



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

September 6, 2013

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

**VIA ELECTRONIC MAIL**

**c/o:**  
Debra MacIntyre  
Senior Legal Counsel, Market Regulation  
Alberta Securities Commission  
[debra.macintyre@asc.ca](mailto:debra.macintyre@asc.ca)

**c/o:**  
Abel Lazarus  
Securities Analyst  
Nova Scotia Securities Commission  
[lazaruah@gov.ns.ca](mailto:lazaruah@gov.ns.ca)

Michael Brady  
Senior Legal Counsel  
British Columbia Securities Commission  
[mbrady@bcsc.bc.ca](mailto:mbrady@bcsc.bc.ca)

Dean Murrison  
Director, Securities Division  
Financial and Consumer Affairs Authority of  
Saskatchewan  
[Dean.Murrison@gov.sk.ca](mailto:Dean.Murrison@gov.sk.ca)

Wendy Morgan  
Legal Counsel  
New Brunswick Securities Commission  
[wendy.morgan@nbsc-cvmnb.ca](mailto:wendy.morgan@nbsc-cvmnb.ca)

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

Dear Sirs/Mesdames:

**I. INTRODUCTION.**

Suncor Energy Inc. and its subsidiaries and affiliates (collectively "**Suncor**") hereby respectfully submit comments on the Canadian Securities Administrators' (the "**Administrators**") Updated Model Rules - Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting ("**Updated Model Rules**"). Suncor appreciates the opportunity to submit these comments on the Updated Model Rules and looks forward to further 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: – (i) crude oil; (ii) natural gas; (iii) sulphur; and (iv) petroleum coke. Suncor's customers include

mid- to large-sized commercial and industrial consumers, utility companies, and energy producers. The energy trading business is used as a mechanism to support 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, like pipeline disruptions or outages at refining customers. The energy trading business has entered into arrangements in respect of midstream infrastructure, such as pipeline and storage capacity, to optimize delivery of existing and future growth production, while generating trading earnings on select strategies and opportunities.

## II. COMMENTS OF SUNCOR.

### A. *A Multi-Jurisdictional Approach to Reporting of Derivatives Data is Essential*

Coordination not only between Canadian regulators, but also Canadian regulators and their international counterparts to the reporting and collection of derivatives data is essential for two primary reasons.

*First*, a multi-jurisdictional approach will significantly reduce the regulatory burden on Canadian market participants while still achieving the objectives of the regulatory framework. The Administrators have already taken steps towards reducing that burden. For example, allowing trade repositories located outside Canada to serve as designated trade repositories is necessary, though not sufficient on its own, to allow companies that trade derivatives in Canada and other international markets to build a single, enterprise-wide infrastructure for reporting. Allowing Canadian market participants to utilize a single reporting system for their global operations will greatly reduce costs associated with building redundant reporting infrastructure. In doing so, however, Canadian regulators must ensure that data fields and data format required under Canadian regulations are functionally comparable to those that have been adopted and implemented in other jurisdictions, notably in the United States by the Commodity Futures Trading Commission ("CFTC"), as well as those proposed by the U.S. Securities and Exchange Commission under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").

Many Canadian companies, including Suncor, have invested time and resources to create the reporting infrastructure necessary to comply with obligations imposed by the CFTC under the Dodd-Frank Act as reporting by end-users begins next week (September 9, 2013). Any significant deviation between Canadian reporting requirements and the comparable reporting requirements in the U.S. would require companies that participate in both markets to construct redundant and costly reporting and recordkeeping systems. Currently, there are approximately twenty-three data fields in the Proposed Model Rules that are not required under the CFTC's swap data reporting requirements. Beyond the obvious discrepancies, there likely are a number of seemingly equivalent or similar data fields that may not be similar enough to be reported using existing reporting systems as the information required or required format may be functionally different.

*Second*, coordinating reporting regimes across national and international jurisdictions will enhance transparency in global derivatives markets, as well as creating a framework by which regulators from multiple jurisdictions may share, compare and analyse data efficiently. The ability to share actual data seamlessly will also enhance the ability of regulators to: (i) supervise significant international derivatives markets participants; and (ii) identify and eliminate regulatory oversight gaps.



## *B. Definition of Local Counterparty*

The Administrators' initial proposed definition of "local counterparty" would have imposed a significant burden on Canadian companies and served as a competitive disadvantage to those companies' foreign operations.<sup>1</sup> Specifically, the definition of "local counterparty" (*i.e.*, those entities subject to the reporting requirements set forth in the Proposed Model Rules) would have captured the direct and indirect subsidiaries of entities domiciled in Canada. Suncor believes that the revised definition of "local counterparty", which would only capture a foreign subsidiary of Canadian-domiciled entities if the subsidiary is guaranteed by a Canadian Affiliate, is a more reasonable and appropriate approach.

To avoid placing unnecessary burdens on Canadian companies' foreign operations, Suncor respectfully requests that the Administrators permit local counterparties domiciled outside of Canada to satisfy their reporting obligations under the Proposed Model Rules by reporting to any trade repository to which Canadian regulators have access, not just Canadian-registered trade repositories. Such an approach would: (i) help avoid a potential obligation to report the same trade to multiple repositories, as the foreign subsidiary may have a reporting obligation in its home country; (ii) insure that Canadian regulators have access to necessary information; and (iii) limit the adverse competitive consequences to Canadian companies' international operations.

## *C. The Rules for Reporting of Transaction Data Must Provide for Appropriate Time-Delays and Counterparty Identity Protections*

The Administrators' incorporation of some of market participants' comments regarding the potential for real-time dissemination of transaction data to disrupt trading in less-liquid markets is a first step towards avoiding such a disruption. For example, the Proposed Model Rules protections against 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.

Specifically, the proposed delay paradigm for the public dissemination of transaction data should be amended. As the Administrators acknowledge, public dissemination delays are necessary so counterparties "have adequate time to enter into any offsetting transaction that are necessary to hedge their positions."<sup>2</sup> The Proposed Model Rules require public dissemination of trade information by designated trade repositories "not later than (a) the end of the day after receiving the data from the reporting counterparty to the transaction, if one of the counterparties to the transaction is a dealer, and (b) the end of the second day after receiving the data from the reporting counterparty to the transaction in all other circumstances."<sup>3</sup>

Suncor highlights two issues with the proposed approach. *First*, the level of protection provided to a transaction (*i.e.*, the length of the time delay) should not be a function of whether a dealer is a counterparty to the trade. Said another way, there is no rational reason that an end-user should receive less protection when they transact with a dealer than when they transact with another end-user. The

<sup>1</sup> See Section 1of CSA Consultation Paper 91-301 – Model Provincial Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting.

<sup>2</sup> See Proposed Model Rules at pg 37.

<sup>3</sup> See Proposed Model Rules at Section 39(2).



goal of protecting market liquidity and preventing front-running should remain the same regardless of the classification of the counterparty.

*Second*, the rules provided a maximum time delay, but do not provide a minimum delay. As such, there is nothing to prevent a designated trader repository from publicly reporting information the moment they receive it. Real-time disclosure may not be harmful for certain trades, but it could be very detrimental for counterparties to other trades. For example, disclosing information regarding a relatively small trade in a liquid commodity such as WTI would not harm and may actually improve market integrity. However, real-time or even slightly delayed public dissemination of information on trades in less liquid markets such as WCS could seriously disrupt trading in that market.

As such, Suncor respectfully requests that the Administrators amend the time delay provisions in Proposed Model Rule 39 to require an affirmative time delay such that trade repositories would not publicly disseminate information on derivatives above a certain size threshold until the end of the second day after receiving the data from the reporting counterparty. That size threshold should vary across markets and should be a function of the open interest in a market. For example, a threshold could provide that transactions above the fiftieth percentile in notional size in a given market should receive the affirmative delay. Setting a percentile above which trades receive an affirmative delay would be a good initial safe guard, though individual markets require slightly different levels depending on their unique market characteristics.

Finally, one additional protection is necessary to avoid the disclosure of information that can identify a market participant. In certain commodity markets, the disclosure of the value of trades with large notional values can provide enough information to the market to allow market participants to determine the identity of at least one of the counterparties and potentially front-run trades or engage in other anti-competitive conduct. Suncor suggests that the Administrators amend Proposed Model Rule 39 to provide that publicly disseminated notional value or quantity of any trade with a notional value above the threshold discussed in the previous paragraph should simply be an indication that the trade's size was above the relevant threshold.

Given that the above recommendations will be complex to implement, Suncor requests that the Administrators provide market participants the opportunity to comment on those suggestions if the Administrators decide to include such suggestions.

#### *D. Market Participants Should Only be Obligated to Report Historical Data in Their Possession*

The Administrators' desire to collect information on unexpired derivatives entered into prior to the effective date of Part 3 of the Proposed Model Rules is well founded. Reporting of such trades will provide the Administrators with a picture of the current risk in the Canadian derivatives markets. The fact that the Proposed Model Rules were amended to limit the number of data fields required to be reported with respect to pre-existing swaps will lessen the burden and cost to market participants. 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 further limit the burden with reporting pre-existing derivatives.

However, Proposed Model Rule 26 will still impose an unnecessary burden on market participants as it would likely require market participants to create data not in their possession and to modify the format of existing data in their possession as the derivatives at issue were entered into prior to the model rules being finalized. As such, Suncor suggests that the Administrators revise Proposed



Model Rule 26 to require market participants to report only on creation data currently in their possession in the format in which the reporting counterparty currently keeps such data.

*E. Reporting Timeframes Should be Phased-In and Should Reflect Market Participants' Role*

Under the Proposed Model Rules, reporting counterparties must report a derivatives transaction "as soon as technologically practicable" and no later than the business day following execution of the derivative.<sup>4</sup> Suncor requests that the Administrators clarify that the phrase "as soon as technologically practicable" reflects the functional role that a reporting counterparty plays in the market. In this respect, the reporting timeframes for derivatives dealers should be shorter than that applicable to end-users, as dealers will likely have more robust systems infrastructure and other back-office resources.

Suncor also requests that the Administrators phase-in reporting timeframes to provide market participants with a reasonable time period that will allow them to adjust to reporting derivatives. In short, market participants' reporting deadlines should not be the end of the next business day as of the date that these requirements become effective. Rather, market participants should have an interim period of time where they are subject to more flexible reporting timeframes before they are required to achieve the final reporting timeframe.

In addition, derivatives dealers should be required to commence reporting before other market participants. Derivatives dealers are likely counterparties to a significant percentage of derivatives transactions in Canadian markets and will continue to play a similar roll in markets going forward. To ensure that derivatives reporting infrastructure is operational and on schedule, designated trade repositories should focusing on interfacing with the small set of derivatives dealers first. This phased-in approach will allow designated trade repositories to focus on beta testing with a small set of market participants before focusing on the remainder of the market, which will likely require more customer service resources to properly "on board." Only once dealers are reporting their derivatives transactions on a full and continuous basis should other market participants begin to test and interface with trade repositories (and then ultimately move to full and continuous reporting). A phased approach to the implementation of derivatives reporting requirements would be consistent with the CFTC's ultimate reporting implementation time line, which was the product of multiple delays due to technical challenges and unrealistic time frames imposed by the regulator.

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

The suitability of the compliance dates set forth in Part 7 of the Proposed Model Rules is a function of the resources necessary to come into compliance with the Proposed Model Rules. The proposed compliance dates should be sufficient to the extent that the final Canadian reporting requirements are functionally equivalent to those in the U.S. If they are equivalent, and since U.S.-registered trade repositories will be able to register in Canada, much of the infrastructure construction and testing needed for those repositories to be able to interface and test with market participants will already be complete. The majority of the time of the pre-compliance period provided by the Proposed Model Rules remaining can then be used by market participants to: (i) establish reporting relationships; (ii) develop their reporting systems, if not already in place to comply with the CFTC's requirements; and (iii) conduct necessary testing with the repositories.

However, if Canada's reporting requirements are functionally different than those in the U.S., Suncor requests an extension of each of the compliance deadlines in Part 7 of the Proposed Model Rules

<sup>4</sup> See Proposed Model Rules at Section 28.

of six months as trade repositories will need the additional time to develop Canadian-specific reporting systems. Providing that extension would be consistent with the amount of time ultimately provided to end-user reporting counterparties in the U.S., which was just under two years.

### **III. CONCLUSION.**

Suncor thanks the Committee and the Administrators 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 Administrators to regulate the Canadian OTC derivatives market and will continue to provide support and feedback to the Administrators 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

cc: Ontario Securities Commission, Attn: John Stevenson, Secretary  
(via email: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca))