



November 3, 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 Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the Commodity Exchange Act, RIN Number 3038-AD60**

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

**Comments**

In the NOPR, the Commission proposes regulations that would establish a schedule to phase-in compliance with certain statutory provisions enacted under Title VII of the Dodd-Frank Act, including the clearing requirement under Section 2(h)(1)(A) of the Commodity Exchange Act (CEA), and the trade execution requirement under Section 2(h)(8)(A) of the CEA. The Commission proposes to phase-in compliance with these requirements by type of market participant based on a variety of factors, including the market participant's experience, resources, and the size and complexity of its transactions. The Commission also proposes to provide market participants with additional time to comply with these new requirements.

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<sup>1</sup> *Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA*, 76 Fed. Reg. 58,186 (Sept. 20, 2011).

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EMUS supports the Commission's proposal to phase-in compliance with these new Dodd-Frank Act requirements in principle, but takes no position on the specific compliance schedule proposed in this NOPR. EMUS agrees with the Commission's observation in the NOPR that the rule governing the elective exception to the mandatory clearing of swaps established by CEA Section 2(h)(7)(A)<sup>2</sup> needs to be finalized before the Commission can require compliance with a mandatory clearing requirement because that rule would establish the process by which a non-financial commercial end-user elects not to clear a swap. EMUS also encourages the Commission to confirm that proposed 17 C.F.R. § 39.5(e)(2) does not specify the number of days by which a non-financial commercial end-user that elects to exercise the exception to mandatory clearing in CEA Section 2(h)(7)(A) must comply because such an end-user would be exempt from the new mandatory clearing and trade execution requirements.

### **Conclusion**

EMUS appreciates the opportunity to file comments on the NOPR, and encourages the Commission to provide the clarification requested above.

Sincerely,

*Keith M. Sappenfield, II / EAZ*

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<sup>2</sup> *Id.* at 58,188, citing, *End-User Exception to Mandatory Clearing of Swaps*, 75 Fed. Reg. 80,747 (Dec. 23, 2010).