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February 10, 2014

Ms. Melissa Jurgens
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Re: Position Limits for Derivatives
RIN 3038-AD99, 78 Fed. Reg. 75,679 (Dec. 12, 2013)

Dear Ms. Jurgens:

Cargill, Incorporated ("Cargill") thanks you for the opportunity to comment on the proposed position limits rule (Commodity Futures Trading Commission, 78 Fed. Reg. 75,679 (proposed Dec. 12, 2013)). This letter outlines Cargill's general and specific concerns with the proposed rule and proffers improvements to the final rule.

Section 4a(a)(3)(B) of the Commodity Exchange Act ("CEA") specifically charges the agency with four specific objectives:

"(i) to diminish, eliminate, or prevent excessive speculation as described under this section;
(ii) to deter and prevent market manipulation, squeezes, and corners;
(iii) to ensure sufficient market liquidity for bona fide hedgers; and
(iv) to ensure that the price discovery function of the underlying market is not disrupted."

7 U.S.C. § 6a(a)(3)(B).

Congress was clear, however, that in establishing such position limits, that the CFTC "shall strive to ensure that trading on foreign boards of trade in the same commodity will be subject to comparable limits and that any limits . . . imposed . . . will not cause price discovery in the commodity to shift to trading on the foreign boards of trade." 7 U.S.C. § 6a(a)(2)(C).

With these charges in mind, Cargill supports the purposes of the position limits rule and recognizes that position limits, particularly during the spot month, play an important role to ensure convergence, which is a critical part of the price discovery function. These markets further ensure the proper allocation of resources for planting and producing commodities, and ultimately meeting the demand of global consumers. We appreciate that at times these may be difficult criteria to achieve simultaneously.

A. General Concerns

Futures and derivatives markets perform critical functions of price discovery and risk management. These markets send important price signals to farmers, ranchers, producers, processors, consumers and others involved in the supply chain so that critical decisions can be made about how to produce, manage, transport, procure and manufacture the food, goods and services our nation and the world rely upon.

Our general concern relates to the CFTC's proposed conversion from a regime with lower speculative limits and a less restrictive exemption process to a new regime with higher speculative limits but more restrictive commercial hedge exemptions. The net effect of the proposed rule could force commercial firms like Cargill to use speculative positions to hedge what has traditionally been legitimate bona fide hedging commercial activity. This could actually place commercial firms at a disadvantage to firms that only speculate, and could run afoul of Congress's mandate to the CFTC as set forth in Section 4a(a)(3)(B) of the CEA.

As the CFTC knows, exemptions from position limits have long been allowed by exchange rules, CFTC regulations and statutes. These exemptions allow commercial participants to hedge commercial risk when futures and derivatives positions exceed established limits. These exemptions and the relationship to the underlying commercial activity differentiate commercial activity from speculative activity. We submit that "anticipatory hedges" when done for "economically appropriate" reasons are bona fide hedges. Failure to make that determination would cause the CFTC to fall short of its charge, namely Sections 4a(a)(3)(B)(iii) and (iv) of the CEA, and to unfairly prejudice non speculative market participants.

Anticipatory hedges, particularly "*anticipatory merchandising hedges*" and "*anticipatory processing hedges,*" are key aspects of Cargill's risk management activity. Anticipatory merchandising hedges allow commercial users like Cargill to have ready bids and offers available for farmers and end users when they are ready to buy and sell. Anticipatory processing hedges, including the use of a single long leg future ahead of locking processing margins, allow for the appropriate risk management of a processing asset at an enterprise level and help prevent any disadvantage to the U.S. industry.

Anticipatory hedging has been a fundamental part of risk management and price discovery during the life of these markets. They help enable price discovery and the effective transference of risk in an orderly fashion. We understand through the narrative of the proposed rule that the CFTC is concerned that some may use such hedging exemptions inappropriately. The CFTC should focus on preventing the inappropriate use of anticipatory hedging, rather than deny its appropriate and lawful use by commercial market participants who utilize these tools for risk management and price discovery in physical products—the very reason these markets exists in the first place.

The unintended consequences of the CFTC's proposed rule could be increased volatility, less price discovery and more uncertainty. Such consequences would be an unfortunate outcome and the antithesis of what Congress, the CFTC, consumers and commercial market participants desire.

CFTC Rule 1.3z states that that bona fide hedge shall mean transactions that "represent a substitute for transactions to be made or positions to be taken at a later time in the physical marketing channel." The positions Cargill takes in the futures market are substitutes for positions we anticipate taking in the cash market. Rule 1.3z further states the positions are "economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise." Cargill operates a commercial enterprise and the examples and narratives herein demonstrate the economic appropriateness of the positions. CFTC Rule 1.3z further states that the risk arises from the "change in value of assets" that a person "owns, produces, manufactures, processes or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising." This describes our commercial business.

B. Specific Concerns

Cargill wishes to bring to your attention five specific issues of concern in the proposed rule:

1. Bona fide hedges
2. Cross-Commodity hedging
3. Net vs. gross hedging
4. Proposed Rule Commentary
5. Further Documentation and Dialogue

1. Bona Fide Hedges

The CFTC has included examples of transactions in its proposed rule that could be problematic for commercial users of futures transactions if they are not deemed bona fide hedges by the CFTC. These included "*irrevocable bids/offers*", "*anticipatory merchandising hedges*", "*anticipatory processing hedges*" and "*cross-commodity hedges*". Cargill has submitted examples of these to the CFTC and also included these examples in the Appendix to this submission.

Irrevocable bids/offers

The proposed position limits rule questions whether or not "irrevocable bids/offers" are bona fide hedges in the absence of a cash transaction. The CFTC argues that a market participant could simply assume a contract "may" occur and thus take on additional speculative positions and exit those positions when the cash bids and offers do not come to fruition. We submit that we enter into these bids and offers with the expectation that they will lead to cash transactions and that risk does exist. During the time that a bid or offer is open, any number of factors could impact the market. For example, recent factors influencing the market include the following:

- Weather in US, Argentina, Brazil, Ukraine, Russia, Australia
- Argentinean macroeconomics policies
- USDA Crop Reports
- EPA's Renewable Fuels Standards
- Egyptian tenders
- Disruption of US grain exports to China
- Navigation challenges on the Mississippi River
- EU imposition of countervailing duties on biodiesel imports

These and countless other factors affect markets. We must be able to factor expectations about events into our bids and offers so that we manage our own risk and price the bids and offers appropriately in a competitive marketplace. We, and the market, will only hedge a portion of the business based on our degree of confidence and experience of the situation. This natural adjustment should mitigate the CFTC's concerns regarding market disruption and in any event, such concerns should not eliminate the availability of irrevocable bids/offers as bona fide hedges to legitimate industry stakeholders.

Indeed, existing and proposed regulations contain additional rules regarding orderly trading in the markets. Cargill supports such requirements and the penalties that may be applied for any violation. If the CFTC deems irrevocable bids/offers to not be bona fide hedges until cash transactions are actually consummated, then there is a much smaller window in which to execute futures hedges. Since some of these transactions could entail single contracts with very large volumes, the CFTC's interpretation of the proposed rule could potentially lead to increased market disruption, market volatility and less orderly marketing.

This is certainly contrary to the goals of the marketplace, market participants and the CFTC. We request that the CFTC take this into consideration when evaluating these comments and remove from page 75720 of the proposed rule the statement that hedging a binding bid or offer would not be economically appropriate.

Anticipatory Merchandising

The "anticipatory merchandising hedge" is important as we bid for grain from farmers. In its proposed regulations, the CFTC, contrary to the statutory language and intent of Congress, declined to provide for the "anticipatory merchandising hedge", and states that such hedges are not economically appropriate. The CFTC takes the view that an anticipatory merchandising hedge should not be allowed because it could be abused by speculators. But this possibility should not prevent it from being available to those who use it for bona fide commercial purposes. Given that merchandising has been, is, and will be a critical part of the commercial side of this business for some time, we believe the CFTC should recognize the intent of Congress to allow anticipatory merchandising hedges. The CFTC should recognize the "anticipatory merchandising hedge" as a bona fide hedge as described in the Appendix to this letter and remove from page 75718 of the proposed rule the statement that anticipatory merchandising positions fail to meet the economically appropriate test.

CFTC Rule 1.3(z)(1)(i), which is the statutory definition of bona fide hedge, recognizes the risk that is incurred in transactions of this type and that it is economically appropriate to hedge these transactions as a bona fide hedge. We submit that this rule describes these activities and identifies what is at risk while these transactions are open. If the market moves counter to our position, we are at risk. The CFTC should interpret this rule and the statute to ensure that the "anticipatory merchandising hedge" is recognized as a bona fide hedge.

Anticipatory Processing

This is a critical issue in the proposed narrowing of the definition of bona fide hedge. The CFTC appears to interpret an "anticipatory processing hedge" as a bona fide hedge but only if all legs of the complete transaction are in place. At times however this will be contrary to prudent risk management because the inputs and products of a processing plant are driven by different economic factors. There could be economic drivers, such as the ones listed above, which cause the products to move in different directions. Hedging the processing margin immediately may not be the most prudent risk management decision. The CFTC's proposed rule could increase risk if there are different economic conditions impacting the inputs and outputs of the plant.

We request the CFTC to remove pages 75836-37 of the proposed rule and enumerated example therein and make clear that it does recognize that there may be occasions where it is economically appropriate for a single long leg future to reduce risk for a processing enterprise.

2. Cross-Commodity Hedging

The CFTC's proposed rule requires cross-hedges to have an 80% correlation of returns over 3 years in order to be bona fide. Requiring a numerical standard over this time period is impractical because there are numerous commodities that have correlations change due to seasonality and other factors. As correlations change, risk managers seek other instruments to hedge risk. Hedges below 80% can be very appropriate hedges and are appropriate when large price moves occur over time. This is what is important to effective hedging, not smaller daily fluctuations which are what is captured in daily return calculations. For example, the comparison between Henry Hub and power without taking into account gas basis is not logical and the restriction on gas as a hedge for power should be eliminated. There are other instances where this is very appropriate. In addition, most hedges are for deferred months and comparing spot prices to deferred prices is not a valid comparison.

3. Net vs. Gross Hedging

Currently, market participants have the flexibility to determine whether to hedge risks on a net or gross basis. In the proposed rule on page 75709, the CFTC states "gross hedging may be appropriate under certain circumstances, when net cash positions do not measure total risk exposure due to differences in the timing of cash commitments, the location of stocks and differences in grades or types of the cash commodity being hedged." However, the CFTC also states that a commodity derivative contract only offsetting a gross long position would not qualify as a bona fide hedge because the hedge resulted in "increased value exposure of the enterprise."

The CFTC should modify this portion of the rule to allow risk managers to evaluate the risk of the enterprise and allow net hedging when appropriate and gross hedging when appropriate. When gross hedging, firms should have the flexibility to hedge either the gross long or the gross short when this is the most economically appropriate risk management position. This is consistent with the flexibility afforded under the current rules and we believe consistent with current trade and exchange practices.

4. Proposed Rule Commentary

We have concerns that the CFTC believes that any errors in the interpretation of bona fide hedging can be accommodated because speculative limits are deliberately large. We believe that this is an inappropriate approach that unduly prejudices the legitimate merchandising and processing stakeholder.

We ask that it be made clear that in the event changes are made to the final rule that past indications and enumerated examples in the proposed rule will not prejudice future interpretations by including in the final rule words to the effect that:
In the notice of proposed rulemaking, the Commission stated its views that various hypothetical transactions would not be economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise. Upon further consideration, the Commission has determined that these views should not be included in the final rule release, and that these views should not be used as guidance in interpreting the rules, because the facts that were assumed as a basis for the Commission's views on these hypothetical transactions may be incomplete. For actual transactions, the economically appropriate test should be applied on a case by case basis, based on all of the relevant facts pertaining to those actual transactions.

5. Further Documentation and Dialogue

Cargill has worked closely with many of our industry partners and trade associations. We ask that you closely review the comment letters of the Commodity Markets Council, the National Grain and Feed Association and Futures Industry Association letter, specifically the portion of the letters pertaining to commercial market users, cross-hedging and reporting.

We suggest additional, transparent dialog with you and other industry partners to discuss what reasonable documentation, beyond what is already required and anticipated by the proposed rule, is needed to support the statutory interpretations discussed above. For example, the CFTC will receive information through form 204 reporting of cash and derivatives positions, annual exchange exemptions and can access information through special call authority. We ask that the CFTC make every effort to make its information needs commercially reasonable.

The hedging tools discussed in this letter are invaluable for commercial users like Cargill and should be available to those who have legitimate need for them. Limitations on the use of anticipatory hedging could have a deleterious impact on commercial market users and farmer suppliers and customers, and ultimately on consumers.

Thank you for the opportunity to provide these comments and we sincerely hope for the opportunity to see and respond to the further opinion of the Commission as it seeks to finalize this important matter.

Respectfully submitted,

Greg Page
Executive Chairman
Cargill, Incorporated

Appendix

Cargill's Example Bona Fide Hedge Transactions

Cargill as Buyer of Grain

During the course of Cargill's commercial grain buying activity, we will routinely have thousands of outstanding bids to farmers. Farmers need time to contemplate these bids. This is the marketplace as it exists. The time for these open bids to be outstanding may be 24 to 48 hours but at times can be as long as 7 days. While the bids and offers may have this short time horizon, the underlying cash contract could be a single shipment, a portion of the farmer's crop or the entire annual production. During the time bids are open, there are numerous factors that could impact the market. If the market goes up while a bid is open, the farmer will likely not sell but will likely expect a higher bid. If the market goes down, we are still obligated to buy at the higher price despite a lower market. The bid is in effect a "put" to the farmer and we make the bid with the expectation that it will lead to a cash transaction—not that it won't. Our risk managers in all of the diverse markets in which we operate assess the likelihood of market moves and the risk of the bids, and manage the risks in the futures market. The protection may be partial, full protection, or none, depending on the circumstances, past history with the customer, and many macro and micro economic factors. While the bids are outstanding, there is risk to us.

For these reasons, the "irrevocable bid" should be viewed as a bona fide hedge by the CFTC.

During any given week during harvest in the U.S., Cargill will buy from farmers hundreds of millions of bushels of corn. Some of this corn may have been previously contracted, some will be delivered for storage and sold at a later date, and some will be sold upon delivery at the posted elevator price. Harvest continues whether the futures market is open or not, be it a weekend or late at night. Longer futures market hours does not always ensure appropriate liquidity to execute trades. To ensure that Cargill can offer competitive bids to farmers when the markets are closed—late at night or on weekends—it is customary for the industry and for Cargill to have pre-hedged our anticipated purchases for the weekend. That means we anticipate across the areas where we have operations how many bushels we are likely to purchase and place an appropriate futures transaction. We make that decision based upon the rate of harvest, expected or anticipated yields, price, perceived willingness of farmers to sell, availability of freight, cost of freight, history of purchases in the regions and other factors that impact the market. Having a posted price and a firm bid means we can provide farmers a marketing option for their grain upon delivery. If we are unable to "pre-hedge" farmer deliveries with an anticipatory hedge, then the risk of market moves that would have mitigated through the pre-hedge will have to be a) borne by the farmer until the crop can be priced when the market re-opens; b) be carried by Cargill; or c) be calculated into a lower cash price in the form of a risk premium. None of these options are good for farmers, Cargill or the market when the futures market already exists to transfer and effectively manage the risk for both parties. This is how risk is currently managed and price signals are effectively sent to producers and consumers around the world.

For these reasons, the "anticipatory merchandising hedge" should be accepted by the CFTC as a bona fide hedge because it is economically appropriate for the reduction of risk and it is a critical part of the market's price discovery function.

Cargill as Seller of Grain

Cargill will also routinely have many offers out to customers who are interested in buying grain from Cargill. These may be domestic or international food companies, feed companies or buying agencies from sovereign nations. These offers may be open for 24 to 48 hours and often up to 7 days. Sometimes the buyer requests more time to evaluate the offer. While the offer may be open for a limited time, the transaction being negotiated may cover a single shipment, multiple shipments over a specified time or a customer's entire annual supply. While the offer is open, many factors could impact the market from weather, freight rates, macro and micro economic factors, exchange rates, government policies and other supply and demand drivers. The offer is effectively a "call" to the customer. We make the offer with the expectation that it will lead to a cash sale to the customer—not that it won't. While the offer is outstanding, similar to a cash bid to a farmer, our risk managers are continually evaluating the market conditions and take the appropriate risk management positions in the futures market to manage the risk that exists based upon our assessment of the risk, experience with the customer and market expectations while the offer is open. While the offer is outstanding, we are in a risk position due to the implicit "call" given the customer.

For these reasons, the "irrevocable offer" should be viewed as a bona fide hedge by the CFTC because it is economically appropriate for the reduction of risk.

Cargill as a Seller of Products

Cargill sells corn sweetener to global food and beverage companies. These companies buy sweetener in large volumes, sometimes equal to a quarter to half of their annual needs and their purchases are often the equivalent of millions of bushels of corn. The market structure and competitive nature of this industry requires that firm offers be submitted to the customer for review for several days. Based upon our view of the conditions of the corn and sweetener market, global supply and demand conditions for crops, and the myriad of macro and micro economic factors that drive markets, our risk managers manage this risk by continually evaluating the likelihood the transaction will occur and use the futures market to manage the risk. Many factors could impact the market while the bid is outstanding. It is imperative that Cargill have the ability to manage this risk. As in the example with the producer bids, an inability to manage this risk will potentially raise the cost to consumers because the risk we incur must be managed somehow. Without the ability to hedge the risk of these expected transactions, the management of the risk we incur may be in the form of risk premiums built into cash prices.

For these reasons, the "irrevocable offer" should be viewed as a bona fide hedge by the CFTC because it is economically appropriate for the reduction of risk.

Cargill as a Processor & Plant Operator

As a processor of soybeans, we buy soybeans from farmers and sell the soybean oil and soybean meal to customers after the beans have been crushed in a soybean plant. The CFTC's proposed rule requires that all legs of the "soybean crush" be covered, either in the cash or futures market for the transaction to be bona fide for hedge exemption purposes. In reality, there are many factors that go into managing the risk and margin of a crush plant beyond simply board crush because the economic drivers are not the same for beans, meal and oil. For example, soybean prices may be impacted by weather, prices of substitute planting options for farmers before harvest such as corn, import and export policies, macroeconomic factors in other soybean growing countries and competition for all modes of transportation.

Meanwhile, soybean meal is largely driven by domestic and international demand for animal protein products such as meat, milk and eggs. As meat protein demand changes, so does the demand for soybean meal. Soybean meal demand can also be heavily impacted by the supply and demand for other substitute proteins such as cottonseed meal, distillers grain, canola meal, or other protein alternatives. Meanwhile soybean oil is largely driven by demand for food and fuel uses. Thus, changes to dietary patterns and substitutes for soybean oil such as canola oil, specialty oils or alternative oils can impact soybean oil demand. Also, soybean oil has been one of the largest sources of biodiesel and it is therefore heavily impacted by global biofuels policies. To manage soybean oil risk, one must be aware of crude oil markets, crude oil crack spreads, distillate markets, biodiesel demand, and global policy issues such as renewable fuels mandates, the U.S. Renewable Fuels Standard, EU Renewable Fuels Directive, status of biodiesel tax credit in the U.S. and the market impacts of the EU's countervailing duties on biodiesel imports. A risk manager takes all of these disparate issues into account when evaluating the risk of the soy complex. It is not as simple as going long beans and short meal and oil. The CFTC requirement could actually increase risk to commercial participants if the market participant was forced to place all legs of a trade when the risk factors suggest otherwise. The CFTC should not require a broad standard for anticipatory processing hedges and should instead recognize that risk managers are in a position to evaluate these risks when managing a commercial processing enterprise.

For these reasons, the CFTC should remove the requirement that all legs of an "anticipatory processing hedge" be fixed for the hedge to be considered bona fide.

Further, the CFTC should recognize that Cargill uses the futures market to manage the risk that exists in the operation of the commercial enterprise as a whole. In the above example, Cargill buys soybeans from farmers and further processes them into meal and oil for sale to domestic and international customers. CFTC's proposed rule breaks these transactions into disparate categories of "anticipatory merchandising hedges", "anticipatory processing hedges" and "irrevocable bids and offers". In fact, they are part of a continuum of transactions that may be used concurrently to run a commercial business and collectively should be afforded bona fide hedge treatment. Together they provide critical risk management and price discovery functions and are economically appropriate for the reduction of risk.