

October 30, 2015

Mr. Christopher Kirkpatrick  
Secretary  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

**RE: Amendments to the Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps**

Dear Mr. Kirkpatrick,

ICE Trade Vault, LLC, (“ICE Trade Vault”) appreciates the opportunity to provide the Commodity Futures Trading Commission’s (“CFTC” or “Commission”) comments related to certain provisions in the proposed Amendments to the Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps (“Part 45 Amendments”).<sup>1</sup> As background, ICE Trade Vault is a wholly owned subsidiary of Intercontinental Exchange, Inc. (“ICE”) and operates as a Swap Data Repository (“SDR”) in the commodity, credit, foreign exchange and interest rate asset classes. ICE Trade Vault has a global customer base of over 700 participants. As an operator of a U.S. and Canadian SDR and European Registered Reporting Mechanism and Trade Repository, ICE Trade Vault has the practical experience in implementing regulations and a unique perspective on potential implications relating to rule modifications. This comment letter is in response to the Commission’s request for comments contained in the Part 45 Amendments.

The Derivatives Clearing Organization should unambiguously be the reporting counterparty for clearing swaps.

ICE Trade Vault supports the Commission’s proposed Part 45 Amendments which explicitly establishes the Derivatives Clearing Organization (“DCO”) as the reporting counterparty for “clearing swaps” and codifies the DCO’s obligation to choose the SDR. For clearing swaps, the DCO is the sole party who holds the complete and accurate record of transactions and positions. The DCO is best positioned to have the sole responsibility to accurately report this swap data to a SDR in the most direct and efficient way after acceptance for clearing. ICE Trade Vault acknowledges and supports the Commission requiring DCOs to report clearing swaps and to have the obligation to report to a registered SDR of its choosing. ICE Trade Vault also supports the Commission’s proposed Part 45 Amendments which require an SDR to accept the termination messages for an “original” swap. Failure to accept the termination message from DCOs can produce incorrect and inaccurate swap data due to double reporting. The Commission will now appropriately be able to link the original swap and the clearing swap to determine counterparty positions and open swap transactions.

Transparency of the swaps market is a key goal of the Dodd-Frank Act. The Commission has made great strides towards enacting positive changes to the reporting rules for clearing swaps. ICE Trade Vault encourages the Commission to continue its review of all of the swap data reporting rules<sup>2</sup> including those provisions covering uncleared bilateral swaps (“Reporting Rules”). ICE Trade Vault appreciates the

<sup>1</sup> 17 CFR Part 45 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.

opportunity to comment on the proposed Part 45 Amendments. Please do not hesitate to contact Kara Dutta (770.906.7812 or [kara.dutta@theice.com](mailto:kara.dutta@theice.com)) if you have any questions regarding our comments.

Sincerely,



Kara Dutta  
General Counsel  
ICE Trade Vault, LLC



Bruce A. Tupper  
President  
ICE Trade Vault, LLC

cc: Charles Vice, Intercontinental Exchange Inc., President & Chief Operating Officer  
Trabue Bland, Intercontinental Exchange Inc., Vice President, Regulation  
Takako Okada, ICE Trade Vault, LLC, Chief Compliance Officer

## **Annex A – Ancillary Comments to Proposed Part 45 Amendments**

The following are additional comments to the Commission’s proposed Amendments to Part 45. The proposed updates to Part 45 are the first step to improving reporting accuracy but the bilateral sections of Part 45 and in conjunction Parts 49 and 43 must also be amended.

### ***EFRP reporting should be eliminated due to the transitory nature of the swap***

In an Exchange for Related Position (“EFRP”), futures contracts are exchanged for economically offsetting positions in a related cash commodity or OTC derivative. EFRPs are short-lived transactions which are brought to an exchange. EFRPs have futures reporting requirements once they are given up to the exchange thereby providing the Commission with the necessary information to regulate the transactions. Often when reporting the EFRP leg of the transaction, much of the required swap data reporting fields are not known to the reporting party; for example, the master agreement type or date of the agreement. In addition, due to the fact that the swap is so short lived and then exchanged for a futures position, the benefit obtained by the Commission is minimal, if any. The Commission should re-examine the benefit, if any, to EFRP reporting, specifically compared to the cost and effort to report the swap leg.

### ***DCOs are best position to generate and report USIs for cleared swaps***

The proposed amendments to §45.5(c)(2)(ii) requires SDRs to generate and submit USIs to the DCO for cleared swaps. The DCO is the appropriate party to report USIs as currently done today. SDRs should not generate USIs for cleared swaps as this will delay the acceptance of swaps to the clearing process.

### ***The Commission should clarify the swap Reporting Rules with respect to swaps executed as part of a “package transaction”***

The Commission should clarify the reporting requirements for swaps that are executed as part of a package transaction. The current workflow to clear package transactions occurs on a per-leg basis, whereby each component is separately cleared. Subsequently, package transactions are reported as individual components to SDRs without reference to the initial package transaction. Thus, the current swap reporting regime does not address the totality of the package, albeit the execution of each component is contingent upon the execution of all other components.

ICE Trade Vault recommends an enhancement to the reporting requirements to supplement the current set of minimum required fields. Specifically, two fields should be added to denote whether a swap is a component of a package transaction (e.g., “Package Transaction Indicator”) and the associated identifier (e.g., “Package Transaction USI”). These fields will provide traceability of package transactions and enhance the quality of Real-Time Reporting. These fields should be reported on each leg of the package transaction to link the legs together because it is not technologically feasible to report the initial package transaction itself.

### ***The Commission should add portability provisions to the Reporting Rules similar to those currently utilized by DCOs***

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 directly address whether the data in one SDR may be transferred or “ported” to another 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>3</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.

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

Under 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. Furthermore, §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. When applying these hierarchy principles, a foreign financial entity supersedes a U.S. entity. It is ICE Trade Vault’s view that U.S. entities can better discharge the creation and continuation data reporting obligations than foreign financial entities. When both parties are non-SD/MSPs regardless of the financial entity or U.S. Person designation, these parties should be afforded the opportunity to select the reporting party.

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

CFTC Rule §45.5(c)(2) 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. CFTC Rule §49.11(b)(1)(i) requires SDRs to notify both counterparties that data has been submitted and to receive an acknowledgement from both counterparties of the accuracy of the swap data. SDRs can only securely transfer swap data, provide system access and notice of reported swap data to enrolled participants. ICE Trade Vault has no knowledge of or contractual relationship to non-reporting counterparties unless these parties are enrolled in its SDR service. Pursuant to Commission regulations, SDRs are required to have standard terms and conditions in place to provide access and this access must be provided through 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 affirmatively requires participants to sign a user agreement and abide by ICE Trade Vault access rules and terms. Since swap data is highly confidential and SDRs are subject to the confidentiality requirements prescribed in the SDR Core Principles, ICE Trade Vault cannot provide access or transmit swap data to parties who have not executed a user agreement. 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 the SDR’s identity SDR that stores the swap; or c) or add a new requirement to Part 45 that obligates the non-reporting party to affirmatively verify the accuracy of the data reported on its behalf. Furthermore, ICE Trade Vault recommends amending CFTC Rule §45.5(c) to require the reporting counterparty to transmit the USI to the non-reporting counterparty and amending CFTC Rule §45.5(c)(2) to only require SDRs to send USIs to the reporting counterparties.

<sup>3</sup> See 17 C.F.R. § 39.15(d) Transfer of customer positions.

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

CFTC Rule §49.11(b) requires SDRs 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, it is not possible to match Single Sided Trades due to the nature of these submissions. As such, ICE Trade Vault must rely on the reporting counterparty to verify the swap and continuation data via the confirmation process relied on by swap counterparties. Upon guidance from Commission staff, ICE Trade Vault requires participants to attach an image of the confirmation to Single Sided Trade. This image of the confirmation necessary 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 for its participants and is costly to maintain. There is little evidence this information effectuated any substantive benefit as part of the Commission's goal to increase transparency through swap reporting. ICE Trade Vault recommends the Commission revise the Reporting Rules to allow participants to warranty and represent that its 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.

***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 the Reporting Rules provision SDRs with a secure means to notify and provide swap data to 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 via SDRs. Incorrect swap data could implicate a market participant in certain activities, status or overall investigations into its 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 their obligations under the Reporting Rules.

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 best 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

***Counterparties to a transaction executed on facility should retain the right to choose the reporting party***

Under the proposed rule amendments, the Commission intends to remove parts of CFTC Rule §45.85 in an effort to preserve the anonymity of counterparties for swaps executed on facility. Nevertheless, the proposal creates an adverse impact for certain counterparties, mainly end-users, especially when a swap is not intended for clearing. In practice and particularly in the commodities asset class, many of the swap transactions occur between two end-users and often do not involve any SDs, MSPs, or financial end-users that would assume the swap reporting obligation. When SEFs and DCMs adopt rules that identify the reporting counterparty in such swaps (e.g., default reporting by SDs or sell-side counterparties), these rules effectuate a reporting obligation on the identified counterparty. When end-users are chosen, such users may lack the ability technical infrastructure to assume the swap creation and swap continuation data reporting obligation. Furthermore and related to the commodities asset class, it is common practice for the two end-user counterparties to negotiate the reporting party.

As such, ICE Trade Vault believes that the existing provisions of CFTC Rule §45.8 provide greater benefit to commodity end-users. These end-users should continue to be afforded the opportunity to select the counterparty most appropriately qualified to report non-cleared swaps.

***In connection with swaps executed on facility and not mandated to be cleared, SEFs should not be required to issue the sole confirmation, maintain master agreement dates and store reporting party information***

The Commission should re-examine the current SEF Core Principles and Reporting Rules to determine whether the current reporting and confirmation requirements placed on SEFs 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 process used throughout the financial industry. This current process can be amended to support the Commission's transparency requirements. To that end, ICE supports removing the requirements on SEFs to issue the sole transaction confirmation, maintain the confidential master agreement information (including the execution date and the reporting counterparty), and report this information to a SDR. As an alternative, a SEF should issue a transaction confirmation detailing the economic terms facilitated on its platform and report the required real-time creation data to a SDR. This procedure is consistent with current market convention and non-action relief granted to SEFs by the Commission.

In order to maintain the current and practical reporting practices, market participants should continue to bilaterally negotiate documentation terms and confirm transactions using the SEF confirmation to govern the economic terms. Furthermore, the removal of the bilateral confirmation process amongst

swap counterparties is specifically impactful to participants of ICE Trade Vault. These participants, predominately end-users in the commodity asset class, rely on the ICE eConfirm confirmation platform to electronically match swap data which includes an identifier for CFTC reporting obligations. This platform supports participants' real-time, confirmation and continuation reporting obligations in a cost-efficient manner. Any disruption to this reporting flow will cause undue hardships on end-users because of the increased likelihood of incorrect data being reported to SDRs due to the absences of electronic confirmations.