



January 25, 2022

CFTC Regulation 23.105(i)

By Electronic Mail

Ms. Amanda Olear
Acting Director, Market Participants Division
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St., NW
Washington, D.C. 20581

Re: Request for No-Action Relief from Public Disclosure of Financial Reports as Required Under CFTC Regulation 23.105(i)

Dear Ms. Olear,

Pursuant to 17 C.F.R. § 140.99, Cargill, Incorporated (“**Cargill**”), in connection with its Cargill Risk Management Business Unit (“**CRM**”) and provisional swap dealer registration, respectfully requests that the Market Participants Division (“**MPD**”) of the U.S. Commodity Futures Trading Commission (“**CFTC**” or “**Commission**”) provide no-action relief confirming that MPD will not recommend that the Commission bring enforcement action for purposes of the public disclosure requirements under CFTC Regulations 23.105(i)(1) and (2) if CRM as a commercial Swap Dealer makes its most recent five-year financials (in the form and manner of Annex A and as otherwise described in this request) available to its swap counterparties.

Background

Headquartered in Minnesota and founded over 155 years ago, Cargill is an agribusiness company that has remained privately held and family-owned since its inception.¹ Since its founding, Cargill is focused primarily on agricultural, food, and nutrition business that interfaces with farmers and physical commodity producers, suppliers, and others operating directly within physical commodity supply chains. As part of its efforts to provide commodity price risk hedging solutions to its customers, CRM was launched in the early 1990’s as a business unit of Cargill and has expanded its current global business with a range of commodity price risk

¹ See, <https://www.cargill.com> and <https://www.cargill.com/about/cargill-history>.



management products and customers.² To this day, while CRM remains a business unit within Cargill and is not an independent legal entity, counterparties trade in contractual privity with the Cargill legal entity and its larger balance sheet. This legal structure was intentionally chosen to accommodate Cargill's long-standing clients.

Although an important component of our service offering to a predominantly commercial end-user customer base, the CRM business unit and its related embedded price hedging and swap activities remain an ancillary support function of Cargill's core physical commodity and agricultural business. For over thirty years, Cargill's customers and counterparties have become accustomed to Cargill's unique structure and expect that Cargill will continue operating in this manner. Unlike other financial firms or registrants, Cargill's provisional Swap Dealer status is largely a product of facilitating hedging transactions to accommodate its commercial end-user customer base (and not, by way of comparison, by taking proprietary positions or engaging in trading activities believed to present systemic risk to the broader financial marketplace). Recent risk management metrics mandated for submission to the CFTC evidence that, on average, 90%-95% of CRM's gross swap exposures are to non-financial commercial end-users.³

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Transacting almost exclusively in commodity swaps⁴ (and prohibited via Commission order from transacting in credit default swaps and other asset classes), CRM's marketplace footprint is minimal in comparison with larger Swap Dealers exhibiting interconnectedness to derivatives markets. For example, CRM will not be required to comply with Initial Margin ("IM") requirements until the final phase-in of implementation scheduled for September 2022 (i.e. 'Phase 6'). Nevertheless, as a provisionally registered Swap Dealer, the CRM business unit remains subject to the Commodity Exchange Act (CEA) and Part 23 Regulations, including CFTC and National Futures Association ("NFA") examination authority and oversight. CRM is required to submit an annual SD CCO Report, file periodic risk exposures (and related risk management) reports, and various trade report submissions (large trader) directly to the Commission.

CRM must also comply with swap trading relationship documentation requirements which facilitate the exchange of trade confirmations governed by a master netting agreement, engage in the exchange of margin on its uncleared swap transactions with financial counterparties (and elsewhere as needed), satisfy external business conduct standards to help ensure fair dealing and enhance transparency with its end-user customer base, make real-time trade reports publicly available, and file comprehensive trade reports to an SDR, among other regulatory requirements. The CFTC therefore receives the same information related to CRM's operations as it would otherwise obtain from other provisionally registered Swap Dealers.

² See, <https://www.cargill.com/price-risk/risk-management-home>.

³ Stated differently, less than 10% of CRM's average gross mark-to-market exposures are to Swap Dealers or financial end-user counterparties. CRM primarily hedges its customer-facing swap portfolio by entering into futures or on-exchange contracts.

⁴ When facing non-US counterparties, CRM may occasionally enter into a foreign exchange transaction with an end-user customer, typically to accommodate the customer's need to hedge related currency risk.



Discussion

The Commission promulgated final rules establishing capital and financial reporting requirements for non-bank Swap Dealers with an effective date of November 16, 2020 and a compliance date of October 6, 2021 (the “*CFTC Capital Rule*”). Pursuant to Regulation 23.105(i), subject swap dealers are required to “make publicly available on its website” unaudited and audited statements of financial condition, as well as amounts of capital held and minimum regulatory capital required. In effect, the statements must be updated on a bi-annual basis pursuant to Regulation 23.105(i)(2).

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As a family and employee-owned business that has remained privately held since its founding, and as a company that is not required to report financial information publicly,⁵ Cargill has preferred to refrain from the public disclosure of its proprietary financial information, electing to preserve confidentiality and eliminate the possibility of unnecessarily divulging trade secrets. With respect to certain key third-party relationships necessitating financial disclosure (*e.g.*, lending or debt arrangements), Cargill provides financial information only *after* securing confidentiality protections under a standard non-disclosure agreement. As a matter of internal policy and practice, these disclosures occur infrequently and in limited fashion, on a “need-to-know” basis, and only in response to a requesting third-party.

Accordingly, as a privately held company, Cargill has never made a public share offering and is not listed or traded publicly. Among other benefits, the approach enables the firm to insulate itself from outside investor pressures and pursue longer-term growth that can be used to, among other things, explore or help develop nascent or otherwise illiquid markets. At present, Cargill is not reliant upon issuing or selling shares to boost short-term profits (which can be used to create leverage and fuel proprietary positions in financial markets) and, as such, is not mandated to publicly disclose its financials to the SEC or any other regulator.

While the CFTC’s stated policy purpose in implementing financial reporting requirements to “help the Commission and investors monitor and assess the financial condition of [Swap Dealers or Major Swap Participants]”⁶ does not directly apply to its business model (which lacks third-party investors and investment), Cargill believes market participants should have the right to informed decision-making based on an evaluation of the creditworthiness, liquidity standing, and financial well-being of its counterparties, including swap dealers. To best accomplish this initiative, we propose that providing a longer-term (yet simplified) financial statement in the form and manner of Annex A is most appropriate for enabling CRM customers (existing or prospective) to evaluate Cargill’s financial wherewithal.

⁵ Cargill is not a public reporting company under the Securities and Exchange Act of 1934 and is not otherwise subject to Securities and Exchange Commission regulation as a broker-dealer or security-based swap dealer.

⁶ See CFTC Capital Rule at 57,538.



By providing access to a five-year ‘lookback’ period of its results, the proposed financials are most responsive to the concerns of the CRM customer base, who are predominantly commercial end-users less concerned with short-term profitability and highly focused on trading with a reliable counterparty credit to hedge their physical commodity price risk over lengthier supply chain cycles. The financial information and line items captured more directly present the statement of financial condition in a digestible format to customers who may be unfamiliar with lengthy audited and unaudited financial statements and their supporting materials and footnotes.

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The financial line items proposed for disclosure also enable the Commission to verify that any counterparty has the capability to access information essential to informed decision-making when evaluating CRM as a swap counterparty. By disclosing the “Total Equity” of Cargill, Incorporated, customers would be able to gauge the amount of loss absorbing capacity of the Swap Dealer in the event of a market downturn or idiosyncratic event. In disclosing current assets and liabilities, customers would be able to evaluate the liquidity position and ratio of the firm to ensure continued capability to meet transaction obligations. And, by providing the firm’s total debt (in addition to equity), the amount of leverage undertaken by the firm can be considered. As noted previously, all of the line items disclosed in Annex A would be made available over a five-year lookback period.

The CRM Swap Dealer would simultaneously continue to comply with all other components of the CFTC Capital Rule, ensuring that the Commission will otherwise be provided with the same information received from all other covered swap dealers. For example, the firm would remain obligated to file annual audited⁷ and quarterly unaudited financial statements with the CFTC on a non-public basis.⁸ In addition, CRM would be required to submit monthly and quarterly margin and position data reports to the CFTC, provide notification directly to the Commission in the event of any sizable equity withdrawal or dividend distribution that reduces its capital position (e.g. provide notification in the event the firm’s capital held falls below 120% of the minimum regulatory capital requirement), maintain current books and records, and provide notification where the firm fails to post or collect certain established amounts of variation or initial margin, among other requirements.

If the requested relief is not granted and the Cargill, Incorporated legal entity is required to widely publish its statement of financial condition beginning in September 2022 (the vast majority of which pertains to its commercial, non-dealing business), CRM would be forced to consider organizing a standalone subsidiary and/or reducing its presence in hedging commodity markets. Fragmenting the firm’s equity in this fashion would only increase counterparty credit risk to a lesser capitalized subsidiary and increase cost to both Cargill and its end-user

⁷ In accordance with Regulation 23.105(e)(4), the annual audited financial report must include a statement of financial condition, statements of income (loss), cash flows, changes in ownership equity, changes in liabilities, appropriate footnote disclosures, a statement demonstrating compliance with applicable regulatory capital requirements, among other information.

⁸ We note that Cargill, Incorporated also continues to submit quarterly unaudited and annual audited financial statements directly to the CFTC and NFA as a result of its operation of CBOT and KCBOT warehouse facilities. The firm was required to submit these statements prior to the CFTC Capital Rule compliance date.



customers.⁹ Last, given that market risk charges do not recognize offsetting futures positions for commercial firms such as Cargill operating pursuant to the non-model approach under the CFTC Capital Rule, the cost of organizing a standalone legal entity would no longer be economically sensible.

Request for Relief

In order to allow CRM to continue offering hedge-related OTC derivative products to its end-user customers and to ensure its current processes with respect to the safeguarding of its financial information are followed, we respectfully request the following no-action relief from MPD staff:

1. Cargill will not be required to publicly disclose on its website financial information required under Commission Regulation 23.105(i)(1), including an unaudited statement of financial condition and a statement disclosing both the amount of regulatory capital and the amount of its minimum regulatory capital.
2. Cargill will not be required to publicly disclose on its website financial information required under Commission Regulation 23.105(i)(2), including an audited statement of financial condition and a statement disclosing both the amount of regulatory capital and the amount of its minimum regulatory capital.
3. The potential relief discussed in 1 and 2 above will be conditioned upon Cargill providing the following:
 - a. A statement in which Cargill represents to the public on its website that Cargill maintains regulatory capital, at all times, in excess of two (2) times its regulatory minimum; and
 - b. The five-year lookback financial information on a confidential basis, substantially in the form and manner of Annex A to this no-action relief request, to all existing and prospective swap counterparties.

This approach would ensure the Commission's continued access to Cargill's financial statements on an ongoing basis, while also providing valuable financial information and assurances as to the firm's well-capitalized standing to its swap customers.

⁹ In its current structural composition, Cargill, Incorporated maintains capital well in excess of the regulatory capital minimums set forth under the CFTC Capital Rule.



Thank you for your attention to our request. Please feel free to reach out to the undersigned with any questions.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ryan Hayden", written over a horizontal line.

Ryan Hayden
Senior Lawyer
Cargill, Incorporated
(952) 742-0810
Ryan_Hayden@Cargill.com


Cc: Thomas Smith, Deputy Director
Cc: Joshua Beale, Associate Director
Cc: Rafael Martinez, Associate Director
Cc: Jennifer Bauer, Special Counsel

Cc: David Robertson, Assistant General Counsel, Cargill Incorporated
Cc: Thane Twiggs, Chief Compliance Officer, Cargill Risk Management
Cc: Steve Dvorske, Compliance Lead, Cargill Risk Management



Certification (Pursuant to Commission Rule 140.99(c)(3)(i))

The undersigned hereby certifies that the material facts set forth in the attached letter, dated January 24, 2022, are true and complete to the best of his or her knowledge.

By: 
Name: Ryan Hayden
Title: Senior Lawyer, Cargill Incorporated



Annex A:

**Form of
Cargill, Incorporated: Five-year Financial Summary
(Dollars in millions (USD))**

Line Item:	2021	2020	2019	2018	2017
<i>Sales & other revenues</i>					
<i>Net earnings</i>					
<i>Adjusted operating earnings</i>					
<i>Current assets</i>					
<i>Net property & other assets</i>					
<u>Total assets:</u>					
<i>Current non-interest bearing liabilities</i>					
<i>Debt</i>					
<i>Other liabilities</i>					
<u>Total equity:</u>					
<u>Total liabilities & equity:</u>					