NOTICE TO PARTICIPANTS AND STAKEHOLDERS

December 14, 2017

Re: Conclusion of MSA Affiliated Retailer Advertising Investigation

In May 2017 the MSA received a referral and complaint regarding the conduct of an electricity and natural gas retailer. This retailer is affiliated with a distributor or regulated rate provider as defined in the *Code of Conduct Regulation* (Code). The referral stated that the affiliated retailer advertised without including the statement required by section 7 of the Code, often referred to as the "Fair Competition Statement" (FC Statement). In addition to the section 7 allegations, the MSA investigated whether the retailer's affiliated distributor had solicited business on behalf of a retailer (section 15(b) of the Code).

The MSA found that the affiliated retailer advertised energy services online using search ads, display ads and online video, through direct email and on the radio, without the FC Statement and this did not meet the requirements of section 7(1) of the Code to include the FC Statement "in any advertising that markets energy services". In addition, in a number of advertisements, the affiliated retailer included the FC Statement in a form that does not meet the formatting requirements of section 7(3) of the Code. The MSA found that any issues related to s. 15 of the Code had been self-reported to the Alberta Utilities Commission (Commission) and would be appropriately addressed by the Commission. The MSA, however, reminded the retailer and distributor that no distributor or regulated rate supplier may solicit on behalf of a retailer or give the appearance that it is acting on behalf of a retailer or that the retailer is acting on its behalf.

On review of the MSA's investigation findings, the affiliated retailer committed to cease advertising in the manner that the MSA viewed as contrary to the Code. The MSA has discontinued its investigation and closed its file based on the retailer's commitment to cease any further advertising except in strict compliance with the Code. If the retailer does not comply with the MSA's conditions, the MSA retains the right to bring the matter to the Commission for enforcement action.

The MSA provides notice to all retailers with an affiliated distributor or regulated rate provider that have a similar name or logo of their obligation to strictly adhere to section 7 of the Code and their Commission approved compliance plans. Section 7 of the Code states that the FC Statement must be included "in any advertising that markets energy services". The MSA interprets any to mean any and all advertisements and is of the view that having a web link to a webpage that includes the FC Statement or a phone number with a recording of the FC Statement does not meet the requirements of the Code. This may preclude affiliated retailers from using certain types of advertising if it is not possible to include the FC Statement in the advertising.

The MSA is of the view that the Code is meant to increase competition in the retail electricity market and to level the playing field so that affiliated retailers of distributors and regulated

suppliers do not have an unfair advantage over other retailers. The MSA is open to participating in any consultations to discuss competition in the Alberta retail electricity market including potential revisions to the Code to ensure that it is serving its purpose of promoting a competitive retail market for electricity and natural gas and that it is aligned with modern advertising methods.

The MSA notes that its findings in this investigation and this notice do not constitute a formal guideline of the MSA under the Market Surveillance Regulation. However, the MSA believes it is reasonable to report on its findings in this investigation so that stakeholders can understand the MSA's enforcement stance and provide transparency to the MSA's activities. Views expressed by the MSA do not supplant the role and authority of the courts, the Alberta Utilities Commission or another adjudicative body with jurisdiction over a given matter.