



IN THE MATTER OF THE *SECURITIES ACT*, S.N.B. 2004, C. S-5.5 (the “*Act*”)

AND

IN THE MATTER OF

***EXEMPTION FROM CERTAIN DERIVATIVES REPORTING REQUIREMENTS UNDER MI 96-101 TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING FOR CERTAIN FINANCIALLY-SETTLED ELECTRICITY-BASED DERIVATIVES***

**Blanket Order 96-503**  
**Section 208**

**Definitions and Interpretation**

1. Terms defined in the *Act*, National Instrument 14-101 *Definitions*, Multilateral Instrument 91-101 *Derivatives: Product Determination* or Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting (MI 96-101)* have the same meaning in this Blanket Order unless otherwise defined herein.
2. In this Blanket Order,
  - (a) “CEA” means the United States (US) Commodity Exchange Act;
  - (b) “CFTC” means the US Commodity Futures Trading Commission;
  - (c) “CFTC Orders” means
    - (i) CFTC Final Order 78 FR 19879 (2013), and
    - (ii) CFTC 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),
    - (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 CFR pt. 46 (2013);

- (e) “derivative” means a “specified derivative” as defined in Multilateral Instrument 91-101 *Derivatives: Product Determination*;
- (f) “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;
- (g) “ERCOT” means the Electric Reliability Council of Texas;
- (h) “FERC” means the US Federal Electricity 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/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”;
- (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 the 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 Order” means OSC Decision *Re Independent Electricity System Operator* (October 30, 2014);
- (p) “OSC 91-507” means Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*;
- (q) “PUCT” means the Public Utility Commission of Texas;
- (r) “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;
- (s) “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 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.

6. 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.
7. Pursuant to the OSC Order, the OSC has exempted IESO Transmission Rights Contracts from the reporting requirements under OSC 91-507.

#### **Order**

The Financial and Consumer Services Commission (Commission) has delegated to the Executive Director of Securities (Executive Director) the Commission's power under section 208 of the *Act* to exempt, in whole or in part, a person or class of persons from any requirement of any National Instrument, Multilateral Instrument or Local Instrument, subject to such terms and conditions considered appropriate.

Considering that it would not be prejudicial to the public interest, the Commission makes the following order under section 208(1) of the *Act*:

#### *Relief Related to Financial Transmission Rights and Energy Transactions*

8. 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.
9. 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*

10. 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*.

11. This Blanket Order takes effect November 30, 2016.

**Dated** at Saint John, New Brunswick, this \_\_\_ day of November 2016.

“Original signed by”

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Kevin Hoyt  
Executive Director