

March 24, 2015

To: British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission

Via email: mbrady@bcsc.bc.ca

Care Of: Michael Brady
Senior Legal Counsel, Capital Markets
British Columbia Securities Commission
P.O. Box 10142 Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2

Re: **CSA Multilateral Notice and Request for Comment on Proposed Multilateral Instrument 91-101 Derivatives Product Determination and Proposed Multilateral Instrument 96-101 Trade Repositories and Derivatives Data Reporting issued January 21, 2015**

BP Canada Energy Group ULC and its affiliates ("**BP**") appreciate the opportunity to provide the Alberta Securities Commission, the British Columbia Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan, the New Brunswick Financial and Consumer Services Commission and the Nova Scotia Securities Commission ("**Authorities**"), each aforementioned province being an "**MI Jurisdiction**", with BP's views on the following proposed instruments ("**Proposed Instruments**"):

- Multilateral Instrument 91-101 Derivatives: Product Determination ("**Scope Rule**");
- Companion Policy 91-101 Derivatives: Product Determination ("**Scope CP**");
- Multilateral Instrument 96-101 Trade Repositories and Derivatives Data Reporting ("**TR Rule**"); and
- Companion Policy 96-101 Trade Repositories and Derivatives Data Reporting ("**TR CP**").

BP's business in Canada encompasses a range of activities including the production, purchase and sale of hydrocarbons and other energy commodities. As a major participant in the marketing and trading of Canadian natural gas, power and crude oil, BP also manages risk and optimizes value across physical and financial markets through its participation in the Canadian over-the-counter (OTC) energy derivatives market.

BP commends the Authorities in providing simplicity in the following areas of the TR Rule:

- i) **Local Counterparty Definition** – BP supports the differentiation made by the Authorities in the definition of a local counterparty from that found in the local rules in Manitoba, Ontario and Quebec. The exclusion of mere registration as a derivatives dealer as the basis upon which an entity is deemed a local counterparty considerably alleviates the burden of regulatory oversight on both the Authorities and the entity where no need for oversight is warranted. Without the exclusion, all derivatives engaged in by a foreign-based derivatives dealer registered in an MI Jurisdiction would be subject to reporting, even those derivatives with no connection to the MI Jurisdiction.
- ii) **Reporting Counterparty Waterfall** – BP supports the streamlined reporting counterparty waterfall and applauds the Authorities in establishing a clear, elegant and non-convoluted hierarchy. The reporting obligation rests appropriately with the parties best placed, in descending order, to report derivatives, having regard to their intermediary role in derivatives transactions, in the case of clearing agencies, or their level of sophistication, in the case of derivatives dealers and financial institutions.

BP respectfully requests the Authorities to consider its comments with respect to the following:

- iii) **Embedded Optionality in the Scope CP** – BP supports the exclusion to the application of the TR Rule of a contract or an instrument that is a derivative if the contract or instrument is for delivery of a commodity other than cash or currency that is intended to be settled by delivery of the commodity and does not allow for cash settlement in place of delivery. BP also agrees and supports the notion that optionality embedded in a contract or instrument that satisfies the two pronged test for physical commodity contracts, should not in itself, result in the contract or instrument being a reportable derivative,

In that regard, BP finds the language in the Scope Rule clear and unambiguous when read in conjunction with the Scope CP except for the statement set out on page 8 of the Scope CP (excerpt below, emphasis mine):

Embedded optionality with respect to the volume or quantity, or the timing or manner of delivery, of the commodity to be delivered may be consistent with the intention requirement in subparagraph 1(1)(d)(i) where the terms of the contract make it clear that the parties intend to settle the contract by physical delivery of the commodity and not by cash or any other means. **A contract will not qualify for this exclusion where it can be inferred that the counterparties intend to enter into the contract to achieve an economic outcome that is, or akin to, an option.**

BP finds that the highlighted statement creates some confusion. The statement may suggest that contracts that achieve an economic outcome that is, or akin to, an option but also meet the two pronged test, might not be deemed as excluded derivatives. Such a result would seem to contradict the acknowledgment that a

contract can be a contract for physical delivery of a commodity and have optionality embedded in it. BP seeks clarity from the Authorities on what the language is attempting to say and queries whether the language is needed at all. In that regard, BP believes that contracts having the characteristics described below would qualify as excluded derivatives, and would ask that the Authorities provide clarification if that is not the case:

Variable Quantity Contracts: Buyer and Seller may agree that the Buyer must, at Seller's option, take a quantity of natural gas (or other commodity) that Seller delivers, which quantity may vary from zero to a set maximum quantity. Another variation of this type of contract is where Seller must, at Buyer's option, deliver a quantity of natural gas that Buyer wishes to take, which quantity may vary from zero to a set maximum quantity. Such contracts are known commonly as firm (variable) quantity contracts, swing deals, peaking deals etc. and are used by sellers and buyers of physical commodities to manage operational, market or other factors impacting their availability of supply, need for supply, or otherwise hedge risk. Such contracts may or may not include a premium for the flexibility they afford either through an additional premium included in the price for the volumes ultimately delivered or as an up-front premium or reservation fee.

Physical "Option" Contracts: Similar to the above, Buyer and Seller may agree, in consideration for the payment of a sum of money by Buyer, that Seller will be obligated to deliver and sell an agreed-upon quantity of natural gas (or other commodity) to the Buyer at an agreed upon Price X upon Buyer notifying Seller of its election to require such delivery, or some other condition precedent occurring (such as the natural gas index price hitting a certain level). In such contracts the election or the condition precedent may never occur, however, upon the election being made or the condition precedent occurring settlement is effected through the physical delivery of the natural gas. There is no additional option to settle through financial payment. The opposite scenario can also occur, where in consideration for the payment of a sum of money by Seller, Buyer will be obligated to receive and purchase an agreed upon quantity of natural gas from Seller at an agreed upon Price. Such contracts may be called a physical call or put option, but the settlement is made by physical delivery; there is no other option at the time the transaction is entered into to elect to settle financially in lieu of the obligation to deliver/receive the natural gas.

- iv) **Dual UTI Submission** – BP acknowledges that, where parties to a transaction cannot agree that one of the parties will be the reporting counterparty, dual reporting will result. While BP appreciates the Authorities desire to reduce or eliminate the circumstances of dual reporting, BP is concerned with the requirement to have to seek out the other party's unique transaction identifier necessary to comply with subsection 25(4) where agreement has not been reached between the parties on who will report. BP is concerned that this additional burden will create a compliance risk for otherwise compliant and

reporting parties in the event the other party fails to, or is unwilling to, provide the requisite information.

- v) **Implementation Date and Transition Period** – BP believes that there must be an adequate period of time for implementation and transition. Parties will need time to adequately prepare to report. This will include time for parties to obtain LEI's, the need to determine the status of counterparties, putting reporting counterparty agreements in place and/or amending agreements; for those parties not already a reporting counterparty in another jurisdiction, time could also be required to put in place the necessary business systems and processes. In this regard, BP urges the Authorities to provide for a minimum period of six months from the date the Final Instrument becomes effective. In addition, BP proposes an implementation date and transition period where neither coincides with the end of the natural gas contract year when a large proportion of physical natural gas annual contracts are negotiated and companies' resources are focused on those activities.

- vi) **Legal Entity Identifiers (LEI)** – The Authorities have not specifically sought comment on the matter of LEIs. BP, however, requests the Authorities to consider inserting a direct obligation in the TR Rule requiring all counterparties to obtain a LEI. The TR Rule, as currently proposed, presumes all counterparties will obtain a LEI or a pre-LEI but does not expressly mandate counterparties to have done so, except to the limited circumstance set out in subsection 28(4). BP notes that reporting counterparties will have obtained a LEI because of their interaction with the trade repository in reporting the transaction and, arguably, their greater familiarity with the reporting requirements generally. Non-reporting counterparties or end-users, however, may not be as alert to the necessity of obtaining a LEI. BP has experienced some challenges in pressing upon some of its non-dealer counterparties the importance of obtaining a LEI prior to the implementation date and believes that, with a clear and direct regulatory obligation, compliance could be more readily achieved.

- vii) **Exclusions** – BP Canada believes the end-user exemption being proposed by the Authorities may be attractive to certain market participants, provided it can be practically administered. While BP Canada does not have specific comments on the proposal here, BP Canada would comment that a de minimis type threshold would also have merit in relation to determining whether a party should be required to register as a dealer or not and would request the Authorities consider such a concept when drafting the registration rules.

- viii) **Public Dissemination of Data:** BP Canada would encourage the Authorities to consider and accept the recommendations made by ISDA in its correspondence to the Canadian Securities Administrators ("CSA") dated January 16, 2015 in regards to Public Dissemination Requirements of Commission Rules 91-507 *Trade Repositories and Derivatives Data Reporting* in respect of what information should be subject to public dissemination and the timing for such dissemination. In addition, BP Canada believes that the date for such public dissemination should be consistent between all member constituents of the CSA.

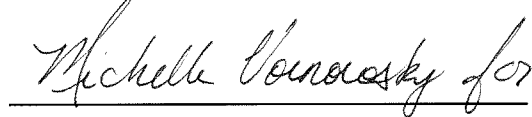
BP supports tailored, fit-for-purpose rules that ensure market transparency and regulatory certainty as appropriate to the derivatives markets. We understand the delicate balance that the Authorities must strike in effecting appropriate regulation without unduly hindering OTC derivative markets. BP respectfully submits its comments set forth in this letter and thanks the Authorities for seeking and considering comments from the stakeholders.

Respectfully submitted,

BP Canada Energy Group ULC

A handwritten signature in cursive script, appearing to read "Cheryl G. Worthy", written over a horizontal line.

Per: Cheryl G. Worthy, Vice President Regulatory Affairs, NAGP

A handwritten signature in cursive script, appearing to read "Michelle Vouras for", written over a horizontal line.

Per: Antony A. Deakin, Partnerships and Regulatory Affairs Manager, GOA