



April 11, 2011

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

**Re: Comments of Encana Marketing (USA) Inc. on the Proposed Rule on Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, RIN Number 3038-AC96**

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 this rulemaking, the Commission proposes to establish requirements for swap trading relationship documentation for swap dealers (SDs) and major swap participants (MSPs). EMUS' comments on the NOPR are limited to the end-user exception documentation requirements proposed by the Commission in § 23.505.

Proposed § 23.505(a) would require SDs and MSPs to obtain documentation from any counterparty seeking to exercise its rights under the end-user exception from the mandatory clearing of swaps. Each SD and MSP would be required to obtain documentation "sufficient to provide a reasonable basis on which to believe that its counterparty meets the statutory conditions required for an exception from a mandatory clearing requirement, as defined in section 2h(7) of the [Commodity Exchange Act] and §

<sup>1</sup> *Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants*, 76 Fed. Reg. 6715 (Feb. 8, 2011).

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39.6 of this chapter.” The proposed regulation specifies that “such documentation” would include: (1) the identity of the counterparty; (2) that the counterparty has elected not to clear the swap pursuant to the end-user exception; (3) that the counterparty is a non-financial entity; (4) that the counterparty is hedging or mitigating a commercial risk; and (5) that the counterparty generally meets its financial obligations associated with non-cleared swaps. Proposed 23.505(b) would require each SD and MSP to “maintain all of documents required to be obtained pursuant to this section” and make them available to the Commission or any applicable prudential regulator upon request.

The Commission acknowledges that proposed § 23.505 would work together with the proposed rule on swap data recordkeeping and reporting requirements and the proposed rule on the end-user exception to mandatory clearing, both of which were previously noticed for comment in other rulemaking proceedings.<sup>2</sup> It is important to note that comments on both of those proposed rules were due after the Commission voted to issue the instant NOPR.<sup>3</sup> Many of the comments in those rulemaking proceedings urged the Commission to modify the proposed rules in ways that would impact the end-user exception documentation requirements proposed in this rulemaking proceeding.

Specifically, in the end-user exception to mandatory clearing rulemaking, a large number of commenters, including EMUS, encouraged the Commission to reconsider its proposal to require an end-user to provide certain information regarding its election to use the exception to mandatory clearing of swaps to a registered swap data repository (SDR) on a transaction-by-transaction basis. These commenters, which are end-users or represent end-users, urged the Commission to adopt a less burdensome alternative, including, but not limited to: (1) requiring an end-user to file a one-time financial obligation notice to be updated if there is a material change; (2) requiring an end-user to provide the information necessary to establish its eligibility for the end-user exception on an annual or other periodic basis to be updated as needed; or (3) requiring an end-user to simply make the required representations in its transactional documents.

EMUS believes that the need for the end-user exception documentation requirements set forth in proposed § 23.505 would be obviated if the Commission revises the proposed rule on the end-user exception to mandatory clearing as advocated by commenters. However, if the Commission finds that it is still necessary to require a SD or MSP to obtain documentation from a counterparty that elects to use the exception to mandatory clearing of swaps, EMUS encourages the Commission to streamline proposed § 23.505 to avoid duplicative requirements. The Commission should modify § 23.505 to simply require a SD or MSP to obtain documentation that a counterparty qualifies for the end-user exception from mandatory swap clearing in the transaction documents with that counterparty. EMUS expects that, in response to final rules issued by the Commission, the International Swaps and Derivatives Association, Inc. (ISDA) will revise its master agreement, schedules and/or confirmations to capture the end-user exception documentation information that a SD or MSP will need to confirm the eligibility of a counterparty for the end-user exception and/or report swap transaction data to a registered SDR.

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<sup>2</sup> *Id.* at 6719, citing, *Swap Data Recordkeeping and Reporting Requirements*, 75 Fed. Reg. 76,574 (Dec. 8, 2010) and *End-User Exception to Mandatory Clearing of Swaps*, 75 Fed. Reg. 80,747 (Dec. 23, 2010).

<sup>3</sup> This NOPR was published in the *Federal Register* on February 8, 2011. Comments on the proposed rule on swap data recordkeeping and reporting requirements were due on February 7, 2011. Comments on the proposed rule on the end-user exception to mandatory clearing of swaps were due on February 22, 2011.

**Conclusion**

EMUS appreciates the opportunity to file comments on the NOPR, and encourages the Commission to take the comments and recommendations set forth above into consideration in this rulemaking.

Sincerely,

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