



June 9, 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 Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, RIN Number 3038-AD48**

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 a non-financial end-user of swaps under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act).

**Comments**

The Commission must finalize and implement several related rules before the reporting of pre-enactment and transition swaps proposed in the NOPR can commence. As a threshold matter, the Commission must provide clarity regarding the scope of its jurisdiction under the Act by finalizing the rules on entity and product definitions.<sup>2</sup> Market participants cannot comprehensively determine what agreements, contracts, and transactions qualify as pre-enactment or transition swaps until the Commission finalizes the definition of the term "swap." Since the Commission has proposed a

<sup>1</sup> *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 76 Fed. Reg. 22,833 (Apr. 25, 2011).

<sup>2</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).

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reporting hierarchy in the NOPR, 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 pre-enactment or transition swap will be the reporting counterparty under proposed § 46.5(a). In addition, the Commission must establish the market infrastructure necessary for swap transaction data reporting, including operational registered SDRs.<sup>3</sup>

In the final rule, the Commission should clarify that swaps among affiliates are excluded from the reporting requirements for pre-enactment and transition swaps. Inter-affiliate swap transactions are used to make transfers and shift risks within a corporate family. 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. Under these circumstances, the burden of reporting data regarding pre-enactment and transition inter-affiliate swaps would significantly outweigh the value of the information provided to the Commission.

EMUS also encourages the Commission to provide market participants with additional guidance regarding the determination of which party must report data for pre-enactment and transition swaps. Under proposed § 46.5(a)(3), if both counterparties have the same status – two SDs, two MSPs or two non-SD/MSP counterparties – the counterparties must decide which counterparty will be responsible for reporting data for the pre-enactment or transition swap. The Commission should clarify what happens in the unlikely event that two counterparties at the same hierarchical level are unable to reach an agreement as to who will be the reporting counterparty. Notwithstanding the reporting hierarchy, if only one counterparty to a pre-enactment or transition swap is a U.S. person, the U.S. person should be the reporting counterparty as proposed by the Commission in § 46.5(a)(4).

As previously suggested in rulemaking comments filed by others in the energy industry, EMUS encourages the Commission to adopt or create a safe harbor for good faith efforts to comply with the recordkeeping and reporting requirements for pre-enactment and transition swaps.

Finally, EMUS believes that the NOPR under-estimates the burden of the proposed recordkeeping and reporting requirements. With respect to non-SD/MSP reporting counterparties, the NOPR estimates that the average one-time burden per entity will be 10 hours, excluding customary and usual business practices. However, EMUS has already spent more than 10 hours of internal staff time just reading and evaluating the NOPR. EMUS expects that the time burden will likely be more than 3 to 4 times the estimate in the proposed rule based on the amount of work that will need to be done manually and the changes it will need to make to its systems, practices and procedures in order to comply with the final rule.

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<sup>3</sup> *Swap Data Repositories*, 75 Fed. Reg. 80,898 (Dec. 23, 2010).

**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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