

September 6, 2013

Sent via EMAIL

Ontario Securities Commission

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
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Re: Ontario Securities Commission (“OSC” or the “Commission”) Proposed Rule 91-506 Derivatives Product Determination and Companion Policy 91-506CP; and Proposed Rule 91-507 Trade Repositories and Derivatives Data Reporting and Companion Policy 91-507CP (“Updated Model Rules”)

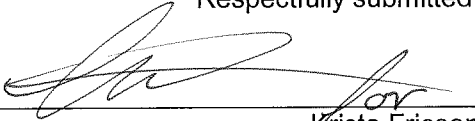
Dear Members of the OSC Derivatives Committee:

BP Canada Energy Group ULC and its affiliates (“BP Canada”) are appreciative of this opportunity to provide comments on the aforementioned rules and companion policies, and would like to advise the OSC that its substantive comments on the revised Updated Model Rules have been captured in its letter to the Canadian Securities Administrators (“CSA”) dated September 6, 2013, attached herein.

To enable a smooth transition and efficient implementation of the Updated Model Rules, BP Canada recommends to the OSC that the effective date for the proposed rules be concurrent with the implementation of similar rules in other Canadian jurisdictions, and that reasonable notice in advance of implementation be provided to market participants.

BP Canada respectfully requests that the Commission consider its comments as set forth in the attached comment letter to the CSA, and if any questions or concerns arise, or if we may be of further assistance, please do not hesitate to contact the undersigned.

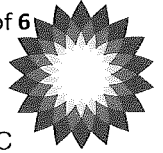
Respectfully submitted,



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BP Canada Energy Group ULC

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**Re: Canadian Securities Administrators (“CSA” or “Committee”) Consultation
Paper 91-302 – Updated Model Rules: Derivatives Product Determination and Trade
Repositories and Derivatives Data Reporting (“Updated Model Rules”)**

Dear Members of the CSA Derivatives Committee:

This letter sets out the comments of BP Canada Energy Group ULC and its affiliates (“BP Canada”) with respect to the CSA Updated Model Rules. Specifically, BP Canada provides comments on the CSA Derivatives: Product Determination rule (“Scope Rule”), the Trade Repositories and Derivatives Data Reporting rule (“TR Rule”), as well as the Model Explanatory Guidance as it relates specifically to the Scope Rule and the TR Rule (“Explanatory Guidance”).

BP Canada is appreciative of this opportunity to provide comments on the aforementioned rules, and looks forward to continually engaging and cooperating with the regulators and market participants on future regulation related to Over-The-Counter (“OTC”) derivatives markets.

In Canada, BP Canada buys and sells hydrocarbon production and requirements for the BP group of companies. It is a major purchaser, marketer and trader of Canadian natural gas and power, and is a major trader of crude oil and purchaser of Canadian crude oil for BP's refineries in the United States. As such, BP Canada participates in the Canadian OTC energy derivatives markets and manages risk and optimizes value across physical and financial OTC markets.

BP Canada commends the Committee for its detailed consideration of the public comments received in respect of CSA Consultation Paper 91-301 - Model Provincial Rules: *Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting* ("Rule 91-301"), and the resulting revisions and clarity offered within the Updated Model Rules. We also strongly support the CSA's view that instruments requiring physical delivery of an underlying commodity should be excluded from the requirements attaching to derivatives contracts, and appreciate the efforts this Committee has used to better capture the needs of industry participants transacting in physical commodities.

Nevertheless, BP Canada continues to be concerned that the exclusionary language of the Scope Rule and associated Explanatory Guidance has the potential to inadvertently capture physical transactions as derivatives - particularly physical commodity transactions within standardized industry contracts. As well, BP Canada wishes to express the need for the Updated Model Rules to explicitly consider and incorporate the principle of substituted compliance and consistency across Canadian and foreign jurisdictions. The certainty of reporting requirements, derivative classification and treatment of market participants across jurisdictions will encourage and foster access into the Canadian OTC derivatives market, as well as maintain existing market activities and liquidity.

BP Canada appreciates the revisions and additional clarification provided by the Committee within the Explanatory Guidance; however, it is still not clear as to the weight such supplementary material will be given by the regulators, and should be applied by market participants, when interpreting and implementing the Updated Model Rules. As such, BP Canada continues to seek clarification on the force and effect of the Explanatory Guidance.

To remedy the limitations of the Updated Model Rules and the uncertainties as to the role of the Explanatory Guidance, BP Canada proposes that:

- (i) the Explanatory Guidance for the Scope Rule, as well as the Scope Rule itself, be amended to more precisely capture the various events of default defined within standardized industry contracts for physical commodities and the counterparties' options in dealing with such events of default;
- (ii) the TR Rule include a provision that captures the CSA's recognition of substituted compliance by a market participant reporting to an equivalent foreign trade repository, and the adoption of globalized reporting standards by jurisdictional regulators; and
- (iii) Explicit force and effect be provided to the Explanatory Guidance to allow for consistent interpretation and implementation by the local regulator(s), affected market participants, as well as other Canadian and foreign regulators.

In addition to the general comments above and for further clarity, BP Canada has provided more specific comments on the proposed Scope Rule and TR Rule below.

Scope Rule

Definition of Excluded Derivatives and Guidance

Section 2(d)(i) of the Scope Rule states that a physical commodity transaction is characterized as an *excluded derivative* if the counterparties intend to physically settle the transaction at the time of execution. The Explanatory Guidance clarifies that when determining whether counterparties meet the “intention” requirement of Section 2(d)(i), regulators may consider a provision allowing cash settlement triggered by a termination right that results from an event of default to be consistent with the required *intent* to physically deliver.

BP Canada suggests that while this language could be interpreted by industry participants to include standardized industry contracts for physical commodities within the *excluded derivative* category, greater clarity is required in the Explanatory Guidance to form this interpretation. Standardized contracts such as (but not restricted to) the Gas Electronic Data Interchange Base Contracts (“EDI”) and North American Energy Standards Board Base Contract for the Purchase and Sale of Natural Gas (“NAESB”) both contemplate a cash settlement in place of physical delivery where certain situations occur. For example, both types of contracts allow a counterparty to demand cash settlement for: non-payment of a monthly invoice; insolvency or bankruptcy; failure to provide and maintain Performance Assurance; or a default under any credit annex. BP Canada believes that the language of the Explanatory Guidance should capture these types of circumstances, which reflect the reality of commercial relationships between counterparties, and seeks clarity of this interpretation.

Moreover, the Explanatory Guidance pertaining to Section 2(d)(ii) of the Scope Rule does not clearly capture all of the instances in which a standardized physical energy contract could provide for cash settlement without negating an intent to deliver. The examples provided in the Explanatory Guidance are commonly items listed in physical industry standard force majeure clauses; as such, one might regard the exception as only applying in force majeure circumstances. Although there are some circumstances in which counterparties will cash settle a physical energy contract that has been frustrated by a force majeure, it is more often the case that a declaration of force majeure will relieve counterparties from contractual obligations and neither cash nor physical settlement occurs.

Therefore, BP Canada recommends that the Explanatory Guidance be amended to make clear that Canadian regulators will not consider the various circumstances allowing for cash settlement which are common to standardized industry contracts such as non-payment, insolvency, failure to provide performance assurance, or a default under a credit annex to indicate a negation of the counterparties intent to physically settle under that contract.

In addition, BP Canada requests that the Scope Rule itself be redrafted in Section 2(d)(ii) to incorporate the Committee’s intention to allow the cash settlement of certain physical commodity transactions. As it currently stands, the language of Section 2(d)(ii) is narrow. Consistent with its prior comments to the CSA on Rule 91-301 dated February 4, 2013, BP Canada continues to advocate the following definition for a “physical commodity contract” within the Scope Rule in order to ensure that standardized industry physical commodity contracts are included in the derivatives exemption:

- 2(d)** a contract or instrument for delivery of a commodity other than cash or a currency that,
- (i) is intended by the counterparties to be settled by delivery of the commodity, and
 - (ii) does not allow for cash settlement in place of delivery except (A) upon events of default in accordance with the contractual terms or provisions agreed upon between the parties and where such cash settlement is not the ordinary method of settlement for such contracts, or (B) where all or part of the delivery is rendered impossible or commercially unreasonable by an intervening event or occurrence not reasonably within the control of the counterparties, their affiliates, or their agents.

Providing further clarity in the language and intention within Section 2(d) of the Scope Rule and the associated Explanatory Guidance will provide certainty and reduce confusion for market participants relying on standardized industry contracts for physical commodities, such as EDI and NAESB contracts. BP Canada cautions the CSA that such provisions for cash settlement within standardized contracts facilitates trading and where certainty as to the treatment of such contracts is not provided, this may discourage market participants from entering into, or maintaining, commercial activities within the Canadian OTC derivatives market.

BP Canada would also like to note that its concerns regarding restrictions on cash settlement are shared by others such as the International Swaps and Derivatives Association, Inc. ("ISDA") as will be evidenced in a forthcoming ISDA comment letter.

TR Rule

1. Reporting of Derivatives Transactions

BP continues to seek clarification from the Committee as to the timing and frequency of the required reporting, as well as the recognition of, and harmonization with, foreign reporting standards.

Inconsistencies continue to exist between the timing of reporting required within Section 33 of the TR Rule, directed towards general reporting requirements, and Section 26, directed towards reporting of pre-existing derivatives. For example, in circumstances where timestamps are not available for pre-existing transactions, Section 33 requirements would not be satisfied. This concern will also be highlighted by ISDA in its comment letter.

Further, BP Canada wishes to restate its comments made in its prior submissions to the CSA regarding Rule 91-301 on providing sufficient time to market participants to make necessary technological and systems modifications, as well as harmonizing reporting identifiers and data fields in accordance with international standards and practice. For example, further clarity is required within Section 28 of the TR Rule to incorporate the Explanatory Guidance note that the interpretation of the term "technologically practicable" will consider and respect differences between standards used in different industries and the differences in sophistication of various market participants. As well, BP Canada wishes to express the need for consistency between Canadian regulatory reporting requirements and the reporting requirements set out in the U.S. *Dodd-Frank Wall Street Reform and*

*Consumer Protection Act*¹ in order to foster commercial efficiency in the North American OTC derivatives market.

2. Data Dissemination and Access to Data

BP Canada seeks further clarification from the CSA within the TR Rule as to which jurisdictional repositories are considered equivalent to the local jurisdictions' reporting regime(s).

Clear rules and guidance on repository reporting requirements are critical for certainty and risk mitigation by market participants in the OTC derivatives market. In particular, clarity on which Canadian and foreign jurisdictional repositories are considered equivalent to the local jurisdiction reporting regime is necessary given the complexity of multiple Canadian and foreign jurisdictions and agencies that will have oversight responsibility for the OTC derivatives market. BP Canada suggests the CSA include a provision within the TR Rule that captures the principle of substituted compliance and establishes a process between Canadian and foreign jurisdictional regulators. This process should ensure transparency and facilitate access to trade data necessary for each regulator to fulfil its respective oversight objectives.

Section 39 of the TR Rule sets out the parameters for disclosures of data to the public. BP Canada is of the opinion that the CSA has addressed its concerns regarding public disclosure by revising the data fields in Appendix A to the Updated Model Rules required to be publically disseminated by market participants; however, BP Canada would like to caution the CSA that the need to preserve confidentiality and anonymity of the data being provided to and disseminated by the trade repository is of utmost priority.

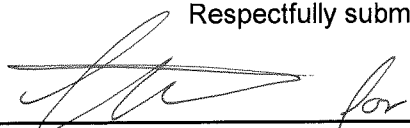
Conclusion

We appreciate this opportunity to comment, and BP Canada respectfully requests that the CSA consider its comments set forth herein regarding the Updated Model Rules.

To enable a smooth transition and efficient implementation, BP Canada recommends that the effective date for the TR Rule be concurrent with the implementation of similar rules in other Canadian jurisdictions, and that reasonable notice in advance of implementation be provided to market participants.

If you have any questions, or if we may be of further assistance, please contact the undersigned.

Respectfully submitted,



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¹ Pub.L.III-203, H.R. 4173, sec. 721(a)(47), online: U.S. Government Printing Office:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf.

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