-713-877-5813.

Regards,



Judith S. Kim
Senior Counsel
Direct Energy
12 Greenway Plaza, Suite 250
Houston, Texas 77046
Judith.Kim@directenergy.com