



September 1, 2017

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Alberta Securities Commission
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Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Commission
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintend of Securities
Superintendent of Securities, Department of Justice and Public Safety,
Prince Edward Island

(collectively called the “Authorities”)

c/o

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Grace Knakowski
Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario, M5H 3S8
comments@osc.gov.ca

Dear Sirs/Mesdames:

Re: Comment Letter CSA Notice and Request for Comment - Proposed National Instrument 93-101 *Derivatives: Business Conduct* and Proposed Companion Policy 93-101CP *Derivatives: Business Conduct*

Enbridge Inc. together with its affiliates, subsidiaries and related entities (collectively “we” or “Enbridge”) hereby respectfully submits these comments in response to the Authorities’ request for

comments in connection to the Canadian Securities administrators (“CSA”) Notice and Request for Comment Proposed National Instrument 93-101 *Derivatives: Business Conduct* (the “**Business Conduct Rule**”); Proposed Companion Policy 93-101CP *Derivatives: Business Conduct* (the “**Business Conduct CP**”); (collectively the “**Proposed Instruments**”). The Proposed Instruments were published on April 4, 2017 and outline the Authorities’ proposals related to the business conduct regime for derivative market participants.

Enbridge appreciates the opportunity to comment on the Proposed Instruments. Although it is a challenge to comment on the Proposed Instruments without the benefit of the CSA’s proposed registration regime which was to be published concurrently with the Proposed Instruments. Enbridge would request that when the proposed registration rule and companion policy are available for comment, that the CSA consider allowing for further comments on the Proposed Instruments at that time. In Enbridge’s opinion, the business conduct regime and the registration regime are so inter-related that they should move forward and be implemented at the same time.

I. Introduction

On February 27, 2017, Enbridge closed its merger transaction with Spectra Energy. The combination with Spectra Energy created the largest energy infrastructure company in North America with an extensive portfolio of energy assets including the world’s longest and most complex crude oil pipeline system and one of North America’s leading natural gas delivery companies. In addition to extensive crude oil pipelines and natural gas pipelines (both onshore in Canada and the United States, and offshore in the Gulf of Mexico), Enbridge is the largest natural gas distributor in Canada, owns and operates midstream processing facilities, power generation, power transmission and has an extensive renewable portfolio with both wind and solar assets in Canada, the United States and Europe. Enbridge also has marketing affiliates that provide energy supply and marketing services to North American refiners, producers and other customers.

Like many other “end-users”, Enbridge transacts in derivatives to hedge the risks associated with its core business of transporting and processing energy commodities as well as interest rate and foreign exchange risks. Enbridge transacts in derivatives on its own behalf, to mitigate its own risks.

II. Endorsement of Comments

Enbridge is a member of the Canadian Energy Derivatives Working Group; the International Energy Credit Association (“IECA”) Contracts & Legal Education Group; and the IECA’s Canadian Derivatives Regulatory Working Group (“**IECA Canadian Working Group**”) and fully supports the comments submitted by the IECA Canadian Working Group with respect to the Proposed Instruments.

Enbridge has also reviewed the comments submitted by the Canadian Commercial Energy Working Group (“**Working Group**”) with respect to the Proposed Instruments. Enbridge fully supports the comments submitted by the Working Group.

III. Enbridge's Specific Comments on the Proposed Instruments

A) Eligible Derivatives Party ("EDP")

The definition of EDP should be consistent with the current, well understood definitions being utilized by the industry, namely "qualified party" under Alberta Blanket Order 91-507 and "eligible contract participant" under the *Commodity Exchange Act* in the United States. Representations utilizing the above definitions are already incorporated into agreements in the industry by many market participants and as such, using already established definitions would reduce additional documentation requirements between entities to comply with any final business conduct regime. Once the representation is made to an entity, it should not need to be renewed, but rather be deemed to be true unless otherwise revoked by the representing entity at a future point in time. Derivative dealers should be able to rely on the representations being provided by an EDP without further inquiry unless the derivative dealers are aware of some information that would lead them to believe that the representation was false.

Enbridge would also support an EDP definition that refers to total assets of at least \$25 million versus the currently proposed net assets of at least \$25 million. Further, an entity should be an EDP as long as any affiliate that provides guarantees in support of the entity's business qualifies as an EDP. Enbridge utilizes what are known as "treasury affiliates" in support of its hedging activities to be the market facing entity. While the treasury affiliates would not qualify as EDP's on their own, they are all supported by guarantees from entities that would qualify as an EDP. Having less market facing entities reduces costs substantially and is more efficient, as complex master hedging agreements do not have to be negotiated for each and every entity or project that may require hedging.

B) Business Trigger Guidance

Enbridge agrees with the Working Group and the IECA Canadian Working Group that hedging entities need to be able to regularly quote prices on one or both sides of the market and that they should not be considered a derivatives dealer for engaging in this activity. Further, the business triggers are problematic as they are open to subjective interpretation. Enbridge would strongly endorse the utilization of a de minimis exception as outlined in the Working Group's White Paper attached to their comment letter. The consequences of becoming a derivatives dealer are significant and market participants require certainty that their activities do not move them out of the "end user" category into the derivatives dealer category.

C) Senior Derivatives Managers

The requirement to have a senior derivatives manager supervise activities within their functional business unit is not best practice from a compliance perspective. Best practice would require a group outside the group transacting in derivatives (such as an enterprise risk group) to create, maintain and enforce policies that regulate the derivative activities thorough delegations of authority, quarterly compliance reviews and reporting up to senior management levels. There is an inherent conflict of interest in the Proposed Instrument and the concept should be removed.

D) Recordkeeping

The recordkeeping requirement of the Proposed Instrument is overly broad. A further complication is that not all transactions, in particular commodity transactions, are conducted in the same manner. Some transacting activities for certain commodities may not be done over the phone at all, with other forms of communication and technology being preferred by the industry such as instant messaging. These "records" are then replaced within a very short time frame with written or electronic confirmation of the terms of the transaction by the parties, and so recording and storing phone records and instant messages has limited value to the parties.

IV. Conclusion

Enbridge thanks the Authorities again for the opportunity to submit our comments on the Proposed Instruments and sincerely hope the Authorities would consider our comments and recommendations as the Authorities draft its final rules to establish a regulatory regime for the OTC derivatives market in the multilateral jurisdictions. 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