

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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**

Under the relevant provisions of the Commodity Exchange Act (“**CEA**”) and the regulations of the Commodity Futures Trading Commission (“**Commission**”), a person who is a swap dealer (“**SD**”) is deemed to be an SD with respect to each swap it enters into, regardless of the category of the swap or the person’s activities in connection with the swap, except in circumstances where the Commission, upon an appropriate showing, agrees to limit the person’s designation as an SD to specified categories of swaps or specified activities of the person in connection with swaps.¹ On October 29, 2013, the Commission approved an Order of Limited Purpose Designation² granting a limited purpose SD designation to Cargill, Incorporated (“**Cargill**”)³ in connection with swaps dealing by its Cargill Risk Management Business Unit (“**CRM Business Unit**”), which provides risk management expertise to other businesses.⁴ Cargill has submitted an application to the Commission requesting amendments to its Limited Purpose Designation⁵ as an SD for the swap activities that it engages in through the CRM Business Unit. Specifically, Cargill is requesting that the Order be amended to (i)

¹ See Section 1a(49)(B) of the CEA; Commission regulation 1.3; Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant”, 77 FR 30596, 30645 (May 23, 2012).

² The Order is available on the Commission’s website at:
<https://www.cftc.gov/PressRoom/PressReleases/6756-13>.

³ Cargill is a Delaware corporation that is an international agribusiness company.

⁴ The activities of the CRM Business Unit are largely contained within Cargill but also include personnel and/or infrastructure in affiliated entities. Affiliates of Cargill employ personnel who provide services to the CRM Business Unit and who will register as associated persons (“APs”) of Cargill (which will supervise them) in connection with those activities.

⁵ The term, “limited purpose designation,” refers to circumstances in which the Commission designates a person as a SD for one type, class, or category of swap or activities without the person being considered a SD for other types, classes, categories, or activities. *Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-based Swap Participant,” and “Eligible Contract Participant,”* 77 Fed. Reg. 30,596, 30,643 (May 23, 2012). The term, “limited designation,” has been used interchangeably with the term, “limited purpose designation.” See, e.g., *id.* at 30,643-44.

remove references to its affiliate, Cargill Financial Services International Inc.,⁶ and (ii) clarify the effect of the Limited Purpose Designation on Cargill's ability and the ability of its affiliates to qualify for certain exceptions to the Commission's swap clearing and uncleared swap margin requirements under Sections 2(h) and 4s(e)(4) of the CEA, respectively.⁷

I. Definitions.

For the purposes of this Amended and Restated Order:

- (1) The term, "**CRM Business Unit**," for purposes of this Order, shall be defined as:
 - (a) All direct employees of the CRM Business Unit as shown on its internal organizational directory as of the date hereof, together with such other direct employees of the CRM Business Unit as may be shown on its internal organizational directory from time to time who are engaged in the CRM Business Unit's business as of such future date (to the extent any such change in the CRM Business Unit's business would not be materially inconsistent with this Order as it is in effect on such date);
 - (b) Employees of Cargill or any affiliated entity who are:
 - (i) Registered as APs of Cargill in respect of services provided to the CRM Business Unit;
 - (ii) Shown on the internal organizational directory of the CRM Business Unit as employees of the CRM Business Unit; and
 - (iii) Subject to supervision by the CRM Business Unit;
 - (c) Employees of Cargill within corporate functions that provide direct services to the SD as part of the SD's Risk Management Unit under the Risk Management Program required by Commission Rule 23.600, including legal and risk management professionals;

⁶ At the time of the issuance of the Order in 2013, Cargill intended to register its affiliate, Cargill Financial Services International Inc., as an SD solely for purposes of meeting foreign legal requirements. Cargill subsequently declined to register such affiliate and thus requests removal of references to the affiliate from the Order.

⁷ The Commission's swap clearing requirement is in Section 2(h)(1) of the CEA and is implemented in Commission regulations 50.2 and 50.4. The exceptions to the Commission's swap clearing requirement are in Section 2(h)(7) of the CEA and are implemented in Commission regulation 50.50. The Commission's uncleared swap margin requirements for SDs are in Section 4s(e) of the CEA and are implemented in Commission regulations 23.150-161. Specifically, Section 4s(e)(4) of the CEA is implemented in Commission regulation 23.150(b).

- (d) Members of the management of Cargill who are in the direct supervision reporting line between the CRM Business Unit's President and Cargill's Board of Directors; and
 - (e) The Board of Directors of Cargill.
- (2) Cargill's "**Limited Purpose Designation**" means Cargill's swaps activities⁸ by its CRM Business Unit.

II. Representations of Cargill.

In making its request, Cargill has represented certain facts as follows:

- (a) All swap dealing activities of Cargill and any of its affiliates are limited to swap dealing activities of the CRM Business Unit in commodity swaps⁹ and foreign exchange transactions that are swaps¹⁰ that are solely related to and entered into solely in connection with commodity swaps of the CRM Business Unit or physical commodity purchases and sales, except for swap dealing activities that are (i) engaged in by one or more foreign entities that are affiliates of Cargill, and (ii) have an aggregate annual notional amount of less than the registration threshold specified in Commission regulation 1.3 (including all swaps counted towards such threshold consistent with Commission guidance);
- (b) Certain affiliates of Cargill ("**Treasury Affiliates**") enter into foreign exchange transactions that are swaps used to hedge or mitigate the commercial risk¹¹ of the

⁸ "Swaps activities" is defined in Commission regulations to mean "with respect to a registrant, such registrant's activities related to swaps and any product used to hedge such swaps, including, but not limited to, futures, options, other swaps or security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives." See, e.g., Commission regulation 23.200(j).

⁹ For purposes of this Order, commodity swaps are swaps that are correctly classified and reported to a swap data repository ("**SDR**") under the "Other Commodity Swaps" swap asset class pursuant to Part 45 of the Commission's regulations (i.e., swaps that are not reported pursuant to Part 45 under the "Credit Swaps and Equity Swaps," "Foreign Exchange Transactions," or "Interest Rate Swaps" swap asset classes, as in effect as of the date of this Order.

¹⁰ For purposes of this Order, "foreign exchange transactions that are swaps" are swaps that: (i) are not subject to any clearing requirement under Part 50 of the Commission's regulations, as in effect as of the date of this Order; and (ii) are correctly classified and reported to an SDR exclusively under the "Foreign Exchange Transactions" swap asset class category pursuant to Part 45 of the Commission's regulations (or would be so classified and reported if subject to Part 45 of the Commission's regulations), as in effect as of the date of this Order.

¹¹ For purposes of this Order, "used to hedge or mitigate commercial risk" has the meaning provided in Commission Regulation 50.50(c).

Treasury Affiliate or other affiliates of the Treasury Affiliate that are not financial entities,¹² but do not engage in swap dealing activities;

- (c) No employee of the CRM Business Unit will arrange, negotiate, or execute foreign exchange transactions that are swaps that will be booked in any Treasury Affiliate of Cargill;
- (d) Almost all of the infrastructure, with limited exceptions, including, without limitation, personnel, equipment, and other assets and rights necessary to the maintenance and operation of the swaps activities of the CRM Business Unit and necessary to enable Cargill to comply with all of the requirements of the CEA and Commission regulations promulgated thereunder that are applicable to SDs, is and will be located within the Limited Purpose Designation;
- (e) To the extent that support functions are located in other parts of Cargill or any of its affiliates but outside of the Limited Purpose Designation, (i) Cargill and such affiliates will provide such support on an ongoing basis, (ii) Cargill and such affiliates will give the Commission enforceable access rights to those areas, and (iii) Cargill's registered SD will provide for the appropriate supervision, monitoring, and reporting with respect to those functions that fall outside of the Limited Purpose Designations;
- (f) Cargill understands that staffs of the Commission and National Futures Association ("NFA") shall have the right to audit Cargill and its affiliates at will to verify compliance with the CEA, Commission regulations, and this Order;
- (g) Cargill's CCO will report directly to Cargill's board of directors, while also reporting to the CRM Business Unit's president, who is the senior officer within the CRM Business Unit; and
- (h) All swaps that fall within the Limited Purpose Designation will be executed by the CRM Business Unit and unconditionally guaranteed by Cargill.

III. Findings.

The Commission FINDS that a Limited Purpose Designation on the terms and conditions set forth in this Order is appropriate. The Commission makes this finding pursuant to sections 1a(49)(B) and (D) and 4s of the CEA, based on the representations made, and the materials provided by, Cargill, and after reviewing the complete record in this matter, including a review of (a) the adequacy of Cargill's proposed separation of swap dealing activities and non-dealing activities taking into account relevant agreed conditions, (b) the ability of the registrant to comply with all requirements for SDs in

¹² For purposes of this Order, "financial entity" has the meaning provided in Section 2(h)(7)(C)(i) of the CEA.

connection with its CRM Business Unit, and (c) the ability of the Commission to adequately regulate and examine the activities within the Limited Purpose Designation.

IV. Order.

IT IS HEREBY ORDERED that Cargill's application for an amendment to the Order of a Limited Purpose Designation with respect to all of the swaps activities of its CRM Business Unit (including both dealing and non-dealing swaps) is approved, subject to compliance with the following conditions:

- A. All swap dealing activities of Cargill and any of its affiliates will be limited to swap dealing activities of the CRM Business Unit in commodity swaps and foreign exchange transactions that are swaps that are solely related to and entered into solely in connection with commodity swaps of the CRM Business Unit or physical commodity purchases and sales except for swap dealing activities that are (i) engaged in by one or more foreign entities that are affiliates of Cargill, and (ii) have an aggregate annual notional amount of less than the registration threshold specified in Commission regulation 1.3 (including all swaps counted towards such threshold consistent with Commission guidance);
- B. All swaps that fall within the Limited Purpose Designation will be executed by the CRM Business Unit and unconditionally guaranteed by Cargill;
- C. Cargill will implement written policies and procedures with respect to the activities of the CRM Business Unit (copies of which will be provided to the Commission) to ensure full compliance with the requirements imposed on SDs by the CEA and all Commission regulations promulgated thereunder, and those written policies and procedures will include measures to ensure full compliance with the requirements of this Order with respect to the activities of the CRM Business Unit;
- D. Such written policies and procedures shall include policies and procedures that will require Cargill to monitor its employees and annually audit its operations to ensure compliance with the CEA, the Commission regulations promulgated thereunder, and this Order, including without limitation that none of its business units or affiliates is engaging in swap dealing in excess of that permitted herein and that the CRM Business Unit dealing activity is limited to commodity swaps and foreign exchange transactions that are swaps that are solely related to and entered into solely in connection with commodity swaps of the CRM Business Unit or physical commodity purchases and sales;
- E. The Commission or NFA may examine Cargill and any of its affiliates or business units (including, but not limited to, the CRM Business Unit) at any time to ensure, *inter alia*, compliance with this Order;

- F. To the extent that any of the business, activities or operations within the Limited Purpose Designation relies on any support or input from Cargill or any affiliate of Cargill but outside of the Limited Purpose Designation, Cargill will:
- (1) Provide to the Commission:
 - (a) A written notice adequately describing such support and input and any conditions thereto;
 - (b) Minutes of the governing body ratifying or adopting resolutions to provide such support or input; and
 - (c) Documents setting forth written and enforceable rights to access the area outside of the Limited Purpose Designation for the purpose of examining the applicant as the Commission determines is necessary or appropriate;
 - (2) Implement and maintain diligent supervision of the activities within the Limited Purpose Designation related to such support or input meeting the standards established within Commission regulation 23.602;
 - (3) Document, maintain, and enforce risk management policies and procedures designed to monitor and manage the receipt of, and the satisfaction of any conditions to the receipt of, such support or input; and
 - (4) Treat any failure from without the Limited Purpose Designation to timely provide any such support or input as a breach of a risk tolerance limit and related policy and procedure pursuant to Commission regulation 23.600, and provide immediate notice of such breach to the CCO;
- G. Cargill will comply with all applicable recordkeeping and reporting rules, and provide the Commission with enforceable access to any books and records of Cargill that, in the sole opinion of the Commission, are necessary to determine compliance with the CEA, Commission regulations applicable to SDs, and this Order;
- H. Cargill will designate all corporate officers within a direct reporting line from the senior officers in the CRM Business Unit and the relevant support functions to the entire Board of Directors of Cargill (with directors being principals of the SD);
- I. Cargill's CCO will report directly to Cargill's board of directors, while also reporting to the CRM Business Unit's president, who is the senior officer within the CRM Business Unit;
- J. Cargill shall promptly provide notice to the Commission and NFA of any event, circumstances, or situation concerning any of their operations or activities that (i)

may materially affect or detract from the ability of Cargill to continue to comply with any of the terms of this Order, or (ii) would render any statement in the supporting material provided to the Commission by Cargill incomplete, untrue or misleading, or (iii) would constitute a material change to the facts or circumstances pursuant to which this Order is issued;

- K. Such notification shall be made by email to the Director of the Division of Swap Dealer and Intermediary Oversight; such notification shall be followed as soon as possible (but in any event within 48 hours of knowledge of such occurrence) by Cargill's assessment of whether the occurrence of such event, circumstances, or situation would impair (i) the separation of the activities within the Limited Purpose Designation from the rest of Cargill's and its affiliates' activities, (ii) Cargill's ability to maintain full compliance, in the context of this Order, with the requirements imposed on SDs by the CEA, Commission regulations promulgated thereunder, and this Order, or (iii) the Commission's ability to oversee, examine, and otherwise regulate the activities of the CRM Business Unit; and after providing this notification, Cargill shall be available (and shall make any of its affiliates or personnel available) to discuss with the Commission whether any modification to this Order is required due to the event, circumstances, or situation.

IT IS FURTHER ORDERED that Cargill shall be within the definition of the term "financial entity" under Section 2(h)(7)(C)(i)(I) of the CEA to the extent of the swaps activities of the CRM Business Unit.

IT IS FURTHER ORDERED that the swaps activities of the CRM Business Unit and its Limited Designation as an SD shall be disregarded for purposes of determining whether Cargill (outside of the Limited Purpose Designation of the CRM Business Unit as an SD) or its Treasury Affiliates qualify for any exception from the clearing requirement set forth in Section 2(h)(7) of the CEA¹³ (although the Commission is making no determination as to whether any other Cargill business unit or affiliate is an SD, major swap participant, or financial entity). Specifically:

- A. Cargill (outside of the Limited Purpose Designation of the CRM Business Unit as an SD) and its Treasury Affiliates shall be deemed not to be affiliated with the

¹³ Pursuant to section 1a(49)(B) of the CEA, the Commission may designate a person as an SD for a single type or single class or category of swap or activities and such person will not be considered to be an SD for other types, classes, or categories of swaps or activities. In this Order, the Commission, taking into account the facts and circumstances described herein and the applicable conditions imposed, makes clear that Cargill's Limited Designation as an SD with respect to its swaps activities in its CRM Business Unit will not be considered when evaluating the regulatory implications of the other swaps activities of Cargill and its Treasury Affiliates occurring outside of the Limited Designation of the CRM Business Unit. The Commission notes that, but for the Limited Designation, Cargill's Treasury Affiliates would be considered to be affiliated with an SD for purposes of 2(h)(7) of the CEA.

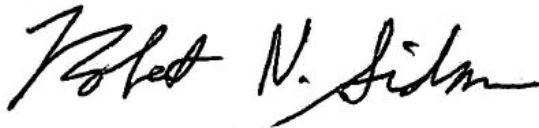
Limited Purpose Designation of the CRM Business Unit as an SD for purposes of Section 2(h)(7)(D)(iii)(IV) of the CEA; and

- B. Cargill (outside of the Limited Purpose Designation of the CRM Business Unit as an SD) shall be deemed not to assume, net, combine, or consolidate the risk of swaps entered into by the CRM Business Unit as an SD for purposes of Section 2(h)(7)(D)(iv)(II).

This Order is based upon the representations made, conditions agreed to, and the supporting material provided to the Commission by Cargill and, in the event of any changes to or omissions in the material facts or circumstances pursuant to which this Order is issued (including, without limitation, any changes to Cargill's, or its CRM Business Unit's, respective businesses (including their respective infrastructure, activities, and the like) to the extent such changes would be materially inconsistent with this Order), or in the event of any failure of performance of conditions or enforceability thereof, or for any reason in its own discretion, the Commission may condition, modify, suspend, terminate, or otherwise restrict the terms of this Order, as appropriate and as permitted by law, on its own motion.

Issued in Washington, DC, this 26th day of May, 2020.

By the Commission

A handwritten signature in black ink, appearing to read "Robert N. Sidman". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Robert N. Sidman

Deputy Secretary to the Commission