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Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
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 Superintendent 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.on.gov.ca

Dear Sirs and Mesdames,

Re: Comments on Proposed National Instrument 93-102 *Derivatives: Registration* and Proposed Companion Policy 93-102 *Derivatives: Registration*

Enbridge Inc. together with its affiliates, subsidiaries and related entities (collectively "**we**" or "**Enbridge**") hereby respectfully submits these comments in response to Canadian Securities Administrators ("**CSA**") request for comments in connection with the following published documents:

- Proposed National Instrument 93-102 *Derivatives: Registration* (the "**Proposed Registration Rule**"); and
- Proposed Companion Policy 93-102 *Derivatives: Registration* (the "**Proposed Registration CP**").

(collectively, the "**Proposed Registration Instrument**")

Enbridge appreciates the opportunity to comment on the Proposed Registration Instrument.

I. Introduction

Enbridge is 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 is 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 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.

Enbridge would request the CSA consider a long transition period between the publication of the final registration rule and its effective date. Market participants will need time to assess their registration status, put in place appropriate risk procedures including revised know-your-counterparty processes, complete compliance training with employees, assess if they need additional technology or other resources, and ensure their agreements have the appropriate representations as may be required by the final registration rule.

II. Endorsement of Comments

Enbridge would like to express its full support of the comment letter from Eversheds Sutherland (US) LLP, on behalf of The Canadian Commercial Energy Working Group, to the Canadian Securities Administrators dated August 2, 2018 (the "**CCE Letter**") and the comment letter filed by the International Energy Credit Association, (Canadian Derivatives Regulatory Group) (the "**IECAWG Letter**"). Enbridge was an active participant in the drafting of the IECAWG Letter. Throughout this letter Enbridge will refer specifically to the CCE Letter and the IECAWG Letter in support of the comments contained herein.

III. Notional Amount Calculations

Enbridge has reviewed the two different methodologies for determining notional amount and finds that the "Regulatory Notional Amount" methodology to be the most appropriate with a few changes with respect to commodity derivatives calculations. We would direct the CSA to the excellent discussion and examples of commodity notional amount calculations in both the CCE Letter and the IECAWG Letter.

IV. De Minimis Threshold Value

The consequences of becoming a derivatives dealer are significant and market participants require certainty that their activities do not move them out of the non-dealing "end user" category into the derivatives dealer category. Any activities undertaken to hedge or mitigate commercial risk should be expressly excluded from any de minimis calculation (whether under a general threshold or a commodity threshold). This would be consistent with how Enbridge is treated under derivative regulations in both the U.S. and in Europe where we are considered to be an "end user". Without this express hedging exclusion, to avoid being designated a derivatives dealer, end users will either stop or reduce hedging activities, which will result in increased costs for the consumer. Canadian companies will also be impacted negatively by reduced liquidity in the Canadian market as counterparties who would not be

deemed a derivatives dealer in their own jurisdiction, will not run the risk of being designated a derivatives dealer in Canada and will either reduce their activities or choose not to transact in the Canadian market. We would direct the CSA to the discussion in the CCE Letter on pages 3 and 4. Further, the CSA should not modify its currently proposed commodity threshold of \$1 billion. Any change to the \$1 billion threshold should be carefully considered and only be made once the CSA has a clear picture of the data. Any lower threshold will negatively impact liquidity in derivatives that are tailored for the energy industry. In particular, a higher threshold is required due to the “holistic” nature of the business triggers in the proposed National Instrument 93-101: *Business Conduct* and the use of “trading” activities versus “dealing” activities.

V. Definition of Affiliate

The CSA has provided two definitions of “Affiliated Entity” in the Proposed Registration Instrument, the first one based on “control” and the second based on “consolidation”. If the CSA is proposing to only accept one definition over the other, Enbridge prefers the “control” definition. Upon further review of Enbridge’s consolidated financials, there are many active hedging entities within Enbridge that are not identified specifically in our consolidated financials. As an example, Enbridge utilizes what the Commodity Futures Trading Commission (“CFTC”) calls “treasury affiliates”, which are wholly-owned entities that transact with the market, and then sleeve or pass through the hedges they execute to other internal Enbridge entities (whether wholly-owned or partially owned) that have the underlying risk that requires hedging. Since it is difficult and time consuming to negotiate master derivative agreements with external counterparties, many large companies use this type of structure for their hedging programs. Also, use of the “control” definition would be consistent with all other definitions of “affiliate” under securities legislation in Canada. That being said, Enbridge would also be supportive of using the consolidation definition as an additional definition of “affiliate” if the CSA deems it appropriate.

VI. Definition of Eligible Derivatives Party and Criteria

The CSA has requested comments on the appropriateness of the criteria for eligible derivative party (“EDP”) in the Proposed Registration Instrument.

The definition of EDP should be consistent with the current, well understood definitions being utilized by the energy industry, namely “qualified party” under Alberta Blanket Order 91-507 (and other similar provincial blanket orders), “accredited counterparty” under the Québec Derivatives Act, a “permitted client” as defined in National Instrument 31-103, and “eligible contract participant” under the *Commodity Exchange Act* in the United States. In the aforementioned definitions, under Canadian or provincial laws, there is no stipulation that the entity have a certain amount of assets, merely that the hedging activities are connected to the management of an entity’s physical commodity business. As stated in Enbridge’s original comment letter to National Instrument 93-101: *Business Conduct*, Enbridge would support an EDP definition that refers to **total** assets versus the currently proposed **net** assets. Furthermore, the CSA should consider how the U.S. has a much lower threshold for eligible contract participants, being \$10 million in total assets or \$1 million in net assets. Finally, market participants should be able to rely on representations that are made to each other within their trading agreements as to their status as an EDP without further analysis or investigation.

VII. Derivatives Adviser and Commercial Hedger Definitions

Enbridge would direct the CSA to the commentary on the derivatives adviser and commercial hedger definitions in the IECAWG Letter and Enbridge supports those comments. Energy market participants are sophisticated and should be able to give and receive tailored derivative advice from internal entities



that may not be “affiliated entities” as well as other third parties without triggering registration as a derivatives adviser.

VIII. Portfolio Reconciliation Requirements

Any rules with respect to portfolio reconciliation with derivative dealers should clarify that the responsibility to review the data exchanged lies solely with the derivative dealers. There should be no expectation by derivative dealers for end users to either sign up to a specific portfolio reconciliation service (which is an expense for the end user) or check the data end users receive from our derivatives dealers. End users do not have the resources to take on derivative dealers’ responsibilities in this regard. The U.S. and Europe have handled these issues by allowing swap dealers to have written policies and procedures in place that are reasonably designed to perform such reconciliation however, if a counterparty does not want to engage in the portfolio reconciliation, the swap dealer is not in violation of the portfolio reconciliation requirements.

IX. Proficiency Requirements for Compliance Positions


Enbridge would direct the CSA to the commentary on the proficiency requirements in the IECAWG Letter and Enbridge agrees with those comments.

X. Conclusion

Enbridge thanks the CSA again for the opportunity to submit our comments on the Proposed BC Instrument and Proposed Registration Instrument and sincerely hope the CSA would consider our comments and recommendations as the CSA drafts 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
Senior Legal Counsel