

GENERAL ORDER 96-507

**Exemption from Certain Derivatives Reporting Requirements under Multilateral
Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*
for Certain Financially Settled Electricity Based Derivatives**

IN THE MATTER OF
THE SECURITIES ACT, 1988

ORDER

WHEREAS the Financial and Consumer Affairs Authority of Saskatchewan (the Authority) has assigned to the Director of the Securities Division (the Director) the power to make exemption orders under the provision of *The Securities Act, 1988* (the Act) including orders of general application;

AND WHEREAS terms defined the Act, National Instrument 14-101 *Definitions*, Multilateral Instrument 91-101 *Derivatives: Product Determination* (MI 91-101) and Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (MI 96-101) have the same meaning in this Order unless defined herein.;

AND WHEREAS in this Order:

“CEA” means the United States (US) *Commodity Exchange Act*;

“CFTC” means the US Commodity Futures Trading Commission;

“CFTC Orders” means

- (i) CFTC Final Order 78 FR 19879 (2013), and
- (ii) CFTC Final Order 81 FR 73062 (2016);

“CFTC Swap Data Reporting Requirements” means

- (i) CFTC *Real-Time Public Reporting of Swap Transaction Data*, 17 CFR pt. 43 (2013),
- (ii) CFTC *Swap Data Recordkeeping and Reporting Requirements*, 17 CFR pt. 45 (2013), and

- (iii) *CFTC Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 17 C.F.R. pt. 46 (2013);

“derivative” means a “specified derivative” as defined in MI 91-101;

"Energy Transaction" means a derivative to which all 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 determined 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;

"ERCOT" means the Electric Reliability Council of Texas;

"FERC" means the US Federal Electricity Regulatory Commission;

"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/RTO's 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 for the holder to make a payment, commonly referred to as "option type";

"IESO" means the Ontario Independent Electricity System Operator;

"IESO Market Rules" means the written rules of the IESO governing the wholesale electricity markets in Ontario, administered by IESO;

"IESO Transmission Rights Contract" means a derivative transacted on a market administered by the IESO that is linked to locational price differences for electricity across interties;

"interties" means transmission lines that allow electricity to move between adjacent control areas;

"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;

"OSC Order" means Ontario Securities Commission (OSC) Decision *Re Independent Electricity System Operator* (October 30, 2014);

"OSC 91-507" means OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting*;

"PUCT" means the Public Utility Commission of Texas;

"Report" means, in respect of derivatives data relating to a derivative that involves a local counterparty, to report, update, amend or supplement, each in accordance with MI 96-101;

"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.

AND WHEREAS the staff of the Authority have applied to the Director for an Order pursuant to section 160 of the Act exempting certain reporting counterparties from certain requirements under MI 96-101;

AND WHEREAS:

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

4. The OSC exempted certain counterparties from the reporting requirements under OSC 91-507 in relation to certain contracts transacted on markets administered by certain ISO/RTOs.
5. Pursuant to the OSC Order, the OSC has exempted IESO Transmission Rights Contracts from the reporting requirements under OSC 91-507.

AND WHEREAS the Director is of the opinion that it would not be prejudicial to the public interest to make this Order;

IT IS HEREBY ORDERED pursuant to section 160 of the Act, that:

Relief Related to Financial Transmission Rights and Energy Transactions

1. 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
 - (a) the transaction in the Financial Transmission Right is executed on a market administered by an ISO/RTO,
 - (b) the Financial Transmission Right is transacted in accordance with the ISO/RTO's Tariff, and
 - (c) the ISO/RTO continues to operate in accordance with the oversight and requirements of the FERC or, in the case of ERCOT, the PUCT.
2. 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
 - (a) the Energy Transaction is transacted in accordance with the ISO/RTO's Tariff, and
 - (b) the ISO/RTO continues to operate in accordance with the oversight and requirements of the FERC or, in the case of ERCOT, the PUCT.

Relief Related to IESO Transmission Rights Contracts

3. 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
 - (a) the transaction in the IESO Transmission Rights Contract is executed on a market administered by IESO,
 - (b) the IESO Transmission Rights Contract is transacted in accordance with the IESO Market Rules, and

(c) the IESO continues to operate pursuant to a valid licence granted to it by the Ontario Energy Board under the *Ontario Energy Board Act, 1998*.

Dated November 30, 2016.

A handwritten signature in black ink, appearing to read 'D. Murrison', written over a horizontal line.

Dean Murrison
Director, Securities Division
Financial and Consumer Affairs
Authority of Saskatchewan