



March 3, 2020

Via Electronic Submission

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: **Proposed Rule: Capital Requirements of Swap Dealers and Major Swap Participants, RIN 3038-AD54**

Dear Mr. Kirkpatrick:

Cargill Incorporated (“*Cargill*”) submits this letter to the Commodity Futures Trading Commission (“*Commission*”) in response to the Commission’s request for additional comments to the *Capital Requirements of Swap Dealers and Major Swap Participants* (the “*Proposed Rule*”).¹ Cargill generally supports the capital requirement calculation methodology presented in the Proposed Rule as well as the Commission’s stated intent to avoid imposing unnecessary costs on market participants and the public. However, as discussed herein, Cargill remains concerned that the Proposed Rule will establish burdensome and costly compliance obligations for major swap participants (“*MSPs*”) and swap dealers (“*SDs*”) without enhancing the Commission’s regulatory objectives.

I. BACKGROUND

Pursuant to Commission order, Cargill Risk Management (“*CRM*”) is authorized to operate as a stand-alone, registered SD within the larger Cargill enterprise, while remaining a business group in Cargill and not a separate legal entity.² Although CRM carries out Cargill’s

¹ *Capital Requirements for Swap Dealers and Major Swap Participants*, 84 FR 69664, *et seq.* (Dec. 19, 2019); *Capital Requirements for Swap Dealers and Major Swap Participants*, 81 FR 91252, *et seq.* (Dec. 16, 2016).

² *In re Request of Cargill, Incorporated for Limited Purpose Swap Dealer Designations Under Section 1a(49)(B) of the Commodity Exchange Act*, Order of Limited Purpose Designations for Cargill, Incorporated and an Affiliate, CFTC, (Oct. 29, 2013).

swap dealing activities, Cargill maintains the requisite capital to support CRM as an SD. CRM submitted initial comments on the Proposed Rule on May 15, 2017.³

In its Initial Comments, CRM identified three problematic aspects of the Proposed Rule that would require MSPs and SDs subject to the Commission's new regulations to significantly alter their current practices:

- (1) the Proposed Rule would require MSPs and SDs to file monthly unaudited financial statements with the Commission;
- (2) the Proposed Rule would require MSPs and SDs to file annual audited financial reports with the Commission within 60 days after fiscal year end; and
- (3) the Proposed Rule would require MSPs and SDs 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 MSP or SD.

As discussed in CRM's Initial Comments, the Proposed Rule purports to strike a balance between bolstering market protections and imposing costs on market participants and the public. However, MSPs and SDs will be required to incur significant implementation and reorganization expenses to meet the financial reporting obligations listed above. This letter supplements CRM's Initial Comments with additional information demonstrating the increased burden the Proposed Rule would impose on MSP and SD operations.

II. SUPPLEMENTAL COMMENTS

Cargill maintains its view that MSPs and SDs will face considerable outlays and logistical challenges if they are required to submit monthly unaudited financial statements, as described in the Proposed Rule. Cargill maintains a complex accounting and financial reporting system in order to service hundreds of separate legal entities and locations. These entities operate in a decentralized technology landscape with multiple applications. Consequently, the quarterly consolidation process among the various Cargill entities is a highly coordinated, expensive, and time-consuming endeavor. Cargill has determined that generating monthly unaudited financial statements would require a substantial technological and resource investment spanning multiple years to implement the systems needed to meet the Proposed Rule's monthly financial reporting obligations. Requiring MSPs and SDs to wholly reengineer their internal accounting processes imposes costs that far outstrip any projected benefits to market participants.

MSPs and SDs face similar challenges if they are required to file annual audited financial reports within 60 days after fiscal year end. For example, under Cargill's existing debt agreements with its lenders, Cargill is required to issue annual audited US GAAP financial

³ Letter from Michael P. LeSage, Cargill Risk Management, a unit of Cargill, Inc. (May 15, 2017) ("*Initial Comments*").

statements within 90 days of the fiscal year end. Cargill is currently resourced to account for and report consistent with these lender agreements. If the Commission requires a 60-day reporting period, Cargill would need to increase its accounting resource pool to ensure the 60-day deadline could be met, regardless of significant transactions or accounting events (*i.e.*, impairments, mergers, acquisitions, and disposals) that have occurred within the previous fiscal year. Cargill would also incur an incremental fee from its independent auditor for the additional resource requirement. Cargill and CRM are not uniquely situated in this respect, and other MSPs and SDs likely face comparable compliance expenditures in meeting the Proposed Rule's mandate.

The Proposed Rule would also require MSPs and SDs to submit quarterly reports that include a statement of their financial condition, the minimum amount of capital required, and the amount of regulatory capital the MSP or SD holds. Cargill suggests that the Commission adopt a biannual requirement rather than a quarterly obligation. However, Cargill posits that these requirements, even at a biannual requirement, are not necessary for customer protection. Notwithstanding the Proposed Rule, Cargill already discloses selected financial information from the quarterly and annual financial statements in its quarterly earnings releases and annual report that is made available on the Cargill website.

As an alternative to the proposed public reporting requirements, Cargill recommends that MSPs and SDs that maintain tangible net worth in an amount twice the minimum capital level be permitted to continue publishing their annual financial information according to their current practices and to publish a computation of the MSP's or SD's required capital on a quarterly basis, subject to a representation to the public that the MSP's or SD's capital exceeds 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.

Cargill also notes that the collateral and margin report required under the newly proposed swap reporting regulations appears to be duplicative under proposed sections 23.105(l) and 23.105(q). Requiring market participants to produce multiple Commission reports that provide essentially the same information is overly burdensome. Market participants allocate considerable resources to swap reporting. Absent sufficient justification, Cargill submits that redundant reporting under the Proposed Rule is an unwarranted and costly obligation and recommends striking these modifications from the Proposed Rule.

III. CONCLUSION

Cargill is committed to providing farmers, producers, and commercial end users with a variety of risk management tools to allow them to effectively mitigate risk, including offering swaps through CRM. As noted by the Commission, Cargill maintains sufficient capital to support CRM several times over the expected minimum required capital.⁴ However, the financial reporting regime envisioned under the Proposed Rule would require CRM and other

⁴ See 81 FR 91252 at 91300, n.181.

MSPs and SDs to drastically overhaul their accounting and reporting systems. Faced with significant increases in investment and operating costs, CRM would have to determine whether it is economically viable to remain an SD. Cargill and CRM, therefore, respectfully request that the Commission consider the issues identified herein as it weighs adoption of the Proposed Rule.

Very truly yours,



Jay Olson
Treasurer
Cargill, Incorporated