July 7, 2011

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

Re: RIN 3038-AD54
Capital Requirements 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 appreciates the opportunity to provide comments to the Commodity Futures Trading Commission ("Commission" or "CFTC") on its proposed rules regarding Capital Requirements of Swap Dealers and Major Swap Participants in 76 Fed. Reg. 27802 (May 12, 2011) ("the Proposed Rules"), which have been issued pursuant to the Commodity Exchange Act, as amended by the Dodd-Frank Act (collectively the "Act").

Cargill anticipates that swap dealer registration may be required for certain of its risk management divisions, known as business units, which offer customized risk management products to external customers. Under section 1a(49)(B) of the Act, Cargill anticipates that any swap dealer designation would apply only to these activities. Although these activities are a very small part of

Cargill's overall business activities, the capital requirements for swap dealers nevertheless are important to those specific business units.

In addition to engaging in limited swap dealing activities, Cargill depends upon an orderly functioning swaps market to manage its overall physical commodity price risks efficiently and economically, for the benefit of producers, processors and consumers as well as for its own benefit. Cargill believes that the swaps market in general will benefit from rules that promote the efficient use of capital by swap dealers.

Cargill's comments in this letter are submitted with the objective of promoting the efficient use of capital by swap dealers, while still providing the necessary protections to ensure the financial integrity of the dealers and the swaps they transact.

Comments

1. Transactions with Affiliates Should Not Result in Capital Charges

The Proposed Rules include a capital requirement for swap dealers of $20 million plus two risk-based charges: the market risk exposure requirement ("Market Risk Requirement") and the over-the-counter derivatives credit risk requirement ("Credit Risk Requirement"). Neither of these risk-based charges should apply to transactions with affiliates.

Swaps between affiliates do not present the same risks as swaps with unaffiliated third parties. In its release on the "Further Definition of Swap Dealer" (and further definition of other terms), the Commission has stated the following, for purposes of the swap dealer definition:

> In determining whether a particular legal person is a swap dealer or security-based swap dealer, we preliminarily believe it would be appropriate for the person to consider the economic reality of any swaps and security-based swaps it enters into with affiliates (*i.e.* legal persons under common control with the person at issue), including whether those

> swaps and security-based swaps simply represent an allocation of risk within a corporate group.

75 Fed. Reg. 80174 at 80183.

The Commission should apply similar reasoning to determining capital requirements for swap dealers. The economic reality of swaps between affiliates in a corporate group is an allocation of risk within the corporate group, and not the type of risk to the market that capital charges are intended to measure. In addition, the statutory rationale for capital requirements for swap dealers would not be served by imposing the Credit Risk Requirement and Market Risk Requirement on swap dealers for swaps with affiliates. The rationale, which is in section 4s(e)(3) of the Act, is that capital (and margin) requirements are to "help ensure the safety and soundness of the swap dealer or major swap participant" and "be appropriate for the risks associated with the non-cleared swaps held as a swap dealer or major swap participant."

As a practical matter, there is no credit risk or market risk on swaps between affiliates. The risks on swaps between affiliates affect the performance of individual business units, but do not affect the swaps market. The risks which affect the market are the risks of external swaps, which will be subject to the risk-based capital charges. Also, if risk-based charges were imposed on swaps between affiliates, the charges could give members of a corporate group an incentive to structure their internal swaps in a less economically efficient manner, in order to prevent unnecessary capital charges. Neither the capital charges themselves, nor restructuring to prevent capital charges, would benefit the swaps market, but rather would raise the costs for swap dealers without providing any valid regulatory benefit.

The minimum capital requirement of $20 million, plus risk-based charges on external swaps, will serve the regulatory purposes of the Act, and there is no need to impose capital charges on swaps between affiliates.

2. NFA Should be Permitted to Approve Internal Risk Models

The Proposed Rules provide that internal risk models, if approved by the Federal Reserve Board or the Securities and Exchange Commission ("SEC"), may be used by swap dealers to calculate the Market Risk Requirement and the Credit Risk Requirement. Although the Proposed Rules would permit the CFTC to establish a review process, the proposing release states that the CFTC does not currently have the resources to perform such reviews. The option of using an internal model is thus limited to those swap dealers who are subject to the jurisdiction of either the Federal Reserve Board or SEC. All other swap dealers will be required to compute capital charges in accordance with the formulas in the Proposed Rules.

Cargill has its own internal model which it currently uses for risk management purposes, and Cargill believes this model could be readily adapted to calculate capital charges in a manner that would satisfy the Act's objectives. Because Cargill is not regulated by the Federal Reserve Board or SEC, however, it would not be able to use its model but rather would be required to calculate the charges in accordance with the formulas in the Proposed Rules. As a result, Cargill would potentially have higher capital charges than, and operate at a competitive disadvantage to, those banking and securities firms which will be allowed to use models.

The CFTC should revise the Proposed Rules to permit National Futures Association ("NFA") to review and approve internal risk models for swap dealers. NFA will be administering the registration process for swap dealers and could add the review of risk models to the regulatory services it performs

in relation to swap dealers. Moreover, NFA could charge the expenses of the review process to the swap dealer seeking approval. As a result, there would be no additional expense to the public, or even to NFA members in general, for this review. Without changing the Proposed Rules to permit all swap dealers to use internal risk models, the CFTC would be giving an unwarranted competitive advantage to banking and securities firms, and would be preventing the most efficient use of capital. On the other hand, if the CFTC allows NFA to approve models, the CFTC would be giving all swap dealers the opportunity to develop and use such models, and to achieve the most efficient use of capital consistent with maintaining sufficient capital to meet regulatory needs.

3. Swap Dealer Financial Information Available to the Public Should be Limited to the Same Type of Information that is Published for FCMs

In the Proposed Rules, the Commission proposes to make certain swap dealer financial information publicly available. Specifically, the Commission would publish each swap dealer's minimum required regulatory capital, the amount of the swap dealer's actual capital, and the resulting excess or deficiency. Cargill believes it is appropriate for the Commission to publish these specific categories of information, but that additional detail beyond these categories should not be publicly available. Additional information would not be helpful to the public in material respects, and privately held companies, such as Cargill, should not be required to make their proprietary financial information public as a condition of engaging in limited swap dealing activities.

The Commission currently publishes limited financial information for registered futures commission merchants ("FCMs"). As long as the publicly available information for swap dealers is limited to the types of information now made public for FCMs, Cargill supports the Commission's proposal to make this information public.

4. Provisions Regarding Reporting of Valuation Disputes Should be Revised

The Commission has invited comment on whether a capital charge should be taken for swap valuation disputes, and if so, when it should be taken. The Commission has also restated its previous proposal to require the reporting of any valuation dispute not resolved within one business day. Cargill believes that valuation disputes should amount to a minimum of $100,000 before action needs to be taken to report them or to impose a capital charge, but that once action is required, the entire amount of the valuation dispute should be reportable and subject to a capital charge. The requirement of a $100,000 minimum amount before action is taken is similar to the Commission's proposal that there be a minimum margin call of $100,000 before payment is required. Furthermore, Cargill believes a reasonable time for the reporting and capital charge requirements would be five business days rather than one day, in order to allow a reasonable time for the parties to resolve any disputes.

Conclusion

Consistent with its past participation in the rule-making process, Cargill appreciates the opportunity to comment on the Commission's proposals for capital requirements for swap dealers and major swap participants. Cargill also appreciates the Commission's openness to input from Cargill and other interested market participants, and would be pleased to provide any further information that the Commission may request to assist it in developing the final rules.

Sincerely,

Linda L. Cutler
Vice President, Deputy General Counsel and Assistant Corporate Secretary