

August 21, 2017

**Via Electronic Submission**

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, D.C. 20581

Re: Division of Market Oversight Review of Swap Reporting Rules in Parts 43, 45, and 49 of  
Commission Regulations

Dear Mr. Kirkpatrick,

ICE Trade Vault, LLC, (“ICE Trade Vault”) appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (“CFTC” or “Commission”) regarding the Commission’s Roadmap to Achieve High Quality Swaps Data (the “Roadmap”).<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. In addition to the joint comments filed with BSDR LLC (“BSDR”) and Chicago Mercantile Exchange Inc. (“CME”), ICE Trade Vault would like to add supplementary comments and feedback to the CFTC Roadmap.

***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

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<sup>1</sup> CFTC Staff Letter 17-33 (July 10, 2017).

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.

***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.

### ***Timing of and reliance on confirmation data to confirm accuracy of swaps***

In the Roadmap, the CFTC has suggested streamlining reporting workflows by combining Primary Economic Term (“PET”) data and Confirmation data into a single, clearly defined and electronically reportable set of data elements. ICE Trade Vault believes the reliance on confirmation data is key to achieving further accuracy in swap data reporting. ICE Trade Vault however does not recommend combining PET and Confirmation reporting workflows due to the variation in timing of the execution and confirmation events. ICE Trade Vault believes that where electronic confirmations occur, most PET data is complete and confirmed within 24 hours in most circumstances. However, when trades are not electronically confirmed, the confirmation event has a longer completion time due to the nature of exchanging paper confirmations. As such, some manually confirmed trades cannot be completed within the same time frame as expected PET data reporting. ICE Trade Vault therefore agrees that confirmation events could be combined with PET data reporting for those swaps that are electronically confirmed but in all cases, reliance on confirmation data for reconciliation of swaps data between reporting and non-reporting counterparties is beneficial with regards to data accuracy.

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

Section 45.10 (Reporting to a single SDR) requires that all swap data for a given swap must be reported to a single SDR, and 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. The SDRs believe the Commission should reevaluate whether swap data should be allowed to be transferred to another SDR.

The SDRs support 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>2</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.

### ***Ability to sell SDR data***

Section 49.17(g) contains a general prohibition on the commercial use of SDR data. Presently, the SDRs need express written consent of the market participant prior to commercial or business use. ICE Trade Vault would like the opportunity and flexibility to monetize the data received, including developing ancillary services in connection with that data<sup>3</sup>. ICE Trade Vault is not suggesting the commercial or business use of SDR data prior to its public dissemination, to the extent that the data is required to be publicly disseminated.

<sup>2</sup> See 17 C.F.R. § 39.15(d) Transfer of customer positions.

<sup>3</sup> This might include a service for clients to monitor their reports for compliance with reporting obligations.

Transparency of the swaps market is a key goal of the Dodd-Frank Act. ICE Trade Vault encourages the Commission to continue its review of all of the swap data reporting rules<sup>4</sup>. ICE Trade Vault appreciates the opportunity to comment on the proposed Roadmap. 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  
Assistant General Counsel  
Intercontinental Exchange, Inc.

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

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<sup>4</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.