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Dear Sirs/Mesdames:

TransCanada Corporation (TransCanada) is pleased to submit its comments in response to *CSA Consultation Paper 91-407 – Derivatives: Registration* (Consultation Paper 91-407) drafted by the Canadian Securities Administrators Derivatives Committee (the Committee).

With more than 60 years' experience, TransCanada is a leader in the responsible development and reliable operation of North American energy infrastructure including natural gas and oil pipelines, power generation and gas storage facilities. TransCanada operates a network of natural gas pipelines that extends more than 68,500 kilometres, tapping into virtually all major gas supply basins in North America. TransCanada is one of the continent's largest providers of gas storage and related services with more than 400 billion cubic feet of storage capacity. A growing independent power producer, TransCanada owns or has interests in over 11,800 megawatts of power generation in Canada and the United States. TransCanada is developing one of North America's largest oil delivery systems.

TransCanada constructs and invests in large infrastructure projects, purchases and sells energy commodities, issues short-term and long-term debt, including amounts in foreign currencies, and invests in foreign operations. These activities expose the company to market risk from changes in commodity prices, foreign exchange rates and interest rates. TransCanada uses derivatives as part of its overall risk management strategy to assist in mitigating the impact of these market risk exposures.

TransCanada is a member of the Canadian Energy Derivatives Working Group (Working Group), which is made up of a group of Canadian energy companies that was formed to consider Canadian regulatory and legislative developments with respect to the use of energy derivatives. A comment letter provided to the Committee by Dentons Canada LLP (Dentons) on behalf of the Working Group addresses certain of the concerns raised by the Working Group. TransCanada echoes these concerns.

In addition to the comments raised in the letter from Dentons, TransCanada respectfully submits the following concerns and observations with regard to Consultation Paper 91-407:

1. **Harmonization of rules** – Many Canadian companies transact in several Canadian provinces, therefore to ease the burden of compliance it is important to align the requirements and timelines of the rules for each of the provinces. In addition, many Canadian companies that engage in derivative transactions are also subject to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd Frank) in the US. For greater understanding across the industry and ease of application, TransCanada respectfully suggests aligning the requirements and definitions in the Canadian rules as much as possible with those of the US, our largest trading partner. For example, under the proposed Canadian rules, a "derivatives dealer" has a much different definition from the CFTC's "swap dealer" definition. These differences will make the application and understanding of the rules in Canada much more challenging, and the lower derivatives dealer threshold in Canada and resulting increased compliance burden will put Canadian companies at a significant competitive disadvantage to US companies. It is worth noting that as of the date of this letter, no US energy companies have registered as swap dealers under Dodd Frank.

2. **Distinction between dealing and trading** – Section 6.1(b) of Consultation Paper 91-407 outlines the business triggers for trading, which have some similarities to the CFTC's definition of a swap dealer, but the CFTC specifically articulated that "routine presence in the swap market is not necessarily indicative of making a market in swaps. For example, persons may be routinely present in the market in order to engage in swaps for purposes of hedging, to advance their investment objectives, or to engage in proprietary trading."[1] Section 4.1 of Consultation Paper 91-407 summarizes the International Organization of Securities Commissions (IOSCO) recommendations that registration would generally include persons in the business of dealing in derivatives, and should not include end users or other persons entering derivatives that are not engaged in the business of dealing, making a market or intermediating trades. While TransCanada agrees that entities whose primarily business is derivatives dealing should be subject to the registration requirements, it is important to make sure the distinction between *dealing* and *trading* is clear to ensure that only those entities that are *dealing* in derivatives (and therefore potentially creating systemic risk) are scoped into the registration requirements.

3. **Definition of derivative** – The CSA has not defined "derivative" in Consultation Paper 91-407. It is very important to clearly define what a derivative is in the context of the proposed rules, and carefully evaluate which types of derivatives are considered to create significant risk in the financial markets and should therefore be subject to the proposed regulations. TransCanada suggests the CSA consider developing a definition of derivative consistent with that of Dodd Frank.

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[1] CFTC Federal Register Volume 77, No. 100, May 23, 2012

4. **Lack of end-user exemption** – *CSA Consultation Paper 91-405 – Derivatives: End User Exemption* (Consultation Paper 91-405) describes an end-user exemption available to market participants that use derivatives to mitigate risks related to the operation of their business. This exemption has not been addressed in the context of the requirement to register under Consultation Paper 91-407. As noted in Consultation Paper 91-405, this exemption is appropriate because the activities of end-users are limited in relation to the overall market, and do not represent a substantial risk to the market. The end-user exemption paper implies that one speculative trade would preclude an entity from using the end-user exemption. However, proprietary trading for a qualified party's own account does not create systemic risk, which the CFTC has recognized and has specifically commented that proprietary trading may not be indicative of swap dealing activity. TransCanada respectfully suggests that the Committee consider an exemption from registration for end-users and broaden the scope of the end-user exemption for those that use derivatives for their own account.

5. **Lack of de miminis threshold** – Because the business triggers for trading are written very broadly and there is no end-user exemption, virtually every Canadian entity that enters into derivative transactions will be scoped into the registration requirements. The unintended consequence of this may be certain participants withdrawing from the derivatives market because the registration requirements are too onerous. In addition, some companies that may qualify for an end user exemption as described in Consultation Paper 91-405 may have a small amount of trades that may not meet the specific end-user exemptions, but overall these trades may not contribute to systemic risk within the market. The existence of a de minimis threshold would exempt these entities from the registration requirements, but the requirement to report the trades would remain, keeping Canadian energy companies on a level playing field with its US peers.

TransCanada hopes these comments will be useful to the Committee in their deliberations. If you have any questions or would like to discuss any of these matters, please do not hesitate to contact us.

Yours very truly,

Nancy Johnson, CA
TransCanada Corporation
Director, Market Risk Analytics and Reporting

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