



January 14, 2011

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

Re: RIN 3038 – AC96  
CCO Designation

Dear Secretary Stawick:

Cargill Incorporated ("Cargill") is an international provider of food and agricultural products and services. As a merchandiser, processor and exporter of agricultural commodities, Cargill relies heavily upon efficient and well-functioning methods of risk management, including forward contracts, futures, options and swaps. Cargill also provides risk management products to other businesses, and thereby assists those businesses in obtaining the benefits of Cargill's expertise in risk management. Cargill appreciates the opportunity to provide comments to the Commodity Futures Trading Commission ("Commission") on its proposed rules regarding designation of a Chief Compliance Officer ("CCO") in 75 Fed. Reg.70881 (Nov. 19, 2010) ("the Proposed Rules").

### **Background**

The Commodity Exchange Act, as amended by the Dodd-Frank Act (collectively the "Act"), requires the Commission to adopt regulations to implement the Act's requirement that each swap dealer designate a CCO who shall have duties imposed by the Act. Cargill anticipates that it may be required to register as a swap dealer based on the activities of several of its risk management divisions, which offer customized risk management products to external customers. Other divisions within Cargill use

swaps as end-users to hedge and manage the risks of their businesses, but these other divisions do not engage in swap dealing activities. On a relative basis, the risk management divisions of Cargill are a very small part of the company's overall business activities.

Section 1a (49) (B) of the Act provides that a person may be designated as a swap dealer for a single category of activities and not considered a swap dealer for its other activities involving swaps. In the recent Federal Register Release which issued a Joint Proposed Rule further defining the "swap dealer" term and others, the Commission recognized that there may be non-financial entities, such as physical commodity firms, that conduct swap dealing through a division rather than a separate subsidiary, and that swap dealing would not be a core component of the entity's overall business in such cases. The Commission stated further that it anticipates that if this type of entity registers as a swap dealer, certain swap dealer requirements would apply to the swap dealing activities of the division, but not necessarily to the swap activities of other parts of the entity. See 75 Fed. Reg. 80182 (Dec. 21, 2010).

### **Comments**

The Proposed Rules do not adequately carry out Congressional intent to permit a business with a swap dealing division to be subject to swap dealer regulation only for the activities of that division. Specifically, the Proposed Rules do not clearly provide that the CCO to be designated for a division within a larger company would report to the senior officer or governing body of that division and not to the senior officer or governing body of the larger company.

In order to provide for a divisional or business unit approach to designation and supervision of a CCO, the Commission should expand the definition of "board of directors" in the Proposed Rules to provide that in the case of a registered swap dealer where the registration applies to a division of the

registrant rather than to the registrant as a whole, the term “board of directors” means the governing body of the division, such as a management committee.

The Proposed Rules should similarly be amended to add a definition of the term “senior officer.” For swap dealers which are divisions of a larger company, this definition should clearly provide that the senior officer term applies to senior officer of the division which is engaged in the swap dealing activities.

The governing body and senior officer of a division have the same types of incentives to promote compliance as do the board of directors and senior officer of the entire firm, because a division that has compliance problems will cause problems for the entity as a whole, resulting in adverse consequences for the persons in charge of the division. Moreover, the governing body and senior officer of a division are more familiar with, and closer to, the specific operations of that unit than the board and senior officer of the larger company. The governing body and senior officer of the division will therefore be in a better position to ensure that the unit is compliant on a day to day basis.

Apart from the provisions which need to be changed to clarify the applicability of the CCO requirements to a swap dealer consisting of a division, Cargill believes the provisions in the Proposed Rules are in general reasonable and provide flexibility so that each swap dealer can apply the general requirements to its own business structure. Cargill believes that the Commission should, in its final regulations, retain the flexibility that is in the Proposed Rules. For example, in response to the one of the questions raised by the Commission in the Federal Register release containing the Proposed Rules, and in order for swap dealers to operate their businesses in the manner they deem most effective, Cargill does not favor an inflexible requirement that the CCO can be removed only by a majority of the members of the governing body.

Cargill urges the Commission not to adopt the requirement in the Proposed Rules that the CCO must have appropriate background and skills to perform the compliance duties of the position. While this is a commendable aspirational goal, it is too vague a standard to make into a requirement of federal law, and is best reserved as a business decision for the swap dealer to make. The proposed requirement that the CCO qualify as a principal of the registrant and not be subject to a statutory disqualification from registration provides fitness standards that are clear and objective, and there is no need to go beyond these requirements by imposing a vague standard that the CCO have appropriate background and skills.

The Commission specifically seeks comment on whether there is a need to insulate the CCO of a registrant from undue pressure and coercion. Cargill believes that there is such a need, and that the corporate structure can protect the CCO from undue pressure. This structure for independence can take many forms, e.g., the CCO can report to a senior finance officer or the management team of the swap dealer division, to a senior officer of the corporate entity housing the swap dealer division, or to a senior legal officer of the corporate entity housing the swap dealer division. In addition, Cargill believes most divisions acting as swap dealers within larger commercial entities have compliance responsibilities within the divisions as well as overall corporate oversight. The Commission need not be prescriptive but should remain flexible to the types of structures that will work for individual organizations.

Cargill requests that the Commission provide a period of at least one year for swap dealers to implement the CCO requirements after they become final. There will be many requirements imposed on swap dealers when the Act becomes effective, and one year would be a reasonable time to institute this procedure along with the others that will need to be instituted.

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Cargill appreciates the opportunity to comment and would be pleased to discuss this letter with Commission staff and to provide such other comment as might be helpful to the Commission.

Sincerely,

A handwritten signature in black ink that reads "David Robertson". The signature is written in a cursive style with a large, prominent "D" at the beginning.

David Robertson,  
Assistant Vice President & Assistant General Counsel