Suncor Energy Inc.
P.O. Box 2844
150 – 6th Avenue S.W.
Calgary, AB T2P 3E3
Tel 403-296-8000
Fax 403-296-3030
www.suncor.com

June 17, 2013

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

c/o:
John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8
e-mail: jstevenson@osc.gov.on.ca

c/o:
Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
e-mail: consultation-en-cours@lautorite.qc.ca

RE: ***CSA Consultation Paper 91-405 - End User Exemption; Comments on the Proposed End User Exemption for Derivatives***

Dear Sirs/Mesdames:

I. INTRODUCTION.

Suncor Energy Inc. and its subsidiaries and affiliates (collectively "**Suncor**") hereby respectfully submit comments on the Canadian Securities Administrators ("**CSA**") Staff Consultation Paper 91-405 – *Derivatives: End-User Exemption* ("**Consultation Paper**") published by the CSA over-the-counter (OTC) Derivatives Committee on April 13, 2012. Suncor appreciates the opportunity to submit these comments on the Consultation Paper and looks forward to working with the Committee as it moves forward to implementing Canada's G-20 commitments that relate to the regulation of the trading of derivatives in Canada through its participation in the Alberta Securities Commission Derivatives Advisory Committee.

Suncor is the fifth largest North American energy company and is headquartered in Calgary, Alberta. Suncor's operations include oil sands development and upgrading, conventional and offshore oil and gas production, petroleum refining, and product marketing (under the Petro-Canada brand). Suncor's common shares are listed on the Toronto Stock Exchange and the New York Stock Exchange under the symbol "SU." Suncor's Energy Trading business is organized around four main commodity groups – crude oil, natural gas, sulphur, and petroleum coke. Suncor's customers include mid- to largesized commercial and industrial consumers, utility companies, and energy producers. The Energy Trading business is used as a mechanism to support the marketing of Suncor's oil sands production by optimizing price realizations, managing inventory levels during unplanned outages at Suncor's facilities, and managing the impacts of external market factors, including pipeline disruptions or outages at refining customers. The Energy Trading business has entered into arrangements for other midstream infrastructure, such as pipeline and storage capacity in order to optimize delivery of existing and future growth production, while generating trading earnings on select strategies and opportunities.

II. COMMENTS OF SUNCOR ENERGY.

A. There Should be Consistency Between the Consultation Paper and the CSA's Registration Requirements.

Both the Consultation Paper and the CSA's recent release on registration requirements for Derivatives Dealers (the "Registration Consultation Paper")[1] address the regulatory status of market participants in Canadian Derivatives markets. As such, and as discussed more completely in Suncor's comments on the Registration Consultation Paper (the "Registration Comments"), the two Consultation Papers should be consistent. For instance, both documents focus on "the business of trading derivatives." In the Consultation Paper that phrase is the key criterion in determining whether an entity can qualify for the end-user exemption (*i.e.*, entities not engaged in such business are eligible for the exemption). However, in the Registration Consultation Paper the phrase is used to designate entities that must register as Derivatives Dealers. As discussed in the Registration Comments, this phrase is potentially overly inclusive and the proper focus should be on entities that are in the "business of dealing in derivatives" as trading generally refers to activities beyond derivatives dealing.

Another area where the two Consultation Papers should work in tandem is in the context of eligibility for the Consultation Paper's end-user exemption. Specifically, the end-user exemption should be available for all market participants other than those entities required to register as Derivatives Dealers.

Finally, there is inconsistency in the products addressed throughout the two Consultation Papers. The Consultation Paper refers to "derivatives" and "OTC derivatives" throughout the paper on an inconsistent basis. However, the Registration Paper only discusses "derivatives". The difference in qualities and risk characteristics between "OTC derivatives" and all other types of "derivatives" are significant. Therefore it is crucial that additional clarity and consistency is provided as to which products are in scope for the various potential regulations.

B. The End-User Exemption Should Be Available at the Transaction Level.

Non-financial entities should not lose the ability to rely upon the end-user exemption simply because they engage in speculative trading. The CSA states that "speculation does not involve mitigating commercial risk related to the operation of a commercial business because it is based on a trading strategy independent of other aspects of the business."[2] That is not the case. As discussed, in the Registration Comments, speculative trading activity is legitimate commercial activity that directly impacts a company's core business. Speculation can be a key component in an energy firm's core physical business and its hedging strategy. Specifically, to properly value their assets, energy market participants often use speculative trading as a means of price discovery. That price discovery is

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1 Canadian Securities Administrators Staff Consultation Paper 91-4071 –*Derivatives: Registration* (April 18, 2013).

2 Consultation Paper at 9.

necessary to properly value physical and financial assets and to hedge efficiently. As currently structured, the end-user exemption places energy market participants in the unenviable position of having to choose between using the end-user exemption and the ability to conduct price discovery.

Suncor respectfully requests that the CSA provide for an end-user exemption on a transactional basis. The exemption should be available to all non-Derivative Dealer, non-financial entities when they engage in hedging transactions. To do otherwise would exclude legitimate hedging transactions from the end-user exemption simply because the entity engaged in other legitimate derivatives trading activity.

C. Portfolio and Dynamic Hedging Should be Permitted for Purposes of the End-User Exemption.

Finally, Suncor suggests that the CSA provide clarification as to the types of transactions that will be deemed hedges for the purposes of the end-user exemption. Specifically, Suncor requests that the CSA explicitly state that portfolio hedging satisfies the end-user exemption hedging requirement. Most energy companies will combine multiple underlying positions together and then transact derivatives to "hedge" this net combined position. This is known as portfolio hedging. Portfolio level hedging is a long-established risk management practice in swap markets for both market risk (*i.e.,* the view a firm's portfolio takes on the market) and credit risk (*i.e.,* the overall credit exposure to one counterparty or a group of counterparties). It is the only practical and effective way that to hedge positions in complex organizations with dynamic underlying physical and financial exposures. Requiring swap market participants to adopt a transaction-by-transaction approach to hedging, and thus risk management, to utilize the end-user exemption would force market participants to choose between optimal risk management and regulatory benefit.

III. Conclusion.

Suncor thanks the Committee and the CSA for the opportunity to comment on the Consultation Paper and hopes that the Committee takes these comments into consideration as it finalizes these rules. Suncor respects the efforts of the CSA to regulate the Canadian OTC derivatives market and will continue to provide support and feedback to the CSA as it publishes further consultation papers to regulate the Canadian OTC derivatives market.

Should the Committee have any questions, or if Suncor may be of further assistance, please contact the undersigned.

Yours truly,
Suncor Energy Inc.

Curtis Serra
Director, Legal Affairs
Supply, Trading & Corporate Development