



January 13, 2023

Via Electronic Submission (mpdletters@cftc.gov)

Ms. Amanda Olear
Director, Market Participants Division
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

RE: Cargill, Incorporated (NFA ID 0084857) No-Action Relief Request from Quarterly Financial Reports Set Forth in 17 C.F.R. §§ 23.105(d) & (l).

Dear Ms. Olear:

Cargill, Incorporated (“**Cargill**”), a registered limited purpose swap dealer, acting by and through its Cargill Risk Management business group, requests that the Commission’s Market Participants Division (“**MPD**”) issue relief from certain provisions of the Commission’s capital requirements for swap dealers.¹ As described further below, Cargill requests this relief due to its unique business and financial structure relative to other swap dealers, which makes compliance with the enumerated filing deadline impossible absent a complete restructuring of its existing systems and processes.

Pursuant to 17 C.F.R. § 23.105(d), Cargill is required to submit to the Commission quarterly financial filings no later than 17 business days after the close of an applicable fiscal quarter. Cargill requests that MPD issue no-action relief in the form of a 13 business day submission extension, permitting Cargill to make these filings no later than 30 business days after the close of an applicable fiscal quarter. Similarly, Cargill requests that MPD issue relief from the requirements of 17 C.F.R. §23.105(l), as modified by CFTC Letter No. 21-15, to file position information with the Commission on a quarterly basis. Specifically, Cargill respectfully requests MPD issue relief to permit Cargill to file the required position reports no later than 30 business days after the close of an applicable fiscal quarter, which amounts to a 13 business day submission extension from the current regulation.

Cargill requests that MPD issue the requested relief and such relief should continue so long as Cargill is required to make the applicable quarterly filings set forth in Commission Rules 23.105(d) & (l).

¹ Cargill’s National Futures Association identification number is 0084857. Cargill holds a limited purpose swap dealer designation for swap activity entered into through the Cargill Risk Management group. See 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 Reinstated Order of Limited Purpose Designation for Cargill, Incorporated (May 26, 2020).

I. Background

On September 15, 2020, the CFTC adopted its final rule on Capital Requirements of Swap Dealers and Major Swap Participants.² As a swap dealer “predominantly engaged in non-financial activities,” Cargill has elected to satisfy its minimum capital requirements under the tangible net worth capital approach.³ Under the Commission’s swap dealer capital requirements, swap dealers generally must submit monthly unaudited financial reports to the Commission and the National Futures Association (“NFA”).⁴ However, swap dealers electing the tangible net worth capital approach may submit quarterly filings as opposed to monthly filings.⁵ These quarterly filings must be submitted to the Commission and NFA within 17 business days after the close of an applicable fiscal quarter.⁶ Additionally, swap dealers are required to provide the CFTC and NFA with certain position information and credit exposure information pursuant to Appendix B to Subpart E of Part 23, on a monthly basis.⁷ In 2021, MPD issued CFTC Letter No. 21-15, which interpreted that non-bank swap dealers using the tangible net worth capital approach may submit the position information and credit exposure information required pursuant to Commission Rule 23.105(l) on a quarterly basis. The result of CFTC Letter No. 21-15 was to conform the filing obligations specified in Commission Rules 23.105(d) & (l) to the same quarterly timeline for non-bank swap dealers using the tangible net worth capital approach (collectively, the “**Quarterly Filings**”).

The Commission’s regulations permit a swap dealer that is required to make financial filings to request an extension from the NFA.⁸ The NFA has discretion to approve or disapprove a request, either conditionally or unconditionally. Since the capital rules became effective in 2021, Cargill has sought and received submission timeline extensions from the NFA. Although the NFA has the authority to grant an extension to submit the Quarterly Filings, Cargill’s no-action request seeks more permanent relief to provide it with legal certainty regarding compliance with the timelines to submit the Quarterly Filings.

II. Cargill’s Justification for Relief

Cargill submits this no-action request because its 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. Headquartered in Minnesota and founded over 155 years ago, Cargill is a privately held agribusiness company that has remained a family and employee-owned business since its inception. Unlike many other Commission-registered swap dealers, which exist as a separate legal entity from their parent

² Capital Requirements of Swap Dealers and Major Swap Participants, 85 Fed. Reg. 57462 (Sept. 15, 2020).

³ See generally CFTC Letter No. 22-04 (Feb. 14, 2022).

⁴ See Commission Rule 23.105(d).

⁵ *Id.*

⁶ *Id.*

⁷ Commission Rule 23.105(l).

⁸ 17 C.F.R. § 23.105(j).

company, Cargill's swap dealer business exists within the broader company.⁹ Cargill adopted this approach to streamline transactions for its customers by offering physical commodity transactions, which constitute one of Cargill's primary business offerings, along with derivatives transactions out of the same legal entity.

Cargill operates in 70 different countries and is comprised of approximately 800 subsidiaries, containing nearly 1,200 reporting groups. When preparing its Quarterly Filings, Cargill must collect, analyze, and compile financial information from all the company's disparate reporting groups. Given the breadth of its operations, Cargill's company-wide financial reporting process involves complex data collection and accounting coordination. At present, Cargill can generate a quarterly financial report within 26 business days of the close of a quarter. This timeline is consistent with the expectations of Cargill's material lenders and stakeholders. The additional 4 days are designed to provide sufficient time to convert the Cargill financial reports into the required position data report pursuant to Appendix B (Schedule 1) to Subpart E of Part 23 of the Commission's regulations.

If the MPD were to deny Cargill's extension request, Cargill would be required to initiate a complex multi-year systems overhaul, involving thousands of employees, contractors, and consultants across the world to submit quarterly financial reports along a truncated timeline. Cargill's preliminary estimate is that such a complicated undertaking would likely cost at least hundreds of millions of dollars and necessitate Cargill diverting technology resources from other important projects. Moreover, Cargill is a privately held company. If Cargill were a publicly traded company, under the Securities and Exchange Commission ("SEC") regulations, it would have either 40 or 45 days following the end of the quarter to submit its Form 10-Q quarterly financial report, depending on its filer status.¹⁰ Subjecting Cargill to a 17 business day filing requirement would hold a privately held company to a more rigorous financial reporting timeline than publicly-traded firms.

Lastly, MPD should also consider that Cargill has committed to maintaining two times its minimum regulatory capital requirement.¹¹ Furthermore, Cargill's previous financial filings demonstrate that it holds capital well in excess of its minimum regulatory capital requirement. Cargill also notes that the 13 business day extension should not deprive the Commission and NFA of timely information regarding capital issues because Cargill is already subject to numerous notification requirements designed to provide the Commission and NFA with notice of material changes to Cargill's financial condition.¹²

⁹ As noted above, Cargill holds a limited purpose swap dealer designation for swap activity entered into through the Cargill Risk Management business group.

¹⁰ See 17 C.F.R. § 240.13a-13(a); Form 10-Q, General Instructions, U.S. Securities and Exchange Commission (2022).

¹¹ See CFTC Letter No. 22-04, pg. 4 (Feb. 14, 2022).

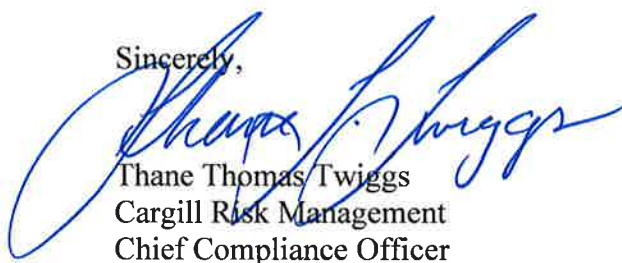
¹² See, e.g., Commission Rule 23.105(c)(1)(i)(requirement to provide immediate written notice if Cargill's regulatory capital is less than that required by Commission Rule §23.101); Commission Rule 23.105(c)(2)(requirement to provide written notice within 24 hours if Cargill's regulatory capital is less than 120 percent of its minimum regulatory capital requirement); Commission Rule 23.105(c)(3)(requirement to provide same-day written notice if Cargill fails to make or keep current books and records as required by CFTC regulations); Commission Rule 23.105(c)(4)(requirement to provide written notice if Cargill experiences a substantial reduction

III. Cargill Request for Relief from 17 C.F.R. §§ 23.105(d) & (l)

For the reasons set forth above, Cargill requests that MPD grant no-action relief in the form of an extension to submit its Quarterly Filings. Specifically, MPD's no-action relief should permit Cargill to submit its Quarterly Filings within 30 business days following the close of an applicable fiscal quarter. Such relief would provide Cargill with a 13 business day extension beyond the current requirement to submit the Quarterly Filings. Cargill requests this relief so long as it must submit the Quarterly Filings specified in Commission Rules 23.105(d) & (l).

Cargill appreciates the MPD's time and attention to this matter. If you have any questions or require any further information and documentation, please contact me via email at thane_twiggs@cargill.com or phone at (952) 984-4270.

Sincerely,

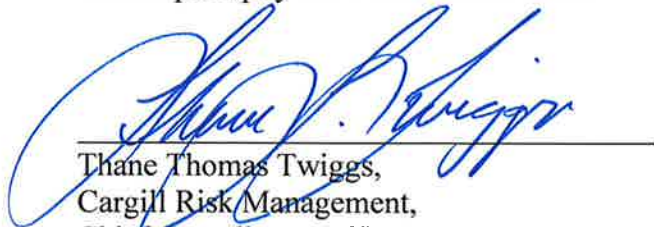


Thane Thomas Twiggs
Cargill Risk Management
Chief Compliance Officer

cc: Thomas Smith, Deputy Director, Market Participants Division
Joshua Beale, Associate Director, Market Participants Division
Michael Otten, Senior Vice President, NFA

in capital as compared to its last financial report filed with the Commission); Commission Rule 23.105(c)(5) (requirement to provide written notice two days prior to the withdrawal of capital if the withdrawal exceeds 30 percent of Cargill's excess regulatory capital).

I hereby certify that the material facts set forth in the above letter dated January 13, 2023 are true and complete to the best of my knowledge. Furthermore, to the extent any material representation made in the request ceases to be true and complete, I will inform promptly the Commission Staff in writing of all materially changed facts and circumstances. If a material change in facts or circumstances occurs subsequent to issuance of a no-action relief letter, I will inform promptly the Commission Staff.



Thane Thomas Twigg,
Cargill Risk Management,
Chief Compliance Officer