SCOTTISHPOWER

Rupert Steele OBE
Director of Regulation

Phil Slarks
Wholesale Markets
Ofgem
9 Millbank
LONDON
SW1P 3GE

30 August 2013

Dear Phil,

WHOLESALE POWER MARKET LIQUIDITY: FINAL PROPOSALS FOR A 'SECURE AND PROMOTE' LICENCE CONDITION – DRAFT IMPACT ASSESSMENT

Thank you for the opportunity to provide views on behalf of ScottishPower in response to Ofgem's draft Impact Assessment of its final proposals on wholesale market liquidity.

We recognise the important role market liquidity plays promoting competition and in the transition to a low carbon economy. The Feed-in Tariffs with CfDs being introduced through Electricity Market Reform will support investment in low-carbon generation. Liquid reference prices for the intermittent and baseload generation CfDs are necessary for the system to work.

We are broadly in agreement with Ofgem's assessment of costs and impacts of the Supplier Market Access (SMA) rules. The SMA rules generally reflect our own voluntary approach in trading with independent suppliers, and our estimates for the set-up and ongoing costs to provide the services to small independent suppliers are at the low end of Ofgem's estimates. We also do not consider that the costs of trading out open positions created by trading small clip sizes will be significant since the open positions created will be small.

Our main concern relates to the assessment of mandatory market making, where we believe Ofgem has significantly under-estimated the ongoing costs and risks for obligated parties, and the potential distortion of competition between larger and smaller obligated parties that will result from the proposed design. In particular:

- Transaction fees: Ofgem estimate that 330TWh would be traded per annum through market making, equivalent in volume to GB total generation, and that the transaction fees associated with this would be around £550k per annum. It appears to us that the market making rules could accommodate a volume several times this size, in which case the transaction fees may be much higher than Ofgem's estimate.

- Cost of open positions: Ofgem recognise that if companies manage open positions by going back into the market as soon as possible to close them, this would be very expensive (potentially £5.5m per annum per obligated party), but say that companies are more likely to wait for a day or two for the trade to be matched by a trade in the opposite direction – for which they estimate the cost at £750k per

ScottishPower London Office, 4th Floor, 1 Tudor Street, London EC4Y 0AH
Telephone +44 (0)141 614 2000, Fax +44 (0)141 614 2001, Direct +44 (0)141 614 2012
rupert.steele@scottishpower.com www.scottishpower.com

annum. We believe this significantly under estimates the cost of managing open positions. There is no reason to suppose that a later trade will reverse the earlier one rather than being in the same direction. Obligated parties will therefore need to close positions promptly (though not necessarily immediately) in order to manage value at risk and we believe it is inappropriate to assume that the costs of doing this will somehow disappear. We estimate that the cost of closing out market making positions in a reasonable timescale could in fact be significantly higher than the £5.5m estimated by Ofgem. Our modelling suggests that without any limits on open positions, costs could potentially reach £15m per annum (£90m per annum across all obligated parties).

- <u>Costs from mispricing:</u> Ofgem says it is unable to quantify the costs from mispricing, but considers that these are likely to be small after including the profit from the spread that market makers will receive at other times. This ignores the fact that the current proposals do not adequately protect licensees against exploitation by specialist trading houses or high frequency trading. If suitable protective measures are not included in the final Secure and Promote proposals, Ofgem should include an estimate of such costs in the Impact Assessment

- <u>Costs of complying with EU financial regulations:</u> The proposed market making obligation could impact companies' categorisation under European financial regulations, with very substantial impact on their overall costs. If these issues are not satisfactorily addressed in the final Secure and Promote proposals, Ofgem should include an estimate of the associated costs in the Impact Assessment.

Ofgem adopts a 'break-even' analysis in which it demonstrates that the benefits are likely to exceed the £14m per annum cost estimate. Therefore, if the costs are significantly higher than £14m, the cost-benefit case will be need to be revisited and may prove challenging, particularly when the potential distortion of competition is taken into account. Alternatively, the costs could be reduced to a level closer to Ofgem's original estimate by introducing measures to mitigate the risks identified above and replacing the *ex ante* spread limits with an *ex-post* obligation for spreads to be objectively justifiable.

Our responses to the detailed questions in the consultation are provided in Annex 1.
I hope that you will find these comments useful. Should you wish to discuss any of these points further then please do not hesitate to contact me.

Yours sincerely,

Rupert Steele

Rupert Steele
Director of Regulation

Annex 1

WHOLESALE POWER MARKET LIQUIDITY: FINAL PROPOSALS FOR A 'SECURE AND PROMOTE' LICENCE CONDITION– DRAFT IMPACT ASSESSMENT

SCOTTISHPOWER RESPONSE

Question 1: Do you agree with our evaluation of the impact of our 'Secure and Promote' proposals on consumers? Are there any other factors we should be considering?

Competitive pressure on consumers' bills

We agree that it is difficult to provide a quantitative estimate of the potential impact on consumers' bills from greater liquidity. A wide range of factors influence how competitive pressure impacts the final prices consumers pay and it is difficult to determine the effect of improved liquidity on each of these factors, and the way these factors interact with each other.

- Wholesale energy costs

  We agree that in general, increased liquidity is in principle beneficial to the operation of the wholesale market. However, with prices close to short run marginal cost for gas generation, there is no evidence that there is any weakness in competition in the current wholesale market. We agree that increased availability of longer-dated products could in principle enable suppliers to offer more fixed price deals which protect customers from short-term increases in wholesale prices, though Ofgem has not quantified any extent by which fixed price deals are constrained by hedging issues.

  In any event, we believe Ofgem has significantly underestimated the costs of the proposed market making obligation (see response to Question 4 below). These costs are likely to find their way to consumers, either directly, to the extent that obligated parties are able to pass them on, or indirectly through distortions of competition leading to inefficient decisions.

  If a consequence of the market making proposals is to attract new more sophisticated traders into the wholesale energy market, eg exploiting specialist knowledge or high frequency trading, any net profits made by such traders are likely to be at the expense of existing energy companies and ultimately final consumers.

- Suppliers' operational costs

  Competition between suppliers incentivises them to become more efficient, leading to reductions in operational costs.

  As noted above, we think the costs of the market making obligation have been significantly underestimated and these costs are likely ultimately to be paid for by consumers. Under Ofgem's current proposals, we think that these increased costs may well outweigh any benefit from increased competition.

  We would also note that the current market making proposals will result in a disproportionate sharing of costs across different sizes of supply and generation businesses. A relatively small participant such as ScottishPower will face the same overall costs as much larger participants and hence a much higher cost per customer. This will tend to distort competition and potentially detract from the efficiency benefits alluded to above. If the market making activity does not cover its costs, then it is imperative that the obligation is designed so that its cost is proportionate to the size of the obligated party

- Suppliers' profit margins

  We agree that, in general, competition encourages suppliers to reduce their controllable costs. It is not clear to us whether competition is currently constrained by liquidity weaknesses, though improvements in liquidity are always welcome.

  However, as noted above, the market making proposals, as currently designed, are likely to result in a higher cost per customer for smaller obligated parties than for larger. If as we believe, the costs of market making are significantly higher than Ofgem has estimated, the main impact will be to increase the profit margins of larger obligated suppliers and reduce the profit margins of smaller obligated suppliers. The resulting distortion is likely to be adverse to consumer interests.

Customer service

We agree that improved access for small independent suppliers will increase incentives on all suppliers, large and small, to be more responsive to their customers and seek out ways in which quality of service can be improved. We consider that challenge to be good for customers and good for suppliers, as it incentivises all suppliers to innovate to deliver better service.

Choice and innovation

We agree that the potential gains in choice for consumers do not only apply to the electricity market. Recognising that most domestic electricity is sold to consumers through dual fuel tariffs there could be benefits from improving access for small suppliers to the gas market. Given that liquidity in the gas market is recognised as being very good, the main benefits could come from extending the Supplier Market Access proposals to small gas suppliers.

Transparency and consumer confidence in the power market

We agree that consumers want to be sure that the energy markets are delivering the best possible deal for them and that if the measures to improve liquidity and market access help to facilitate entry and competition that this will help to build trust by giving consumers options and a range of different suppliers. If however the measures result in financial players entering the market and profiting at consumers' expense, this will reduce consumer confidence.

Security of supply

In our view it is unlikely that improving access for small suppliers and improving liquidity in the forward market up to two years ahead will have a significant impact on security of supply. Investment in new generation and decisions on whether or not to close existing plant will be influenced more by the developments under Electricity Market Reform (EMR), including the Capacity Mechanism, than by developments on access and liquidity. However, improved year-ahead liquidity could improve the robustness of the EMR Contracts for Difference (CfD) reference price for baseload low carbon generation.

As Ofgem notes, new power plants are typically financed on a 15 year basis and therefore the liquidity arising from secure and promote is unlikely to be material to the investment case. It is implausible that the kind of long term fixed price power purchase agreement that was common before the fall of Enron could exist in today's market because of the financial risks involved.

Costs

We believe that the ongoing costs estimated for the 'Secure and Promote' proposals are significantly under-estimated, in particular the ongoing costs associated with market making and the potential impact of specialist traders entering the market.

Larger benefits would thus be required to ensure that consumers' bills were not higher as a result and in our view Ofgem has not made the case that sufficient benefits would materialise.

Question 2: Do you agree with our evaluation of the impact of our 'Secure and Promote' proposals on competition? Are there any other factors we should be considering?

The Supplier Market Access rules

We agree that the Supplier Market Access rules will facilitate entry and competition by smaller suppliers by addressing directly the specific issues faced by these firms. They build on voluntary commitments made by us in 2010 aimed at assisting independent suppliers to access the electricity wholesale market.

We have followed up these initial commitments and in January 2012 we wrote to all 56 supply licence holders with whom we had no existing bilateral trading relationship making them aware of the commitments we had made and inviting them to establish a trading relationship with us. We are now actively engaged with 20 independent suppliers and have established trading relationships with 6.

Credit and collateral are very important for small suppliers and we have granted bilateral credit lines with a total value of £15.5m to the independent suppliers with whom we have established trading relationships. This enables them to trade with us for periods of up to 36 months ahead. Credit lines have been extended to counterparties who do not have investment grade credit ratings.

It is also important that small independent suppliers can access the trade sizes they require to hedge their businesses. We have transacted power trades to date at a granularity of 0.05MW and of varying bespoke sizes between 0.25MW and 18.5MW contrasting with a standard market clip size of 10MW. We have also traded small clip sizes in the gas market with volumes as low as 50 therms/day compared with a standard clip size of 25,000 therms/day.

Smaller suppliers also need access to the trade durations they require to hedge their businesses and we have to date traded electricity with durations of between 1 and 182 days, covering periods of up to 16 months ahead of delivery, and gas trades between 1 and 181 days.

Since 2010 we have taken the actions necessary to ensure that independent suppliers can secure bilateral credit lines and be able to access the wholesale market in the trade sizes, durations and shapes required, and at fair market prices, to operate their businesses. The Supplier Market Access rules can further improve competition for smaller suppliers by ensuring that other major players take similar actions.

Market making obligation

Although the market making obligation is likely to improve price discovery and product availability, the question is whether these benefits will outweigh the costs and risks for obligated parties. As noted elsewhere in this response, we do not believe that Ofgem has demonstrated that this is the case with the current design of the obligation.

Impact on competition between platforms

It is important that ‘Secure and Promote’ does not mandate the use of a particular platform and thus does not distort the current competition between trading platforms. An implicit designation of any particular platform may be anti-competitive as well as potentially creating EMIR issues as noted above.

Impact on ‘Secure and Promote’ licensees

The consultation recognises that ‘Secure and Promote’ licensees will incur costs which their competitors will avoid but notes that since the cost of ‘Secure and Promote’ is estimated to be small then this is likely to have an insignificant impact on the relative competitiveness of firms with and without the ‘Secure and Promote’ licence condition. However we believe that the costs estimated for the ‘Secure and Promote’ proposals are significantly under-estimated, in particular the costs associated with market making, and thus relative competitiveness could be impacted.

Ofgem is required to have regard to the need to secure that licence holders are able to finance the activities which are the subject of obligations on them and if parties are obligated to market make then they must be able to recover the costs they incur from the market. Ofgem has proposed a structure that will result in a disproportionate sharing of costs across different sizes of supply and generation businesses. If the market making activity does not cover its costs, then it is imperative that the obligation is designed so that its cost is proportionate to the size of the obligated party.

Impact on other firms in the market

Ofgem considers it unlikely that the ‘Secure and Promote’ obligations would limit the willingness of firms outside the obligation to grow and compete, as they do not consider the obligations to be particularly onerous.

We agree that small suppliers who qualify for access to the market under the Supplier Market Access rules are unlikely to be disincentivised to grow above the eligibility threshold since there are more significant commercial incentives to grow their businesses and that the companies would be quite large enough to organise their own trading by the time they fell outside the Supplier Market Access rules.

However, as noted above, we believe that Ofgem have significantly under-estimated the adverse impact of the market making obligation on smaller obligated parties, in part because there is at present no proportionality of the obligation and even relatively small players could face significant trading costs and position-closing risks. This could affect incentives.

The potential interaction with EU financial regulations could intensify such issues; for example if a firm's categorisation under EMIR or MiFID II would change as a result of being caught by the licence condition, the firm would be likely to take steps to avoid this.

Question 3: Do you agree with our evaluation of the impact of our 'Secure and Promote' proposals on sustainable development? Are there any other factors we should be considering?

Managing the transition to a low carbon economy

We recognise the important role market liquidity plays in the transition to a low carbon economy. The Feed-in Tariffs with CfDs being introduced through EMR will play a key role in supporting investment in low-carbon generation. Liquid reference prices for the intermittent and baseload generation CfDs are needed for the system to work; such reference prices should increase investor confidence in the returns available and therefore encourage investment in low carbon generation.

Actions taken by us and other major market participants on a voluntary basis have already delivered increased liquidity into the day-ahead market and the Government have proposed that this should be used for the reference price for intermittent low carbon generation. We agree with Ofgem's conclusion that the use of the day-ahead market in the CfD reference price will encourage more trading in this market, further improving liquidity, and also that market coupling under the European Target Model will also make this market an attractive route for European parties, potentially attracting new players to the GB market.

The Government have indicated that the reference price for low-carbon baseload generation should be taken from the forward market. If 'Secure and Promote' can deliver improved forward market liquidity, then the use of this market for determining the baseload CfD reference price will encourage more trading in this market, further improving liquidity.

Eradicating fuel poverty and protecting vulnerable customers

Promoting effective competition between suppliers is important for vulnerable customers as well as for other customers. As noted above, we believe Ofgem has significantly under-estimated the cost of the market making obligation, and proposed a design which will cause smaller obligated parties to bear a disproportionate share of these costs. These costs and the distortion of competition are likely to be detrimental for all customers including the vulnerable, and (assuming the proposals remain unchanged) it is not clear that they will be outweighed by the potential benefits of easier market entry.

Ensuring a secure and reliable gas and electricity supply

In our view it is unlikely that improving access for small suppliers and improving liquidity in the forward market up to two years ahead will have a significant impact on security of supply. The Enron-era long term fixed price contracts are implausible in the current market because of the risks involved. Investment in new generation and decisions on whether or not to close existing plant will be influenced more by the developments under EMR, including the Capacity Mechanism, than by developments on access and liquidity. However, improved year-ahead liquidity could improve the robustness of the EMR CfD reference price for baseload low carbon generation.

Question 4: Do you agree with our evaluation of the cost impacts of our 'Secure and Promote' proposals? Are there other factors we should be considering?

Supplier Market Access set-up costs

Our estimate of the set-up costs to provide the services to small independent suppliers set out in the Supplier Market Access rules is over £100k which is at the low end of Ofgem's estimates. We are currently actively engaged in talks with 20 independent suppliers and have established trading relationships with 6; this cost estimate covers the costs we have incurred in progressing our offers to establish trading relationships including performing counterparty credit checks.

Supplier Market Access ongoing costs

Based on our experience to date, our estimate of the Supplier Market Access ongoing costs is under £200k per annum, also at the low end of Ofgem's estimates. This includes providing trade notification services, monitoring continuing lines of credit, undertaking financial regulatory compliance and transferring qualifying over-the-counter trades to exchanges for clearing. It also, unlike Ofgem's estimate, includes the cost of processing small clip size trades, recognising that when a small clip is traded an open position will be created which will need to be combined with other small trades before it can be traded out in the market. The costs of this are not significant since the open positions created are small but these costs would be significant if larger open positions had to be held for any significant period of time.

This cost does not include the potential cost of default by a counterparty which can be a significant risk for parties who do not have investment grade credit ratings or parent company guarantees. It also does not include the costs of more onerous obligations under European financial legislation if these were triggered by trades under the Supplier Market Access rules.

Market making set up costs

Our estimate of the set up costs is over £400k to implement exchange-based market making on an existing exchange. This is within the range of Ofgem's estimates but at the higher end. The major costs of market making are however the potential ongoing costs.

Market making ongoing costs

We believe Ofgem have significantly underestimated the potential ongoing costs of obligated market making as set out in the 'Secure and Promote' proposals, particularly in relation to the potential costs of open positions.

- **Staff costs:** Ofgem estimate the ongoing staffing costs associated with market making as around £300k per annum and this is consistent with our estimate.

- **Transaction fees:** Ofgem estimate that 330TWh would be traded per annum through market making, equivalent in volume to GB total generation, and that the transaction fees associated with this would be around £550k per annum. The proposed market making rules could accommodate several times this volume of trading, in which case the transaction fees may be much higher than Ofgem's estimate.

- **Cost of open positions:** Ofgem recognise that if the market maker manages open market positions by going back into the market as soon as possible to close these positions, this will be very expensive, potentially £5.5m per annum for each 'Secure and Promote' licensee, or £33m per annum across all licensees. Ofgem do not believe that obligated parties will adopt this strategy but instead will wait for a day or two for the trade to be matched by a trade in the opposite direction – for which they estimate the cost at £750k per annum per licensee, based on a cost of capital calculation. However, there can be no assurance that the next trade will be in the opposite direction rather than the same direction again. Accordingly, we believe that this approach significantly under estimates the cost of managing open positions. Obligated parties will need to close positions promptly (though not necessarily immediately) in order to manage value at risk and it is inappropriate to assume that the costs of doing this will somehow disappear. On the basis of our modelling we estimate that the cost of closing out market making positions in a reasonable timescale could in fact be significantly higher than the £30m estimated by Ofgem. Our modelling suggests that without any limits on open positions costs could potentially reach £15m per annum for each market maker, potentially £90m per annum across all licensees. It is thus imperative that limits are placed on the trading risks that obligated parties are required to take in order to keep the costs of market making at a level that the market can absorb.

- **Costs from mispricing:** Ofgem says it is unable to quantify the costs from mispricing, but considers that these are likely to be small after including the profit from the spread that market makers will receive at other times. This ignores the fact that the current proposals do not adequately protect licensees against exploitation by specialist trading houses or high frequency trading. There are various simple measures which could protect against this risk, such as a 5 minute reload time (whereby a market maker can automatically stop purchasing any products for 5 minutes after a purchase was completed and the same for sales), fast market rules and gross position limits (that would allow obligated parties to withdraw from the market for the day). However, in the absence of such protective measures, the costs could be significant, and we do not think is justifiable to ignore them.

<u>Other costs not listed by Ofgem</u>

As noted in response to Question 5, the market making obligation could cause companies to be categorised differently under European financial regulations, with very substantial impact on their overall costs. If these issues are not satisfactorily addressed in Ofgem's final Secure and Promote proposals, it will be necessary for Ofgem to include an estimate of the associated costs in the Impact Assessment.

<u>Comparing costs to benefits</u>

Ofgem suggest that on the basis of the 'Secure and Promote' proposals costing £14m per annum that they could produce benefits through reductions in operational costs and/or profits which would outweigh the costs. However, as set out above we believe that Ofgem have significantly underestimated the risks and costs associated with the market making obligation in its current form and thus it is unlikely that sufficient benefits will be realised by that proposal to outweigh the likely level of costs.

Any market making obligation should be designed in a way that market makers are able to cover their costs. Consideration should therefore be given to replacing the *ex ante* spread limits with an *ex-post* obligation for spreads to be objectively justifiable so that the market sets spreads at an efficient level and Ofgem need only intervene if parties set spreads in a way that constitutes avoidance. This would also allow spreads to widen in faster moving market conditions, as is observed elsewhere.

Question 5: Do you agree with our evaluation of the risks and unintended consequences of our 'Secure and Promote' proposals? Are there any other factors we should be considering?

<u>Accessibility for smaller firms may remain constrained</u>

We believe that the Supplier Market Access rules will facilitate entry and competition by smaller suppliers by addressing directly the specific issues faced by these firms. Credit and collateral will always be key for small suppliers and any firms unable to operate under the terms offered to them through the Supplier Market Access rules would in our view not be suitable to be supplying customers in the electricity retail market.

<u>Supplier Market Access rules may remove volumes from the market</u>

We do not anticipate that the Supplier Market Access rules will significantly impact overall volumes in the market. Their implementation should improve the competitiveness of small independent suppliers and enable them to take some volume from the larger suppliers. This in turn could encourage more small participants into the market to the benefit of final customers.

<u>Market makers may not always be present</u>

It is not necessary for market makers to be present for the majority of market opening hours for market making to improve liquidity and reference prices in the forward market. Markets can operate satisfactorily on the basis of trading windows allowing market participants to concentrate their main trading activity into part of the trading day while still being able to trade at other times of the day should they wish to do so. This can reduce costs for the market makers and can also facilitate market making across more than one platform by concentrating activity on all platforms into the same window in each day.

<u>Market making has limited effect on volumes</u>

We agree that market making does not need to lead to a large increase in traded volumes to be successful. The target Ofgem have set for a volume equivalent to GB total generation to be traded through market making is ambitious, although far from an upper limit. Market making could improve the robustness of reference prices by concentrating liquidity in particular trading periods and thus could achieve its aims without a substantial increase in overall volumes traded across all forward market products.

<u>Risk of distortion to market prices</u>

We do not believe there is a risk of distortion to market prices from voluntary market making. However, if firms are obligated to market make with tight bid offer spreads and find they are being forced into unprofitable trades when posting bids and offers around their view of market prices then there is a risk that the prices they post are not reflective of their view of market prices. This could be avoided by setting limits on the extent of parties' obligations and also ensuring that bid offer spreads can be set at levels reflecting changing market conditions.

Intervention may crowd out commercial activities

We are not close enough to the business models of the aggregators that are active in the UK market to be able to offer a very informed view on the impact of Ofgem's proposals on them. However, the aggregators do perform a valuable service both directly and through driving innovation and it will be important for Ofgem to listen to any concerns that they may have.

Subject to that point, we think it is unlikely that the Supplier Market Access rules will disadvantage small independent suppliers by discouraging intermediaries from offering bespoke services to small suppliers. We believe that the major market players are able to offer better terms directly to small independents rather than through an intermediary.

Given that market making does not have a significant role in GB power trading currently, it is important to ensure that it is delivered in the most efficient way. Commercial market making is likely to be more efficient than obligated market making and if this can be delivered in the appropriate timescales then it should be the option chosen.

Firms could obtain supply licences just to be eligible for the Supplier Market Access rules

The Supplier Market Access rules are clearly targeted at small suppliers and it is unlikely in our view that access to these terms would attract other players such as financial participants to the detriment of small suppliers. It could, however, attract new small suppliers into the market, competing with the small suppliers currently in the market, giving customers more choice.

Compliance risk for 'Secure and Promote' licensees

Ofgem recognise that the introduction of a new licence condition creates compliance risks for 'Secure and Promote' licensees and stress the importance of clear rules to ensure 'Secure and Promote' licensees are aware of their obligations.

Ofgem considers that replacing the previously proposed qualitative rules around bid-offer spreads with specific values reduces compliance risks for obligated licensees. However, the proposed values are so tight that they significantly increase the risk that obligated market makers will not be able to cover their costs. Consideration should therefore be given to replacing the *ex ante* spread limits with an *ex-post* obligation for spreads to be objectively justifiable so that the market sets spreads at an efficient level and Ofgem need only intervene if parties set spreads in a way that constitutes avoidance. This would also allow spreads to widen in faster moving market conditions, as is observed elsewhere.

Uncertainty over European financial regulation

A fundamental concern with the market making proposals centres on their interaction with European financial regulations, in particular EMIR. The consultation document suggests that market making trades may amount to 330TWh, which equates to £18bn per annum in value (or double this for EMIR threshold calculations as there are two sides to each trade).

If these trades were in scope for EMIR threshold calculations then there would be an EMIR classification issue based on the EMIR threshold of €3bn per year. Indeed it would be likely that all six integrated companies would face a Non Financial Counterparty + (NFC+) classification – the implications of which are particularly onerous. This classification would lead to mandatory clearing of global derivatives trading even where these are used for hedging purposes. There would also be more onerous reporting, trade processing and related risk reduction requirements from this classification. The result of this would be significant extra costs for UK consumers as well as significant costs in other global markets in which the affected companies' groups are trading.

Although Ofgem has acknowledged this problem, the proposed solution (allowing licensees to nominate a third party to discharge the obligation on their behalf) is not sufficiently certain as it relies on a suitable third party coming forward at reasonable cost. There is however no relief in the proposed licence condition if this does not happen. Another possible solution – allowing the market making to be undertaken on centrally cleared exchanges – is also not currently viable because Ofgem is proposing to lay down conditions about other participants on those exchanges which are both uncertain and impossible for licensees to monitor.

It is essential that a robust solution is found to these EU compliance issues.

ScottishPower
August 2013