



January 25, 2013

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Ontario Securities Commission OTC Derivatives Committee

Dear Sirs/Mesdames:

RE: Comments on “Model Rules” from Encana Corporation

- **Model Provincial Rule – Derivatives: Product Determination (the “Scope Rule”),**
- **Model Explanatory Guidance to Model Provincial Rule – Derivatives: Product Determination (the “Scope EG”),**
- **Model Provincial Rule – Trade Repositories and Derivatives Data Reporting (the “TR Rule”), and**
- **Model Explanatory Guidance to Model Provincial Rule – Trade Repositories and Derivatives Data Reporting (the “TR EG”).**

We are pleased to respond to your request for comments with respect to the above captioned.

General Comments

Companies worldwide are already in the process of implementing the business processes and data capture elements necessary to comply with US Dodd-Frank OTC Derivatives regulations promulgated by the CFTC and the SEC.

Although far from ideal, the US regulations are the first to be clarified. Given the level of detail and timeliness demanded, compliance with US regulations involves considerable costs and challenges,

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even for non-US entities. As Canadian jurisdictions implement their own derivatives regulations, we respectfully request that they consider that any inconsistencies among Canadian regulators or any divergence among the regulations promulgated by Canadian, US and other regulators significantly complicate the challenges of compliance.

This consistency across jurisdictions is especially important in the creation and recognition of trade repositories.

General Principal: One transaction, one report

Each derivative transaction should have a unique universal identifier, regardless of the jurisdiction(s) or location(s) of the counterparty(s). This implies:

- each transaction is required to be reported only once to a recognized trade repository;
- for each transaction, a universal (independent of locality) counterparty hierarchy exists such that one of the counterparties is recognized as being responsible for reporting the transaction to a trade repository OR if the counterparties are at the same level in the hierarchy the two counterparties to a transaction mutually agree which of them is responsible for reporting the transaction;
- trade repositories established and recognized in any G20 country are accepted and recognized by the derivatives regulators in all G20 countries.

Note: An exception to this principle of “one transaction, one report” would be when there is no designated trade repository available that can accept a transaction (an “exotic” transaction as referred to in this submission).

- If both counterparties are in the same locality, the reporting hierarchy determines which counterparty is responsible for reporting the transaction to the local securities regulator.
- If the counterparties are in different localities, both should be responsible for reporting the transaction to their applicable local securities regulator.

Clarification

Although not mentioned in the Model Rules, all transportation, gathering, processing or any other physically-based service agreements should not be considered derivative transactions regardless of their pricing structures.

Specific Comments and Questions

Part 2 Trade Repository Designation and Ongoing Requirements

23. (page 28) A designated trade repository must establish, implement, maintain and enforce written policies and procedures to confirm with each counterparty to a transaction, or agent acting on behalf of such counterparty, that the derivatives data that the designated trade



repository receives from a reporting counterparty or from a party to whom a reporting counterparty has delegated its reporting obligation as required by this Rule is correct.

COMMENT: The responsibility for confirming transaction data should rest with the counterparties to a transaction, not the trade repository.

Part 3 Data Reporting

27. (1) (page 30) *The counterparty required to report derivatives data for a transaction is determined as follows:*

- (a) if the transaction is between a derivatives dealer and a counterparty that is not a derivatives dealer, the derivatives dealer is the reporting counterparty,*
- (b) in any other case, both counterparties are reporting counterparties unless they agree in writing between themselves that one of them is to be the reporting counterparty.*

QUESTION: What is the definition of “derivatives dealer”?

QUESTION: Will there be a standard hierarchy definition across regulators in G20 member countries?

28. (1) (page 31) *The reporting counterparty for a transaction, subject to the reporting requirements of this Rule, must make a report required by this Part in real time unless it is not technologically practicable to do so.*

QUESTION: What is the definition of “real-time”?

31. (1) (page 32) *Each transaction subject to the reporting requirements of this Rule must be identified in all recordkeeping and all reporting required pursuant to this Rule by means of a unique transaction identifier.*

- (2) Each of the following rules apply to unique transaction identifiers*
 - (a) a designated trade repository must assign a unique transaction identifier to the transaction using its own methodology, and*
 - (b) a transaction must not have more than one unique transaction identifier.*

QUESTION: What is the process for generating unique transaction identifiers for “exotic” transactions?

35. (2) (page 33) *Valuation data for a transaction that is not cleared must be reported to the designated trade repository*

- (a) at the end of each business day by each local counterparty if that counterparty is a derivatives dealer, and*
- (b) at the end of each calendar quarter for all reporting counterparties that are not derivatives dealers.*

QUESTION: Is the reporting counterparty responsible for submitting valuation data to the trade repository for non-cleared transactions?

QUESTION: Does the protocol for reporting “exotic” transactions also apply to reporting valuation data on “exotic” transactions?

Part 4: Data Dissemination and Access to Data

39. (1) (page 35) *A designated trade repository must, on a periodic basis, create and make available to the public, at no cost, aggregate data on open positions, volume, number and prices, relating to the transactions reported to it pursuant to this Rule.*

(2) *The periodic aggregate data made available to the public pursuant to subsection (1) must be complemented at a minimum by breakdowns, where applicable, by currency of denomination, geographic location of reference entity or asset, asset class, product type, whether the transaction is cleared, maturity and geographic location and type of counterparty.*

(3) *A designated trade repository must make transaction level reports of the principal economic terms of each transaction reported pursuant to this Rule available to the public at no cost not later than*

(a) one day after receiving those terms from the reporting counterparty to the transaction, if one of the counterparties to the transaction is a derivatives dealer, and

(b) two days after receiving those terms from the reporting counterparty to the transaction in all other circumstances.

COMMENT: In some cases, the information referred to in 39(2) could be sufficient data to identify individual counterparties. Trade repositories must ensure any data that they release to the public is not of sufficient detail to identify specific counterparties.

Part 5: Exemptions

40. (2) *Despite anything in this Rule, there is no obligation under this Rule for a local counterparty to report derivatives data in relation to a physical commodity transaction if the local counterparty is not a dealer or adviser and has less than \$500 000 aggregate notional value, without netting, under all its outstanding transactions, at the time of the transaction including the additional notional value related to that transaction.*

QUESTION: What does “in relation to a physical commodity transaction” mean?

QUESTION: Does the \$500,000 aggregate notional value include only derivative transactions, or physical and derivative transactions?

COMMENT: \$500,000 is so low as to render the exemption inaccessible to practically all participants. Suggest removing the exemption in 40. (2) and keeping only the exemption in 40. (1).

Appendix A: Minimum Data Fields Required to be Reported to a Designated Trade Repository (page 37)

COMMENT: Encana suggests the following approach:

- **Examine the data elements being collected by existing trade data repositories such as ICE Trade Vault and DTCC’s DDR**
- **Organize workshops with various industry sectors to collect input and clarify trade details.**
- **Provide guidance on “exotic” transactions (those that do not fit into existing standards of trade repositories)**

QUESTION: Encana has the following questions and comments (in the left column of the below table) in relation to the data fields set out in Appendix A.

Data field	ENCANA QUESTIONS AND COMMENTS
Calculation agent	What is the definition of Calculation agent?
Intragroup	The CFTC recently stepped back from requiring the reporting of intragroup trades. What is the CSA recommending for Canadian legislation?
Contract type	Standardized terms and definitions would be helpful to both transacting counterparties and derivatives regulators.
Delivery type	What do “deliverable” and “non-deliverable” mean?
Notional amount/total notional quantity – reporting counterparty	Normally the two counterparties to a transaction agree to a common underlying notional quantity.
Fixed rate payer Floating rate payer	This nomenclature will not work with basis swaps (each counterparty pays one index in exchange for a different index)
Fixed rate or floating rate index reference level	What does this term mean?
Option exercise period	Would “Option Type” be sufficient here? Possible option types include European, Asian, American, etc.
Value for options	Is this the same as “option premium”?
Grade	A derivative transaction does not involve product delivery. This information should be adequately described in the name(s) of the floating indexes.
Delivery point	A derivative transaction does not typically involve product delivery.
Submission of transaction entry timestamp	While the trading venues may track this information, it may not be available to the transacting parties. Also, there will be two



	transaction entry times: one for placing the bid or offer, and one for accepting the bid or offer.
Confirmation timestamp	This can be difficult to define, especially for manually confirmed transactions as the process involves several steps internally within both counterparties.

Please contact me at (403) 645-7519 or by email at scott.dalton@encana.com if you have any questions.

Yours very truly,

ENCANA CORPORATION

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