Cargill

May 15, 2017

Via CFTC Website, Comments Online Process:
http://comments.cftc.gov

Mr. Chris Kirkpatrick
Secretary
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Re: RIN 30038-AD54
Capital Requirements for Swap Dealers and Major Swap Participants

Dear Mr. Kirkpatrick:

This comment letter is submitted to the Commodity Futures Trading Commission (the "Commission") by Cargill Risk Management ("CRM"), a business group of Cargill, Incorporated ("Cargill"). CRM is a provisionally registered swap dealer, and has been granted a limited designation as such, pursuant to the Commission's October 29, 2013 Order of Limited Purpose Designations for Cargill, Incorporated and an Affiliate. Under the limited purpose designation, the swap dealing activities of Cargill are carried out only by CRM, but the capital to support these swap dealing activities is the capital of Cargill.

CRM supports the Commission's proposed "Capital Requirements for Swap Dealers and Major Swap Participants," 81 F.R. 91252 *et seq.* (Dec. 16, 2016) (the "Proposed Rules") insofar as they provide for the tangible net worth method for computing the capital requirements for swap dealers, such as CRM, that are predominantly engaged in non-financial activities. Basing the capital requirement on tangible net worth, calculated according to GAAP, is a reasonable and efficient method for ensuring that the swap dealer has sufficient financial capability to support the swaps positions it is holding, without requiring that the swap dealer adopt a separate system of regulatory accounting.

CRM also supports the Commission's stated intent to permit CRM to satisfy the capital requirements for a swap dealer without incurring any material costs. The Commission expressed this intent in the Federal Register release of the Proposed Rules as follows: "Therefore, the costs of this proposal are not expected to be material because it is not expected that this firm [Cargill] would have to alter its business practice in any substantial way to comply with the minimum tangible net worth requirement." 81 F.R. 91300.

The Proposed Rules achieve this intent in large part by adopting the tangible net worth measure for non-financial firms. Many of the reporting requirements, specifically those that relate solely

9350 Excelsior Blvd
Hopkins, MN 55343

to CRM's swap dealing activities, such as reporting of margin, position, and counter-party information, are also consistent with this intent, because CRM will be maintaining records of these activities in the normal course of its swap dealing business, and can readily report the information to the Commission.

There are three specific proposed requirements, however, which would require Cargill to significantly alter its current practices. These are the proposed requirements: (1) to submit monthly unaudited financial statements to the Commission, (2) to submit annual audited financial statements to the Commission within 60 days after fiscal year end, and (3) to make public, on a quarterly basis: (a) a statement of financial condition, (b) the amount of minimum capital required, and (c) the amount of regulatory capital held by the swap dealer. CRM requests that the Commission revise the Proposed Rules in relation to these requirements.

Submitting a monthly unaudited financial statement to the Commission would require Cargill to incur a significant expense that it would not otherwise incur. Cargill currently prepares unaudited financial statements only on a quarterly basis, which is acceptable to Cargill's lenders, and it would require significant extra work by the accounting staffs for Cargill and its numerous business groups to prepare monthly financials. CRM therefore requests that the Commission permit Cargill to satisfy the swap dealer capital requirements with quarterly reporting. Nevertheless, in order to ensure that the public is protected by less frequent reporting, CRM proposes that quarterly reporting be limited to non-financial swap dealers that maintain at least two times the required minimum capital. If a non-financial swap dealer chose to operate only with the minimum required capital, that swap dealer should be required to report monthly.

Similarly, submitting an annual audited financial statement within 60 days of fiscal year end would require Cargill to incur significant expense to change its current business practices. Cargill customarily produces audited annual financial statements within 90 days of fiscal year end, and requests that the Commission permit Cargill to have 90 days to submit its annual audited financials. As with the requirement for unaudited statements, Cargill requests that the Commission permit non-financial swap dealers with twice the required capital to have 90 days to submit their annual audited financial statements.

Proposed Reg. 23.105(i) would require the quarterly public reporting of a statement of financial condition, the minimum amount of capital required, and the amount of regulatory capital held. These requirements would be contrary to Cargill's current practices, and are not necessary for customer protection. As a privately held corporation, Cargill does not currently make this information public. Moreover, the separate requirement, that Cargill report details of its financial condition to the Commission, ensures that Cargill's capital standing will be subject to regulatory oversight. As with the requirement for monthly and annual financial statements, CRM requests that the Commission waive these public reporting requirements for swap dealers with two times the required capital.

In the Proposed Rules, namely Proposed Reg. 23.105(c), the Commission has included additional reporting obligations which CRM supports, and which will ensure that Cargill maintains sufficient capital to satisfy CRM's obligations as a swap dealer. These obligations include requirements to report immediately if the firm is undercapitalized, to report within 24 hours if capital falls below 120% of the required amount, to notify the Commission of a decrease of 30%

or more in the amount of excess regulatory capital, and two days' advance notice if equity capital that exceeds 30% of the firm's excess regulatory capital is to be withdrawn. In addition to these reports, the Proposed Rules would require other reports relevant to Cargill's financial condition. *See* proposed Reg. 23.105(l)(m)(q).

In place of the proposed public reporting requirements, CRM proposes that it be permitted, as long as it maintains twice the required capital, to publish its annual financial information in the form it currently does (see 81 F.R. 91300 at n. 181), and to publish a computation of its required capital on a quarterly basis, subject to a representation to the public that its capital exceeds twice the required amount. Customers and prospective customers will thus be informed of the minimum amount of the capital requirement, and that the amount is satisfied. At the same time, the Commission will receive detailed financial statements from Cargill.

If the Commission were to adopt the changes requested by CRM in this letter, the Commission would achieve its goal of not requiring Cargill to significantly alter its current business practices. At the same time, the interests of customers would be protected because CRM would be maintaining twice the required capital, would be reporting details of its finances to the Commission, and would be under a continuing obligation to make reports of events that would materially affect its capital standing.

For these reasons, CRM requests that the Commission adopt the Proposed Rules, subject to amendments in accordance with the requests in this letter.

Very truly yours,

Michael P. LeSage
President, Cargill Risk Management

ACTIVE 221686793v.2