September 6, 2013

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Saskatchewan Financial Services Commission

VIA ELECTRONIC MAIL

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Re: Multilateral CSA Staff Notice 91-302: Updated Model Rules - *Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting*.

Dear Members of the Canadian Securities Administrators:

Direct Energy Marketing Limited ("Direct") hereby submits comments to the Canadian Securities Administrators (the "Administrators") with respect to CSA Staff Consultation Paper: Model Provincial Rules - *Derivatives: Product Determination and Trade Repositories and Derivatives Data Reporting*, published on June 6, 2013 (the "Proposed Model Rules").[1] Direct offers these comments on the present proceeding and looks forward to working with the Administrators throughout the derivatives regulatory reform process.

[1] Canadian Securities Administrators, CSA Staff Consultation Paper 91-301, *Model Provincial Rules - Derivatives: Products Determination and Trade Repositories and Derivatives Data Reporting*, December 6, 2012.

Direct appreciates the Administrators receptiveness to public comment and the beneficial changes that the Administrators made to the Proposed Model Rules in response to such comment. However, in order to avoid a patchwork derivatives regulatory regime, the current version of the Proposed Model Rules requires further adjustments.

I. Direct Energy.

Direct is one of North America's largest energy and energy-related services providers with over 6 million residential and commercial customer relationships. A subsidiary of Centrica plc (LSE: CNA), one of the world's leading integrated energy companies, Direct operates 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 172 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. Technical Comments on Reporting Obligations.

A. A Coordinated Approach to Reporting of Swap Data is Necessary

A coordinated approach to the reporting of derivatives across international jurisdictions is essential for a well-functioning Canadian reporting regime. As Direct stated in its comments to the initial Proposed Model Reporting Rules,[2] permitting trade repositories located outside Canada to serve as designated trade repositories is critical. Allowing them to do so will significantly reduce the burden on multi-national companies that trade derivatives in Canada and other international markets. However, for that burden to be measurably reduced, Canadian regulators must ensure that data fields and data format required under Canadian regulations are at least functionally comparable to those required by the U.S. Commodity Futures Trading Commission ("CFTC") under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[3]

Many Canadian companies, including Direct, have already undertaken, and in some cases completed, efforts to build the reporting infrastructure necessary to comply with reporting requirements imposed by the CFTC under the Dodd-Frank Act.[4] Any significant deviation between Canadian reporting requirements and the CFTC's final reporting regulations would likely require companies that participate in both Canadian and U.S. markets to build duplicative and costly reporting and recordkeeping systems. In this respect, Direct has identified approximately twenty-three data fields that appear inconsistent with, or may not be included in, the CFTC's swap data reporting requirements. In addition, there are a number of seemingly

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[2] Direct Energy Public Comment Letter to CSA (Jan. 25, 2012), http://www.osc.gov.on.ca/documents/en/Securities-Category9-Comments/com_20120125_91-403_kimj.pdf.

[3] In addition, the CFTC and ESMA have announced efforts to coordinate and harmonize their approaches to the regulation of derivatives, including the reporting of derivatives. *See* Cross-Border Regulation of Swaps/Derivatives Discussions between the Commodity Futures Trading Commission and the European Union – A Path Forward (July 11, 2013), available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/jointdiscussionscftc_europeanu.pdf.

[4] *See* Parts 43 and 45 of CFTC Regulation 17 C.F.R.§§ 45 et al. and §§45 et. al.

equivalent or similar data fields that, if required to be reported in a different format, will be functionally different.

Finally, and perhaps most important to the Administrators, in addition to reducing the compliance burdens imposed on market participants, the adoption of substantially similar reporting requirements in Canada and the United States will allow regulators in these countries to share and compare uniform data with respect to market participants that engage in significant cross-border derivatives activity in an effective and efficient manner. The uniform supervision of significant cross-border derivatives market participants will facilitate administrative efficiency and reduce regulatory gaps.

B. Proper Protections Must be Used When Disseminating Data in Real-Time

Direct appreciates the CSA's incorporation of market participants' comments regarding the potential for real-time dissemination of transaction data to reveal the identity of counterparty or their trading strategy. Specifically, not disclosing information such as the exact delivery location referenced in a commodity derivative will limit the potential harmful impacts that real-time disclosure of transaction information can have on market integrity.

The Administrators should, however, take additional steps to ensure that real-time disclosure of transaction data does not hinder liquidity in Canadian derivatives and commodities markets. For example, disclosure of the value of trades with large notional values in certain commodities or delivery location can provide enough information to the market so that hedging such transactions can become uneconomical.

Direct respectfully requests that the Administrators effectively "mask" trades by establishing a notional ceiling above which the notional value of a derivative is only reported as being above that threshold and disclosure of such trades should be delayed an appropriate period of time. In addition, for less liquid sub-commodities, (*e.g.,* [Alberta power]) that notional threshold might be significantly lower than for other more liquid commodities (*e.g.,* [WCS]) and the necessary time delay may be longer for less liquid commodities. As such, Direct requests that the CSA sets disclosure delays and associated notional thresholds at appropriate levels for individual sub-commodities. Given the importance and complexity involved with setting appropriate thresholds, Direct requests that the CSA seek additional public comment specifically addressing appropriate timing delays and notional thresholds with respect to less liquid commodities.

C. Market Participants Should Only be Obligated to Report Historical Data in Their Possession

Direct understands the Administrators' rationale for requiring the reporting of unexpired derivatives entered into prior to the effective date of Part 3 of the Proposed Model Rules. Reporting of such trades will provide the Administrators with a picture of the current risk in the Canadian derivatives markets.

Direct also appreciates the CSA amending the model reporting rules to limit the number of data fields required to be reported with respect to pre-existing swaps. In addition, the exemption in Proposed Model Rule 41.4 for transactions that expire within 365 days of the

effective date of Part 3 of the Model Rules and allowing both counterparties to serve as reporting party for a transaction will limit the burden with reporting pre-existing derivatives.

However, Proposed Model Rule 26 may still impose an unnecessary burden on market participants. Specifically, the proposed model rule still may require entities to create data not in their possession and to modify the format of existing data in their possession as the swaps at issue were entered into prior to the model rules being finalized. Direct respectfully requests that the Administrators amend Proposed Model Rule 26 to require market participants to report only creation data currently in their possession and to allow such reporting to be in the format in which market participants currently keep the relevant data.

III. Implementation and Reporting Timelines Should Reflect Associated Compliance Burdens.

A. Reporting Timeframes Should be Phased-In and Should Reflect a Market Participant's Role

The Proposed Model Rules require market participants to report a derivatives transaction as soon as technologically practicable and no later than the business day following execution of the derivative.[5] Direct requests that the CSA, recognize that interpretation of the phrase "as soon as technologically practicable" is dependent on the nature of the reporting counterparty. Specifically, the reporting timeline for registered derivatives dealers should be shorter than the deadline applicable to end-users. Phasing in the reporting timelines in this manner reflects the resources available to different classes of market participants and their ability to realistically meet the mandatory reporting deadlines. Accordingly, the Administrators should (i) amend the ultimate reporting timeframe so that dealers and other market participants are subject to different reporting timeframes, and (ii) gradually phase-in reporting timeframes to allow market participants to adjust to the new obligations and requirements.

In this respect, dealers should be required to report derivatives by no later than the business day following execution, and non-dealers should be required to report derivatives by no later than the second business day following execution. However, prior to the time that the final, mandatory reporting requirements go into effect, market participants should be granted an interim period to operationally adjust to the new reporting paradigm. Direct requests that the Administrators require dealers to report derivatives by no later than the second business day following execution for an interim period of six months after the reporting rules applicable to the dealers become effective. Non-dealers should be required to report derivatives by no later than the third business day following execution for an interim six month period after the reporting rules applicable to these market participants become effective.

B. Reporting Compliance Should be Phased In by Market Role

The Proposed Model Rules set forth a six month time delay from the publication of final rules until dealers must begin reporting derivatives and non-dealers must begin reporting three months after that. Direct respectfully requests that the Administrators amend the Proposed

[5] *See* Proposed Model Rule at Section 28.

Model rules to provide that non-dealers begin reporting derivatives six months after dealers begin reporting.

Large derivatives dealers are likely counterparties to a significant majority of derivatives transactions in Canadian markets. To ensure that reporting infrastructure is functional and operational, trade repositories are best served focusing on interfacing with the small set of large financial derivatives dealers first. Only once those entities are actively reporting should other market participants begin to interface with trade repositories and then report. Such an approach will allow trade repositories to focus on beta testing with a small set of market participants before focusing on other market participants that will likely require more customer service resources to properly "on board" with trade repositories. This recommendation is a product of Direct's "lessons learned" from the implementation of reporting requirements in the U.S. where a small period of time between swap dealer and end-user compliance with regard to the reporting of commodity swaps resulted in the CFTC having to delay end-user compliance.

Moreover, this recommended approach is consistent with the proposed approach of the Monetary Authority of Singapore ("MAS"). Under the MAS proposal, reporting of credit and interest rate derivatives will be phased in over a six month period from October 2013 to April 2014 with banks beginning reporting in October, other financial entities in January, and non-financial end-users beginning reporting in April 2014.[6] In fact, Direct's recommended approach may actually be more ambitious than the MAS proposal as that proposal will only apply to banks, other financial entities, and non-financial entities with $8 billion SGD notional of derivatives booked in Singapore.

C. Compliance Dates Should Reflect Degree of Variation From U.S. Reporting Requirements

The appropriateness of compliance dates for the Proposed Model Rules is a function of the amount of work that will be necessary to come into compliance with such rules. The compliance dates proposed in Part 7 of the Proposed Model Rules[7] should be sufficient to the extent that the ultimate Canadian reporting requirements are functionally identical to those in the U.S. If that is the case, and since U.S.-registered Swap Data Repositories ("SDRs") will be able to register as trade repositories in Canada, much of the build-out and testing necessary to get those trade repositories to a state where they are able to interface and beta test with market participants will be completed. The majority of the time remaining before compliance is necessary will be needed for market participants to (i) put in place the documentation necessary to designate reporting counterparties or otherwise establish reporting relationships, (ii) develop the systems necessary to report, if not already in place to comply with the CFTC's requirements, and (iii) conduct necessary testing of the SDR interface.

However, if Canadian reporting requirements are substantively different than those in the U.S., Direct requests an extension of each of the compliance deadlines in Part 7 of the Proposed Model Rules by six months as trade repositories will need the additional time to develop the systems necessary for market participants to start to interface with the repositories. Such an

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[6] *See* MAS Consultation Paper on Draft Regulations Pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts, June 2013, at Section 16.

[7] *See* Proposed Model Rules at Section 42.

extension would be consistent with, though shorter than, the amount of time ultimately provided to end-user reporting counterparties in the U.S.[8]

Finally, as a general matter, the Administrators should provide the ability for non-dealer market participants to petition their regulator for a one-time three month compliance deadline extension with respect to the reporting of derivatives. That extension should be available to any non-dealer market participant as long the market participant has made a good faith effort to meet the original reporting deadline. Providing the ability to petition for an extension will avoid negative regulatory consequences for entities that are trying to comply with complex requirements, but are unable to do so in the allotted period of time.

IV. Conclusion.

Direct thanks the Administrators for the opportunity to provide comments on the Proposed Model Rules. Direct is looking forward to working with the Administrators in crafting the new regulatory environment for derivatives in Canada. If Direct can offer any assistance to the Administrators as regulatory reform efforts move forward, please do not hesitate to contact me at 403-776-2246.

Sincerely,

/s/ Bill Rutherford

Bill Rutherford
Credit Risk Officer
Direct Energy Marketing Limited

[8] The CFTC's swap data reporting rules were published on January 13, 2012, and will ultimately go into effect for end-user reporting counterparties almost twenty-one months later, on September 9, 2013.