Craig S. Donohue
Chief Executive Officer

February 22, 2011

VIA E-MAIL AND ON-LINE SUBMISSION

David Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
secretary@cftc.gov

Re: Swap Data Repositories (RIN 3038-AD20)

Dear Mr. Stawick:

CME Group Inc. ("CME Group"), on behalf of its four designated contract markets ("Exchanges" or "DCMs"), appreciates the opportunity to comment on the Commodity Futures Trading Commission's (the "CFTC" or "Commission") proposed rulemaking regarding Swap Data Repositories (the "Release").[1] In the Release, the Commission seeks comment on proposed rules (the "Proposed Rules") that would implement the statutory framework for establishing the registration requirements, statutory duties, core principles and certain compliance obligations for registered swap data repositories ("SDRs").

CME Group is the world's largest and most diverse derivatives marketplace. CME Group includes four separate Exchanges, including Chicago Mercantile Exchange Inc. ("CME"), the Board of Trade of the City of Chicago, Inc. ("CBOT"), the New York Mercantile Exchange, Inc. ("NYMEX") and the Commodity Exchange, Inc. ("COMEX"). The CME Group Exchanges offer the widest range of benchmark products available across all major asset classes, including futures and options based on interest rates, equity indexes, foreign exchange, energy, metals, agricultural commodities, and alternative investment products.

CME includes CME Clearing, a derivatives clearing organization and one of the largest central counterparty clearing services in the world, which provides clearing and settlement services for exchange-traded contracts, as well as for over-the-counter derivatives transactions through CME ClearPort®.

The CME Group Exchanges serve the hedging, risk management and trading needs of our global customer base by facilitating transactions through the CME Globex® electronic trading platform, our open outcry trading facilities in New York and Chicago, as well as through privately negotiated transactions.

CME generally supports the objectives of the Commission's proposed rulemaking. SDRs will play a central role in the new data reporting and transparency regulatory regime that will apply to the swap markets and it is appropriate that SDRs are subject to a level of regulation that is commensurate with these responsibilities. CME believes the Commission's primary focus with respect to implementing these requirements should be on the lowest cost, most efficient and least burdensome alternatives available.

[1] See 75 FR 80898 (December 23, 2010).

I. Overview of Proposed Rules

A central purpose of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("DFA") was to increase transparency and efficiency in the swap markets. Section 728 of the DFA amended the Commodity Exchange Act ("CEA") by adding Section 21 and establishing registration requirements, core principles and certain statutory duties for SDRs. Section 728 directed the Commission to adopt rules to implement these statutory directives.

The duties of an SDR under the DFA and the Proposed Rules include: (1) accepting data; (2) confirming with both counterparties to the swap the accuracy of the data that was submitted; (3) maintaining data according to standards prescribed by the Commission; (4) providing direct electronic access to the Commission or any designee of the Commission; (5) providing public reporting of swap data in the form and frequency as the Commission may require; (6) establishing automated systems for monitoring and analyzing data (including the end user clearing exemptions) at the direction of the Commission; (7) maintaining user privacy; (8) on a confidential basis, upon request and after notifying the Commission, making data available to other specified regulators; and (9) establishing and maintaining emergency procedures.

SDRs are required under the Proposed Rules (and DFA) to abide by four core principles. First, an SDR is prohibited from adopting any rules or taking any action that results in any unreasonable restraint of trade or imposing any material anticompetitive burden on the trading, clearing or reporting of transactions. Second, each SDR must establish governance arrangements that are transparent to fulfill the public interest requirements and to support the objectives of the federal government, owners and participants. Third, each SDR must establish and enforce rules to minimize conflicts of interest in the SDR's decision-making processes and establish a process for resolving conflicts of interest. Finally, the DFA provides that the Commission might establish additional duties for SDRs in its discretion to minimize conflicts of interest, protect data, ensure compliance and guarantee the safety and security of the SDR, or for other purposes to account for evolving standards. The DFA and Proposed Rules further require each SDR to have a chief compliance officer ("CCO") responsible for certain duties.

Our comments will suggest some major changes to the structure of SDRs in a manner that will reduce the burden on scarce Commission resources (as well as those of applicants), while still fully complying with the requirements of Dodd Frank. Given the Commission's budgetary uncertainty, the Commission should give strong consideration to the recommendations for streamlining the SDR proposals.

II. Comments

a. The Rules Should Feature Explicit Exemptions for DCOs Complying with Applicable Core Principles

DCOs are the natural repositories for cleared swap transactions and as such currently conduct many SDR-like activities for the cleared markets.[2] Congress understood this and expected DCOs to play this role going forward. In addition to adding new provisions in the CEA to apply to SDRs, Congress also amended existing provisions in the CEA that will subject DCOs to generally comparable regulation.

For example, Section 725 of DFA directs the Commission to "adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations" that are "comparable to the

[2] For example, DCOs, among many other things, accept data for clearing purposes; maintain transaction data pursuant to Commission standards; provide access to the Commission and other appropriate regulators to transaction records; conduct transaction data analysis and monitoring; maintain user privacy pursuant to applicable regulations; and employ emergency back-up procedures.

corresponding requirements" for swaps data reported to swap data repositories.[3] Further, DCO statutory core principles now include specific core principles that address each core principle that applies to SDRs, namely, antitrust considerations, governance fitness standards and conflicts of interest.[4] Post-DFA, DCOs will be required to designate an individual to serve as chief compliance officer in the same manner as SDRs.

Thus, any entity that is registered as a DCO will be subject to a statutory and regulatory regime that includes comparable requirements to those that are proposed to be imposed on SDRs. In fact, the regime that will apply to DCOs post-DFA will include far more stringent requirements.[5]

Given the current proposals, an entity that is registered as a DCO and also chooses to register as an SDR will be subject to duplicative regulatory requirements. The Commission acknowledged this possibility in the Release, when it explained that a DCO that registers as an SDR would be expected to meet the more stringent set of rules to the extent final rules on SDR governance and conflicts of interest differ between a DCO and an SDR.[6] CME agrees that a dual registrant should be expected to comply with the most stringent set of requirements applying to it. However, in CME's view, the more stringent set of requirements will apply to DCOs. CME urges the Commission to avoid duplicative requirements in these circumstances and make explicit in its final SDR rules that a registered DCO that is also registered as an SDR can achieve compliance with SDR core principles by demonstrating compliance with applicable DCO core principles.

b. The Rules Should Provide for Notice Registration for DCOs

The Proposed Rules address the registration process for entities seeking SDR status. The initial application process involves submission of proposed Form SDR along with documents and descriptions pertaining to the (i) business organization (ii) financial resources (iii) technological capabilities and (iv) accessibility of services of the SDR. According to the Release, the business organization documents will include descriptions of the applicant's legal status including a copy of the constitution, articles of incorporation or association with all amendments, existing by-laws, rules or instruments corresponding with, and a description of the organizational and governance structure. The financial information requirements would include a balance sheet, a statement of income and expenses, a statement regarding the sources and application of revenues and all notes or schedules as of the most recent fiscal year. SDR applicants would also be required to demonstrate operational capability through documentation of technical manuals and/or third party service provider agreements employed to provide services to the SDR.

DCOs have the information described above on file with the Commission as part of their registration requirements. Any entity that seeks to obtain registration as a DCO would be required to submit these same materials to achieve DCO status. If entities registered as DCOs were required to submit an entirely

[3] See new paragraph (k)(2) in Section 5b of the CEA, as amended by Section 725 of DFA.

[4] To obtain and maintain registration, a DCO post-DFA will be required to comply with eighteen core principles established by Section 5b of the CEA.

[5] DCOs will be subject to eighteen core principles. As noted above, SDRs will be subject to four. In addition, DCOs will also be subject to a number of additional substantive provisions in the CEA that will not apply to SDRs. As one example, DCOs will have to comply with proscriptive ownership restrictions.

[6] See Release, footnote 9 at page 80899.

new and separate SDR application it would necessarily include a largely duplicative set of materials already on file with or available to the Commission.[7]

CME urges the Commission to consider an abbreviated SDR notice registration process that could be applied to entities registered as DCOs in good standing. The Commission has jurisdiction over DCOs and could easily request additional information before granting SDR status. Providing for a notice registration process for DCOs in good standing with the Commission makes sense. DCOs are by definition subject to equivalent standards. DCOs also already have required documentation on file with the Commission by virtue of the current DCO registration process.

c. Issues Regarding Commercialization of Data Maintained by an SDR

SDRs are generally prohibited from commercializing information received for the purpose of regulatory swap reporting.[8] Specifically, new Section 21(c)(6) of the CEA provides that each SDR must:

> "maintain the privacy of any and all swap transaction information that the swap data repository receives from a swap dealer, counterparty, or any other registered entity…"

In the Release, the Commission makes clear that "commercial use" of any data submitted and maintained by an SDR must be "severely restricted."[9] It also expressed the view that any information an SDR receives from a reporting entity (including DCMs, DCOs, SEFs, swap dealers, major swap participants, end-users, and/or any other counterparties) "may not be accessed, disclosed, or used for purposes not related to SDR responsibilities under the CEA or regulations thereunder, unless such use is explicitly agreed to by the reporting entities, i.e., the submitter(s) of the data."[10]

Proposed Rule 49.17(g) codifies the general statutory prohibition against commercialization. The Rule includes an exception providing that "*market participants*" who submit the data maintained by the SDR "may permit the commercial or business use of that data by express written consent." In the Release, the Commission explains this exception as requiring "the express written consent of the *counterparties* to the swap."[11] The Release also adds in general that "aggregated data that cannot be linked back to individual transactions or market participants may be made publicly available by SDR".[12]

CME believes the Commission should clarify the scope of the regulatory exception to the general statutory prohibition against commercialization to avoid any chance of confusion as to its application. First, it must be clear that an SDR must clearly receive express written consent before commercializing data received from *any* entity that submits reports to it, whether such entity is a swap counterparty *or* other registered entity such as a DCO. The term "market participant" in the current formulation of the rule is confusing. It should not be read to apply to only swap counterparties. Second, the Commission should

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[7] Obviously, to the extent an entity that was simply affiliated with a DCO but was not the DCO itself sought SDR registration, it would certainly be appropriate to require submission of a complete application regarding such affiliated entity.

[8] The commercialization restrictions do not apply to the swap data reports that are required to be reported to the public on a real-time basis as described in the Commission's proposed part 43 regulations.

[9] See Release at page 80911.

[10] See Release at page 80908.

[11] See Release at page 80911.

[12] See Release at page 80908.

specifically acknowledge that information submitted by a DCO to an SDR cannot be considered to be aggregated, unattributed data that can be made publicly available by an SDR without a DCO's specific consent.

This clarity is critical for DCOs to the extent final rules require them to report swap continuation data to non-DCO SDRs. Derived settlement prices and curve values are the intellectual property of a DCO. This information is clearly owned by a submitting DCO and is clearly within the statutory prohibition against SDR commercialization of regulatory information. Under no circumstances should a non-DCO SDR that receives reports from a DCO be allowed to make any commercial use, whether direct or indirect, of this type of information without first obtaining the express written consent of the submitting DCO.

To avoid confusion, CME believes the Commission should replace the term "market participants" in the final version of Rule 49.17(g) with language that more closely tracks Section 21(c)(6) and clearly picks up registered entities like DCOs and DCMs that may submit data to SDRs.

d. SDR Obligations to Monitor, Screen and Analyze Data Should Be Clarified

The DFA amended the CEA to require SDRs to implement automated systems for "monitoring, screening and analyzing swap data" as directed by the Commission. Proposed Regulation 49.13 requires SDRs to monitor, screen and analyze swap data in their possession. However, the Proposed Rules fail to provide any specificity regarding the scope of this duty to monitor or the specific actions that SDRs are expected to take to discharge these responsibilities.[13] The Release notes that the Commission will consider specific tasks to be performed by SDRs at a later date, as its knowledge of the regulatory oversight needs with respect to the swap markets increases.[14] It will obviously be critical for the Commission to provide further guidance regarding its expectations in this area and firms will not be able to begin coding until these responsibilities are communicated.

As a threshold matter, CME is not convinced that SDRs should be given wide ranging surveillance responsibilities. Market-wide surveillance duties are best placed with a regulator or self-regulatory organization empowered with disciplinary powers and subject to concomitant responsibilities. A statutory duty of an SDR certainly includes establishing automated systems for monitoring, screening and analyzing swap data. However, CME believes the primary responsibility of an SDR in this regard is *establishing* automated systems to enable another regulatory body to access data that will allow it to carry out its market oversight responsibilities. With respect to cleared markets, self-regulatory organizations like DCMs and DCOs already play these roles and could be called on to do so in the future. With respect to the bilateral markets, the Commission will be in the best position to exercise oversight because of its aggregated viewpoint.

e. The CFTC's Approach to Receiving Access to SDRs Should be Carefully Considered

A critical function of an SDR under the Proposed Rules is to provide the CFTC with "direct electronic access" to swap data maintained by it. More specifically, Proposed Regulation 49.17 requires an SDR to: (1) provide the Commission or its designee with connectivity and access to the SDR's database of swap data and web-based services on a real-time basis; and (2) electronically deliver to the Commission or its designee certain data in the form and manner prescribed by the Commission. In addition, registered SDRs are required under proposed Rule 49.17 to provide the Commission with monitoring tools capable

[13] The ability to monitor for compliance with end user clearing exemption claims is the sole area highlighted in the Proposed Rules. Obviously, clearing exemption claims for end users is relevant for uncleared trades and therefore would not be applicable to the activities of a DCO-SDR maintaining swap data with respect to cleared trades.

[14] See Release at page 80907.

of screening and analyzing swap data that are identical to those provided to compliance staff and the CCO or the registered SDR.

CME is concerned with the Commission's proposed approach for gaining access to SDR data. The Proposed Rules require an SDR to provide "identical" access to systems that are provided to the SDR's CCO. In CME's view, requiring identical access is problematic and unnecessary. Certain features associated with internal access to systems are not practical to port to outside parties like the Commission due to the technical architecture that may be required to support them.

On a practical level, the Commission should not expect or want any level of access that exceeds "read only" view ability. Internal staff performs routine maintenance on technology systems and implements new functionality. Internal staff therefore necessarily has access rights that allow them to make such changes. The Commission obviously does not need this type of access. Even if it were provided, who would be responsible for making upgrades to the Commission's systems when new functionality was rolled out? Who would be responsible for maintaining connectivity between the SDR's systems and the Commission's systems?

Under the proposed Rules, the Commission automatically is entitled to any regulatory system tools of an SDR. This means that trade secrets or intellectual property built into any such regulatory system will necessarily be disclosed to the CFTC. SDRs should not be asked to surrender proprietary systems in this manner without compensation and without sufficient protection from Commission disclosure to other entities. CME Group believes that Commission requirements along these lines could stifle the potential for innovation and ultimately result in SDRs developing and providing bare minimum regulatory systems.

The Commission should instead require that SDRs be required to provide data and standardized reports on a regular basis to the Commission. This approach is in line with current levels of access the Commission has to data which has proved sufficient for regulatory purposes.

Finally, CME Group notes that the Commission has reserved the right in its Proposed Rules to require SDR to provide the Commission's "designee" with access to confidential swap data information. The Commission should not be able to assign any particular designee chosen by it to receive full access to complete SDR swap data. Review of this data is a core Commission responsibility and it should not delegate its review responsibility. Further, if a registrant is properly carrying out its duties as an SDR, the Commission should not require that registrant to report data to another registered SDR.

f. Allow DCOs/DCO-SDRs to Limit Reporting to Cleared Trades

Proposed Regulation 49.10 requires SDRs to accept data with respect to all swaps in an asset class for which the SDR has registered. This requirement should be amended to allow DCOs or DCO-SDRs to choose to limit their data reporting services to the trades they clear and it should not force them to develop systems to take in reports of uncleared/bilateral transactions simply because they handle reporting for cleared trades in a particular asset class. The services and systems of DCOs are fundamentally different than the systems and services of repositories that service the uncleared derivatives market. Over time entities will likely develop the abilities to service both the cleared and uncleared markets; however, this evolution will necessarily take time. The CFTC does not need to force this development at the outset of implementation.

As discussed in detail in CME Group's comments to the Commission's proposed swap data reporting proposed rules[15], the DFA contemplates that DCOs will continue to act in their current role as the natural

[15] See CME Group's comments in its February 7, 2011 letter from Craig Donohue to David Stawick regarding the Commission's proposed rules in 75 FR 76574 (December 8, 2010) and 75 FR 76139 (December 7, 2010).

repositories for cleared trade information for regulatory access purposes. CME has argued that the Commission should clarify in the final swap reporting rules that each initial regulatory report for a cleared swap be directly reported to the applicable DCO or SDR chosen by such DCO because that approach would be the lowest cost and least burdensome method for implementing the regulatory reporting requirements. CME has also maintained that non-DCO SDRs should be called upon to fill the reporting gap for the uncleared markets. CME believes that non-DCO SDRs operating in the uncleared markets should be expected to accept all swaps in an asset class for which such SDR has registered to address the issue of preventing "orphaned" swaps.

Allowing DCOs or DCO-SDRs to limit their acceptance of data to the transactions for which such DCO (or affiliated SDR) accepts for clearing is the quickest path to implementing reporting requirements for the majority of swap trades, that is, for reporting of standardized, cleared transactions. Each DCO that currently clears swap transactions already possesses the majority of transaction records that would be required to be maintained under the CFTC's proposed reporting rules. Any required records that are not currently maintained by a DCO that clears a swap transaction can easily be reported to such DCO or DCO-SDR at the time a transaction occurs. DCMs and SEFs that are matching standardized swaps transactions will necessarily be required to establish connectivity with DCOs for the purpose of clearing. These connections could easily be used to facilitate reporting as well and technology build outs would be as limited as possible.

Thus, if DCOs or DCO-SDRs were allowed to limit acceptance of swap reports to cleared trades, swap trade reporting requirements for cleared trades could be implemented immediately. Reporting of uncleared trades by non-DCO SDRs, which have to establish entirely new connections with DCOs, DCMs, SEFs, swap counterparties and regulators, as applicable, could be implemented in a separate and later phase after required connectivity is established. Allowing DCOs to limit SDR services to cleared trades would therefore allow the Commission to set final compliance dates that take into account the scope of the projects that will be involved in implementing the new swap data reporting requirements.

g. Requirement for SDR Chief Compliance Officer

New Section 21(e) of the CEA creates an internal regulatory framework for all SDRs, including the establishment of the position of Chief Compliance Officer ("CCO") for SDRs. The Proposed Rules would implement Section 21(e) through Proposed Rule 49.22.

CME Group filed a comment letter with the Commission regarding its notice of proposed rulemaking with respect to General Regulations and Derivatives Clearing Organizations, which established the position of CCO for DCOs.[16] CME Group refers to those comments which are generally applicable to Proposed Rule 49.22.

In summary, CME Group generally supports the regulatory policy underlying the requirement in DFA for CFTC registrants to appoint a CCO. CME Group takes issue, however, with the overly broad scope of responsibilities the CFTC proposes to assign to CCOs, and suggests that the CFTC: (a) not require CCOs to "ensure" compliance, but rather to establish policies and procedures "reasonably designed to ensure" compliance; (b) not require CCOs to "enforce" compliance policies and procedures or "resolve" conflicts of interest, both of which are responsibilities of senior management and supervisory personnel; (c) require the registrant's senior officer rather than the CCO, to certify that the annual compliance report is accurate and complete; and (d) give registrant's a reasonable amount of flexibility in determining how certain aspects of the CCO role (e.g., reporting lines, measures to ensure CCO independence) will be designed.

[16] See CME Group's comments in its February 7, 2011 letter from Craig Donohue to David Stawick regarding the Commission's proposed rules in 75 FR 77576 (December 13, 2010).

h. Ensure Conformity to the Maximum Extent Possible Between CFTC and SEC Standards

Both the Commission and the Securities and Exchange Commission ("SEC") have proposed separate sets of rules that would apply to SDRs and security-based swap data repositories, respectively. These two sets of rules are not entirely conformed and deviate in certain respects.

As it stands, entities that maintain records for both swaps and security-based swaps would be required to register as both an SDR with the CFTC and as a security-based swap data repository with the SEC and comply with both sets of rules. We do not believe there are substantive differences in the characteristics of swaps under the jurisdiction of the CFTC and of security-based swaps under the supervision of the SEC that justify disparate regulatory treatment in this area. CME Group believes that final repository rules governing swaps and security-based swaps should be comparable. To the extent final rules of the two agencies differ in significant ways, an entity that receives and maintains swap reports for both categories of products could be required to develop two separate sets of systems to handle essentially the same set of tasks for economically similar products. This result would be costly and unnecessary.

III. Conclusion

CME generally supports the objectives of the Commission's proposed rulemaking. SDRs will play a central role in the new data reporting and transparency regulatory regime and should therefore be subject to regulatory responsibilities that are commensurate with this role.

CME believes the Commission's primary focus with respect to implementing these requirements should be on the lowest cost, most efficient and least burdensome alternatives available and hopes the Commission's considers it comments in this regard.

CME Group thanks the Commission for the opportunity to comment on this matter. We would be happy to discuss any of these issues with Commission staff. If you have any comments or questions, please feel free to contact me at (312) 930-8275 or via email at **Craig.Donohue@cmegroup.com**, or Tim Elliott, Director, Associate General Counsel, at (312) 466-7478 or **Tim.Elliott@cmegroup.com**.

Sincerely,

Craig S. Donohue

Craig S. Donohue

cc: Chairman Gary Gensler
Commissioner Michael Dunn
Commissioner Bart Chilton
Commissioner Jill Sommers
Commissioner Scott O'Malia