

September 17, 2018

**DELIVERED VIA ELECTRONIC MAIL**

Alberta Securities Commission  
Autorité des marchés financiers  
British Columbia Securities Commission  
Financial and Consumer Services Commission (New Brunswick)  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Nova Scotia Securities Commission  
Nunavut Securities Office  
Ontario Securities Commission  
Office of the Superintendent of Securities, Newfoundland and Labrador  
Office of the Superintendent of Securities, Northwest Territories  
Office of the Yukon Superintendent of Securities  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

c/o:

Me Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, rue du Square-Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montréal (Québec) H4Z 1G3  
Fax: 514-864-6381  
[consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

Grace Knakowski  
Secretary  
Ontario Securities Commission  
20 Queen Street West  
22<sup>nd</sup> Floor  
Toronto, Ontario M5H 3S8  
Fax: 416-593-2318  
[comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Dear Sirs/Mesdames:

**RE: CSA Notice and Request for Comment dated April 19, 2018 with respect to Proposed National Instrument 93-102 Derivatives: Registration and Proposed Companion Policy 93-102 Derivatives: Registration**

TransCanada Corporation (**TransCanada**) is pleased to submit its comments in response to:

- Proposed National Instrument 93-102 Derivatives: Registration (the **Instrument**)

- Proposed Companion Policy 93-102 Derivatives: Registration (the **CP**);

(collectively, the “**Proposed Rule**”) as published and solicited for comments by staff of the Canadian Securities Administrators. TransCanada will also refer to Proposed National Instrument 93-101 Derivatives: Business Conduct (the **Business Conduct Instrument**), and Proposed Companion Policy 93-101 Derivatives: Business Conduct (the **Business Conduct CP**).

TransCanada appreciates the opportunity to provide its comments on the Proposed Rule. The comments below are provided with the goals of achieving effective regulatory oversight of the OTC market while not unduly burdening market participants and ensuring that the Proposed Rule contains the necessary clarity to be effectively applied.

## I. TransCanada

With more than 65 years' experience, TransCanada is a leader in the responsible development and reliable operation of North American energy infrastructure including natural gas and liquids pipelines, power generation and gas storage facilities. TransCanada operates one of the largest natural gas transmission networks that extends more than 91,900 kilometres, tapping into virtually all major gas supply basins in North America. TransCanada is a leading provider of gas storage and related services with 653 billion cubic feet of storage capacity. A large independent power producer, TransCanada owns or has interests in approximately 6,100 megawatts of power generation in Canada and the United States. TransCanada is also the developer and operator of one of North America's leading liquids pipeline systems that extends approximately 4,900 kilometres, connecting growing continental oil supplies to key markets and refineries. TransCanada's common shares trade on the Toronto and New York stock exchanges under the symbol TRP. For more information visit [www.transcanada.com](http://www.transcanada.com).

## II. Comments to Specific Questions Posed by the Authorities

### 1) Methodology for determining “notional amount”

- (a) In general, TransCanada suggests that details informing specifically how these proposed methodologies will be applied are needed. Several questions under both methodologies exist, which prevent fulsome understanding of the CSA’s intent. Specific comments follow:
  1. The individual merits of the Regulatory Notional Methodology vs the CDE Guidance are unclear. By applying different notional thresholds to each methodology, the fundamental accuracy of both methods, with respect to determining the actual systemic risk arising from each derivatives transaction, is called into question. TransCanada advocates for use of well-established and well-understood methodologies that are commonly used by market participants.
  2. Product “Commodity options and similar products”, Column 2 – the concept of a delta-adjusted spot price is not standard in many commodities and is neither frequently calculated nor easily verified. Additional clarification on how and why the CSA proposes to use delta-adjusted spot price, in particular for commodities with highly volatile and/or variable spot prices, would greatly facilitate understanding of this mechanism. TransCanada notes that in commodities with such volatile and/or variable spot prices, spot prices can diverge significantly from forward prices, thereby causing inaccurate or seemingly arbitrary notional valuations.
  3. Products “Commodity fixed/float swaps and similar products” and “Commodity CFDs and similar products” – these concepts are used synonymously for some commodities. The discrepancy the CSA sees between these two, and why they warrant separate notional calculation methodologies, is unclear.

4. The delta-adjusted price methodology appears to produce different notional valuations of the same transaction depending on whether the party is on the buy-side or the sell-side. The notion that the same transaction could produce different notional values for the two parties involved creates confusion.
5. Regarding option valuations, TransCanada continues to believe that use of the option premium is the clearly the most appropriate method for determining the market value of an option. The option premium method provides the market-facing value of the instrument at the time of execution. This method is also objectively observable, in that the premium is clearly stated in the contract. Conversely, use of the strike price method produces an inaccurate reflection of the inherent risks when an option is deep-in-the-money or deep out-of-the-money. Similarly, the delta-adjusted price method would rely on the option-modelling tools employed by individual firms, thereby creating inconsistent valuations. Both methods proposed by the CSA appear to have the potential to frequently produce significantly overstated notional amount valuations.

Although some may view the option premium method as producing notional amount values that are “too small”, TransCanada advocates for a valuation methodology that accurately reflects the actual, verifiable market value of an option transaction at the time of execution.

6. TransCanada proposes that the method of determining notional value for basis swaps should be spread between two nodes. This most accurately calculates the actual notional value of the transaction. By contrast, the proposed method projects a basis swap as two separate transactions, which it is not – this does not produce an accurate representation of the transaction’s value.
- (b) TransCanada proposes the most appropriate approach to determining notional amount of a derivative with a notional amount schedule would be to use the summation of the notional amounts that apply to each of the schedule dates. Understanding the definition of “notional amount schedule” as used by the CSA would allow for better understanding of this question, and would permit more specific feedback.
- (c) TransCanada offers the general comment that attempting to assign values to different components of a multi-leg derivative introduces the possibility of subjectivity in valuation. In the case of mutually exclusive multi-leg derivatives, assigning the value of the leg with the highest value to the multi-leg derivative creates a more easily-understood, replicable methodology.

In instances where transactions consisting of multiple derivatives mechanisms are ‘bundled’ into a single product, such as multi-leg derivatives (other than mutually exclusive multi-leg derivatives), TransCanada proposes that the CSA consider applying a fungibility analysis. (The result of the notional amount calculation should be the same for a series of five transactions or a single transaction with five separate “legs”, all other factors like price and volume being the identical). This approach would ensure that the notional amount arising from a bundled transaction would be the same as the amounts contributed by the individual components.

## 2) Definition of “affiliated entity”

TransCanada supports the definition of “affiliated entity” and “control” as currently set out in the Instruments based on a legal definition of those terms. This definition of affiliation is clear and consistent with definitions of affiliation found in business corporations’ statutes across Canada generally. TransCanada would discourage the use of definitions referring to rules made by other

professional organizations or bodies such as IFRS, since CSA regulators may have little notice, visibility or input into changes made by such independent governing bodies.

**3) Definition of “eligible derivatives party”**

TransCanada supports this definition.

**4) Application of the derivatives adviser registration requirement to registered advisers/portfolio managers under securities legislation**

No comment provided.

**5) IIROC membership for certain derivatives dealers**

No comment provided.

**6) Exemption from the individual registration requirements for derivatives dealing representatives and derivatives advising representatives**

TransCanada supports these exemptions.

**7) Specific proficiency requirements for individual registrants**

TransCanada submits that the qualifications are unnecessarily onerous, and may not otherwise be required for individuals currently holding similar/suitable roles in companies whose primary business is not dealing or trading in derivatives or securities. Alternative proficiency requirements, such as demonstration of requisite experience, a statement of suitability from a company’s senior management, or a combination of both, should be considered as an alternative to mandatory education/licensing criteria.

**8) Derivatives ultimate designated person**

TransCanada submits that 28(3)(c) of the Instrument should be limited to confirmed, rather than potential, instances of non-compliance. This prevents the unnecessary burden of creating reporting mechanisms that apply to uninvestigated events, which may ultimately prove to be compliant with the Instrument. Additionally, 28(3)(c)(i) should be limited to entities that the non-compliant party knows to be directly affected by the non-compliance event. Extending this requirement beyond these parameters creates a burden of understanding what events may or may not materially harm third parties that are not, or are not known to be, directly affected by non-compliance with the Instrument.

**9) Requirements, roles and responsibilities of ultimate designated persons, chief compliance officers and chief risk officers**

TransCanada submits that each of sections 27, 28 and 29 of the Instrument should contain the ability for companies to nominate alternative individuals, possessing appropriate seniority and requisite knowledge, who can adequately fulfill the necessary requirements in those sections. This would offer the ability for a company to identify a more appropriate representative when the roles at that company, as specified in Sections 27-29, are not well-suited to conduct of the required tasks (such as

Vice President, Risk Management which may not be the head of the business unit whose activities trigger the requirement to register).

Specifically in reference to the obligations imposed on senior derivatives managers in section 31 of the Business Conduct Instrument, redundant requirements (for example, section 31(1)(a) in the Business Conduct Instrument and section 27(3)(a) in the Instrument) appear to exist in both of National Instruments 93-101 and 93-102, relating to Business Conduct and Registration. Eliminating these redundant requirements not only reduces compliance burden, but also improves understanding of the aggregated requirements. At a minimum, TransCanada respectfully urges the CSA to harmonize the two rules to address the possibility of 'double jeopardy' enforcement action against a firm in response to single act or action being caught by a substantively similar requirement in each instrument.

#### **10) Minimum requirements for risk management policies and procedures**

TransCanada proposes a revision to Section 39(3)(g) to remove the reference to "...a material change to the registered derivatives firm's risk exposures or a material breach...". Limiting this section's application to actual breaches of a firm's risk management policy focuses the requirement on the intended mechanism, and does not introduce the ambiguity of determining materiality of non-breach events. TransCanada also proposes adding language to confirm that reporting to a firm's board would only be necessary in response to breaches of those risk limits that are directly approved or determined by the board.

TransCanada views the requirement in section 39(4) to have risk systems independently reviewed no less than once every two years as being appropriate.

#### **11) Exemptions from the requirement to register for derivatives dealers with limited derivatives**

TransCanada strongly supports the use of exemptions for derivatives users who do not pose a significant systemic risk to Canada's commodity trading markets through their derivatives dealing activities.

However, Sections 50 and 51 fail to distinguish between derivatives trading (such as for hedging purposes) and derivatives trading for dealing purposes. TransCanada proposes that the CSA expressly exclude transactions that are intended to hedge or mitigate commercial risk from the determination of whether an entity exceeds either de minimis exemption. Doing so would make both of those exemptions available to larger corporate families that primarily use derivatives to hedge financial risks or physical commodity risks, but also engage in limited derivatives dealing activities.

Further, excluding transactions intended to hedge or mitigate commercial risk would provide cross-border consistency with the approach taken in the United States by the Commodity Futures Trading Commission ("CFTC"). For example, under CFTC Regulations, transactions that hedge physical commodity risk are not considered swap dealing activity and do not factor into the CFTC's swap dealer de minimis exception analysis. Providing a similar methodology to determine registration requirements for Canadian derivatives market participants assists with cross-border consistency and competitiveness. Moving to the above-described approach may require a re-evaluation of the relevant thresholds.

#### **12) Exemptions from specific requirements in this Instrument for investment dealers**

No comment provided.

TransCanada hopes these comments will be useful to the Authorities in their deliberations. If you have any questions or would like to discuss any of these matters, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew Davies', with a long horizontal flourish extending to the right.

Matthew Davies

Compliance Manager

TransCanada Corporation