



May 27, 2014

**Via Electronic Submission**

Ms. Melissa Jurgens  
Secretary  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

**Re: Review of Swap Data Recordkeeping and Reporting Requirements**

Dear Ms. Jurgens:

ICE Trade Vault, LLC, (“ICE Trade Vault”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“CFTC” or “Commission”) recently published review<sup>1</sup> of the swap data reporting rules<sup>2</sup> (the “Reporting Rules”). As background, ICE Trade Vault is a wholly owned subsidiary of IntercontinentalExchange, Inc. (“ICE”) and operates as a Swap Data Repository (“SDR”) in the commodity and credit asset classes. ICE Trade Vault has a global customer base of over 700 participants. As an operator of a U.S. SDR and European Trade Repository, ICE Trade Vault has the practical experience implementing regulations and a unique perspective on potential implications relating to rule modifications.

**Executive Summary**

ICE Trade Vault supports the Review and thoughtful revisions to the swap data recordkeeping and reporting rules. In promulgating rule revisions, the Commission should:

- Remove the reporting obligations of the alpha trade for on-facility cleared swaps;
- Compel SDRs to accept and process the termination message of the alpha trade;
- Codify DCOs obligation to report and their right to choose a SDR;
- Permit reporting counterparties to represent and warrant the accuracy of single-sided swaps;

<sup>1</sup> 17 CFR Chapter 1 Review of Swap Data Recordkeeping and Reporting Requirements.

<sup>2</sup> 17 CFR Part 43 Real-Time Public Reporting of Swap Transaction Data, 17 CFR Part 45 Swap Data Recordkeeping and Reporting Requirements and 17 CFR Part 49 Swap Data Repositories: Registration, Standards, Duties and Core Principles.

- Remove the SDR requirement to send messages or swap data to non-reporting counterparties;
- Clarify the non-reporting counterparty's obligation to confirm swap data accuracy;
- Permit a consolidated swap reporting mechanism for Parts 43 and 45;
- Allow swap counterparties to determine the reporting counterparty in certain circumstances;
- Require SDRs to calculate market participants' positions;
- Limit valuation reporting to swap dealers/major swap participants for uncleared bi-lateral transactions and DCOs for cleared swaps.
- Adopt portability procedures for participants to move data from one SDR to another;
- Modify SEF reporting requirements to exclude Master Agreement execution date and reporting party designation fields; and
- Adopt the recommended changes and responses contained in Annex A.

***The DCO should be the sole reporting counterparty for intended to be cleared swaps***

A key objective of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") and subsequent CFTC rulemaking is the reduction of credit risk through central counterparty clearing. To that end, the Commission imposed mandatory clearing and trade execution requirements. Swaps mandated to be cleared must be executed on a Designated Contract Market ("DCM") or Swap Execution Facility ("SEF"). As a result of these mandates, a large percentage of swaps transactions are now executed on exchanges or SEFs and subsequently submitted for clearing.

Swaps clearing requires the original swap between the counterparties to the trade (the "alpha swap") to be instantaneously terminated and replaced by different and unique resulting swaps (the "beta" and "gamma" swaps) between each counterparty and the Derivatives Clearing Organization ("DCO").<sup>3</sup> CFTC regulations require DCOs to accept or reject swaps for clearing as soon as technologically practical after execution.<sup>4</sup> Swaps intended to be cleared but rejected are void ab initio.<sup>5</sup>

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<sup>3</sup> See 17 C.F.R. § 39.12(b)(6).

<sup>4</sup> See 17 C.F.R. § 39.12(b)(7)(ii).

<sup>5</sup> See Staff Guidance on Swaps Straight-Through Processing, September 26, 2013. The price of a swap depends, in part, on whether it is intended to be cleared. Consequently, if a swap that is intended to be cleared is rejected, a material term to the contract is unfulfilled. Therefore, the Divisions believe that any trade that is executed on a SEF or DCM and that is not accepted for clearing should be void ab initio.

The Reporting Rules require DCOs, DCMs and SEFs to submit primary economic terms and confirmation data (collectively, “creation data”) to an SDR as soon as technologically practicable after execution or acceptance for clearing. DCMs and SEFs are currently reporting the primary economic terms of the alpha swap to an SDR. Once this swap is accepted for clearing, which according to Commission guidance should occur within 10 second time period,<sup>6</sup> the DCO notifies the original SDR via a termination message that the alpha swap was accepted for clearing and extinguished. Subsequently, the DCO reports the swap data for the corresponding beta and gamma swaps to a SDR of its choice.<sup>7</sup>

For all transactions intended to be cleared, ICE Trade Vault recommends the DCO be the sole reporter of all swap data. The Reporting Rules should be amended to reflect that reporting begins once the swap is accepted for clearing versus reporting at the time of execution and place the burden of reporting on the DCO. The act of submitting an intended to be cleared swap to a DCO for clearing should completely discharge any reporting duty each swap counterparty and any SEF or DCM may have for that particular swap. Reporting prior to the acceptance of the swap for clearing is costly and burdensome and introduces another data reporter (and point of failure) into the reporting chain. There is little if any benefit to requiring any party other than the DCO to report the swap data as the intended to be cleared swaps exist for only a few seconds and the same set of information for these swaps is simultaneously submitted to a clearinghouse as part of the clearing submission.

The Reporting Rules should also be amended to reflect the Commission’s straight-through processing guidance and the significant processing differences between cleared and uncleared swaps.<sup>8</sup> Intended to be cleared swaps are fundamentally different from uncleared swaps and as such need different rule sets for each trade flow. The reporting of un-cleared swaps should however remain the same. For intended to be cleared swaps, the market participant or DCM/SEF will submit the trade to the DCO for clearing. The DCO will accept the trade for clearing, real-time report showing the pricing forming event and terminate the alpha swap. The DCO will also report the resulting swaps subsequent from terminating the alpha swap. The DCO should report the real-time and creation data for all intended to be cleared swaps, not the DCM/SEF or market participant. This is consistent with reporting obligations in CEA section 2(a)(13) and simplifies the reporting flows.

In conclusion, ICE Trade Vault supports modifying the Reporting Rules to require DCOs to report all cleared swap data under Parts 43 and 45. ICE Trade Vault also recommends the

<sup>6</sup> See Staff Guidance on Swaps Straight-Through Processing, September 26, 2013. Division of Clearing and Risk also determined that 93% of trades accepted for clearing are within 3 seconds or less.

<sup>7</sup> See Regulation 40.5 Request for Expedited Approval: Chicago Mercantile Exchange Inc., Submission # 12-391: Adoption of New Chapter 10 (“Regulatory Reporting of Swap Data”) and Rule 1001 (“Regulatory Reporting of Swap Data”), dated November 9, 2012; CME submission #12-391R amending CME submission #12-391, dated December 6, 2012; CME submission #12-391RC amending CME submission #12-391R, dated December 14, 2012.

<sup>8</sup> See Staff Guidance on Swaps Straight-Through Processing, September 26, 2013.

Commission modify the reporting requirement to begin once the swap is accepted for clearing to make the reporting obligation consistent with the CEA and straight-through processing guidelines.

***SDRs should be obligated to accept and process the termination message from a DCO***

The Commission should clarify and enforce the obligation of the SDR to accept termination messages submitted by the DCO. Pursuant to the Reporting Rules and upon acceptance of the alpha swap by the DCO, this swap is extinguished, thus necessitating (a) the transmission of a termination message to the SDR possessing the pre-cleared alpha swap<sup>9</sup> and (b) the subsequent reporting by the DCO of the creation data for the new beta and gamma swaps to the SDR of its choosing.<sup>10</sup>

Failure to accept the termination message from DCOs can produce incorrect and inaccurate swap data due to double reporting. The rejection of the termination message could distort notional amounts and market risks, particularly for the credit asset class. Amending the Reporting Rules to place the reporting obligation on the DCO for intended to be cleared swaps simplifies the reporting flows and places the responsibility on the party best suited to accurately report cleared swap data.

***DCOs have the clear obligation to report and right to choose a SDR***

The Dodd-Frank Act contemplates a fair and competitive landscape for transparent swap data reporting. As part of the clearing process, a DCO's choice to report beta and gamma swaps to an affiliated SDR is unambiguous. Specifically, the Commission in its final rules stated, "section 21 (a)(1)(B) allows DCOs to register as SDRs, and that the final rules do not preclude counterparties or registered entities from reporting swap data to existing DCOs registered as SDRs, or to SDRs chosen by DCOs, if they so choose for business or cost-benefit reasons."<sup>11</sup> The Commission correctly promulgated SDR rules to allow market forces to benefit counterparties. The text of Part 45 is silent as to whether a DCO selects the SDR for cleared swaps. That said, the preambles to both Part 45 and Part 49 clearly contemplate that a DCO can adopt rules identifying the SDR to which it will report. As the CFTC stated in its preamble to Part 49, "the rules and regulations of a particular SEF, DCM or DCO may provide for the

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<sup>9</sup> See 17 C.F.R. § 45.4, "Swap data reporting: continuation data," requires reporting entities, including both counterparties and DCOs, to report Life Cycle Event Data, which includes termination messages. Accordingly, § 49.10, "Acceptance of Data," requires a SDR to accept all swap data in its selected asset class that is required to be reported pursuant to Part 45 of the CFTC Regulations.

<sup>10</sup> See 17 C.F.R. § 45.10, "All swap data for a given swap must be reported to a single swap data repository, which shall be the swap data repository to which the first report of required swap creation data is made pursuant to this part."

<sup>11</sup> See page 2184 of 17 C.F.R. Part 45, "Swap Data Recordkeeping and Reporting Requirements."

reporting to a particular SDR."<sup>12</sup> ICE Trade Vault recommends the Commission affirmatively codify in Part 45 the right of DCOs to select an SDR in order to best fulfill its reporting obligations.

***Reporting counterparties should be allowed to represent and warrant the accuracy of single-sided swaps***

CFTC Rule 49.11(b) requires the SDR to confirm the accuracy of all swap data that is submitted pursuant to the Reporting Rules. To comply with this requirement, ICE Trade Vault provides two methods of submission: (1) both counterparties to a swap each submit an electronic record and the swap data is electronically matched; or (2) only the reporting counterparty submits an electronic record ("Single Sided Trade"). In the latter instance, ICE Trade Vault is unable to match Single Sided Trades and must rely on the reporting counterparty to verify the confirmation of swaps and subsequent continuation data. Upon advisement from Commission Staff, ICE Trade Vault requires participants to attach an image of the confirmation to Single Sided Trades upon submission in order to "confirm the accuracy of all swap data that is submitted" as required by CFTC Rule 49.11(b).

ICE Trade Vault believes this requirement is overly burdensome and costly to implement and maintain. ICE Trade Vault recommends the Commission revise the Reporting Rules to allow participants to warranty and represent that their Single Sided Trades are confirmed prior to submission. This will relieve the reporting counterparty of its obligation to attach confirmation images for Single Sided Trades and provide a cost-efficient means to comply with the Reporting Rules.

***SDRs should not be required to send messages or swap data to non-reporting counterparties***

CFTC Rule 45.10(c)(3) requires SDRs to transmit the Unique Swap Identifiers ("USIs") to both the reporting counterparty and the non-reporting counterparty for off-facility and bilateral swaps executed between two non-SD/MSPs. In addition, CFTC Rule 45.5(c)(2) requires SDRs to submit the USI to both the reporting counterparty and the non-reporting counterparty as soon as technologically practicable following the creation of the USI. ICE Trade Vault can only securely send data in compliance with Commission regulations to market participants who are enrolled in the SDR service. ICE Trade Vault has no knowledge of or contractual relationship to non-reporting counterparties unless these parties are enrolled in the SDR service. In contrast, swap counterparties have a legally binding commercial relationship and are best suited to send information to one another. In general, swap counterparties have completed due diligence on

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<sup>12</sup> Swap Data Repositories: Registration Standards, Duties, and Core Principles, 76 Fed. Reg. 54538, 54569 (September 1, 2011).

each other, regularly make payments or take delivery from each other and have the correct and accurate contact details. As such, the reporting counterparty is best suited to transmit the USI details (and any other swap data) to the non-reporting counterparty.

It is not feasible for SDRs to obtain the contact details for non-reporting counterparties from the Pre-Local Operating Unit of the Global Legal Entity Identifier System (“GMEI”). Even if the Commission requires the GMEI to collect and house contact data, there are several deficiencies with the GMEI which will frustrate and prevent this effort. First, individuals are not eligible for a pre-LEI. In addition, swap dealers and major swap participants (“SD/MSP”) are able to obtain a pre-LEI on behalf of their customer which has led to incorrect and duplicative identifiers. These customers and many market participants are not verifying and correcting the data contained in the GMEI since there is no obligation to do so. Lastly, these deficiencies with the GMEI would prevent SDRs from accurately discharging their duties.

To grant system access to a participant, ICE Trade Vault must verify the participant’s identity and access rights to view this swap data. Pursuant to Commission regulations, SDRs are required to have standard terms and conditions in place to provide access and must provide data through a secure means. SDRs must also maintain the security of swap data and control system access by ensuring a secure infrastructure. These controls are necessary to protect swap data confidentiality and system integrity. As such, ICE Trade Vault must require participants to sign a user agreement and abide by ICE Trade Vault access rules and terms. Since swap data is highly confidential and the SDR is subject to the confidentiality requirements prescribed in the SDR Core Principles, ICE Trade Vault cannot provide access or transmit swap data to participants who have not executed a user agreement.

To that end, ICE Trade Vault cannot compel participants to enroll into its SDR so they can to discharge their obligation to verify the accuracy of swap data. As outlined above, SDRs can only provide system access and notice that swap data was submitted on their behalf to enrolled participants and maintain accordance with SDR Core Principles. As such, the current requirements of Rule 49.11 (b)(1)(i) are untenable and conflict with the intent of SDR Core Principles. ICE Trade Vault suggests that the Commission either: a) remove the SDR notice requirement in 49.11 (b)(1)(i) for counterparties who are not a participant of the SDR, b) require the reporting party to provide notice to the non-reporting party of which SDR the data has been reported to c) or add a new requirement to Part 45 which obligates the non-reporting party to affirmatively verify the accuracy of the data reported on their behalf. ICE Trade Vault further recommends amending CFTC Rule 45.10(c) to require the reporting counterparty to transmit the USI to the non-reporting counterparty and CFTC Rule 45.5(c)(2) to only require SDRs to send USIs to the reporting counterparties.



***Clarify the non-reporting counterparty's obligation to confirm the accuracy of their Swap Data***

In order for the Commission to receive accurate data, both parties to the transaction must affirmatively review and agree upon the data accuracy. This can be accomplished by placing an affirmative obligation on: (a) both parties to report the data, (b) the reporting and non-reporting counterparties to verify the accuracy of the data reported or (c) the non-reporting counterparty can delegate its responsibilities to verify the data to the reporting party. As drafted, the Reporting Rules are inconsistent and unclear as to the non-reporting counterparty's obligations to verify the accuracy of swap data reported on its behalf. CFTC Rule 49.11(b) states that the SDR must receive acknowledgement from both counterparties of data accuracy and any error corrections. However, Part 45 does not require an affirmative responsibility of the non-reporting counterparty to verify swap data. SDRs do not have the means to confirm the accuracy of reported swap data. Only swap counterparties have the detailed knowledge to verify the various reportable fields prescribed in the Reporting Rules. As previously mentioned and in many instances, SDRs do not have contractual relationships with non-reporting counterparty nor do SDRs have a secure means to notify and provide swap data with these parties.

Data integrity and accuracy is paramount to meeting the objectives of the Dodd-Frank Act. The only way to maintain and be certain of data accuracy is for both parties to affirmatively view and agree that the swap data is correct. The means to achieve this is by placing an affirmative obligation on both parties. If the Commission does not affirmatively place this responsibility on both parties, they can allow the non-reporting counterparty to delegate their responsibilities to the reporting counterparty. The Commission should be mindful that the lack of an affirmative duty on the non-reporting counterparty to verify swap data reported on their behalf is affecting the quality of data warehoused by SDRs. Based on ICE's twelve years of experience operating an electronic confirmation platform ("ICE eConfirm"), there is an error rate of approximately 8% to 10% for initial confirmation submissions. Due to the high volumes of trades, variable terms and the inherent reality of human error, the confirmation process and subsequent swap reporting is ripe with opportunities for inaccuracies. Non-reporting counterparties should be concerned regarding inaccurate swap data being reported on their behalf to the Commission. Incorrect swap data could implicate a market participant in certain activities, status or overall investigations into their trading activity. This in and of itself should prompt non-reporting counterparties to actively verify their swap data stored by SDRs and notify the reporting counterparty of errors, regardless of the obligation to submit this data.

In order to maintain the highest data quality, ICE Trade Vault recommends both counterparties affirmatively view and agree the reported Swap Data is correct. This can be accomplished by placing an affirmative obligation on the non-reporting counterparty to verify the accuracy of Swap Data reported on its behalf. In addition and for the previously stated reasons,

the Commission should relieve SDRs of the obligations contained in CFTC Rule 49.11(b) since these obligations are untenable.

***A consolidated swap reporting mechanism for Parts 43 and 45 is consistent with SDR and reporting counterparty obligations.***

ICE Trade Vault implemented a cost-effective swap reporting mechanism whereby participants satisfy their reporting obligations through a consolidated data stream. The consolidated data stream approach allows the reporting counterparty to submit a single data stream or systematic message to ICE Trade Vault for compliance with Parts 43 and 45. Upon receipt of the consolidated data stream, ICE Trade Vault divides the consolidated data stream into two separate messages to satisfy the initial reporting obligations or primary economic terms of Parts 43 and 45. The reporting party will also send a second follow-up message with the additional confirmation data as required under Part 45. ICE Trade Vault's participants invested significant resources to implement the systems upgrades and operational work flows to support a single messaging protocol.

ICE Trade Vault believes its practice of collecting a single, consolidated swap data message from reporting parties is consistent with SDR core principles and related guidance. During the implementation of Parts 43 and 45, the CFTC provided SDRs with guidance that a consolidated swap reporting mechanism is consistent with an SDR and reporting counterparty's obligations.<sup>13</sup> CFTC Staff additionally sought guidance from ICE Trade Vault during the process of proposing and adopting Parts 43 and 45, and the Commission received comments raising concerns about the inefficiency of requiring reporting parties to submit separate messages to SDRs for swap data.<sup>14</sup> In response to these comments, the CFTC: stated that it "agrees with commenters that a reporting regime that, to the extent possible and practicable, permits reporting parties and counterparties to comply with the regulatory data reporting requirements of part 45 and the real time reporting requirements of part 43 by making a single report can reduce reporting burdens while still ensuring fulfillment of the purposes for which the Dodd-Frank Act requires such reporting;"<sup>15</sup> Further, the Commission elaborated that "harmonization will result in a significant reduction in cost to counterparties and registered entities" as a result of such

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<sup>13</sup> See Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (Jan. 12, 2012) ("Part 45 Release") and Real-Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1182 (Jan. 9, 2012) ("Part 43 Release").

<sup>14</sup> See Part 45 Release at 2146 (citing comments from DTCC and roundtable participants suggesting that it consider minimizing the number of swap creation reports to be required of reports to be required of any given registered entity or swap counterparty, either by combining PET data reporting and confirmation data reporting in a single report, or by allowing a single PET data report to fulfill both regulatory reporting requirements under Part 45 and real time reporting requirements under Part 43.) See also Part 43 Release at 1216-17.

<sup>15</sup> See Part 45 Release at 2150.



reporting parties being able to make one initial swap report that satisfies the harmonized requirements of Part 43 and Part 45.”<sup>16</sup>

ICE Trade Vault acknowledges that Parts 43 and 45 are separate regulatory requirements; however, the fact that these are separate regulatory requirements should not burden reporting counterparties with a duplicative and unnecessarily complicated messaging protocol. ICE Trade Vault recommends the Commission clarify through interpretative guidance that the dual stream reporting mechanism is consistent with the Reporting Rules or to amend Parts 43 and 45 to codify a consolidated reporting mechanism.

***Counterparties should be able to determine the reporting party in certain circumstances***

Pursuant to CFTC Rule §45.8(c), if both counterparties are non-SD/MSPs and only one counterparty is a financial entity, that entity should be designated as the reporting counterparty.<sup>17</sup> CFTC Rule §45.8(e) states that if both counterparties to a swap are non-SD/MSPs and only one counterparty is a U.S. Person, that counterparty should be designated as the reporting counterparty.<sup>18</sup> Furthermore, in the preamble to Part 45, the Commission states that for swaps between non-SD/MSP counterparties where only one counterparty is a financial entity, the financial entity should be the reporting counterparty because the Commission believes financial entities are more likely to have automated systems to facilitate reporting.<sup>19</sup>

Therefore, ICE Trade Vault has interpreted the rule that in the situation of two non-SD/MSP counterparties where one counterparty is a financial entity, the financial entity has the reporting obligation. However, ultimately, ICE Trade Vault is agnostic as to which counterparty should bear this obligation; but requests the Commission provide definitive guidance as to who bears the reporting responsibility in this situation.

***The Commission should require SDRs to calculate market participants’ positions***

ICE Trade Vault recommends the Commission formally adopt and codify the requirement for SDRs to create positions. This will allow the Commission to assess counterparty and clearinghouse positions to ultimately monitor systematic risk. In order for the Commission discharge its duty to monitor systematic risk, it is imperative to explicitly codify position creation requirement for SDRs. The Commission should also clarify that valuation

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<sup>16</sup> See Part 45 Release at 2182.

<sup>17</sup> See Part 45.8 Release at 2207.

<sup>18</sup> Id.

<sup>19</sup> See Part 45 Release at 2167.

reporting should be submitted as a mark on a position level versus the mark to market value at the trade level.

ICE Trade Vault calculates and creates positions for cleared and over-the-counter swaps transactions, across counterparties and a range of products. ICE Trade Vault seeks to assist the Commission in achieving the key objectives of the Dodd-Frank Act: identification and analysis of risk positions in order to increase transparency, monitor market integrity and mitigate systemic risk. The Commission can only accurately access systemic risk and participant concentration by SDRs calculating positions with the reported swap data. To summarize the position calculation process: 1) reported swap data is passed through a validation process; 2) transactions are broken down into settlement strips; 3) the decomposed transactions are netted; 4) positions are created to corresponding unique products; and 5) the reported mark is applied to each positions to determine profit and loss. This process is similar to the one deployed by DCOs which is a proven methodology that allows the Commission to view and accurately access participants risk. For example, counterparties execute an OTC Brent calendar swap. A single UTI is applied to this swap upon submission. ICE Trade Vault breaks this swap into its corresponding months (e.g., January, February and March) and calculates a netted position for each month. A “Position Screen” enables regulators and participants to view positions via multiple variations. The layout and format of this screen enables users to view position data in a human readable format. In summary, the Commission should require all SDRs to report position level data.

### ***Valuation reporting should only be required in limited circumstances***

All participants with a swap data reporting obligation are also required to report valuation data. CFTC Rule 45.4(b)(2)(i) requires that swap valuation data be reported to a SDR by both the relevant DCO that clears the swap and the reporting counterparty to the cleared swap, if the reporting counterparty is an SD or MSP. The obligation of the DCO to provide valuation data for the cleared swap under regulation 45.4(b)(2)(i) is independent of the obligation of the SD or MSP to provide valuation data for the same cleared swap under regulation 45.4(b)(2)(ii). Currently pursuant to CFTC Part 39.14, a DCO is required to effect daily settlement with its clearing members, and in order to do so the DCO must calculate a daily settlement price or mark. The DCO marks the position each night to determine margin requirements. All swaps cleared by the DCO are margined off of this daily settlement price or "mark." A mark by any other market participant is not valid on a cleared position. As a result of this process, requiring SDs and MSPs to report valuation data is duplicative and fails to provide the Commission will useful data. The clearing house holds the “golden record” associated with swap data and their marks are the only ones that should be required by the Commission. ICE Trade Vault recommends the Commission relieve SDs/MSPs from reporting valuation data for cleared swaps and this obligation should be placed solely on DCOs.

In addition, CFTC Rule 45.4(c)(2)(ii) requires a non-SD/MSP to report the current daily mark of the transaction as of the last day of each fiscal quarter. In other words, the Commission provided non-SD/MSPs a one calendar month delay to report valuation data. A non-SD/MSP is only required to report this valuation data for transactions where they are serving as the reporting counterparty. The Commission should examine the quality of the information they are requesting balanced against the cost and burden on non-SD/MSPs to report valuation data. This valuation data is significantly out-of-date by the time it is reported and only reflects a portion of the non-SD/MSPs' swaps portfolio. ICE Trade Vault recommends the Commission remove this reporting requirement for non-SD/MSPs since the valuation data is dated and provides little if any benefit to the Commission with much cost and burden on non-SD/MSPs.

***The Commission should add portability provisions to the Reporting Rules similar to those currently utilized by DCO's***

The Commission seeks comment on whether CFTC Rule §45.10 should be re-evaluated and whether swap data should be allowed to be transferred to another SDR. This issue relates to the operation of CFTC Rule §45.10 (Reporting to a single SDR), which requires that all swap data for a given swap must be reported to a single SDR, specifically, the SDR to which creation data is first reported. The Commission did not, however, directly address whether the data in one SDR may be moved, transferred or "ported" to another SDR. The inability to transfer reported swap data is creating issues in novating transactions and is interfering with the markets. This is especially problematic when financial institutions sell swap portfolios and the buyer has a reporting relationship with a different SDR.

ICE supports the concept of swap data portability and allowing the reporting counterparty to transfer data to the SDR of its choice. This is consistent with the portability and transfer provisions currently in place for DCOs.<sup>20</sup> The transfer of swap data can be effectuated by cancelling the swaps in one SDR, replacing those swaps with new swaps in the new SDR and creating a new USI which references the previous USI in the "Previous USI field". By linking the old and new USIs, the Commission can view the entire life of the swap. Therefore, in order to facilitate market participant choice, the Commission should adopt portability provisions similar to that of a DCO which allow a reporting counterparty to transfer all swap data to another SDR.

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<sup>20</sup> See 17 C.F.R. § 39.15(d) Transfer of customer positions.

***SEFs should not be required to issue the sole confirmation, track master agreement dates and reporting party information in connection with swaps executed on a SEF but not intended or required to be cleared***

The Commission should re-examine the current SEF Core Principles and Reporting Rules to determine whether the current reporting and confirmation requirements placed on a SEF are best suited to be carried out by these entities. ICE Trade Vault supports establishing a confirmation and reporting protocol which creates a relationship between specific economic transaction terms and non-transaction specific relationship terms that is consistent with the conventional documentation architecture used throughout the financial markets, while ensuring that these arrangements support the Commission's transparency requirements. To that end, ICE supports removing the requirements for SEFs to issue the sole transaction confirmation and to track, maintain and report confidential master agreement information including the execution date and the reporting counterparty. The SEF should instead be required to issue a confirmation listing the economic terms of the transaction that were negotiated and agreed by the parties on the SEF and to report the required real time creation data to an SDR. This procedure is consistent with how the market currently operates. Market participants should be able to continue to bilaterally negotiate documentation terms and confirm transactions using the SEF confirmation to govern the economic terms of the transactions.

Furthermore, the retention of the bilateral confirmation process between the counterparties to the transaction is specifically impactful to participants of ICE Trade Vault. Currently, our electronic confirmation platforms are the front-end to our trade repository. Market participants are able to electronically match their trade details including whether the transaction is CFTC reportable and are able to accurately and within real time, report this data to the SDR. This allows market participants to retain control over the confirmation of swap transactions and to facilitate reporting to the Commission. Any disruption to this reporting flow will cause undue hardships and expense on many market participants and increases the likelihood of incorrect data being reported to SDRs.

ICE Trade Vault supports a holistic review of the swap data reporting rules and proposes the Commission carefully review the comments received from market participants prior to enacting any Reporting Rule changes. ICE Trade Vault appreciates the opportunity to comment on the Reporting Rules review. Should you have any questions or comments regarding this letter, please feel free to contact me ([kara.dutta@theice.com](mailto:kara.dutta@theice.com)) (770) 916-7812 or Bruce Tupper ([bruce.tupper@theice.com](mailto:bruce.tupper@theice.com)) (770) 738-2121).



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Sincerely,

A handwritten signature in blue ink that reads 'Bruce A. Tupper'.

Bruce A. Tupper  
ICE Trade Vault, LLC  
President

A handwritten signature in black ink that reads 'Kara Dutta'.

Kara Dutta  
ICE Trade Vault, LLC  
General Counsel

cc: Charles Vice, IntercontinentalExchange Inc., President & Chief Operating Officer  
Trabue Bland, IntercontinentalExchange Inc., Vice President, Regulation

Enclosures: Annex A and Annex B

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*Annex A – Ancillary Comments to Review Section III: Issues and Questions*

The follow are specific responses to the CFTC’s review of the Reporting Rules. Questions are numbered in accordance to Section III of the review and are reprinted in italics below with ICE Trade Vault’s response immediately following.

*Question 1(a): For confirmations that incorporate terms by reference (e.g., ISDA Master Agreement; terms of an Emerging Markets Trade Association (“EMTA”)), which of these terms should be reported to an SDR as confirmation data?*

**ICE Trade Vault Response:** Only the master agreement name should be referenced in the confirmation data. It is industry practice to reference the master agreement in the confirmation data. Subsequently, terms and conditions of this agreement will apply to the transaction. The addition of master agreement terms and conditions in confirmation data will result in a cumbersome and unworkable operational workflow for participants and SDRs.

*Question 3(a)-(d): Should the confirmation data reported to an SDR regarding swaps that are subject to the trade execution requirement in CEA section 2(h)(8) be different from the confirmation data reported to an SDR regarding: (a) Swaps that are required to be cleared but not subject to the trade execution requirement; (b) swaps that are not subject to the clearing requirement but that are intended to be cleared at the time of execution; (c) swaps that are voluntarily submitted to clearing at some point after execution (e.g., backloaded trades); and (d) uncleared swaps? If so, how?*

**ICE Trade Vault Response:** The obligation to confirm uncleared swaps executed on SEFs should be placed on the parties to the transaction instead of SEFs. The parties should bi-laterally confirm these transactions after SEF execution as is current industry practice. The Commission should require less information for cleared transaction confirmations since these confirmation terms are already defined in the relevant product specs and rulebooks of DCOs.

*Question 7(b): Should all SDRs be required to accept both the snapshot and lifecycle methods for reporting continuation data?*

**ICE Trade Vault Response:** SDRs should not be required to accept both the snapshot and lifecycle event methods for reporting continuation data. SDRs and its participants should be provided with the choice to select the continuation method that best suits their needs. However, it is not systematically feasible for SDRs to support both methods of continuation reporting. ICE Trade Vault strongly supports the lifecycle method. When each lifecycle event occurs, it is reported and the SDR knows how to correctly create a position for the transaction.

*Question 8(a): Should SDs and MSPs continue to be required by the swap data reporting rules to provide their own valuation data for cleared swaps to SDRs? If so, what are the benefits and challenges associated with this valuation reporting?*



**ICE Trade Vault Response:** Please reference the above response on this topic. In summary, SDs and MSPs should not be required by the Reporting Rules to provide their own valuation data for cleared swaps. DCO marks should instead be used for cleared valuations.

*Question 8(b): What challenges and benefits are associated with unregistered swap counterparties (both financial entities 27 and non-financial entities) reporting valuation data for uncleared swaps to SDRs on a quarterly basis?*

**ICE Trade Vault Response:** Please reference the above response on this topic. In summary, the requirement to report valuation data by non-SD/MSPs should be removed as this requirement imposes a substantial amount of effort by non-SD/MSPs entities for which the Commission receives little or no benefit. By the time this valuation data is received, the information is stale as positions and prices have changed and the Commission is unable to access their current risk.

*Question 10(a): What role should SDRs play in auditing swaps data to help identify the current state of a swap?*

**ICE Trade Vault Response:** SDRs should not play a role in auditing swaps data to help identify the current state of a swap. This requirement should instead be placed on the counterparties to the transaction. SDRs do not have access to their participants and non-participant's trade capture systems to verify the current state of a swap is correct (e.g., trade date). SDRs should however be required to perform validation checks on data as it is submitted by the reporting counterparty. SDRs do not have access to the relevant systems to verify this swap data is correct.

*Question 10(c): Should swaps that are executed on or pursuant to the rules of a DCM or SEF, but which are not accepted for clearing and are therefore void ab initio, continue to be reported to and identified in SDR data? Why or why not? If so, how?*

**ICE Trade Vault Response:** Swaps executed on or pursuant to the rules of a DCM or SEF, but which are not accepted for clearing should not be reported to an SDR.

*Question 16: Market participants have indicated that they face challenges electronically representing all required data elements for swap transactions because those elements have not yet been incorporated into standard industry representations (e.g., FpML, FIXML). In particular, various market participants have indicated that these challenges impact reporting to SDRs.*

*What is the most efficient methodology or process to standardize the data elements of a bespoke, exotic or complex swap, to ensure that all required creation data is electronically represented when reported to the SDR? Do these challenges vary depending on the asset class? If so, how?*

**ICE Trade Vault Response:** A small subset of swap transactions will always exist which are bespoke and highly structured and as such not easily represented in electronic submissions

to SDRs. It is appropriate for these trades to be submitted as exotic swaps and the full trade terms should be attached in a separate document.

*Question 27: Please describe how swap transactions such as strategies and packages should be represented in swap data reporting such that it enables the Commission to effectively understand timing and the economics of the strategy or package and the component swap transactions?*

**ICE Trade Vault Response:** A package swap should be reported with each product leg having its own USI. A reference identifier field should be added to identify the legs as being executed under a package transaction.

*Question 28: Please describe any challenges (including technological, logistical or operational) associated with the reporting of required data fields, including, but not limited to:*

- a. Cleared status;
- b. Collateralization;
- c. Execution timestamp;
- d. Notional value;
- e. U.S. person status; and
- f. Registration status or categorization under the CEA (e.g., SD, MSP, financial entity).

**ICE Trade Vault Response:** The “collateralization” field should be removed from SEF reporting. This field should only be required for bi-lateral or off-facility trades. In addition, the “notional value” field should be classified as not applicable for commodities as transactions in this asset class are not calculated in notional amount but quantity (e.g., mmbtu, gallons, barrels etc.). Lastly, the DCO should be added as a valid counterparty status under the “registration status or categorization under the CEA” field. The DCO is a unique and separate entity with its own reporting obligations.

*Question 29: What additional data elements beyond the enumerated fields in Appendix 1 of part 45, if any, are needed to ensure full, complete, and accurate representation of swaps (both cleared and uncleared)? For example, other fields could include additional timestamps (for each lifecycle event, including clearing-related timestamps); clearing-related information (identity of futures commission merchant, clearing member, house vs. customer origin indication, mandatory clearing indicator, or indication of exception or exemption from clearing); and/or execution-specific terms (order type or executing broker). Responses should consider the full range of oversight functions performed by the Commission, including, but not limited to, financial surveillance; market surveillance; risk monitoring; and trade practice surveillance.*

**ICE Trade Vault Response:** Any new rule, data elements or fields should be put out to comment and provide significant time before implementation. This will provide SDRs with the necessary time to implement the fields and reporting counterparties the appropriate time

to test their submissions. In addition, any new CFTC rules which effect SDR reporting should require the commenting and updating of the Reporting Rules. For example, when the cross boarder rules were released, a requirement was placed on the SDR to verify Part 43 reporting. The SDR was required to know if the trade was executed by a foreign SD with a US Branch and if the counterparty was guaranteed or affiliated with a US Person.

*Question 33(a)&(c): Part 45 requires the reporting of all swaps to SDRs. The Commission requests comment on how cleared swaps should be reported. Specifically: a. For swaps that are subject to the trade execution requirement in CEA section 2(h)(8), and ipso facto the clearing requirement, do commenters believe that the part 45 reporting requirements with respect to original swaps (alpha) should be modified or waived, given that the two new resulting swaps (beta and gamma) will also be reported? c. For swaps that are not subject to the clearing requirement, but are intended for clearing at the time of execution, do commenters believe that the part 45 reporting requirements with respect to alpha swaps should be modified or waived, given that the beta and gamma swaps will also be reported?*

**ICE Trade Vault Response:** As discussed above, the DCO should be the sole reporting party for intended to be cleared swaps. As such, ICE Trade Vault supports modifying the Reporting Rules to require DCOs to report all cleared swap data under Parts 43 and 45. ICE Trade Vault also recommends the Commission modify the reporting requirement to begin upon acceptance for clearing which is consistent with the CEA and straight-through processing guidelines.

*Question 33(b): For swaps that are subject to the clearing requirement, but not the trade execution requirement, do commenters believe that the part 45 reporting requirements with respect to alpha swaps should be modified or waived, given that the beta and gamma swaps will also be reported?*

**ICE Trade Vault Response:** The reporting requirement should begin upon acceptance for clearing versus at the time of execution. This would clearly make the DCO the sole reporting party for all intended to be cleared swaps.

*Question 35: Can the existing rules be improved to more clearly represent how the clearing process impacts reporting obligations with respect to both the original swap (alpha) and the two new resulting swaps (beta and gamma)? If so, please explain. a. Responses should address:*

- i. The reporting obligations applicable to alpha swaps;*
- ii. The reporting obligations applicable to beta and gamma swaps;*
- iii. Who holds the reporting obligation(s) for each swap;*
- iv. The reporting of the linkage of alpha, beta, and gamma swaps; and*
- v. Who has the legal right to determine the SDR to which data is reported?*

**ICE Trade Vault Response:** Please reference the above responses on this topic.

*Question 39: Swaps created by operation of a DCO's rules related to determining the end-of-day settlement prices for cleared credit default swaps ("CDS") are also known as "firm trades" or "clearing-related swaps" (see NAL 13-86). How should these swaps be reported pursuant to the swap data reporting rules?*

**ICE Trade Vault Response:** Firm trades should be reported by the DCO as the DCO is in the best position to report the firm trade related data to an SDR. ICE Trade Vault recommends that the temporary Commission relief on firm trade reporting (NAL 13-86) be permanently incorporated in Part 45.

*Question 45: Should third-party service providers that report part 45 data to SDRs on behalf of reporting entities be required to register with the Commission?*

*i. Confirmation of Data Accuracy and Errors and Omissions (§ 45.14)*

**ICE Trade Vault Response:** Third-party service providers that report Part 45 data to SDRs on behalf of reporting entities should not be required to register with the Commission. The majority of these service providers are technology providers who facilitate reporting on behalf of market participants. These providers do not have obligations as to the data accuracy, are not sources of essential Commission data and the cost to regulate would substantially outweigh any benefit to the Commission.

*Question 54(a): What principles should the Commission consider when designating pursuant to § 45.7? Are there any commonly used taxonomies that the Commission should consider in connection with the designation process? Please respond by asset class.*

**ICE Trade Vault Response:** The Commission should consider adopting the ICE Trade Vault UPI Taxonomy, a copy of which is attached hereto as Annex B.

*Question 56: Should the Commission require an SDR to aggregate the number of transactions by an entity, and the aggregate notional value of those transactions, to reflect the entity's total swap position and its total swap activity during a given period (e.g., for purposes of monitoring the SD de minimis calculation)?*

**ICE Trade Vault Response:** The SDR should not have any role in swap dealer de minimis calculations because total activity does not provide any indication of whether a party is engaging in swap dealing activity. SDRs are not the appropriate place for the Commission to attempt to monitor rules that are activity-based and are facts and circumstances types of rules. In addition, as noted above, aggregation by notional is not possible in the commodities asset class as transactions are not calculated in notional amount but quantity (i.e. mmbtu, gallons, barrels etc.).

*Question 58: Where transactions are executed in non-U.S. dollar ("USD") denominations, should the SDR data reflect USD conversion information for the notional values, as calculated*

*by the counterparty at the time of the transaction (rather than the conversion taking place at the SDR)?*

- a. If so, how should the SDR data reflect this information?*
- b. Would this answer be different depending on the registration status of the reporting counterparty (e.g., SD/ MSP)?*

**ICE Trade Vault Response:** The transaction should be reported and displayed by SDRs in the same denominations as it was executed.

*Question 59: Should the Commission require SDRs to calculate market participants' positions in cleared and uncleared swaps?*

- a. Given the definition of "position" in part 49 of the Commission's regulations,<sup>49</sup> and the transactional nature of swap data reporting, how should an SDR calculate the positions of market participants whose swaps are reported to it?*
  - i. Please explain whether these calculations should differ by underlying instrument, index or reference entity, counterparty, asset class, long risk of underlying instrument, index, or reference entity, or short risk of the underlying instrument, index or reference entity, or any other attribute.*
- b. How should SDR positions or position calculation methods relate, if at all, to positions calculated by DCOs and DCOs' position calculation methods?*

**ICE Trade Vault Response:** In order for the Commission to accurately assess risk, the Commission must require SDRs to create position reporting. With regard to cleared transactions, ICE Trade Vault suggests that where the DCO nets positions, they report the netted positions to the SDR and the SDR will aggregate the reported positions.

### Annex B – ICE Trade Vault UPI Taxonomy

The ICE Trade Vault UPI Taxonomy supports the commodity and credit asset classes. An application of the appropriate combination of the following fields will derive a unique product for swap data reporting. Not all fields will be applicable for every product (e.g., power fields will not be applicable on natural gas products).

#### **Commodity Product Taxonomy**

**Market Type:** Is the highest level indicator in the commodities asset class which references the type of underlying physical commodity and whether it is financially or physically settled. (e.g., Financial Oil, Physical Natural Gas and Physical Power)

**Trade Type:** If necessary, provides further commodity description and this field may represent the pricing date of the underlying index. (e.g., Fixed Price for LD1 and Fixed Price for Penultimate)

**Contract Type:** Describes the instrument type. (e.g., Swap, Option, Swaption and Forward)

**Buyer Pay Index:** The published price as paid by the buyer. For swaption transactions, the Buyer Pay Index applies to the underlying swap. Data values for this field are represented in the ISDA Commodity Reference Price format.<sup>21</sup>

**Seller Pay Index:** The published price as paid by the seller. For swaption transactions, the Seller Pay Index applies to the underlying swap. Data values for this field are represented in the ISDA Commodity Reference Price format.

**Price Unit:** Price Unit is the unit of measure applicable for the price on the transaction. For swaption transactions, the Price Unit applies to the underlying swap.

**Price Currency:** The standard ISO currency code of the fixed price on a transaction. For swaption transactions, the Price Currency applies to the underlying swap.

**Quantity Unit:** The unit of measure applicable for the quantity on the transaction.

**Hours From Thru Timezone:** The time zone prevailing for the hours during which electricity is transmitted.

**Delivery Type:** A descriptor associated with the physical commodity, sometimes referred to a firmness indicator.

**Delivery Location:** The physical location at which a physical commodity is delivered.

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<sup>21</sup> 2005 ISDA Commodity Definitions Document Listing



An application of the appropriate combination of the following fields will derive a unique product for swap data reporting.

***Credit Product Taxonomy***

**Base Product:** References the high-level type of product (e.g., Index, IndexTranche and Swaptions).

**Sub Product:** Provides further description of the product such as CDX and iTraxx

**Transaction Type:** Describes the CDS trade type (e.g., iTraxxEurope, CDXEmergingMarkets, CDXIG and CDXHY).

**Reference Entity Id:** Unique identifier for the specific Index Series and Version such as a Markit RED Code.

**Notional Currency:** The standard ISO currency code.

**Scheduled Termination Date:** This is the scheduled maturity date of the swap. This field is used when forming and pricing positions.