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March 24, 2015

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Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
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RE: CSA Staff Notices 91-101 *Derivatives: Product Determination* (the "Scope Rule") and 94-101 *Trade Repositories and Derivatives Data Reporting* (the "TR Rule");

SaskEnergy Incorporated ("SaskEnergy") and TransGas Limited ("TransGas") welcome the opportunity to comment on Multilateral CSA Staff Notices 91-101 and 91-304.

About SaskEnergy and TransGas

SaskEnergy is a Saskatchewan Crown Corporation and operates as a natural gas distribution utility. TransGas is a wholly owned subsidiary of SaskEnergy and operates primarily as a natural gas transmission and storage utility.

SaskEnergy serves in excess of 380,000 customers in approximately 93% of Saskatchewan's communities.

1. Is it appropriate to exclude derivatives dealers from the definition of local counterparty?

SaskEnergy does not wish to see the shifting of reporting obligations to a relatively small number of local counterparties in Saskatchewan. We understand that despite this change the foreign derivatives dealer remains the reporting party under the "reporting party waterfall" in Section 25, and that this in turn relieves the local counterparty end

user of that obligation. Accordingly, SaskEnergy and TransGas do not see any difficulties with this approach.

Section 25 of the TR provides:

> **Reporting counterparty**
> **25. (1)** The reporting counterparty with respect to a transaction involving a local counterparty is
> (a) if the transaction is cleared through a reporting clearing agency, the reporting clearing agency,
> (b) if paragraph (a) does not apply to the transaction and the transaction is between a derivatives dealer and a counterparty that is not a derivatives dealer, the derivatives dealer,
> (c) if neither paragraph (a) nor (b) applies to the transaction and the transaction is between a Canadian financial institution that is not a derivatives dealer and a counterparty that is not a Canadian financial institution or a derivatives dealer, the Canadian financial institution,
> (d) if none of paragraphs (a) to (c) apply to the transaction and the counterparties have, at the time the transaction occurs, agreed in writing that one of them will be the reporting counterparty, the counterparty determined to be the reporting counterparty under the terms of that agreement, and
> (e) in each other case, each local counterparty to the transaction other than an individual.
>
> **(2)** Each local counterparty to a transaction to which paragraph (1)(d) applies must keep a record of the written agreement referred to in paragraph (1)(d) for 7 years after the date on which the transaction expires or terminates.

2. Do you foresee any difficulties in counterparties agreeing as to who will be the reporting counterparty? If so, explain.

If parties do not agree upon where they fit on the "waterfall" in Section 25, then obtaining an agreement may be difficult.

For the most part, the guidance and explanation provided for various concepts has improved from one consultation paper to the next. However, the reporting party waterfall is largely dependent upon a determination of who is and is not a "derivatives dealer".

This is something a lot of parties are going to have to seek legal advice on, and somewhat speculative legal advice on, because there is no definition (or proposed definition) that allows for a ready answer.

To reduce cost and uncertainty, our preference would be that this concept be addressed with clear business triggers, and that this occur sooner rather than later. We would also like it made clear that, in determining whether a party is a derivatives dealer, exempt

derivatives under the scope rule (e.g. physically settled commodity transactions) are not to be considered.

In terms of regulatory burden, we would like to see more "tie breakers" in the waterfall and less reliance on agreements amongst the parties. If you define derivatives dealer very broadly, for example, you could have a lot of very disparate market participants who meet that same criteria thus necessitating a multitude of negotiations on reporting, or duplicated reporting. If another layer of prioritization was added, i.e. derivatives dealers who are also financial institutions have the reporting obligation, or monetary threshold based distinctions, it would be helpful.

3. **Section 40 of the proposed TR Rule contemplates an exemption from trade reporting for commodity-based derivatives transactions that differs from the section 40 exemption in the existing TR rules in Manitoba, Ontario and Québec. The proposed TR Rule would exempt commodity-based transactions between two end-users provided each counterparty is below a threshold of $250,000,000 aggregate notional value, without netting, under all of its outstanding commodity-based derivatives transactions.**

The use of aggregate notional value, without netting, creates certainty in some respects. However, it also seems contrary to the practice in our industry of calculating exposures on a mark to market basis, with allowances for netting, as allowed under the ISDA Master Agreement and similar documentation. In most instances the notional value arguably has no reflection on the amount actually at risk, and therefore strikes a poor balance between systemic risk and regulatory burden. If a different methodology could be used that better reflects the aggregate amount at risk that would be preferable.

5. Subsections 1(4) and (5) of the proposed TR Rule include a harmonized interpretation of the terms "affiliated entity" and "control" that is different from the concept of "affiliate" that applies in the corresponding local rules in Manitoba, Ontario and Québec... . Is the TR Rule proposal appropriate?

SaskEnergy and TransGas do not object to the definitions as altered here. The TR Rule still provides for the reporting of inter-affiliate trade data. In a world of parental guarantees and consolidated financial statements, there are differences of opinion as to the value of this data in many instances, and it will not be released to the public in any event. Where any doubt exists that the benefits of the new regulatory regime will not warrant its cost, directly and indirectly, SaskEnergy would argue for some caution, some care, and potentially a narrower scope.

SaskEnergy and TransGas are thankful for the opportunity to provide these comments, and we hope they are of some assistance.

Respectfully submitted,

SASKENERGY INCORPORATED

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