VIA EMAIL

June 17, 2013

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

Care of:

John Stevenson, Secretary Ontario Securities Commission 20 Queen Street West, Suite 1900 Toronto, Ontario M5H 3S8	and	Anne-Marie Beaudoin, Secrétaire de l'Autorité Autorité des marchés financiers 800 square Victoria, 22e étage Montréal, Québec H4Z 1G3
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Re: Canadian Securities Administrators ("CSA")
Consultation Paper 91-407, Derivatives: Registration

Dear Members of the Canadian Securities Administrators:

Bruce Power L.P. hereby submits comments to the Canadian Securities Administrators Derivatives Committee (the "Committee") with respect to CSA Staff Consultation Paper 91-407, Derivatives: Registration dated April 18, 2013 ("Consultation Paper 91-407"). We thank you for providing interested parties with the opportunity to submit comments and look forward to further participation in this important process.

Bruce Power operates the world's largest nuclear site and is the source of roughly 25 per cent of Ontario's electricity. The company's site in Tiverton, Ontario is home to eight CANDU reactors, each one capable of generating enough low-cost, reliable, safe and clean electricity to meet the annual needs of a city the size of Ottawa. Formed in 2001, Bruce Power is an all-Canadian partnership among TransCanada, Cameco, Borealis Infrastructure Management (a division of the Ontario Municipal Employees Retirement System) as well as the Power Workers' Union and the Society of Energy Professionals. Bruce Power is involved in the electricity wholesale market in Ontario and also sells electricity at the retail level in Ontario.

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Rather than provide responses to all of the questions set forth in Consultation Paper 91-407, we wish to focus on a few key areas, namely (i) clarification on the rationale for the registration requirements and the need for a *de minimis* exemption, (ii) the definition of "qualified parties", (iii) clarification on the business trigger for trading and (iv) threshold levels for Large Derivative Participants.

I. Rational for Registration of Derivative Dealer and *De Minimis* Exemption

We understand that the key objectives that Canada and other G20 members are striving for in reforming the derivatives market are to mitigate systemic market risk, improve transparency and protect against market abuse. To achieve these goals, we recognize and accept that market participants will be faced with increased regulatory burdens. The administrative burdens that are imposed on market participants, however, should be proportionate to the risk that regulatory authorities are hoping to protect against.

Through various consultation papers released to date, it is clear that market participants will be required to comply with a number of rules aimed at mitigating systemic risk and market abuse and improving transparency, including the clearing of derivatives and derivatives data reporting.

The registration regime as described in Consultation Paper 91-407 imposes a significant administrative burden on market participants that are required to register. We are aware that the CFTC has implemented a registration regime and that Consultation Paper 91-407 intends to implement a similar regime in Canada. It would be helpful if the Committee could articulate the rationale for requiring a similar registration regime *in the Canadian context* so that market participants would have a more informed view as to whether this administrative burden is proportionate to the risk that is trying to be addressed. Excessive or unnecessary administrative burden could have unintended consequences, including discouraging new or existing market participants from participating in the derivatives market.

If the Committee believes that this registration regime is necessary in its current form, then we would encourage the Committee to implement a *de minimis* exemption similar to that adopted by the Commodity Futures Trading Commission (CFTC) with comparable levels. Since lower volumes of derivative trading would arguably not give rise to a significant level of market risk, it seems reasonable that the registration requirements should only be required for participants whose trading activity in the Canadian derivatives market – and the corresponding potential risk in connection therewith - is substantial. There should be a reasonable and proportionate balance between any regulatory/administrative burden and the risk that the regulatory regime purports to address.

II. Qualified Party

In order to prevent any potential misunderstanding as to whether or not a person is a "qualified party" for purposes of derivative trading, we would suggest that the Committee define "qualified party" in a manner consistent with the definition of "eligible contract participant" under the U.S. *Commodity Exchange Act*. The thresholds based on total assets provide an adequate level of certainty.

III. Clarification on Business Trigger for Trading

We note that no definition of "derivative" is included in Consultation Paper 91-407. In providing these comments, we have assumed that the exclusions set forth in Consultation Paper 91-301 (Model Provincial Rules- Derivatives: Product Determination and Trade Repositories and Derivatives Data Reporting) are intended to apply. Since our reading of Consultation Paper 91-301 is that electricity retail contracts settled through utilities would be excluded from the definition of derivatives, these types of "derivatives" contracts and any advice provided in connection therewith would not in their own right trigger registration requirements. It would be helpful if the Committee confirmed that the definition of derivatives under Consultation Paper 91-407 should be interpreted in the context of the definition of "derivatives" in the *Securities Act* and the exclusions referred to in Consultation Paper 91-301.

Consultation Paper 91-407 sets out quite clearly what *trading* in derivatives means. It is less clear, however, what is meant by "carrying on the business of trading in derivatives" and whether the factors referenced in paragraph 6.1(b) of the paper are appropriate. The factors set forth in clauses (i), (iii) and (v), that is, intermediating trades, trading with the intention of being remunerated and providing clearing services to third parties, seem reasonable to us since they make it clear that the entity is dealing in derivatives not solely on its own behalf but on the behalf of third parties. We would suggest that a person that trades derivatives solely on its own behalf and not on behalf of third parties should not be deemed to be "in the business" of trading derivatives. If the Committee does not share this broad approach, then the other factors set out in paragraph 6.1(b) are more problematic in our view and may be overly broad:

(ii) *Acting as a market maker*: The wording suggests that a person may be carrying on the business of dealing in derivates if that person takes both a long and a short position in a derivative. This might be overly broad and might capture companies/traders who sell at a given price and then buy at another price to lock in value.

(iv) *Directly or indirectly soliciting*: This wording could potentially capture companies/traders that contact brokers to find out if there is interest from another party to buy/sell.

(vi) *Trading with a counterparty that is a non-qualified party*: A company that is not already registered as a derivatives dealer would likely not engage in trades with a non-qualified party to avoid registration requirements. This may well result in fewer market opportunities for the non-qualified counterparty. This issue may not be relevant, however, if the threshold for a "qualified party" is, as mentioned above, in line with the *Commodity Exchange Act* definition of "eligible contract participant."

(vii) *Engaging in activities similar to a derivatives dealer*: The scope of this factor is not entirely clear to us.

As a related issue, paragraph 6.1(a) of Consultation Paper 91-407 suggests that if a person is registered as a derivatives dealer and provides advice that is incidental to a derivatives trade, then that person will be exempt from the requirement to register as a derivatives adviser. We would appreciate clarification from the Committee whether this exemption would also apply to a person who provides some advice/suggestions in connection with, but incidental to, a derivatives trade but is not required to register as a derivatives dealer.

IV. Large Derivative Participant (LDP)

To avoid uncertainty as to whether or not a person would be required to register as an LDP, we would request that exposure or other concrete thresholds be provided to assist in the determination of when "counterparty exposure that could pose serious risk to Canadian financial markets" is triggered.

Bruce Power thanks the Committee for this opportunity to provide comments on Consultation Paper 91-407, and we look forward to future input and involvement as the Committee moves forward to put in place regulations governing derivatives.

Yours truly,

Bill Schnurr
Assistant General Counsel