



January 24, 2011

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

Re: RIN 3038 – AC96
Duties of Swap Dealers and Major Swap Participants

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 the duties of swap dealers in 75 Fed. Reg. 71397 (Nov. 23, 2010) (“the Proposed Rules”).

Background

The Commodity Exchange Act, as amended by the Dodd-Frank Act (collectively the “Act”), imposes certain duties on swap dealers and major swap participants, and requires the Commission to adopt regulations governing these duties. Cargill anticipates that it may be required to register as a swap dealer based on the activities of its risk management divisions, known within Cargill as business units, 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 divisions of Cargill providing risk management services to others 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 "swap dealer" which is required to establish a risk management program and risk management unit may be a division of a larger company. Similarly, the Proposed Rules do not clearly provide that the terms "governing body" and "senior management" can refer to the governing body or senior management of a swap dealing division within a larger company, and are not limited to the governing body or senior management of the larger company.

The Proposed Rules require each swap dealer to establish a risk management program and a risk management unit to manage the risks associated with the business of the swap dealer. The Commission

should make it clear that these requirements apply only to the swap dealing business of a swap dealer which is a division of a larger company, and not to the other business activities of the company.

In order to provide for a divisional or business unit approach to the duties of a swap dealer, the Commission should expand the definition of “governing body” 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 “governing body” may mean the governing body of the division, such as a management committee.

The definition of “senior management” in the Proposed Rules should similarly be amended to provide clearly that for swap dealers which are divisions of a larger company, this definition may apply to the senior management of the division which is engaged in the swap dealing activities. The Proposed Rules state that the risk management unit must report directly to senior management and be independent from the “business trading unit,” which is defined as a department, division, group or personnel of a swap dealer or any of its affiliates that performs or is involved in pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of the swap dealer. Cargill believes that this language is unduly rigid, and requests that the Commission provides greater flexibility in how such swap dealers arrange monitoring and compliance of their risk management program.

Cargill believes monitoring and managing the risks associated with the business of a swap dealer and the necessary independence of the risk management personnel from undue pressure can take many forms, and the Commission should remain flexible to the types of structures that will work for individual organizations. Cargill believes that due to the diverse nature of the risks associated with the business of a swap dealer, those risks can be adequately managed and monitored by functional groups within the swap dealer division. To ensure independence, these functional groups will have a reporting line to the most senior officer of the swap dealing division and oversight from an independent organization within

the larger company. Cargill believes the Commission should state that independent oversight of any risk management program must be demonstrated by the swap dealing division rather than being prescriptive. The Proposed Rules also do not reasonably address swap dealing divisions in a larger entity, insofar as they require that a swap dealer's risk management program take into account risks posed by affiliates and take an integrated approach to risk management at the consolidated entity level. Although Cargill believes it is reasonable for a swap dealing division to consider risks posed to itself as a result of its being a division of a larger entity, Cargill believes it is unreasonable and unduly onerous for a swap dealing division which is a small part of a much larger commercial enterprise to monitor and manage risks of the larger company and its affiliates. Such an onerous burden is unnecessary where the swap dealing division is relatively small, and is contrary to Congress's intent in permitting a swap dealing division to be regulated apart from the larger company in which it is included.

The Proposed Rules include a requirement that each risk management unit prepare a quarterly risk exposure report, and that each swap dealer's risk management program be reviewed and tested on at least a quarterly basis by independent internal auditors or third party auditors. Cargill believes that these requirements should be annual rather than quarterly. The risk management unit will be monitoring risk on a daily basis and will be required to take action as necessary to deal with risk. Requirements of quarterly reports and audits are excessive and would create undue expense for a swap dealer. Annual reports and audits would be a more reasonable requirement.

The requirement that procedures and reports be submitted to the Commission is also excessive. If a swap dealer is required to have procedures in place and prepare reports for internal use, compliance with these requirements can most efficiently be tested when the Commission performs its regular audit of the swap dealer or upon a special call for information or request for required records by the Commission.

Cargill requests that the Commission provides a period of at least one year for swap dealers to implement the provisions of the Proposed Rules 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 implement these provisions along with the others that will need to be implemented.

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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,



Linda L. Cutler
Vice President and Deputy General
Counsel