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BY EMAIL

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Dear Sirs / Madames,

Re: Canadian Securities Administrators ("CSA") June 6, 2013 Multilateral CSA Staff Notice 91-302 Updated Model Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting (the "Proposed Model Rules")

About Nexen

Nexen Inc. is a wholly owned subsidiary of CNOOC Limited, which ultimately is 64.43% owned by the Chinese 'state' and 35.57% owned by investors through shares traded on the Hong Kong and New York stock exchanges. CNOOC Limited has also applied for listing on the Toronto Stock Exchange.

Under CNOOC Limited, Nexen Inc. and its subsidiaries ("Nexen") is part of one of the largest independent oil and gas exploration and production companies in the world with production in excess of 900,000 BOE/day and a market capitalization in excess of $80 Billion. Nexen, in its own right, also operates in various countries including Canada, the US, Columbia, the United Kingdom, Yemen and Africa. As such, Nexen brings a unique

perspective as a Canadian company with global operating and marketing experience, expertise and exposure.

Introduction

Nexen welcomes the opportunity to comment on the Proposed Model Rules. In this comment letter, Nexen intends to provide specific comments on a few outstanding areas of concern. Overall, Nexen commends the CSA for considering and acting on the comment letters it previously received and the helpful manner in which it was set out at the end of the Proposed Model Rules.

Specific Comments

a. Section 1 – Definition of "dealer"

While Nexen appreciates the definition of "dealer" included in the Proposed Model Rules was adopted in an attempt to ensure consistency with the use of that term elsewhere and, in particular, the registration requirements in Consultation Paper 91-407, it is an outstanding issue for resolution as to whether the registration categories set out in Consultation Paper 91-407, including the dealer category, are the correct categories to be applied. Nexen's position in this regard is set out in our comment letter to the CSA dated June 17, 2013 in detail at page 9, a copy of which is attached. In summary, Nexen proposes an end-user category similar to the US *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the "*Dodd-Frank Act*") be created, which categorization applies to most of the major energy companies. It is important to resolve the categorization issue in order to determine the extent to which it will impact the "dealer" terminology in the Proposed Model Rules. It is Nexen's position that failure to create an end user distinction could put companies such as Nexen at a competitive disadvantage to those in the U.S. and Europe and could reduce the number of cross border derivatives or swaps that occur between foreign and domestic markets if there is not a consistent treatment of the definition of dealer.

b. Reporting Parties Determination – Section 27

A "local counterparty"[1] shall report, or cause to be reported, to a designated trade repository (or the local securities regulator if no repository accepts the data), derivatives data for each transaction to which it is a party.[2]

The appropriate reporting party for each derivatives transaction is determined as follows:
(a) if the transaction is cleared through a clearing agency, the clearing agency;
(b) if the transaction is between a dealer and a non-dealer, the dealer[3] ;

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[1] A "local counterparty" is defined by the Proposed Model Rules as: (i) any person or company (other than an individual) organized under the laws of, or has its head office or principal place of business in, a Province; (ii) any dealers registered under applicable securities legislation or any person required to register under derivatives trading regulations; or (iii) any affiliate of a person or company falling under clause (i) or (ii) if such person or entity is responsible for the liability of such affiliate. See Proposed Model Rules Part 1 Section 1.
[2] Proposed Model Rules Part 3 Section 25.

(c) if paragraphs (a) and (b) do not apply, then as the parties agree in writing; and
(d) in any other cases, both parties.

If a reporting party is not a "local counterparty," and that reporting party does not comply with the reporting requirement, then the local counterparty must act as the reporting party.[4]

In general, the *Dodd Frank* Rules impose the reporting obligations in the following order: clearing house; swap dealer, major swap participant; non-swap dealer/non-major swap participant financial entity; and non-swap dealer/non-major swap participant other U.S. person. The *Dodd Frank* Rules place the reporting responsibility, which includes creation and valuation reporting, on the "reporting party" determined under the rules.

The CSA should clarify data reporting responsibilities by requiring valuation data to be reported by the "reporting counterparty," as opposed to by the local counterparty.[5]

The CSA should also ease the requirement on the local counterparty to serve as the reporting party if a non-local counterparty dealer fails to comply with its obligations to report derivatives data. A local counterparty should not have to be responsible for monitoring a non-local counterparty dealer's compliance.

Prong (b) of the definition of "local counterparty" should be clarified to refer to a dealer registered under Canadian law. Otherwise, any dealer required to be registered under the *Dodd-Frank Act* or *European Market Infrastructure Regulation* ("*EMIR*") would also be a "local counterparty."

c. Data Reported and Valuation Data – Section 35

For each derivative transaction, the Proposed Model Rules provide that the reporting party should report (i) the legal entity identifiers for the parties; (ii) the unique transaction identifiers; (iii) the unique product identifier; and (iv) at the onset of a transaction, certain prescribed operational, economic, counterparty and event data, and thereafter, any change to such data (creation data and life-cycle data)[6]. The local counterparty must also report valuation data (i.e., mark-to-market valuation) for any cleared transaction on a daily basis if it is a dealer, and on a quarterly basis if it is not a dealer.[7] Furthermore, a new requirement has been inserted that valuation data must be reported by <u>both</u> the clearing agency and the local counterparty.

While the reporting obligations with respect to specific data are generally consistent between the Proposed Model Rules and the *Dodd-Frank* Rules, they are not identical. For example, the delivery point of a commodity derivative is required under the Proposed

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[3] A "dealer" is defined as a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives as principal or agent. See Proposed Model Rules Part 1 Section 1.
[4] Proposed Model Rules Part 3 Section 27(2).
[5] Contrast Proposed Model Rules Part 3 Section 25(1) and Section 27.
[6] Proposed Model Rules Part 3 Sections 29, 33 and 34.
[7] Proposed Model Rules Part 3 Section 35. Reporting of valuation data must be done by both the clearing agency and the local counterparty.

Model Rules but not under the *Dodd-Frank* Rules. This is not significant on its own, but Nexen proposes the CSA should consider harmonizing the specifics of reportable derivatives data under the Proposed Model Rules with those under the *Dodd-Frank* Rules such that the same data feed can satisfy both sets of rules. This would have a significant practical and cost impact to reporting requirements.

A more significant inconsistency between the Proposed Model Rules and the *Dodd-Frank* Rules is the new requirement in s.35(1) of the Proposed Model Rules requiring reporting of valuation data by both the local counterparty and the clearing agency. Under the *Dodd-Frank* Rules only one party is required to report and when it is a cleared transaction, only the clearing agency is required to report. As currently proposed, the double reporting requirement will significantly increase the burden on a local counterparty who may not otherwise be a reporting party. Nexen respectfully requests the double reporting requirement be amended so that only one party is required to report.

In addition, the daily valuations applicable under the Model Rules are not consistent with the treatment for end users under the *Dodd Frank Act* (which categorization applies to most major companies in the oil and gas sector), pursuant to which end users need only report valuations quarterly (actually within 30 days following the end of a quarter). Although under the Proposed Model Rules the local counterparty must report valuation data for any OTC derivative transaction on a daily basis only if it is a dealer, and on a quarterly basis if it is not a dealer, the inconsistency with the *Dodd Frank Act* ties back to the problem with definition of "dealer" under the Proposed Model Rules as discussed above. If left unchanged, many companies in the energy sector will be impacted because they will be an end user under the *Dodd Frank Act* and only required to report valuations quarterly while having to report valuations daily in Canada. This will particularly impact small producers who are conducting these transactions to mitigate their own risk.

d. Section 37(3)

The requirement in Section 37(3) that "a local counterparty must take any action necessary to ensure the [applicable local securities regulator] has access to all derivatives data reported to a designated trade depository for transactions involving the local counterparty" is an unduly harsh standard. Nexen proposes a revised standard reflecting "commercially reasonable efforts" be substituted for "any action necessary".

e. $500,000 exclusion – Section 40

Until the CSA response to the comments on Consultation Paper 91-407 is received, it is difficult to determine whether the $500,000 exclusion under Part 5, Section 40(b) of the Proposed Model Rules is the only form of exemption that will apply or whether there will be a *de minimis* exemption similar to the *Dodd Frank Act* introduced. Nexen's position with respect to the inclusion of a *de minimis* exemption similar to the *Dodd Frank Act* , and the justification for it, was set out in detail in our letter submitted to the CSA dated June 17, 2013 at pages 4 to 9, a copy of which at attached to this letter.

Conclusion

Nexen thanks the Committee for considering the comments set out in this letter and would be pleased to discuss any aspect of our comments in further detail should the Committee so wish. Nexen has full confidence that further clarifications from the Committee will be provided based on the comments received from the public.

All of which is respectfully submitted,

T. Henry

for Susan L. Schulli,
VP and General Counsel, Nexen Marketing