

British Columbia Securities Commission

BC Instrument 96-504

**Exemption from derivatives reporting requirements in Multilateral Instrument 96-101 –
Trade Repositories and Derivatives Data Reporting for certain financially settled electricity-
based derivatives**

The British Columbia Securities Commission, considering that to do so would not be prejudicial to the public interest, provides an exemption from Part 3 of Multilateral Instrument 96-101 – *Trade Repositories and Derivatives Data Reporting* for financially settled derivatives traded on platforms operated by independent system operators.

November 24, 2016

Nigel P. Cave
Vice-Chair

(This part is for administrative purposes only and is not part of the Order)

Authority under which Order is made:
Act and sections:- *Securities Act*, section 187

Exemption from derivatives reporting requirements in Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* for certain financially settled electricity-based derivatives

(Order under section 187 of the Securities Act)

Definitions

1. Terms defined in the *Securities Act* (British Columbia) (the **Act**), in National Instrument 14-101 *Definitions*, Multilateral Instrument 91-101 *Derivatives: Product Determination* or in Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (MI 96-101) have the same meaning in this Instrument unless defined herein.
2. In this Instrument, the following terms have the meanings defined below:
 - (a) “CEA” means the United States Commodity Exchange Act;
 - (b) “CFTC” means the United States Commodity Futures Trading Commission;
 - (c) “CFTC Orders” means
 - (i) Final Order 78 FR 19879 (2013), and
 - (ii) Final Order 81 FR 73062 (2016);
 - (d) “CFTC Swap Data Reporting Requirements” means
 - (i) CFTC Real-Time Public Reporting of Swap Transaction Data, 17 CFR pt. 43 (2013), as amended from time to time,
 - (ii) CFTC Swap Data Recordkeeping and Reporting Requirements, 17 CFR pt. 45 (2013), as amended from time to time, and
 - (iii) CFTC Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 17 CFR pt. 46 (2013), as amended from time to time;
 - (e) “derivative” means a “specified derivative” as defined in Multilateral Instrument 91-101 *Derivatives: Product Determination*;
 - (f) “Energy Transaction” means a derivative to which each of the following apply:
 - (i) the derivative is a contract for the purchase or sale of a specified quantity of electricity at a specified location during a specified time period;

- (ii) the price of the electricity is established at a time set by the offering ISO/RTO;
- (iii) performance can occur by payment of an amount determined by the offering ISO/RTO in accordance with its Tariff;
- (iv) either or both of the following apply to the derivative:
 - (A) the derivative is transacted on a market administered by the offering ISO/RTO;
 - (B) settlement of the derivative is conducted through the ISO/RTO in accordance with the offering ISO/RTO's Tariff;
- (g) "ERCOT" means the Electric Reliability Council of Texas;
- (h) "FERC" means the United States Federal Energy Regulatory Commission;
- (i) "Financial Transmission Right" means a derivative transacted on a market administered by an ISO/RTO, the value of which is based on price differences at specified times or between specified points in the ISO/RTOs energy grid, that is a contract that either
 - (i) entitles the holder to receive a payment or results in an obligation for the holder to make a payment, commonly referred to as "obligation type", or
 - (ii) entitles the holder to receive a payment but does not result in an obligation to make a payment, commonly referred to as "option type";
- (j) "IESO" means the Ontario Independent Electricity System Operator;
- (k) "IESO Market Rules" means the written rules of the IESO governing the wholesale electricity markets in Ontario, administered by IESO;
- (l) "IESO Transmission Rights Contract" means a derivative transacted on a market administered by IESO that is linked to locational price differences for electricity across interties;
- (m) "interties" means transmission lines that allow electricity to move between adjacent control areas;
- (n) "ISO/RTO" means any of the following:
 - (i) the California Independent System Operator;
 - (ii) the ERCOT;

- (iii) the Midcontinent Independent System Operator, Inc.;
- (iv) the New England ISO;
- (v) the New York Independent System Operator;
- (vi) the PJM Interconnection, LLC;
- (vii) the Southwest Power Pool;
- (o) “OSC” means the Ontario Securities Commission;
- (p) “OSC Order” means *Re Independent Electricity System Operator* (October 30, 2014), OSC Decision;
- (q) “OSC 91-507” means Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*;
- (r) “PUCT” means the Public Utility Commission of Texas;
- (s) “Report” means, in respect of derivatives data relating to a derivative, to report, update, amend or supplement, each in accordance with MI 96-101;
- (t) “Tariff” means
 - (i) in the case of a FERC-regulated ISO/RTO, its rules, tariffs, rate schedules and protocols, as approved by the FERC, and
 - (ii) in the case of the ERCOT, its protocols governing the wholesale electricity market in ERCOT’s jurisdiction, as approved by the PUCT.

Background

3. Certain local counterparties are authorized participants in electricity markets administered by an ISO/RTO or by the IESO that offer trading in derivatives.
4. Part 3 of MI 96-101 requires a reporting counterparty to Report derivatives data relating to a derivative that involves a local counterparty.
5. Pursuant to the CFTC Orders, the CFTC exempts Financial Transmission Rights and Energy Transactions transacted on the markets administered by the ISO/RTOs from the application of requirements that apply to “swaps” in the CEA and the CFTC Swap Data Reporting Requirements.

6. The OSC has issued a number of orders that exempt certain counterparties from the reporting requirements under OSC 91-507 for certain derivatives transacted on markets administered by certain ISO/RTOs.
7. In addition, pursuant to the OSC Order, the OSC has exempted IESO Transmission Rights Contracts from the reporting requirements under OSC 91-507.

Order

8. Considering that it would not be prejudicial to the public interest, the Commission makes the following order
 - (a) a reporting counterparty is exempt from the requirement under Part 3 of MI 96-101 to Report derivatives data in respect of a Financial Transmission Right if the
 - (i) transaction in the Financial Transmission Right is executed on a market administered by an ISO/RTO,
 - (ii) Financial Transmission Right is transacted in accordance with the ISO/RTO's Tariff, and
 - (iii) ISO/RTO continues to operate in accordance with the oversight and requirements of the FERC or, in the case of ERCOT, the PUCT.
 - (b) A reporting counterparty is exempt from the requirement under Part 3 of MI 96-101 to Report derivatives data in respect of an Energy Transaction if the
 - (i) Energy Transaction is transacted in accordance with the ISO/RTO's Tariff, and
 - (ii) ISO/RTO continues to operate in accordance with the oversight and requirements of the FERC or, in the case of ERCOT, the PUCT.
 - (c) A reporting counterparty is exempt from the requirement under Part 3 of MI 96-101 to Report derivatives data in respect of an IESO Transmission Rights Contract if the
 - (i) transaction in the IESO Transmission Rights Contract is executed on a market administered by IESO,
 - (ii) transaction in the IESO Transmission Rights Contract is transacted in accordance with the IESO Market Rules, and
 - (iii) IESO continues to operate pursuant to a valid license granted to it by the Ontario Energy Board under the *Ontario Energy Board Act*, 1998.
9. This Blanket Order takes effect on November 30, 2016.