



June 7, 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 Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act**

Dear Secretary Stawick:

Encana Marketing (USA) Inc. (EMUS) hereby files these comments on the Commodity Futures Trading Commission's (Commission) implementation of the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act).

**Background**

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 a non-financial end-user of swaps under the Act. EMUS has participated in a number of the rulemaking proceedings currently pending at the Commission by filing comments on rules proposed by the Commission to implement the requirements of the Act.

**Comments**

EMUS' comments are limited to the Commission's implementation of the final rules which will establish a new regime for the reporting of swap transaction data. These comments focus on energy commodity swap transactions, particularly natural gas, in which one of the counterparties is a non-financial end-user, but they will likely also apply to other physical commodities.

EMUS encourages the Commission to phase-in the implementation of the final rules related to swap data transaction reporting so that market participants, especially non-financial end-users, have sufficient time to make the investments and organizational changes required to comply with the rules.

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As a threshold matter, the Commission should provide clarity regarding the scope of its jurisdiction under the Act by finalizing the rules on entity and product definitions.<sup>1</sup> Market participants cannot determine what agreements, contracts, and transactions will be classified as “swaps” until the Commission finalizes the definition of that term. Since the Commission has proposed a reporting hierarchy, market participants must also know whether they fall within the definition of “swap dealer” (SD) or “major swap participant” (MSP) before they can determine which counterparty to a swap will be the reporting party.

Next, the Commission should establish the market infrastructure necessary for swap transaction data reporting by issuing a final rule on: (1) the procedures and substantive requirements for registration as a SDR, and (2) the statutory duties, core principles and other requirements applicable to SDRs (SDR Final Rule).<sup>2</sup> In EMUS’ opinion, the establishment of a registered SDR will be the crucial step in the implementation of the Commission’s new swap data transaction reporting requirements. However, as discussed below, EMUS estimates that the new swap transaction data reporting regime may not be fully operational until a year or two after the SDR Final Rule is issued by the Commission.

If the SDR Final Rule is issued by the Commission in August 2011 it would typically become effective 60 days after publication in the *Federal Register*. EMUS expects that at least one entity will file an application with the Commission to be registered as the “energy commodity SDR” (EC-SDR) shortly thereafter in October 2011. The Commission will have a 180-day period to review the application at which point it must grant registration, extend the review period or deny the application. If there is no provisional registration of the EC-SDR, and the Commission utilizes the full 180-day review period, the earliest that the EC-SDR could be registered is April 2012.

Once registered, the EC-SDR will need to develop new internal policies, procedures and rulebooks which comply with the Commission’s regulations. The EC-SDR will also need to develop the information technology systems and third-party interconnection methodologies necessary to receive reports of energy commodity swap transactions in accordance with the swap data reporting and recordkeeping requirements adopted by the Commission in other final rules.<sup>3</sup>

EMUS believes that, after a registered EC-SDR is established, all of the counterparties that may potentially be required to report swap transaction to the EC-SDR will need to engage in a collaborative process to develop communications practices and protocols to transmit and confirm the required transaction information to the EC-SDR. This process is highly interdependent on the establishment of the EC-SDR and cannot proceed without such EC-SDR.

For energy commodity swap transactions, the stakeholders that must be involved in this process include, at a minimum, the EC-SDR, SDs, MSPs, end-users and Commission Staff. In EMUS’

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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); *Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* 76 Fed. Reg. 29,818 (May 23, 2011).

<sup>2</sup> *Swap Data Repositories,* 75 Fed. Reg. 80,898 (Dec. 23, 2010).

<sup>3</sup> *Real-Time Public Reporting of Swap Transaction Data,* 75 Fed. Reg. 76,140 (Dec. 7, 2010); *Swap Data Recordkeeping and Reporting Requirements,* 75 Fed. Reg. 76,574 (Dec. 8, 2010).

experience, the timetable for a collaborative development process of these communication practices and protocols for energy commodity swap transactions includes the following:

- 1 month after final rules on swap data reporting and recordkeeping - Establish working group under the Commission's Data Standardization Subcommittee.
- 1 month - Establish scope of work.
- 3 months - Develop technical implementation of communication data sets and related documentation.
- 2 months - Public and energy industry review of working group's recommended implementation plans and finalization of technical implementation plan for recommendation to Commission for approval.
- 2 months – Commission final review and approval.
- 6 months – Time period Commission authorizes for all parties to implement the technical requirements before the effective date for reporting requirements.

This timetable is based on EMUS' experience with technical implementation of communication practices and protocols related to the energy industry standards of the North American Energy Standards Board (NAESB). NAESB standards development requirements and its due process practices and procedures are essential to energy industry acceptance and adoption of the final rules with minimal need to revise the technical implementation requirements after full implementation.

Thus, based on the above timetable minimums, and given the requirement to approve the registration of the EC-SDR, EMUS believes that the anticipated effective date for reporting of swap transactions to the EC-SDR will be June or July 2013.

### **Conclusion**

EMUS appreciates the opportunity to file comments on the Commission's implementation of the new swap data transaction reporting requirements. EMUS encourages the Commission to exercise the flexibility provided under the Act by establishing an implementation schedule which provides non-financial end-users with sufficient time to develop the policies, procedures, systems and infrastructures need to comply with the swap data transaction reporting requirements adopted by the Commission.

Sincerely,

Handwritten signature of Keith M. Sappenfield, II in cursive script.

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