



**U.S. COMMODITY FUTURES TRADING COMMISSION**

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Market Participants  
Division

Amanda L. Olear  
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Mr. Ryan Hayden  
Senior Lawyer  
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**Re: No-Action Position Regarding the Public Disclosure of Financial Information under Swap Dealer Financial Reporting Requirements**

Dear Mr. Hayden:

This is in response to your letter (the “Request”) dated January 25, 2022, to the Market Participants Division (“Division”) of the Commodity Futures Trading Commission (“Commission”). In your letter, you request on behalf of Cargill, Incorporated (“Cargill”), a registered swap dealer (“SD”), that the Division confirm that it will not recommend an enforcement action to the Commission if Cargill does not publicly disclose on its website a statement of financial condition and a statement disclosing the amount of its regulatory capital and its minimum regulatory capital requirement in accordance with regulations 23.105(i)(1) and (2).<sup>1</sup>

**I. Regulatory Background**

Section 4s(f) of the Commodity Exchange Act (“CEA”) authorizes the Commission to adopt rules imposing financial condition reporting requirements on SDs.<sup>2</sup> Pursuant to section 4s(f), the Commission adopted regulation 23.105, which imposes financial reporting

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<sup>1</sup> Commission regulations are found at 17 CFR Ch. I, and are available at the Commission’s website, <http://www.cftc.gov>.

<sup>2</sup> 7 U.S.C. 6s(f).

requirements on SDs. Regulation 23.105 became effective on November 16, 2020 with a compliance date of October 6, 2021.<sup>3</sup>

Regulation 23.105(d)(1) requires each SD to file a periodic unaudited financial report with the Commission and a registered futures association.<sup>4</sup> The unaudited financial report is required to contain defined financial schedules, including a statement of financial condition and a statement demonstrating the SD's compliance with its applicable regulatory capital requirement under regulation 23.101.<sup>5</sup> An SD is required to file its unaudited financial report with the Commission within 17 business days of the close of each month, with the exception that an SD that is "predominantly engaged in non-financial activities" and elects to be subject to the minimum capital requirements of regulation 23.101(a)(2) may file an unaudited financial report with the Commission and with the NFA within 17 business days of the close of each quarter.<sup>6</sup>

Regulation 23.105(e)(1) requires each SD to file an annual audited financial report with the Commission and a registered futures association. The annual audited financial report is required to include defined schedules, including a statement of financial condition and a statement demonstrating the SD's compliance with its applicable regulatory capital requirement under regulation 23.101.<sup>7</sup> An SD is required to file the annual audited financial report with the Commission within 60 days of the close of the SD's fiscal year-end, with the exception that an SD that is "predominantly engaged in non-financial activities" and elects to be subject to the minimum capital requirements of regulation 23.101(a)(2) may file its audited financial report with the Commission and with the NFA within 90 days of the close of the SD's fiscal year-end.<sup>8</sup>

Commission regulations also require each SD to publicly disclose certain financial information on the SD's website. Regulation 23.105(i)(2) requires an SD to make available to the public the statement of financial condition and applicable footnotes from the SD's audited financial report, along with a statement disclosing the amount of the SD's regulatory capital and its minimum regulatory capital requirement as of the SD's fiscal year-end. Regulation 23.105(i)(1) requires an SD to make available to the public the statement of financial condition from the SD's applicable monthly or quarterly unaudited financial report that is filed as of a date that is six months after its fiscal year-end date, and a corresponding statement disclosing the amount of the SD's regulatory capital and minimum capital requirement as of the date of the statement of financial condition. An SD is required to disclose the information from its audited financial report and its unaudited financial report on its public website within 10 business days

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<sup>3</sup> See Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020) ("Final SD Capital Rule").

<sup>4</sup> As of the date of this letter, the National Futures Association ("NFA") is the only registered futures association under section 17 of CEA, 7 U.S.C. 21.

<sup>5</sup> 17 CFR 23.105(d)(2).

<sup>6</sup> Pursuant to regulation 23.101(a)(2), SDs that are "predominantly engaged in non-financial activities," as that term is defined in regulation 23.100, may elect to compute their capital under a "tangible net worth" capital approach.

<sup>7</sup> 17 CFR 23.105(e)(4).

<sup>8</sup> 17 CFR 23.105(e)(1).

and 30 calendar days, respectively, of filing the applicable financial reports with the Commission and NFA.

## II. No-Action Request

You request no-action relief from the requirements of regulation 23.105(i)(1) and (2) that require Cargill to publicly disclose its unaudited and audited statement of financial condition and the corresponding statements of the amount of Cargill's regulatory capital and minimum capital requirements on its website. In support of your request, you represent that Cargill is a 155-year-old family-owned, privately held, agricultural business that has received a limited purpose SD designation for the activities of its Cargill Risk Management Business Unit ("CRM Business Unit"), which has since the early 1990s served predominantly commercial swap counterparties as an ancillary business to Cargill's commercial agricultural operations.<sup>9</sup> In this capacity, you further represent that Cargill's provisional SD status is largely a product of facilitating hedging transactions to accommodate its commercial end-user customer base, such that, on average, 90-95% of the CRM Business Unit's recent gross swap exposures were to non-financial commercial end-users.

You represent that Cargill, as a family and employee-owned business that has remained privately held since its founding, has preferred to refrain from the public disclosure of its proprietary financial information, electing to preserve confidentiality, eliminate the possibility of unnecessarily divulging trade secrets, and pursue long-term growth and investment strategies. You state that Cargill will provide financial information to its existing and potential swap counterparties in an alternative format and will ensure the confidentiality of such information is maintained. Specifically, you request that the Division issue a no-action letter with respect to public disclosure of financial reporting under regulation 23.105(i)(1) and (2), subject to the condition that Cargill provides each existing and potential counterparty with 5 years of comparative financial information in the format set forth in Annex A to the Request. The comparative financial information would include certain balance sheet and income statement information that is broader than the financial reporting required under regulation 23.105(i)(1) and (2), but in a less detailed format. You further state that Cargill would publicly disclose on its website a statement that Cargill maintains a level of minimum regulatory capital that is in excess of two times the regulatory capital requirement.

You further represent that Cargill would need to consider organizing a standalone subsidiary and/or reducing its presence in hedging commodity markets in the event Cargill is required to publish its statement of financial condition (the vast majority of which pertains to its

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<sup>9</sup> In the Matter of the Request of Cargill, Incorporated for a Limited Purpose Swap Dealer Designation under Section 1a(49)(B) of the Commodity Exchange Act, Amended and Restated Order of Limited Purpose Designation for Cargill, Incorporated (May 26, 2020).

Section 1a(49)(B) of the CEA provides that a person may be designated a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities. *See* 7 U.S.C. 1a(49)(B).

commercial, non-dealing business) on its public website. You also state that establishing a separate SD subsidiary and fragmenting Cargill's equity would only increase counterparties' credit risk to a lesser capitalized Cargill subsidiary and increase costs to both Cargill and its end-user customers. You also represent that incorporating a separate legal entity would not be economically practicable for Cargill.

### **III. Market Participants Division No-Action Position**

Based on the facts and representations set forth in your letter and recited above, the Division will not recommend enforcement action to the Commission under CEA Section 4s(f) or regulations 23.105(i)(1) and (2) imposing public financial disclosure requirements on Cargill provided Cargill complies with the conditions listed below. In taking this position, the Division recognizes the limited purpose swap dealer designation granted by the Commission to Cargill for the swap activities of the CRM Business Unit and the unique nature of Cargill as a privately-held company predominantly engaged in commercial activities that has operated its swap dealing functions since 2013 out of a business unit and not a separate legal entity.

The Division believes compliance with the conditions enumerated below, which will provide existing and potential counterparties with a five-year history of certain balance sheet and income statement information of Cargill and will provide all members of the public with information that Cargill maintains a level of capital that is in excess of 200 percent of its minimum requirement, sufficiently balances the purpose of the public disclosures under regulation 23.105(i)(1) and (2) with the consideration of Cargill's interest, as a family and employee-owned, privately held company, in maintaining the confidentiality of more detailed financial information across all its business lines. As a result, the Division believes that no-action relief is warranted under the specific facts herein presented and subject to the following conditions:

1. The Commission's limited purpose swap dealer designation issued to Cargill remains in effect.
2. Cargill files with the Commission and with the NFA audited annual financial reports and unaudited financial reports for Cargill, Incorporated in accordance with the requirements of regulation 23.105.
3. Cargill publicly discloses on its website a statement that Cargill maintains at all times a level of regulatory capital that is in excess of two times Cargill's minimum regulatory capital requirement.
4. Cargill provides financial information, substantially in the form set forth in Annex A to the Request, to all existing and potential swap dealing counterparties.

This letter and the positions taken herein represent the views of this Division only, and do not necessarily represent the views of the Commission or any other office or division of the Commission. The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the CEA or in Commission

regulations. Further, this letter, and the positions contained herein, are based upon the facts and circumstances presented to the Division. Any different, changed, or omitted material facts or circumstances may render this letter void.

Finally, as with all staff letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the relief provided herein in its discretion. If you have any questions regarding this letter, please contact Tom Smith, Deputy Director, at 202-418-5495 or [tsmith@cftc.gov](mailto:tsmith@cftc.gov); Josh Beale, Associate Director, at 202-418-5446 or [jbeale@cftc.gov](mailto:jbeale@cftc.gov); Rafael Martinez, Associate Director, at 202-418-5462 or [rmartinez@cftc.gov](mailto:rmartinez@cftc.gov); or Jennifer Bauer, Special Counsel, at 202-418-5472 or [jbauer@cftc.gov](mailto:jbauer@cftc.gov).

Sincerely,

Amanda L. Olear  
Director

cc: Michael Otten, National Futures Association