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Autorité des marchés financiers  
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Financial and Consumer Services Commission (New Brunswick)  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Nova Scotia Securities Commission  
Nunavut Securities Office  
Ontario Securities Commission  
Office of the Superintendent of Securities, Newfoundland and Labrador  
Office of the Yukon Superintendent of Securities  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

**c/o:**

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Dear Sirs/Mesdames:

**Re: Comment Letter to CSA Proposed National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives and Proposed Companion Policy 94-101CP Mandatory Central Counterparty Clearing of Derivatives**

Enbridge Inc. (“**Enbridge**”) hereby respectfully submits these comments below in response to Canadian Securities Administrators’ (“**CSA**”) Derivatives Committee (“**Committee**”) request for comments in connection with the Proposed National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (“**Proposed Clearing Rule 94-101**”) and Proposed Companion Policy 94-101CP *Mandatory Central Counterparty Clearing of Derivatives* (“**Proposed Clearing Companion Policy**”) which outline the CSA’s requirements for central counterparty clearing of over-the-counter (“**OTC**”) derivative transactions. All comments are from the point of view that the Committee has drafted these regulations not only to regulate derivative participants, but to also “strike a balance between proposing regulation that does not unduly burden participants in the derivatives market”. Enbridge commends the CSA for choosing to develop a national instrument rather than proceeding with CSA Notice 91-303 – *Proposed Model Provincial Rule on Mandatory Central Counterparty Clearing of Derivatives* (“**Proposed Model Rule 91-303**”). Harmonization of the clearing rules across Canada was a major concern for Enbridge being a company that conducts its business across many jurisdictions.

## 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 on average more than 2.2 million barrels every day. Enbridge's natural gas gathering and transmission system transports natural gas throughout North America, 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 both OTC and cleared derivatives to manage and mitigate the risks associated with its core business of transporting and processing energy commodities.

Enbridge appreciates the opportunity to comment on the Proposed Clearing Rule 94-101 and the Proposed Clearing Companion Policy and commends the CSA's efforts to support Canada in meeting its G-20 commitments and establish a regulatory regime for the over-the-counter derivatives market in Canada. Enbridge continues to be very concerned about compliance requirements that are too burdensome for the Canadian market and the implications for liquidity in the derivatives market in Canada.

## II. ENBRIDGE'S GENERAL COMMENTS ON THE PROPOSED CLEARING RULE 94-101

### A) Part 1 – Definitions and Interpretation

#### Section 1 - Definitions

With respect to the definition of "*financial entity*" in Section 1, since the registration rule has not been finalized, parties will be unable to determine whether or not they or their counterparty are required to clear a derivative. For this reason, the Proposed Clearing Rule 94-101 should not come into force until the registration rule is in force. In addition, privately administered company pension funds are caught by financial entity definition as they may be regulated by the Office of the Superintendent of Financial Institutions (Canada) or some other regulatory body in Canada. Being a regulated pension fund should not automatically result in a privately administered company pension fund being categorized as a financial entity. If a company such as Enbridge is administering pension funds for its employees and management, and if Enbridge itself is able to utilize the End-User Exemption, how does it then follow that the hedging activities of the pension fund cannot also utilize the End-User Exemption? In addition, there are more than just clearing costs associated with clearing transactions. Additional cash margin may be required for clearing transactions.

The "*local counterparty*" definition needs further guidance in the Proposed Clearing Companion Policy. It is not clear what is meant by "responsible for liabilities of that affiliated party". Some criteria as to what the Committee believes would satisfy the requirement of "being responsible for liabilities" would be of great value. Given that several commenters had concerns with this section in the previous round of comments to the Proposed Model Rule 91-303, it would seem appropriate for the Committee to provide further guidance beyond, "these are longstanding legal concepts" as an explanation.

#### Section 4 - Interpretation of hedge or mitigation of commercial risk

This section and guidance respecting "hedging or mitigating commercial risk" was improved with the removal of "closely correlated".



In Section 4(2)(a), the term “*speculate*” should be defined so that companies can properly categorize their derivatives as hedges and in turn comply with the final clearing rule.

**B) Part 2 - Mandatory Central Counterparty Clearing**

**Section 5 – Duty to Submit for Clearing**

Enbridge reiterates that the clearing rules should be harmonized across Canada. Allowing the designation of a “mandatory clearable derivative” to be different across jurisdictions creates operational and compliance challenges for end-users that transact throughout Canada.

**Section 6 – Non-application**

Providing that a crown corporation or an entity owned by a government (whether in Canada or in a foreign jurisdiction) does not have to clear their derivatives gives those entities a competitive advantage in the market, both with respect to clearing costs as well as margin. In addition, by not applying the clearing rules to entities owned by foreign governments, an assumption is made that those entities will not create systemic risk in Canada with their derivatives trading. Before granting an exemption, an objective analysis should be conducted of both the entities involved and the financial stability of their governments that are guaranteeing their derivative trading activity, including the ability to collect on those guarantees from the foreign governments.

**C) Part 3 – Exemptions and Application**

**Section 9 – End-user Exemption**

Enbridge appreciates the many revisions to the end-user exemption made by the Committee, in particular, the removal of the reference to “acting as agent” and the additional affiliated entity sections that allow parties to use affiliated entities to be their market facing entities with respect to derivative transactions.

**Section 10 – Intragroup Exemption**

Section 10(2)(c) of the intragroup exemption requires a “written agreement setting out the terms of the transaction between the counterparties”. Enbridge would request that the Committee confirm that this does not require detailed written confirmations between the counterparties for each and every transaction, but that an underlying master agreement between the counterparties is sufficient. It is not an efficient use of time or cost effective for internal entities to generate additional written confirmations by internal confirmation personnel resources and then store that documentation. Unrelated counterparties that transact derivatives with each other OTC are prudent to exchange written confirmations to ensure the terms of the transaction are understood by both counterparties. Internal counterparties that are managed under a consolidated risk framework would not require written confirmations to clarify the terms of a transaction.

Enbridge appreciates the removal of the requirement to file Form F-1 on an annual basis.

**Section 11 – Recordkeeping**

Enbridge commends the CSA in not requiring entities to seek board or other committee approval with respect to the use of the End-User Exemption.

The "reasonable supporting documentation" required to be kept as per the Proposed Clearing Companion Policy is too onerous on a transaction-by-transaction basis for every type of derivative transaction that may become a "mandatory clearable derivative". Hedging strategies are generally managed at a portfolio level and this type of detail may require further modification of risk systems and processes to comply depending on the type of derivative and may also not be practical from a volume perspective. For example, commodity derivatives may be executed on a daily basis depending on the conditions in the market. To create records that capture all the information required in the Proposed Clearing Companion Policy for each transaction would not be an effective use of resources. Enbridge urges the CSA to modify the Proposed Clearing Companion Policy to clarify that documentation on a portfolio level is acceptable to the regulators, as this reflects the reality of how risk is managed within companies. The additional reporting capability on a transaction level basis for all derivatives is not necessary for day to day business and will substantially increase costs for end-users.

Enbridge appreciates the further revision of this section which allows a counterparty to rely on counterparty's representations as to whether or not an exemption is available as long as there are no reasonable grounds to believe the representations are false.

**D) Part 6 – Transition and Effective Date**

**Section 15 – Effective Date**

The phased in approach for clearing including the proposed time lines seems appropriate.

**III. CONCLUSION**

Enbridge thanks the CSA and the Committee again for the opportunity to submit our comments on the Proposed Clearing Rule 94-101 and Proposed Clearing Companion Policy. 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.**



Kari Olesen  
Legal Counsel