



February 7, 2011

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Re: Swap Data Recordkeeping and Reporting Requirements (17 CFR Part 45) and Real Time Public Reporting of Swap Transaction Data (17 CFR Part 43)

Dear Mr. Stawick:

IntercontinentalExchange, Inc. (“ICE”) welcomes the opportunity to comment on the Commodity Futures Trading Commission’s (“Commission”) proposed rulemaking on Swap Data Recordkeeping and Reporting Requirements (17 CFR Part 45) and Real Time Public Reporting of Swap Transaction Data (17 CFR Part 43). One of the key goals of the Dodd Frank Wall Street Reform and Consumer Protection Act (“Dodd Frank Act”) is to create more transparency in the over-the-counter (OTC) swaps markets. The public reporting and swaps data repository rulemakings are key to achieving the objective.

The Commission has put significant thought into the proposed rules. In adopting final rules, ICE recommends that the Commission:

- Simplify the selection of a swap data repository (SDR) by allowing the reporting party to select the SDR as opposed to having such decision made by a SEF;
- Adopt reporting by lifecycle rather than snapshot for the “Other Commodity” asset class;
- In the event of equal parties to a trade, simplify the selection of the reporting party by requiring the selling party to be the reporting party;
- Eliminate redundant valuation reporting by only requiring a derivatives clearing organization (DCO) to report valuation data for cleared transactions; and
- Allow SDRs to charge commercially reasonable fees to distribute public swap data.

Background

ICE was established in 2000 as an over-the-counter (“OTC”) marketplace with the goal of providing transparency and a level playing field for the previously opaque, fragmented energy market. Since that time, ICE has grown significantly through organic growth fostered by product, technology and clearing innovation, and by acquisition of



futures exchanges that have broadened its product offerings and risk management services. Today, ICE operates a leading global marketplace for futures and OTC derivatives across a variety of product classes, including agricultural and energy commodities, foreign exchange and equity indexes. Commercial market participants rely on our products to hedge and manage risk and investors in these markets provide necessary liquidity.

ICE also operates an internet-based electronic trade confirmation service, ICE eConfirm[®]. This service works by matching a participant's trade data to its counterparties' and/or brokers' data to identify discrepancies and execute legal trade confirmations. Users of ICE eConfirm electronically confirm their trades online regardless of execution method - whether completed through voice brokers, online platforms, or directly between counterparties. The service provides an efficient, electronic alternative to the historically manual process for confirming trades.

Through the ICE eConfirm Service, ICE has been successfully offering a trade confirmation system to its energy and commodities customers for over eight years. Today, more than 200 global trading firms submit their trade data to ICE eConfirm to accomplish legally binding electronic trade confirmation matching. As a result, the database contains over 5.1 million trades. According to the December 2009 Commodities Major Dealers ("CMD") commitment letter to the New York Federal Reserve Board, major dealers stated that over 80% of their bilateral derivatives trades were matched online. ICE is committed to delivering an SDR solution for the energy and commodities asset class. ICE proposes to leverage the existing ICE eConfirm infrastructure and our knowledge of the commodities industry to deliver an energy and commodity SDR ("Trade Vault[™]"). This solution will cater to large and small market participants as well as relevant global regulatory agencies

Initial Selection of a Swap Data Repository

The swap data repository and real time reporting provisions of the Dodd Frank Act establish a comprehensive framework for the reporting, storage, and dissemination of swaps data. The Dodd Frank Act provides that "the Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap data repository." The Commission proposes that Swap Execution Facilities (SEFs) or Designated Contract Markets (DCMs) report swap creation data, or primary economic terms, of a cleared or non-cleared swap executed on their platform to an SDR. The regulations intend to streamline and simplify the data reporting approach, by calling for reporting of swap creation data by the registered entity or counterparty that has the easiest, fastest, and cheapest access to the data set. Therefore, for any trade executed on their platforms, SEFs/DCMs are to submit the swap creation data in an electronic format as soon as technologically practicable. In addition, the Commission requires that any subsequent reporting for a swap (e.g., swap confirmation data submitted by reporting entities), will continue to the same SDR where the swap creation data was originally reported. Lastly, the regulation states that the reporting counterparty (e.g., SD, MSP or non-SD/MSP) is responsible for managing the swap in the SDR throughout the swap's life by submitting continuation data on a daily basis.

Unfortunately, the proposal does not currently provide the reporting counterparty with any authority to influence the SEF/DCMs' selection of an SDR when the swap creation data is reported. Even though SEFs/DCMs will facilitate reporting of swap creation data to the SDR, the reporting counterparty is ultimately responsible for managing the swap in the SDR for the entire life of the transaction. As a result, it is expected that the reporting counterparty will incur significant technology expense to build and maintain connections to a SDR. Furthermore, this cost will be compounded if the reporting counterparty has to build systems, train staff, and maintain business processes to monitor swaps in multiple SDRs connected to multiple SEFs.

To avoid this problem, we recommend that the Commission require SEFs and DCMs to submit swap creation data to a SDR according to the preferences of the reporting counterparty. To facilitate this approach, SEFs/DCMs will have to maintain functionality in their systems to capture the SDR preferences of their customers and to report swaps to the SDR preferred by the counterparty with the reporting obligation. This approach will provide clarity, eliminate confusion, and prevent delays for the reporting counterparty that is obligated to report swap continuation data going forward on a daily basis. In addition, since reporting counterparties will likely develop systems for the submission of data to a SDR, then the routing of information to their preferred SDR can be predetermined and automatic. In summary, by allowing the reporting counterparty choose the SDR, the Commission will lessen the burden on the reporting counterparty while still achieving the important goal of timely and accurate reporting.

The CFTC Should Not Adopt a State or Snapshot Approach for Other Commodity Swap Asset Classes

The Commission proposes that the "Other Commodity" asset class should use the state or snapshot approach for submission of swap continuation data. The state or snapshot approach requires a daily update of the current state of the swap which incorporates all the changes that have happened to the swap since the previous snapshot. Therefore, reporting entities are required to submit swap continuation data to an SDR on a daily basis throughout the life of the swap. By contrast, the life cycle approach requires a recording of individual events (e.g., settlement, assignment or termination) as these events occur.

The Commission seeks to minimize complexity of swap continuation data reporting by prescribing the snapshot approach for the Other Commodities asset class. However, due to the large number of open cleared and uncleared swaps, the snapshot approach will prove technically challenging for all parties. Under the proposed regulation, all reporting counterparties in the Other Commodity asset class will need to report the trade details for all open swaps, even if no changes occurred. From a technical perspective, this will result in a massive batch processing of data on a nightly basis. This method of data transfer is inefficient and is not suitable for such a large asset class. The number of messages and amount of data transferred would prove to be taxing for reporting entities

and SDRs. Lastly, it places a burden on each reporting entity to monitor large data set transfers and to manage message failures on a daily basis. Therefore, the drawbacks of the snapshot approach far outweigh the benefits.

A solution is to adopt the life cycle approach for the Other Commodity asset class. To do so, it would be prudent to establish an Other Commodities asset class working group to design a series of standardized life cycle events to be adopted by the reporting entities and the SDRs. This working group would build upon the messaging protocols and framework from other asset classes and use any existing industry standards. Reporting entities should have the opportunity to review and comment on any working group proposals before implementation of a new life cycle event. In summary, the initial implementation tasks needed to establish the life cycle approach will be worth the costs in the long term given the burdensome nature of the snapshot approach.

Determination of Which Counterparty Must Report

The proposed rule establishes a hierarchy of counterparty types for reporting obligation purposes. In this hierarchy, Swap Dealers (“SD”) outrank Major Swap Participants (“MSP”), who outrank non-SD/MSP counterparties. Where both counterparties are at the same hierarchical level, proposed regulation calls for them to select the counterparty obligated to report. When both counterparties are SDs, or both or MSPs, or both are non-SD/MSP counterparties, the proposed regulation requires counterparties to agree as a term of their swap transaction which counterparty will fulfill reporting obligations concerning that swap.

By requiring counterparties to make a choice, the result will be delay and uncertainty when reporting to a SDR. For example, cleared swaps, when executed on a platform, are typically transacted anonymously. As a result, DCMs and DCOs do not disclose counterparty names because the DCO ultimately serves as one counterparty on each cleared swap. Therefore, it will be impossible, at the time of execution, for the parties to know and to agree upon a reporting obligation for continuation data.

A solution would be to require the seller of swaps to serve as the reporting counterparty when both parties are of the same hierarchical status. This simplified approach will eliminate reporting confusion and delay. Furthermore, for trades executed on a platform, SEFs and DCMs will have a mechanism for determining the reporting counterparty while maintaining anonymity. Lastly, this solution will provide all interested parties (e.g., SEFs, DCMs, DCOs, SDRs, counterparties and the Commission) with a clear framework for determining the reporting counterparty when both are of the same status within the reporting hierarchy.

Valuation Data

Under Proposed Part 45, for cleared swaps in all asset classes, when the reporting counterparty is a SD/MSP, the DCO and the reporting counterparty are required to submit

valuation data to a SDR throughout the life of a swap. In general, the Commission intends to streamline and simplify the data reporting approach by identifying the registered entity or counterparty that has the easiest, fastest, and cheapest access to the set of data in question.

Since DCOs are ultimately responsible for settling cleared swaps and continually marking swap positions to market, it is unnecessary for SDs/MSPs to also report valuation data for cleared swaps. As long as the swap remains at a DCO, valuation data provided by the reporting counterparty is irrelevant. Furthermore, requiring submission of this irrelevant valuation data will drastically increase the number of messages transmitted to SDRs on a daily basis and will unnecessarily burden SDs/MSPs with another reporting mandate. Finally, submission of this irrelevant data will likely flood regulators with redundant and duplicative information.

A proposed solution would be to require DCOs to report valuation data for cleared swaps, while continuing to require reporting parties to report valuation data for uncleared swaps. Furthermore, DCOs should not report a total valuation amount on each open swap. DCOs should only report price marks to a SDR on a daily basis and then the SDR can calculate the valuation amount for each open trade. This approach will lessen the burden on reporting counterparties and DCOs. In addition, it will drastically reduce the number of messages processed by the SDR. The Commission will have a single valuation for each swap and that valuation will be from the most relevant and reliable source.

Fees Charged by Registered SDRs

The proposed regulation allows SDRs to choose to publicly disseminate swap transaction and pricing data in real-time for a swap asset class. For a registered SDR that chooses to be a public disseminator, the proposed rules require the SDR to provide open and equal access to data collection services for real-time public reporting. The Commission further requires that the fees and charges adopted by the SDR or the purposes of real-time public reporting must be equitable and nondiscriminatory.

SDRs that offer real-time reporting will collect pricing and swap transaction data from multiple sources (e.g., DCMs, DCOs, SEFs, SDs, MSPs, and non-SDs/MSPs). The SDR will aggregate and standardize the data and provide connectivity to third party distributors. The Commission anticipated that SDRs would charge fees for data collection, but there is a lack of clarity concerning the SDR's ability to be compensated for distribution of data. It appears that third party data distributors will not have any restrictions on data fees that they may charge. At the same time, SDRs will be responsible for building and providing critical services to regulators at significant cost to the SDR.

Absent an ability to earn a return on this investment, SDRs will be saddled with most of the costs of the effort to provide transparency in the OTC markets while not being able



to achieve an adequate return on their investment. In the long run, this will likely prove detrimental to transparency and effective regulation as SDRs will have little incentive to improve systems and implement next generation reporting and analytical tools that will allow regulators to stay ahead of or at least abreast of the broader marketplace.

ICE's recommended solution is to provide in final rules that SDRs may charge commercially reasonable fees for data distribution services, along with the existing provision for collection fees. In addition, keeping with both securities and futures industry practice, a SDR should be able to discount fees based upon volume. As a registered entity, the Commission could review fees periodically to ensure that the SDR's fees were appropriate. In summary, the SDR should be able to earn revenue for distributing any data collected for the purposes of real time reporting just as a third party data disseminator is entitled to charge fees for such distribution.

Conclusion

Transparency of the swaps market is a key goal of the Dodd Frank Act. The Commission has made great strides towards creating a system for increasing transparency through the public reporting and swap data repository rulemakings. ICE looks forward to working with the Commission on implementing a SDR and thanks the Commission for the opportunity to comment on the foregoing rule makings.

Sincerely,

A handwritten signature in black ink that reads "Bruce A. Tupper".

Bruce Tupper

A handwritten signature in black ink that reads "Carrie Slagle".

Carrie Slagle

IntercontinentalExchange, Inc.