



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

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5000

Market Participants  
Division

Amanda L. Olear  
Director

Mr. Thane T. Twiggs  
Chief Compliance Officer, CRM  
Cargill, Incorporated  
9320 Excelsior Boulevard  
MS 150  
Hopkins, Minnesota 55343

**Re: No-Action Position Regarding the Timing of Financial Reporting under Swap Dealer  
Financial Reporting Requirements**

Dear Mr. Twiggs:

This is in response to your letter (the “Request”) dated January 13, 2023, 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 limited purpose swap dealer (“SD”), that the Division confirm that it will not recommend an enforcement action to the Commission if Cargill does not file with the Commission and the National Futures Association (“NFA”) periodic unaudited financial reports and additional position and counterparty reporting information within the timeframes required under Commission regulations 23.105(d) and (l).<sup>1</sup> Specifically, you request an extension of thirteen (13) business days beyond the regulatory due date of seventeen (17) business days after the date for which the reports are made to file such reports with the Commission and the NFA.<sup>2</sup> In other words, you request that Cargill be permitted to file with the Commission and the NFA its periodic unaudited financial reports and additional position and counterparty reporting information no later than thirty (30) business days after the date for which the reports are made.

---

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

<sup>2</sup> 17 C.F.R. § 23.105(d)(1).

## 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>3</sup> Pursuant to section 4s(f), the Commission adopted Commission regulation 23.105, which imposes financial reporting requirements on SDs. Commission regulation 23.105 became effective on November 16, 2020 with a compliance date of October 6, 2021.<sup>4</sup>

Commission regulation 23.105(d)(1) requires each SD to file a periodic unaudited financial report with the Commission and a registered futures association.<sup>5</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 Commission regulation 23.101.<sup>6</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 Commission 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>7</sup>

Commission regulation 23.105(e)(1) requires each SD to file an annual audited financial report with the Commission and a registered futures association.<sup>8</sup> 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 Commission regulation 23.101.<sup>9</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 Commission 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>10</sup>

---

<sup>3</sup> 7 U.S.C. 6s(f).

<sup>4</sup> See Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020) (“Final SD Capital Rule”).

<sup>5</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>6</sup> 17 C.F.R. § 23.105(d)(2).

<sup>7</sup> Pursuant to Commission regulation 23.101(a)(2), SDs that are “predominantly engaged in non-financial activities,” as that term is defined in Commission regulation 23.100, may elect to compute their capital under a “tangible net worth” capital approach.

<sup>8</sup> 17 C.F.R. § 23.105(e)(1).

<sup>9</sup> 17 C.F.R. § 23.105(e)(4).

<sup>10</sup> 17 C.F.R. § 23.105(e)(1).

The Commission's regulations also require each SD to publicly disclose certain financial information on the SD's website. Commission 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.<sup>11</sup> Commission 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.<sup>12</sup> 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 and 30 calendar days, respectively, of filing the applicable financial reports with the Commission and NFA.<sup>13</sup>

Additionally, Commission regulation 23.105(l) requires each SD to provide on the applicable monthly or quarterly basis to the Commission and to the registered futures association the specific information required in Appendix B to Subpart E of Part 23.<sup>14</sup> Appendix B requires an SD to provide certain position information and credit exposure information.<sup>15</sup> The Appendix B financial information supplements the unaudited financial reports.<sup>16</sup>

## II. No-Action Request

You request that the Division take a no-action position with respect to the requirements of Commission regulations 23.105(d) and (l) that require Cargill to file with the Commission and the NFA periodic unaudited financial reports and additional position and counterparty reporting information no later than seventeen (17) business days after the date for which the reports are made. You specifically request that the Division not recommend an enforcement action to the Commission if Cargill files its quarterly unaudited financial reports and additional position and counterparty reporting information with the Commission and the NFA within thirty (30) business days after the relevant reporting period. In support of your request, you represent that Cargill's business practices and financial reporting processes make submission of the quarterly filings within 17 business days after an applicable quarter impossible absent a complete restructuring of its accounting processes.

---

<sup>11</sup> 17 C.F.R. § 23.105(i)(2).

<sup>12</sup> 17 C.F.R. § 23.105(i)(1).

<sup>13</sup> 17 C.F.R. § 23.105(i)(3) and (4).

<sup>14</sup> 17 C.F.R. § 23.105(l). *See also* CFTC Staff Letter No. 21-15, at 2, Jun. 29, 2021 noting that “[n]on-bank SDs utilizing the tangible net worth method for calculation of net capital . . . may satisfy the additional positions and counterparty financial reporting requirements of [Commission] regulation 23.105(l) on a quarterly basis instead of monthly basis.”

<sup>15</sup> *See* 17 C.F.R. Part 23, Subpart E, Appendix B.

<sup>16</sup> *See* CFTC Staff Letter No. 21-15, at 5.

Your request would extend the financial reporting no-action position previously provided by the Division to Cargill in CFTC Staff Letter 22-04.<sup>17</sup> In CFTC Staff Letter 22-04, the Division stated 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 Commission regulations 23.105(i)(1) and (2). CFTC Staff Letter 22-04 was conditioned upon Cargill: (1) remaining designated as a limited purpose swap dealer; (2) filing with the Commission and NFA annual financial reports and unaudited financial reports in accordance with the requirements of Commission regulation 23.105; (3) disclosing publicly on its website a statement that Cargill maintains at all times a level of regulatory capital that is in excess of two times the firm's minimum regulatory capital requirement; and (4) providing defined financial information to existing and potential swap counterparties. In CFTC Staff Letter 22-04, the Division took a no-action position for Cargill regarding certain public financial disclosure requirements on the basis of the representations made therein related to Cargill's unique nature, and subject to conditions designed to effectuate similar protections for Cargill's counterparties.

The unique aspects of Cargill's highly complex entity-wide operations as a privately-held corporation, which is operating a limited purpose designated swap dealer out of a business unit, has precipitated this second request, to obtain additional time for Cargill to submit its regular unaudited financial reports and additional position and counterparty reporting information to the Commission and the NFA. In connection with this second request, you represent that Cargill is a family and employee-owned, privately held, agribusiness founded over 155 years ago and headquartered in Minnesota. You further represent that Cargill's swap dealer business, conducted out of the Cargill Risk Management Business Unit ("CRM Business Unit"), exists uniquely within the broader company instead of existing as a separate legal entity from the parent company as is commonly the case with other Commission-registered swap dealers. You note that Cargill adopted this structure to streamline transactions for its customers by offering physical commodity and derivatives transactions out of the same legal entity.

Additionally, you represent that Cargill's operations encompass 70 different countries and that it is comprised of approximately 800 subsidiaries, containing nearly 1,200 reporting groups. You note that Cargill must collect, analyze, and compile financial information from the company's various disparate reporting groups when preparing its quarterly filings and that Cargill's company-wide financial reporting process involves complex data collection and accounting coordination. You further represent that Cargill is presently able to generate quarterly filings within 26 business days of the close of a quarter, which is a timeline that is consistent with the expectations of Cargill's material lenders and stakeholders. You add that the additional four (4) business days would provide sufficient time for Cargill to convert its financial reports into the required position data report pursuant to Appendix B, Schedule 1 of the Commission's Final Rule on the Capital Requirements of Swap Dealers and Major Swap Participants.<sup>18</sup>

---

<sup>17</sup> CFTC Staff Letter No. 22-04, Feb. 14, 2022.

<sup>18</sup> See Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020).

You further represent that mandating the submission of Cargill's quarterly unaudited financial reports and additional position and counterparty reporting information with the Commission and the NFA along a truncated timeline would require Cargill to commence a complex multi-year systems overhaul, involving thousands of employees, contractors, and consultants across the world and would likely cost at least hundreds of millions of dollars as well as require the company to divert technology resources from other important projects.

Moreover, you emphasize Cargill's commitment to maintain two times its minimum regulatory capital requirement and that Cargill's previous financial filings demonstrate that it holds capital in excess of its minimum regulatory capital requirement. You further represent that because Cargill is already subject to numerous notification requirements aimed at informing the Commission and the NFA of material changes to its financial condition, the requested extension should not deprive the Commission or the NFA of timely information regarding capital issues.

### **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 Commission regulations 23.105(d) and (l) imposing financial reporting requirements on Cargill, and accordingly amends condition 2 of CFTC Staff Letter 22-04 consistent with the no-action position taken herein, provided Cargill complies with the conditions listed below.<sup>19</sup> 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 that has operated its swap dealing functions out of a business unit and not a separate legal entity. Additionally, the Division recognizes the idiosyncratic challenges Cargill faces associated with the requirement that it comply with the time requirements of Commission regulations 23.105(d) and (l).

The Division believes compliance with the conditions enumerated below, which will continue to provide the Commission and the NFA with the applicable financial reporting required of Cargill, sufficiently balances the purpose of obtaining the financial reporting under Commission regulations 23.105(d) and (l) with the consideration of Cargill's interest, as a family and employee-owned, privately held company, in providing complete and accurate quarterly financial information without the need to overhaul longstanding internal practices and financial controls. As a result, the Division believes that this no-action position 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.

---

<sup>19</sup> For the avoidance of doubt, all other conditions listed in CFTC Staff Letter No. 22-04 not pertaining to routine financial reporting obligations within Commission regulations 23.105 (d) and (l) remain in effect.

2. Cargill files with the Commission and with the NFA audited annual financial reports for Cargill, Incorporated in accordance with the requirements of Commission regulation 23.105.
3. Cargill files with the Commission and with the NFA unaudited financial reports for Cargill, Incorporated in accordance with the requirements of Commission regulation 23.105(d), except that such reports are filed no later than thirty (30) business days after the date for which the reports are made.
4. Cargill files with the Commission and with the NFA additional position and counterparty reporting information for Cargill, Incorporated in accordance with the requirements of Commission regulation 23.105(l), except that such reports are filed no later than thirty (30) business days after the date for which the reports are made.

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 no-action position in this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the CEA or in the Commission's 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 this letter provided herein in its discretion. If you have any questions regarding this letter, please contact Jennifer Bauer, Special Counsel, at 202-418-5472 or [jbauer@cftc.gov](mailto:jbauer@cftc.gov); or, Maria Aguilar-Rocha, Attorney Advisor, at 202-418-5840 or [maguilar-rocha@cftc.gov](mailto:maguilar-rocha@cftc.gov).

Sincerely,

Amanda L. Olear  
Director

cc: Michael Otten, National Futures Association