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**via email only**

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Alberta Securities Commission

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For further distribution to other Canadian securities regulators and the OTC Derivatives Committee of the Canadian Securities Administrators (“CSA”)

**Re: Multilateral CSA Staff Notice 91-302  
Updated Model Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting (“the Rules”)**

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Shell Energy North America (Canada) Inc. (“Shell Energy”) and Shell Trading Canada, a division of Pennzoil-Quaker State Canada Incorporated (“STC”) (collectively, “Shell Trading”) make this submission to comment on the Rules proposed by the CSA. Shell Trading commends the CSA for amending the Rules to adopt many of the comments previously submitted by stakeholders. The following comments focus on aspects that remain of concern.

### **Description of Shell Trading**

The Shell Trading companies are indirect subsidiaries of Royal Dutch Shell, plc (“Shell”) which is impacted by, and participating in, the global efforts to reform financial markets regulation. Shell Energy markets and trades natural gas, electricity, and environmental products, including the natural gas produced by its affiliates in Canada. STC trades various grades of crude oil, refinery feed stocks, bio-components, and finished oil-related products, including such commodities that are produced, manufactured, or imported by affiliates. Both entities also participate in the Canadian energy derivatives markets and together they manage risk and optimize value across physical and financial, exchange-traded and OTC markets.

Energy companies such as Shell often use an integrated approach to physical trading, supply management, and financial hedging in which different entities in the corporate group participate

as a producer, trader, and marketer in the relevant commodity markets. Separate legal entities within the group are designated to enter into physical and financial transactions to help manage risk and optimize the physical portfolio of commodity assets owned and controlled by the corporate group. Such an approach achieves economies of scale, reduces and consolidates risk, and lowers administrative and transactional costs. By consolidating such physical and financial trading activity through hedging affiliates like Shell Trading, this model reduces overall risk to the company and the markets. Inter-affiliate swaps are an important, practical, and efficient component of this process.

## **Trade Repositories and Derivatives Data Reporting**

### **Section 1 – Definitions**

Shell Trading is concerned that the definition of a “dealer” has been inserted into these final Rules prior to its determination as part of the registration consultation under CSA Paper 91-407. Stakeholders have commented that “trading” does not equal “dealing”, however, the definition of dealer in the Rules includes the reference that a dealer is engaged in the business of trading derivatives.

### **Section 35 – Valuation Data**

The wording of subsection 35(1) has been changed to state that both the clearing agency and the local counterparty must report valuation data on a daily basis when the transaction has been cleared. This obligation on the local counterparty is unnecessary based on subsection 27(1)(a) stipulating that the clearing agency is the reporting counterparty for cleared transactions. The clearing agency has become a party to the transaction and holds the obligation to value and manage all transactional exposures as part of its operations and as part of the services it provides to the market and the original parties to the transactions. Maintaining such an obligation on local counterparties will remove one of the incentives for these parties to clear transactions and undermine the CSA objective of moving OTC transactions to centralized clearing agencies. This part of the Rule should be amended such that clearing agencies alone bear this obligation.

Shell Trading continues to object<sup>1</sup> to the requirement in subsection 35(2)(a) to have valuation data submitted by both parties where both are dealers, for non-cleared transactions. This is inefficient and the burden to do so does not justify the expressed curiosity of the CSA to be able to compare the submissions. It also undermines the agreement reached by the parties to designate one of them as the reporting counterparty for the transaction. This part of the Rule should be amended such that valuation data is submitted by the reporting counterparty chosen by the two dealers.

Similarly, subsection 35(2)(b) expands this inefficient burden on participants by requiring both non-dealer parties to a transaction to report valuation data on a quarterly basis. These parties, including end-users, would have agreed that one of them would be the reporting counterparty, and so the non-reporting counterparty should not bear this obligation. It will also require that all

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<sup>1</sup> Shell Trading comments on Consultation Paper 91-301 page 4;  
[http://www.osc.gov.on.ca/documents/en/Securities-Category9-Comments/com\\_20130204\\_91-301\\_kerrp.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category9-Comments/com_20130204_91-301_kerrp.pdf)

parties to OTC derivative transactions become participants of trade repositories, which could cause participants to leave these markets. This part of the Rule should be amended to place the obligation on the dealer counterparty where one of the two parties to the transaction is a dealer, and specify quarterly reporting by the reporting counterparty where neither of the parties is a dealer.

More generally related to all parts of section 35, Shell Trading encourages the CSA to consider the language used (and obligations established) in this section in light of the outcomes of section 27, in comparison to the language used in sections 33, 34, and 36, and with respect to the Explanatory Guidance provided for all of these sections.

### **Section 37 – Data Available to Regulators**

Subsection 37(3) is a new inclusion, and is not clear if the obligation on the local counterparty is to ensure regulator access to data that resides at, a) the trade repository, or b) the reporting counterparty for the transaction, or c) the local counterparty that did not report the transaction. If the intent is either a) or b), this section is not practical because the local counterparty should not, and cannot, be expected to ensure the regulator has access to data residing at a trade repository or another party to the transaction. If the intent is to ensure the regulator has access to data residing at the local counterparty, the wording should be amended to specify that the reporting counterparty (rather than local counterparty) should ensure access to derivatives data it holds, as reported to a trade repository by that reporting counterparty.

### **Section 39 – Data Available to the Public**

Shell Trading reiterates concerns regarding the wording used in subsection 39(3).<sup>2</sup> The Explanatory Guidance provided with the Rule states,

*“The purpose of the public reporting delays is to ensure that market participants have adequate time to enter into any offsetting transaction that are necessary to hedge their positions. These time delays apply to all transactions, regardless of transaction size.”*

However, the current version of the Rule maintains the previous language requiring the trade repository to publicly report transaction level detail “not later than” the stipulated timing. “Not later than” does not accomplish the creation of a mandated delay in reporting, rather, it sets an outer boundary for reporting. Within this time limit, the trade repository could report transactions within hours or even minutes of receiving this data, undermining the objective of the CSA to establish a delay in reporting. Shell Trading recommends the inclusion of a “not sooner than” requirement to establish the desired delay.

Shell Trading commends the CSA for adding subsection 39(6) regarding transactions between affiliates. Unfortunately, the wording used does not achieve the expressed desire to exclude this data from publication. The Rule states that the trade repository “will not be required to make public” the data for transactions between affiliates. Such a statement is not restrictive and seems to provide the trade repository with discretion or the option to publish the data if it chooses. Shell Trading recommends the Rule wording be changed to state the trade repository “must not”

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<sup>2</sup> Ibid page 4

make public any derivatives data for transactions between affiliates, consistent with the approach used in subsection 39(4) to establish a restriction.

## **Section 40 – Exclusions**

The addition of subsection 40(c) to this latest version of the Rules will result in the reporting of every OTC commodity derivative transaction, regardless of transaction size or type of participant involved. Since all three requirements must be met for exclusion, the addition of part (c) renders the other two criteria inconsequential – that is, even if a non-dealer party has aggregate notional value under \$500,000 it is not excluded if it is the reporting counterparty, and thus fails criteria (c). This new criteria also effectively creates a singular exclusion where one already exists – that is, it says if the counterparty is not the reporting counterparty, then it is excused from reporting obligations.

Shell Trading recommends the CSA adopt a simplified approach to exclusions based solely on a de minimis threshold for all participant types, including dealers that are not financial institutions. An example of a threshold proposal that could inform the direction of the CSA is that being considered in Singapore.<sup>3</sup>

## **Conclusion**

Shell Trading appreciates the opportunity to provide these comments, and welcomes the opportunity to work with the CSA on the future regulation of commodity derivatives, including the critically important treatment of commercial energy firms within the reforms. Please contact me at (416) 227-7312 if you have any questions regarding these comments or would like to explore any of the issues further.

Respectfully submitted,

*Submitted electronically*

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for Shell Energy North America (Canada) Inc.  
and Shell Trading Canada

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<sup>3</sup> Monetary Authority of Singapore, consultation on derivatives reporting;  
<http://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Consultation%20Papers/CPRreportingRegs.pdf>