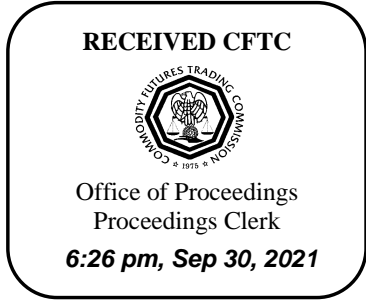


**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**



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**In the Matter of:** )  
 )  
**CARGILL, INC.,** )  
 ) **CFTC Docket No. 21-37**  
**Respondent.** )  
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\_\_\_\_\_ )

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO**  
**SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING**  
**FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

**I. INTRODUCTION**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about June 2017 to in or about November 2019 (“Relevant Period”), Cargill, Inc., a provisionally registered swap dealer doing business as Cargill Risk Management (“Respondent”), violated Sections 4s(f) and 4s(h)(1)(B) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 6s(f) and 6s(h)(1)(B)(2018), and Commission Regulations (“Regulations”) 20.4, 20.5, 20.7, and 23.602, 17 C.F.R. §§ 20.4, 20.5, 20.7, 23.602 (2020). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.<sup>1</sup>

<sup>1</sup> Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

## II. FINDINGS

The Commission finds the following:

### A. SUMMARY

As a provisionally registered swap dealer, Respondent is required to comply with certain reporting requirements related to its swap transactions. Section 4s(f) of the Act, 7 U.S.C. § 6s(f)(1)(A) (2018), and Regulation 20.4, 17 C.F.R. § 20.4 (2020), require swap dealers that meet certain criteria to file daily large trader reports (“LTRs”) for reportable positions in physical commodity swaps. The data about physical commodity swaps reported in LTRs must be the specific data the Commission has directed be submitted. Regulation 20.4. Swap dealers are also required to file certain information on Form 102S when a counterparty account first becomes reportable, and update that information if it changes. Regulation 20.5, 17 C.F.R. § 20.5 (2020). Swap dealers must submit reports under Part 20 of the Commission’s Regulations, 17 C.F.R. pt. 20 (2020), in the form and manner directed by the Commission. Regulation 20.7, 17 C.F.R. § 20.7 (2020).

During the Relevant Period, Respondent failed to comply fully with its Part 20 reporting obligations in two ways. First, Respondent failed to include new swaps in its LTRs and Form 102S submissions from June 2017 until June 2019. Second, Respondent submitted LTRs with incorrect values for commodity reference price and volume between July 2019 and November 2019. Respondent also failed to supervise these reporting obligations in violation of Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B) (2018) and Regulation 23.602, 17 C.F.R. § 23.602 (2020). Respondent’s supervision failures resulted in the aforementioned reporting failures.

In accepting Respondent’s Offer, the Commission recognizes that Respondent self-reported its violations to the Commission, and acknowledges Respondent’s representations concerning its remediation in connection with this matter. The Commission’s recognition of Respondent’s self-reporting and remediation is reflected in the form of a reduced civil monetary penalty.

### B. RESPONDENT

**Cargill, Inc.** is a global agricultural, commodity, and financial services business headquartered in Minnesota. Respondent has been provisionally registered as a swap dealer since February 28, 2013; its application to be designated as a limited purpose swap dealer was approved by the Commission on October 29, 2013. Respondent engages in swaps with counterparties through its Cargill Risk Management business unit. Respondent is also listed as a principal for certain of its affiliates that are registered with the Commission.

### C. FACTS

As a provisionally registered swap dealer, Respondent is required to submit reports to the Commission in the form and manner determined by the Commission. Despite that obligation, during the Relevant Period Respondent, submitted inaccurate and incomplete reports to the Commission. Specifically, between June 2017 and June 2019, Respondent’s LTRs omitted data from all new swaps and it failed to submit or update its Form 102S submissions. From July 2019

until November 2019, Respondent's LTRs included incorrect values for commodity reference price and volume.

**1. Failure to Include New Swaps in LTRs and Form 102S Submissions**

Respondent's omission of new swaps from its Part 20 submissions occurred when Respondent changed its swap data reporting from one swap data repository ("SDR") to another. Rather than use internal data to generate its Part 20 submissions, Respondent's Part 20 submissions were compiled from data it collected from the SDR. After switching SDRs in June 2017, Respondent failed to update its Part 20 data feeds to incorporate data from the new SDR for swaps that were executed after the switch. Consequently, Respondent's daily LTRs did not include data for new swaps from June 27, 2017 until June 13, 2019, and Respondent did not file Form 102S submissions for new swaps or update certain Form 102S submissions from June 27, 2017 until June 13, 2019.

**2. Failure to Report Commodity Reference Price and Volume Accurately**

Starting on or about July 12, 2019, an error in Respondent's reporting code caused it to submit LTRs with incorrect values for commodity reference price and volume. The Commission's surveillance staff identified the issue and informed Respondent on September 26, 2019. Respondent conducted an internal review, confirmed that the issue existed, and corrected the coding error on or around October 7, 2019. On November 19, 2019, Respondent re-submitted LTRs dating back to July 2019 to correct these errors. As a result, Respondent's LTRs from July 12, 2019 to November 19, 2019 contained inaccurate data regarding commodity reference price and volume.

**3. Failure To Supervise**

Respondent did not have robust internal processes in place to determine the accuracy or the completeness of its Part 20 submissions, relying primarily on a Commission-generated error email that informed Respondent if a report was not successfully uploaded. When Respondent conducted a limited review of LTRs as part of its 2018 annual review and testing, the absence of data for new swaps was not identified because there were no errors in the random sample of data that was tested. Prior to its discovery of the reporting issues, it does not appear that Respondent conducted any other analyses to evaluate the accuracy or completeness of its Part 20 submissions, or to ensure that its Part 20 submissions were correctly reporting all data following the change in SDRs. A review of Respondent's LTRs and Form 102S submissions from June 2017 until June 2019 would have revealed that its LTRs and Form 102S did not reflect any new swaps.

**4. Self-Reporting and Remediation**

Respondent identified the issue regarding the omission of new swaps in April 2019 while conducting a review related to the implementation of new internal data, business and controls systems, and reported the issue to Enforcement and other Commission staff on April 10, 2019. Respondent conducted an internal review of its Part 20 processes, and on June 13, 2019, resubmitted LTRs and Form 102S submissions dating back to June 27, 2017 to address its omission of new swaps from its Part 20 submissions.

Respondent has represented to the Commission that it conducted a comprehensive review of its Part 20 reporting processes after learning of the omission of new swaps from its Part 20 submissions, and has implemented a remediation plan to prevent future errors from occurring, including more robust daily monitoring of LTRs, automated email warnings that identify errors as they occur, and processes to escalate warnings or issues so Respondent can evaluate them and determine if remediation or additional steps are needed.

### **III. LEGAL DISCUSSION**

Large trader reporting for physical commodity swaps is essential to the Commission's ability to conduct effective surveillance of markets in U.S. physical commodity futures and economically equivalent swaps. Failure to comply with the reporting specifications set forth by the Commission hinders the Commission's ability to efficiently process and effectively utilize this critical data. The accuracy of the reports is critical to the mission of the Commission for numerous reasons, including surveillance of the markets to detect disruptions to market integrity, enforcement, and calculating statistics that the Commission publishes to enhance market transparency. *See, e.g., In re Wells Fargo Bank, NA.*, CFTC No. 16-32, 2016 WL 5582342, at \*2 (Sept. 27, 2016) (consent order).

#### **1. Respondent's Reporting Failures Violated Section 4s(f)(1)(A) of the Act and Regulations 20.4, 20.5, and 20.7**

As a swap dealer, Respondent is charged with reporting to the Commission pursuant to Section 4s(f)(1)(A) of the Act, 7 U.S.C § 6s(f)(1)(A) (2018). Section 4s(f)(1)(A) provides that “[e]ach registered swap dealer and major swap participant . . . shall make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant.”

The Commission's Part 20 Regulations specify the reports that are required pursuant to Section 4s(f) of the Act. Regulation 20.4(b), 17 C.F.R. § 20.4(b) (2020), requires reporting entities to file daily LTRs for reportable positions. Regulation 20.5(a)(1), 17 C.F.R. §20.5(a)(1) (2020), requires reporting entities to submit a Form 102S when a counterparty consolidated account first becomes reportable,<sup>2</sup> and Regulation 20.5(a)(4), 17 C.F.R. §20.5(a)(4) (2020), requires a reporting entity to file an updated Form 102S if any change causes the information on the original Form 102S to be inaccurate. In turn, Regulation 20.4(c), 17 C.F.R. § 20.4(c) (2020), requires reporting entities to provide certain enumerated data elements in their LTRs,<sup>3</sup> and Regulation 20.7(a), 17 C.F.R. § 20.7(a) (2020), requires a reporting entity, in relevant part, to “submit data records and any other information required under this part to the Commission . . . [u]sing the format, coding structure, and electronic data transmission procedures approved in

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<sup>2</sup> Regulation 20.1, 17 C.F.R. § 20.1 (2020), defines what constitutes a reportable position.

<sup>3</sup> The data elements required by Regulation 20.4(c) include, among others: the commodity underlying the reportable positions, commodity reference price, futures equivalent month, long paired swap positions and short paired swap positions, name of the counterparty, and identifier indicating that a principal or counterparty position is being reported.

writing by the Commission.” The prescribed manner and form of reporting and submitting swaps data is provided in the Part 20 Guidebook.

By omitting new swaps from its Part 20 submissions for nearly two years, Respondent filed inaccurate or incomplete LTRs in violation of Section 4s(f) of the Act and Regulations 20.4 and 20.7. Respondent also failed to make Form 102S submissions for new reportable positions and failed to update its pre-existing Form 102S submissions, in violation of Section 4s(f) of the Act and Regulation 20.5. By submitting inaccurate commodity reference prices and volumes in its LTRs from July 12, 2019 to November 19, 2019, Respondent violated Section 4s(f) of the Act and Regulation 20.7.

## **2. Failure to Supervise**

Section 4s(h)(1)(B) of the Act requires “diligent supervision of the business of the registered swap dealer.” 7 U.S.C. § 6s(h)(1)(B) (2018). Regulation 23.602 requires that each swap dealer “shall establish and maintain a system to supervise, and shall diligently supervise, all activities relating to its business performed by its partners, members, officers, employees, and agents (or persons occupying a similar status or performing a similar function).” 17 C.F.R. § 23.602 (2020). The operative language of Regulation 23.602 is similar to the language of the Commission’s longstanding supervision regulation for futures and options, Regulation 166.3, 17 C.F.R. § 166.3 (2020).

Under Regulation 23.602, a violation is demonstrated by showing either that: (1) the registrant’s supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *See In re Commerzbank AG*, CFTC No. 19-03, 2018 WL 5921385, at \*10-11 (Nov. 8, 2018) (consent order) (noting textual similarities between Regulation 23.602 and Regulation 166.3, applying case law concerning Regulation 166.3, and citing *In re Murlas Commodities, Inc.*, CFTC No. 85-29, 1995 WL 523563, at \*9 (Sept. 1, 1995), and *In re Paragon Futures Assoc.*, CFTC No. 88-18, 1992 WL 74261, at \*14 (Apr. 1, 1992)); *In re INTL FCStone Markets, LLC*, CFTC No. 15-27, 2015 WL 4980321, at \*3 (Aug. 19, 2015) (same). Evidence of violations that “‘should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly,’ is probative of a failure to supervise.” *In re Société Générale Int’l Ltd.*, CFTC No. 19-38, 2009 WL 4915485, at \*7 (Sept. 30, 2019) (consent order) (quoting *In re INTL FCStone Markets*, 2015 WL 4980321, at \*3).

Respondent violated Section 4s(h)(1)(B) of the Act and Regulation 23.602 both by employing an inadequate supervisory system and failing to perform its supervisory duties diligently. Respondent did not have an adequate supervisory system in place to determine the accuracy or completeness of its Part 20 submissions, relying primarily on a Commission-generated error email that informed Respondent if a report was not successfully uploaded. When Respondent conducted a limited review of LTRs as part of its 2018 annual review and testing, the absence of data for new swaps was not identified because there were no errors in the random sample of data that was tested. Nor did Respondent perform its supervision of Part 20 submissions diligently. A review of Respondent’s LTR and Form 102S submissions from June 2017 until June 2019 would have revealed that its LTRs and Form 102S did not reflect any new swaps.

#### **IV. FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent, violated Sections 4s(f) and 4s(h)(1)(B)) of the Act, 7 U.S.C. §§ 6s(f) and 6s(h)(1)(B) (2018) and Regulations 20.4, 20.5, 20.7, and 23.602, 17 C.F.R. §§ 20.4, 20.5, 20.7, 23.602 (2020).

#### **V. OFFER OF SETTLEMENT**

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
  - 1. The filing and service of a complaint and notice of hearing;
  - 2. A hearing;
  - 3. All post-hearing procedures;
  - 4. Judicial review by any court;
  - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
  - 6. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2018), and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2020), relating to, or arising from, this proceeding;
  - 7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
  - 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer; and

- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondent violated Sections 4s(f) and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 6s(f) and 6s(h)(1)(B) (2018) and Regulations 20.4, 20.5, 20.7, and 23.602, 17 C.F.R. §§ 20.4, 20.5, 20.7, 23.602 (2020);
  2. Orders Respondent to cease and desist from violating Sections 4s(f) and 4s(h)(1)(B) of the Act and Regulations 20.4, 20.5, 20.7, and 23.602;
  3. Orders Respondent to pay a civil monetary penalty in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00), plus post-judgment interest; and
  4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

## **VI. ORDER**

### **Accordingly, IT IS HEREBY ORDERED THAT:**

- A. Respondent and its successors and assigns shall cease and desist from violating Sections 4s(f) and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 6s(f) and 6s(h)(1)(B) (2018) and Regulations 20.4, 20.5, 20.7, and 23.602, 17 C.F.R. §§ 20.4, 20.5, 20.7, 23.602 (2020).
- B. Respondent shall pay a civil monetary penalty in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) ("CMP Obligation") within ten (10) days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2018).

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

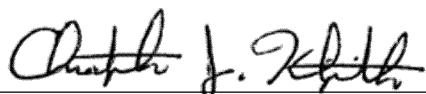
MMAC/ESC/AMK326  
Commodity Futures Trading Commission  
Division of Enforcement  
6500 S. MacArthur Blvd.  
HQ Room 181  
Oklahoma City, OK 73169  
(405) 954-6569 office  
(405) 954-1620 fax

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.
  2. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
  3. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.

**The provisions of this Order shall be effective as of this date.**

By the Commission.



Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: September 30, 2021