



June 17, 2013

DELIVERED VIA ELECTRONIC MAIL

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Ontario Securities Commission
Saskatchewan Financial Services Commission

c/o:

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8
e-mail: jstevenson@osc.gov.on.ca

c/o:

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
e-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Comment Letter to CSA Staff Consultation Paper 91-405 – End-User Exemption

Enbridge Inc. (“**Enbridge**”) hereby respectfully make this submission to comment on the Canadian Securities Administrators (“**CSA**” or the “**Committee**”) Consultation Paper 91-405 - *Derivatives: End-User Exemption* (“**CSA Paper 91-405**”), considering the exemption of end-users (the “**End-User Exemption**”) from future regulatory requirements related to over-the-counter (“**OTC**”) derivative transactions in Canada. Enbridge supports the efforts of the CSA to address this topic and submits these comments to request reevaluation some of the End-User Exemption recommendations as the significant financial burdens associated with some aspects of the proposed derivatives regulation like reporting, clearing and registration makes the proper formulation and structuring of the End-User Exemption critically important for Canadian OTC derivatives market participants. Enbridge also wishes to thank the Alberta Securities Commission Director of Market Regulation, Lynn Tsutsumi, for providing market participants with an another opportunity to comment on CSA paper 91-405.

I. INTRODUCTION OF ENBRIDGE

Enbridge is a transporter of energy, operating the world's longest, most sophisticated crude oil and liquids pipeline system in Canada and the United States, shipping more than two million barrels every day. Enbridge's natural gas gathering and transmission system extends from Northern British Columbia to the Gulf of Mexico, moving billions of cubic feet of gas per day. It also operates Canada's largest

natural gas distribution company in Ontario, and provides distribution services in Quebec, New Brunswick, and New York State.

Like many other “end-users”, Enbridge transacts in derivatives to hedge the risks associated with its core business of transporting and processing energy commodities, where it is “economically appropriate to the reduction of risks in the conduct and management of its commercial enterprise”¹ where the risks arise from numerous sources including risk associated with energy commodities as well interest rate and foreign exchange risks. Enbridge transacts in derivatives on its own behalf, which clearly is meant to mitigate its own risks.

II. ENBRIDGE’S SPECIFIC COMMENTS ON CSA PAPER 91-405

Enbridge urges the CSA to ensure that eligibility criteria for the End-User Eligibility Exemption is properly defined and laid out without any undue restrictions. Enbridge also makes some substantive comments regarding two of the Committee’s proposed factors that it would consider to determine an entity’s eligibility for the End-User Exemption below.

Criteria for Eligibility

i. Trading for own account, not a registrant or affiliate of a registrant

Enbridge submits that the recommendation to exclude participants who are affiliates of registrants from being eligible for the End-User Exemption is contrary to the Committee’s discussion of whether it would exclude intra-group/inter-affiliate transactions from the clearing requirement in CSA Staff Consultation Paper 91-406 *OTC Derivatives: Clearing*. Since the publication of CSA Paper 91-405, the U.S. Commodity Futures Trading Commission (the “CFTC”) has published a final rule on a clearing exemption for inter-affiliate transactions. The CFTC’s rationale is that these inter-affiliate transactions do not pose any systemic risk to the U.S. financial system.

The CSA stated that “market participants who are in the business of trading for or *advising* others in the trading of OTC derivatives will not be eligible for the End-User Exemption and will be required to meet registration requirements. Enbridge would like to refer the Committee to its comments on the CSA Paper 91-407 filed with this comment letter about the variety of commercial contracts that exist, which include commercial transportation arrangements on pipelines. A specific example is the “asset management arrangements” (“AMA”) practices under the U.S. Federal Energy Regulatory Commission (“FERC”) Rule 712.

This FERC Final Rule Order 712 - *Promotion of a More Effective Capacity Release Market* governs capacity release transactions on interstate natural gas pipelines. FERC permits market-based pricing for short-term capacity releases and facilitates asset management arrangements to enhance competition in the secondary capacity release market and to increase shipper gas supply options. In general, AMAs are “commercial contractual relationships where a party agrees to manage gas supply and delivery arrangements, including transportation and storage capacity for another party for a payment”.

¹ See the CFTC’s Final Rule on *End-User Exception to the Clearing Requirement for Swaps* published in July of 2012.

With such AMAs and other prevalent commercial contracts and agency agreements in place with third parties, Enbridge is very concerned such arrangements might be interpreted to constitute advising and thereby render Enbridge ineligible for the End-User Exemption. Enbridge is very concerned about this prospect and we strongly recommend that the CSA defines an OTC derivative, which would definitely exclude such commercial transportation contracts. In the U.S. these contracts are categorically not "swaps" and outside the purview of the CFTC's jurisdiction.

- ii. *Hedging to mitigate commercial risks related to the operation of a market participant's business.*

Enbridge fully supports the Committee's recommendations that hedging include the broader addition of mitigation of commercial risk, which may go beyond the traditional concepts of hedging. This is aligned with the CFTC's criteria for eligibility in its final rule on the *End-User Exception for Clearing Requirement*. Enbridge recommends that the Committee add this recommendation of a broader concept of hedging to include the concept of mitigating of commercial risk to the exemptions from registration requirements in CSA Paper 91-407- *Derivatives: Registration*.

III. ENBRIDGE RESPONSE TO CERTAIN QUESTIONS POSED IN CSA PAPER 91-405

Q2: Are the end-user eligibility criteria proposed by the Committee appropriate? And Q3: Should alternative or additional criteria be considered?

The CSA indicated in CSA paper 91-405 that the End-User Exemption is intended to be available to the "eligible market participants" that use OTC Derivative trading activity to mitigate risks related to the operation of their business without providing what the definition of an "eligible market participant". Enbridge submits that the CSA provide a definition to give legal certainty to market participants and provide clear criteria that market participants could use to determine their eligibility for the End-User Exemption.


Q7. Is the Committee's proposal to require board of directors' approval of the use of OTC derivatives as a risk management tool to demonstrate hedging compliance appropriate for non-registrant entities?

Enbridge would like to comment on the process recommended by the Committee for entities to seek their board of directors' approval to demonstrate hedging compliance. Enbridge submits that with respect to this requirement, the CSA should clarify if entities would have to disclose the "business plan or strategy" that has been approved by the board as part of the record of the board's approval of the use of OTC derivatives as a risk management tool.

IV. **CONCLUSION**

Enbridge thanks the CSA and the Committee again for the opportunity to submit our comments on CSA Paper 91-405 and hope the Committee would consider our comments and recommendations as the Committee drafts its model rules to establish a regulatory regime for the OTC derivatives market in Canada. We would be pleased to discuss our thoughts with you further. If you have any questions or comments, please contact the undersigned.

Respectfully submitted,
Enbridge Inc.

A handwritten signature in blue ink, appearing to read "Kari Olesen", is written over a horizontal line.

Kari Olesen
Legal Counsel