



February 22, 2011

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

**Subject: Comments of Encana Marketing (USA) Inc. on the Proposed Rule on Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant,” and “Eligible Contract Participant,” RIN Number 3038-AD06**

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.<sup>1</sup> 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 response to the Commission's request for comments on the "Application of Major Swap Participant Definitions to Inter-Affiliate Swaps and Security-Based Swaps,"<sup>2</sup> EMUS believes that swap transactions between affiliates and swap transactions between a parent and its subsidiaries should not be considered in the analysis of whether an entity is a Major Swap

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<sup>1</sup> *Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant,” and “Eligible Contract Participant”*, 75 Fed. Reg. 80,174 (Dec. 21, 2010).

<sup>2</sup> *Id.* at 80,202.

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Participant (MSP). EMUS' experience is that such swap transactions are primarily used for operational and internal efficiency purposes.<sup>3</sup>

Inter-affiliate swap transactions commonly occur when a parent corporation enters into swap transactions with unaffiliated counterparties on behalf of its subsidiaries due to credit requirements and then enters into inter-affiliate swap transactions with those subsidiaries to allocate such swap transactions to the underlying assets of the various subsidiaries for financial reporting purposes. Inter-affiliate swap transactions of this nature pose no material risk to the U.S. financial system, especially when they are among affiliates that are not financial entities. It is therefore appropriate to exclude inter-affiliate swap transactions from consideration in the determination of whether an entity's swap positions cause it to be a MSP.<sup>4</sup>

Sincerely,

Handwritten signature of Keith M. Sappenfield, II, dated 1/12.

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<sup>3</sup> EMUS also believes that the Commission should not require end-users to report inter-affiliate swap transactions, and in that regard supports the comments regarding inter-affiliate swap transactions filed by the Edison Electric Institute, Electric Power Supply Association, American Gas Association, and Natural Gas Supply Association (Coalition) on February 7, 2011 on the Commission's proposed rule on real-time public reporting of swap transaction data. The Coalition there correctly asserts that inter-affiliate swap transactions are used to make transfers and shift risks within a corporate family, and that they should not be used as an input to published real-time reporting swap data because they do not serve to enhance price discovery.

<sup>4</sup> The Commission should clarify that the key in determining whether a swap transaction qualifies as an inter-affiliate swap transaction over its lifetime is whether the parties to the swap transaction were affiliated at the time the swap transaction was originally entered into.