



February 7, 2011

David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

**Subject: Comments of Encana Marketing (USA) Inc. on the Proposed Rule on
Real-Time Public Reporting of Swap Transaction Data
RIN Number 3038-AD08**

Dear Secretary Stawick:

Encana Marketing (USA) Inc. (EMUS) hereby files comments on the Notice of Proposed Rulemaking (NOPR) issued by the Commodity Futures Trading Commission (Commission) in this proceeding.¹ EMUS is an indirect wholly owned subsidiary of Encana Corporation (Encana). Its principal U.S. office is located in Denver, Colorado. EMUS' marketing activities include selling and purchasing natural gas, natural gas liquids, other related energy commodities and services in the U.S. wholesale energy markets. As part of EMUS' marketing activities, Encana, for itself and its subsidiaries, enters into hedging transactions or swaps to manage and mitigate commercial risks associated with EMUS' sales, purchases and movement of these energy commodities. It considers itself to be an end-user of swaps under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act).

Comments

In this NOPR, the Commission proposes to implement a new framework for the real-time public reporting of swap transaction and pricing data for all swap transactions.

EMUS supports the Commission's inclusion in these proposed regulations of provisions designed to protect the anonymity of the parties to a swap transaction. Proposed Section 43.4(e)(1) would prohibit the disclosure of the identities of the parties to a swap in the swap transaction and pricing data that is publicly disseminated. This section would also prohibit a

¹ *Real-Time Public Reporting of Swap Transaction Data*, 75 Fed. Reg. 76,140 (Dec. 7, 2010).

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registered swap data repository (SDR) from publicly disseminating such real-time data in a manner that discloses or otherwise facilitates the identification of a party to a swap. Proposed Section 43.4(e)(2) would require a reporting party or swap market to provide a real-time disseminator with a specific description of the underlying asset and tenor of a swap. This description would need to be general enough to provide anonymity, but specific enough to provide for a meaningful understanding of the economic characteristics of the swap.

EMUS appreciates the Commission's recognition in the NOPR that "in situations where few parties trade a particular underlying asset, the description of that asset may inadvertently reveal the identity of one or more party(ies) to the swap."² EMUS shares the Commission's concern that, if the underlying asset to an off-facility swap is an energy commodity contract that has a specific delivery point that is only traded by a few companies, disclosing the underlying asset to the public would likely enable other market participants to figure out which company was entering into the swap.

However, EMUS is concerned that the regulations designed to protect the anonymity of the parties to a swap transaction may not be enough to protect end-users. EMUS is concerned that the public dissemination of swap transaction and pricing data without a time delay could cause harm to end-users. Specifically, EMUS is concerned that the public dissemination of swap transaction and pricing data in real-time could enable some counterparties to take advantage of end-users' hedging objectives, especially when multiple swap transactions for the placement of a large hedge position involve thinly traded products or illiquid markets.

In order to hedge its production, a natural gas producer will commonly enter into a large hedge position that involves multiple swap transactions with multiple counterparties. Based on EMUS' experience, it can take several months for a natural gas producer to negotiate and execute multiple swap transactions with multiple counterparties after it receives board of directors approval to enter into the large hedge position. In one instance, it took Encana approximately three months to fully execute a hedging program that involved more than 50 swap transactions with more than five counterparties at a location that was considered liquid. In another, it took Encana about nine months to fully execute a hedging program that involved more than 50 swap transactions with more than ten counterparties at a location that was considered illiquid.


Historically, when Encana implemented its Over-Counter-Derivative positions (not subject to clearing on exchanges), the completed transactions were reported quarterly in the applicable Securities and Exchange Commission (SEC) reports. This quarterly reporting provided Encana sufficient time to negotiate and execute most of the requisite swap transactions before public reporting provided its counterparties with information regarding its hedging program. EMUS believes that this is true for other large end-users where new hedge positions require negotiation and execution of multiple swap transactions with multiple counterparties.

² *Id.* at 76,150.

Rather than benefiting an end-user such as a natural gas producer, the public dissemination of swap transaction and pricing data in real-time may enable its potential counterparties – presumably swap dealers and major swap participants – to discern that it is implementing a new large hedge position that requires multiple swap transaction with multiple counterparties. The real-time public dissemination of swap transaction and pricing data would provide such counterparties with a market advantage that is not available under current swap transaction reporting.

EMUS does not oppose the Commission's proposal to require swap transaction and pricing data to be reported to a registered SDR in real-time. However, for the reasons discussed above, the regulations adopted by the Commission in this rulemaking proceeding should provide for a delay in the public dissemination of swap transaction and pricing data for swaps entered into by end-users. EMUS believes that a 180 day time delay in the public dissemination of such data should be sufficient to protect end-users similar to prior public reporting requirements under applicable SEC rules and regulations. The Commission would still have immediate access to the swap transaction and pricing data reported to the SDR notwithstanding the time delay in the public dissemination of such data.

Sincerely,



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