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

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Dear Sirs/Mesdames:

Re: Comment Letter to CSA Staff Consultation Paper 91-407 - Derivatives Registration

Enbridge Inc. ("**Enbridge**") hereby respectfully submits these comments below in response to Canadian Securities Administrators' (the "**CSA**") Derivatives Committee (the "**Committee**") request for comments in connection to the *CSA Staff Consultation Paper 91-407 Derivatives: Registration* (the "**CSA Paper 91-407**") published on April 18, 2013, which outlines the CSA's proposals to impose registration requirements on key derivatives market participants.

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.

Enbridge is a member of the Canadian Energy Derivatives Working Group (the "**Working Group**") and fully supports the comments recently submitted by the Working Group with respect to the CSA Paper 91-407.

Enbridge appreciates the opportunity to comment on the CSA Paper 91-407 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. However, while Enbridge supports the CSA's general intentions to "protect participants in the derivatives markets from unfair, improper and fraudulent practices; protect the soundness of Canadian financial markets and reduce risks, including systemic risks, resulting from the derivatives activities of key market participants", Enbridge is very concerned that some of the key requirements the CSA is proposing to impose in the CSA Paper 91-407 on key derivatives market participants are over reaching and should not be imposed on market participants such as Enbridge who enter into derivatives transactions for purely commercial hedging purposes. In addition, as these proposals in the CSA Paper 91-407 (the "**Proposals**") are part of the mechanisms the CSA is recommending to put in place to establish a regulatory regime for the over-the-counter ("**OTC**") derivatives market in Canada and support Canada in meeting its G-20 commitments, Enbridge respectfully submits that these Proposals are not consistent with the regulations being adopted in the United States (the "**U.S.**") and in the European Union (the "**EU**"). As a result, if these Proposals are adopted, entering into derivatives transactions with Canadian energy market participants would become onerous, burdensome and very costly, thereby putting Canadian energy market participants at a competitive disadvantage and would cause a freeze in the liquidity available in Canadian OTC derivatives marketplace, which would increase systemic risk and defeat one of the CSA's intentions as enumerated in CSA Paper 91-407 and in other CSA staff consultation papers.

II. ENBRIDGE'S GENERAL COMMENTS ON THE CSA PAPER 91-407

With regard to the Proposals in CSA Paper 91-407, Enbridge respectfully urges the CSA to re-evaluate its intentions and revisit its Proposals by starting with defining what would be considered an OTC derivative or OTC derivatives trading activities i.e. a **Product Determination Rule** (that is applicable in all circumstances (as opposed to a product determination rule for reporting and another for registration) and should be uniform in all the CSA staff consultation papers). This should then drive what entities should be subject to a registration regime (if then needed), i.e. an **Entity Definitions Rule**. In other words, the CSA should define and provide guidance about whether a company's OTC derivatives trading activities would cause it to fall within the definition of "dealing" or "trading". This is a distinction that has been made in the U.S. that impacts Canadian energy market participants. Enbridge submits that the CSA must also make this distinction to prevent the imposition of different regulatory regimes for the same transactions entered into on different sides of the border.

The U.S. Commodity Futures Trading Commission (the "**CFTC**") in its implementation of the enabling Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**") provided

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

a definition of "hedging" in distinguishing between "dealing" and "trading" activities for the purpose of excluding certain "swaps'' transactions from "dealing" activity under the swap dealer definition to ensure that it provides clarification whether a company's "swaps" activities would cause it to fall within the definition of a swap dealer.[2] The CFTC concluded in its further interpretation that "swaps" entered "for the purposes of hedging [are] inconsistent with swap dealing.' The CFTC further noted that "swaps" entered into "for the purposes of hedging one's own risks generally would not be indicative of making a market in "swaps" or swap dealing as a regular business".[3] We strongly recommend that the CSA adopt the same approach.

In addition, Enbridge submits that to be consistent with other global regulators, the CSA if it decides to press on with a requirement to register as a 'derivatives dealer' , should provide a *de minimis* exemption similar to what the U.S. regulators have adopted and is also being implemented by the EU[4].

Regarding the third category of large derivative participant category ("**LDP**") being proposed by the CSA because the "Committee believes that, similar to the U.S., there may be entities, other than derivatives dealers, that may have positions in derivatives that represent or could represent a significant systemic risk to Canadian markets or to the national or local economies". And a result the Committee believes "the registration of these entities would facilitate regulatory oversight that would assist in the management of systemic risk". Enbridge is very concerned that unlike the U.S. the CSA has not defined or analyzed what would amount to a "substantial aggregate derivatives exposure" that would make entities fall under the LDP category. Enbridge is very concerned that because the CSA has not established a definite registration threshold, it leaves participants in a world of limbo and uncertainty in determining if they are included in this category or not, thereby creating a regulatory risk for such entities. Enbridge respectfully and strongly recommends that as aforementioned, before borrowing a category from the U.S., the CSA should provide a definition for an OTC derivative as the U.S. has done by defining what constitutes a "swap", which drives the assessment of what is counted in "substantial positions" assessment of a major swap participant ("**MSP**"). Without this definition, it is impossible for market participants to determine what would be counted in determining a "substantial aggregate derivatives exposure", a figure that CSA has also yet to provide.

III. ENBRIDGE'S SPECIFIC COMMENTS ON THE PROPOSALS IN CSA PAPER 91-407

1. Business Trigger for Advising

With respect to the second item (ii) of the proposed 'business trigger for advising', the CSA proposes that "*being, or expecting to be, remunerated or compensated* – receiving, or expecting to receive, any form of compensation for providing advice about derivatives" would be one of the specific factors that the CSA would consider when determining whether a person is "in the business" of providing derivatives advice. Enbridge notes that the CSA has borrowed the business trigger factors from securities law and Enbridge submits that legal counsel in the area of energy commodities and derivatives trading are not familiar with applicable securities laws in Canada as it applies to registrants under the securities

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[2] Further Definition of a "Swap Dealer" "security-Based Dealer" "major Swap Participant" "major security-Based Swap participant" and "Eligible Contract participant" 77 Fed Reg, 30596 (May 23, 2012) the "Entity Definitions Final Rule".

[3] *Id* at n.214

[4] The EU has implemented a threshold value on non-financial counterparties whose positions in OTC derivative contracts exceed a clearing threshold of Euro 3 billion notional value for each interest rate, foreign exchange and commodity derivatives. Such a non-financial counterparty who exceeds this threshold must register.

regime. Enbridge plans to get familiar with securities case law as it relates to how the CSA borrows from it to establish a regulatory regime for the OTC derivatives market. Nevertheless, Enbridge respectfully submits that the CSA, in borrowing this aforementioned factor from securities regulation, has not taken into account the energy industry wide commercial practices 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[5] 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*".

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 if this specific factor (ii) under the "business trigger for advising" is broadly construed. Enbridge is very concerned about this prospect and we strongly again 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.

2. Trading Derivatives: a Material Amendment

The CSA is proposing that the making a 'material amendments to a derivatives contract" be considered to be a trade in a derivative. Enbridge submits that the CSA define what it considers to be a 'material amendment'. The CSA refers to the definition of a trade in the Ontario Securities Act to provide guidance, but Enbridge respectfully submits that it will be very difficult for Canadian energy market participants and other market participants to keep track of the different provincial definitions and monitor if there are inconsistencies in different provincial legislation. Enbridge reiterates that Canadian energy market participants are not familiar with securities regulation, and as a result, Enbridge recommends that the CSA provide assurances that the different provincial regimes would be harmonized and would be consistent, to provide legal certainty to all market participants in the Canadian OTC derivatives marketplace.

3. Categories of Registration

In assessing the OTC derivatives trading activity of an entity to determine what would amount to "substantial aggregate derivatives exposure", the CSA is proposing that "entities can be categorized as LDPs, and subject to regulation regardless of *whether their derivative trading activity is for* hedging *purposes or for speculative purposes*". Since the CSA stated that its rationale in creating this category is the same as the U.S., Enbridge strongly recommends that the CSA adopt the U.S. position that allows market participants to expressly exclude all OTC derivatives transactions which hedge or mitigate commercial risk from the calculation that would make up the "substantial aggregate derivatives exposure".

4. Registration Requirements

Enbridge submits that the CSA please clarify what it requires under the proposed 'Maintenance of Financial Records and Periodic Financial Reporting' - calculations of the 'value and risk exposure relating to each position and the value and exposure of the registrant's aggregate position'. Enbridge is confused as about the possible implications of this filing.

In addition Enbridge questions why the Committee requires registrants to file reports to the board

[5] These transactions are influenced by the development of the market and the ability to hedge physical obligations using basis and capacity instruments to avoid the risk of extreme price volatility.

of directors as opposed to a designated audit, risk or finance committees of the board that have assigned this role by the board. Enbridge strongly recommends that the CSA consider the alternative of report to an audit, finance or risk committee as sufficient as it is extremely difficult to call a full board meeting for a public traded company such as Enbridge.

Enbridge is also particularly concerned about the CSA's requirement for a Chief Compliance Officer ("**CCO**") and a Chief Risk Officer ("**CRO**") for all would be registrants. Enbridge submits that the CSA clarify why it is asking for both the registration of these two positions where no other jurisdiction has made this double requirement. In addition, the CFTC in its final regulations limited the scope of the duties and responsibilities of the chief compliance officer of a swap dealer or an MSP in to only the "swaps" activities of the swap dealers and MSPs. Enbridge reiterates that the CSA define what OTC derivatives activities are and limit the scope of any registration requirements to only such activities as the U.S. and the EU have done.

5. Equivalent Regulation and Substituted Compliance

Enbridge submits that the CSA should create an exemption for market participants that are already in compliance with Dodd-Frank Act for the same OTC derivatives transactions.

IV. ENBRIDGE RESPONSE TO CERTAIN QUESTIONS POSED IN CSA PAPER 91-407

Q2. What is the appropriate standard for determining whether a person is a qualified party? Should the standard be based on the financial resources or the proficiency of the client or counterparty? If the standard is based on financial resources should it be based on the net assets of the client or counterparty, gross annual revenues of the client or counterparty, or some other factor or factors?

Enbridge recommends that the CSA adopt a similar approach to what the U.S. did in the Dodd-Frank Act that makes it illegal for anyone to enter into a swap with anyone or any entity that does not fall into the definition of an "eligible contract participant"[6]. The current list of qualified parties in applicable Alberta Securities Commission and the British Columbia Securities Commissions' blanket orders and the list of "accredited counterparties" in the Quebec derivatives act should be harmonized.

Q3. Should registration as a derivatives dealer be subject to a *de minimis* exemption similar to the exemption adopted by U.S. regulators? Please indicate why such an exemption is appropriate

Enbridge submits that such an exemption would be appropriate to provide clarity to market participants and activity-based hedging should be excluded from any such *de minimis* calculation.

Q4. Are derivatives dealer, derivatives adviser and LDP the correct registration categories? Should the Committee consider recommending other or additional categories?

Enbridge reiterates its arguments in the comments above and submits that the CSA should only create registration categories after it has defined an OTC derivative; distinguished between "dealing" and "trading" and then base any such categories on activity-based; the market structure; the nature of the trading excluding hedging activities and the existence of these kinds of participants in the Canadian OTC derivatives marketplace.

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[6] Further Definition of a "Swap Dealer" "security-Based Dealer" "major Swap Participant" "major security-Based Swap participant" and "Eligible Contract participant" 77 Fed Reg, 30596 (May 23, 2012) the "Entity Definitions Final Rule

Q5. Are the factors listed the correct factors that should be considered in determining whether a person is in the business of trading derivatives? Please explain your answer.

Enbridge submits that the factors listed are based on the trading of securities and are inapplicable in determining whether a person is trading derivatives as the rationale for trading derivatives are different. Derivatives are risk management tools and not investment tools like securities.

Q8. Are the factors listed above the appropriate factors to consider in determining whether a person is in the business of advising on derivatives?

Enbridge refers to its answer in Q5.

Q9. Are the factors listed for determining whether an entity is a LDP appropriate? If not what factors should be considered? What factors should the Committee consider in determining whether an entity, as a result of its derivatives market exposures, could represent a serious adverse risk to the financial stability of Canada or a province or territory of Canada?

Enbridge submits that in light of the recent designation by the Office of the Superintendent of Financial Institutions Canada ("**OSFI**") of Royal Bank of Canada, Toronto-Dominion Bank, Bank of Nova Scotia, Bank of Montreal, Canadian Imperial Bank of Commerce and National Bank of Canada as systemically important banks in Canada under the framework of the Basel Committee on Banking Supervision ('**BCBS**") , the factors that have been listed by the CSA are not clear and it is difficult to determine for Enbridge to comment on their appropriateness. The BCBS framework contains detailed criteria which OSFI employed in its determination.

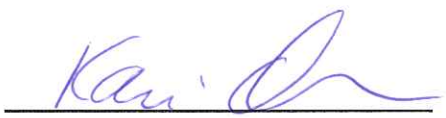
Q13. Is the Committee's proposal to impose a requirement on registrants to "act honestly and in good faith" appropriate?

Enbridge submits that the CSA explain what it means to "act honestly and in good faith".

V. CONCLUSION

Enbridge thanks the CSA and the Committee again for the opportunity to submit our comments on CSA Paper 91-407 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.



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