



November 18, 2019

Via Electronic Submission

Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St, N.W.
Washington, DC 20581

Re: Comments on Certain Swap Data Repository and Data Reporting Requirements - RIN 3038-AE32

Dear Sir/Madam:

ICE Clear Credit LLC¹ and ICE Clear Europe Limited² (collectively referred to herein as the “ICE clearing houses” or “ICE”) appreciate the opportunity to comment on the rules proposed by, the Commodity Futures Trading Commission (the “Commission” or the “CFTC”), titled “Certain Swap Data Repository and Data Reporting Requirements” (the “Proposed Rules” or the “Proposal”).³

As background, both ICE Clear Credit and ICE Clear Europe are CFTC registered derivatives clearing organizations (“DCOs”) that clear credit default swap (“CDS”) contracts and, accordingly, serve as “reporting counterparties” for cleared swap trades under CFTC regulations.⁴ In addition to the comments below, ICE concurs with comments submitted by other market participants that the Commission should not consider imposing further SDR verification requirements until it has finalized and implemented amendments to streamline data fields and leverage existing SDR validation processes.⁵

The ICE clearing houses appreciate the opportunity to comment on the Proposed Rules and are supportive of the Commission’s efforts to enhance data accuracy. Nonetheless, we are concerned that the approach embodied in the Proposal will add significant costs with very little to

¹ ICE Clear Credit has been designated as a systemically important derivatives clearing organization pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. ICE Clear Credit is also registered as a securities clearing agency under the Securities Exchange Act of 1934 (the “Exchange Act”).

² ICE Clear Europe is authorized as a central counterparty under the European Market Infrastructure Regulation (EMIR) and a Recognised Clearing House under English law, and a registered securities clearing agency under the Exchange Act.

³ 84 Fed. Reg. 21044 (May 13, 2019) (RIN 3038-AE32).

⁴ In particular, see Title 17 CFR Chapter 1 Part 43 and Part 45 re: swap data reporting.

⁵ See comments submitted by the Futures Industry Association (August 27, 2019). See also comments submitted by International Swaps and Derivatives Association and Securities Industry and Financial Markets Association (June 19, 2019 and October 8, 2019) noting that the Proposal is the first of three forthcoming amended rulemakings intended to achieve the goals laid out in the Commission’s “Roadmap to Achieve High Quality Swap Data” and that all three rulemakings are integrally related and should be evaluated together.



no additional benefit. We have set forth below our comments which address these concerns with respect to (i) proposed verification of newly created “open swaps reports”; (ii) proposed procedures for correcting errors/omissions in swap data; and (iii) proposed strict language regarding conformance to SDR policies and procedures.

I. Proposal to Require Additional Verification of Swap Data

The Proposal would require swaps data repositories (“SDRs”) to produce newly created weekly open swaps reports and would require reporting counterparties, including DCOs, to verify data accuracy in these open swaps reports within prescribed timeframes (48 hours for a DCO).⁶ As described below, the ICE clearing houses believe this proposed new SDR data verification process should not be applied to DCO reporting counterparties, such as ICE, that verify, maintain and report swaps positions on a real time basis for purposes of daily clearing, processing and settling such trades because it would impose significant new burdens, with little to no benefit in terms of data accuracy.

ICE, as a DCO, is the sole reporting counterparty of cleared swaps and undertakes real time data validations with respect to swaps reporting to SDRs. ICE has systematic alerts in place for failed trade report submissions to the SDR which are done real time at an individual trade report level. In addition, with respect to cleared trades the sole reporting counterparty DCO maintains the “gold” version of swaps data and reports such “gold copy” to the SDRs as well as to the Commission.⁷ With respect to cleared trades and the process of clearing, clients rely on and reconcile their trade data with that of the DCO (not the SDR). As the DCO is the ultimate source of accurate data with respect to all cleared swaps, and as the DCO reports such data directly to the SDRs (and to the Commission) with real time validations, we do not see any benefit to the proposed new weekly open swaps reporting data verification process with respect to reporting counterparties that are DCOs. Further, developing a new weekly open swaps report would require additional processes and resources, including new systems development, in order to verify, maintain and reconcile such report. Accordingly, with respect to cleared swaps, the cost of the proposed weekly report far exceeds any benefit.

For these reasons, we respectfully request that the Commission not impose this additional data verification requirement on DCO reporting counterparties.⁸

⁶ See proposed Reg. 45.14(a). Such open swaps reports are to be distributed by the SDR to reporting counterparties on a weekly basis. See proposed Reg. 49.11(b)(2).

⁷ DCOs undertake daily reporting to the Commission of swaps data pursuant to CFTC Reg. 39.19(c)(1).

⁸ In addition, see footnote 5 above, where ICE concurs with the industry position that it is premature to consider imposing new data verification requirements on any market participant. If the Commission nonetheless determines to impose this requirement on any market participant, we believe that it should only be done pursuant to an industry-wide standard whereby parties would not need to undertake different builds and coding for different SDRs.

II. Proposed Procedures for Correction of Errors/Omissions in Swap Data

The Proposal would also add new, specific prescriptive timing, process and reporting requirements with respect to the correction and reporting of errors/omissions in swap data. ICE believes the proposed prescriptive approach does not allow for the flexibility needed given all the different SDR reporting counterparties and urges the Commission to take a principles-based approach.⁹

As described above, given ICE's role as the DCO and its real-time validations, *cleared swaps* errors/omissions are remediated promptly so adherence to the proposed new prescriptive procedures for correcting and reporting such swaps errors/omissions appears feasible on its face. However, in 2016, CFTC regulation 45.4(c) was revised to require DCOs to submit terminations of *alpha swaps*.¹⁰ ICE notes that when it submits alpha terminations occasionally an error message is returned that the alpha swap ICE is trying to terminate has not been found. Typically, ICE receives this message because the reporting counterparty for the alpha trade has not yet submitted such trade to the SDR or may have submitted data fields (such as the USI or LEI) that differ from the data submitted to the DCO for clearing purposes. ICE is concerned that if the Commission applies the prescriptive approach in the Proposal, the DCO's ability to comply will be entirely dependent on the actions of other persons over which it has no control or relationship.¹¹

Under proposed regulations 43.3(e) and 45.14(b), errors/omissions must be corrected promptly or as soon as technologically practicable,¹² respectively, but no later than three (3) business days following the discovery of the errors/omissions. Further the Proposal provides that, if the error/omission is unable to be corrected within the three (3) business days, the reporting counterparty must immediately inform the CFTC in writing and provide an initial assessment of the scope of the errors/omissions and an initial remediation plan for correcting the errors/omissions. ICE notes that production of scope assessments and remediation reports is not something that happens immediately or even necessarily within three (3) business days. The accurate assessment of the cause and extent of the error/omission involves coordination among numerous internal groups and typically takes more than three (3) business days. The development of an effective remediation plan takes more time. Further, it is not clear under the

⁹ ICE also believes a principles-based approach is consistent with the CFTC's Project KISS initiative which is "about taking CFTC's existing rules as they are and applying them in ways that are simpler, less burdensome and less of a drag on the American economy". *Project KISS (Request for Information)*, 82 FR 23765 (May 24, 2017) at 23766.

¹⁰ CFTC Reg. 45.4(c) requires DCOs to report alpha terminations to the same SDR to which the original reporting counterparty reported the alpha swap. 81 FR 41736, Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps; Final Rule (June 27, 2016)

¹¹ When the CFTC first adopted the requirement for DCOs to report the termination of an original swap (also referred to herein as "alpha swap"), the Commission stated that "DCOs will [] have all information needed to terminate the original swap based on the swap submitted for clearing." 81 FR 41736, Amendments to swap Data Recordkeeping and Reporting Requirements for Cleared Swaps; Final Rule (June 27, 2016) at 41749. The CFTC further noted "DCOs must obtain the relevant information from their clearing members." Id. DCOs do obtain all relevant information with respect to the cleared swaps. However, the clearing submission process happens completely separate from the requirement that original reporting counterparties report an alpha swap to the SDR. In the former case, clearing members and the DCO are involved (i.e., a clearing member(s) must first accept each side of the original swap for clearing and only then will such swap be submitted to the DCO). In the latter case, only the original reporting counterparty, who is not necessarily a clearing member, is responsible for submitting the alpha swap to the SDR and such submission is done outside of the DCO's requirements and systems for cleared swap submissions.

¹² Current Reg. 43.3(e) provides errors/omissions be corrected "promptly" and current Reg. 45.14 provides errors/omissions be corrected "as soon as technologically practicable". We note that the Commission may want to consider harmonizing these provisions which will aid in industry interpretation and implementation.



proposed rule how known data issues that carry over from one day to the next would be reported under the proposed rule. ICE believes the proposed prescriptive standard would be very burdensome and would add another layer of complexity to swaps reporting which could result in multiple overlapping reports. Accordingly, ICE recommends that the Commission adopt a principles-based approach would allow resources to be focused appropriately to investigate and remediate the error/omission rather than expending resources on constant immediacy/fire drills and duplicative reporting. In addition, a more flexible principles-based approach could address those situations where a reporting counterparty should have no obligation to remediate an error/omission over which it has no control or ability to do so.¹³

III. Strict Conformance to SDR Policies and Procedures

ICE also disagrees with proposed regulation 45.14(b)(1)(iii). As currently drafted, proposed regulation 45.14(b)(1)(iii) would make it a regulatory enforceable requirement for reporting counterparties to comply with the swap data verification policies and procedures created by its SDR for the correction of errors/omissions. It is unclear the purpose or benefit of this proposed requirement, as reporting counterparties already have a regulatory obligation under CFTC regulation 45.14(a) to report to the SDR errors and emissions as soon as technologically practicable after the discovery of any such error or omission.¹⁴ Further, all SDRs require reporting counterparties to sign a legally binding agreement that, among other things, requires reporting counterparties to conform to their technical and functional requirements. Such a provision in a SDR's legal agreement is necessary to ensure that its systems operate in a consistent and predictable manner for its customers. The CFTC's proposed rules makes the contractual obligation also become a regulatory obligation. It is unclear to ICE why this is necessary or a good use of Commission resources. Thus, ICE recommends removing this proposed amendment.

Conclusion

ICE appreciates the opportunity to comment on the Proposed Rules, and the engagement of the Commission and its staff in the rulemaking process. ICE shares the Commission's goals of improving the accuracy of swaps data -- noting however that ICE cleared swaps data is already accurate given the real-time alerts and validations in effect as well as DCO's role of maintaining the "gold" version of swaps data for purposes of clearing. ICE respectfully requests that the Commission and its staff consider the different types of swap data reported, parties who can be

¹³ We note that the Commission has included this concept in proposed Reg. 45.14(b)(2) which contemplates that a non-reporting party will report an error/omission to the reporting counterparty and if all parties agree that such swap data is incorrect or incomplete, then it must be corrected within the prescribed time period. Again, however, this proposed rule is narrowly tailored and does not cover similar situations.

¹⁴ See also the approach in CFTC Reg. 45.13(b) *Data reported to swap data repositories*. In reporting swap data to a swap data repository as required by this part, each reporting entity or counterparty shall use the facilities, methods, or data standards provided **or required by** the swap data repository to which the entity or counterparty reports the data." (emphasis added)



held accountable for its accuracy and timing for remediation actions in accord with the comments supplied in this letter.

Sincerely,

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