



April 10, 2024

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 Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements - RIN 3038-AF26

Dear Sir/Madam:

ICE Clear Credit LLC¹ (referred to herein as the “ICC” or the “Clearing House”) appreciates the opportunity to comment on the rules proposed by, the Commodity Futures Trading Commission (the “Commission” or the “CFTC”), titled “Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements”² (the “Proposed Rules” or the “Proposal”).

As background, ICE Clear Credit is a registered derivatives clearing organizations (“DCO”) that clears credit default swap (“CDS”) contracts and, accordingly, serves as “reporting counterparty” for cleared swap trades under CFTC regulations.³ The Commission notes in the Proposal that the Proposed Rules are intended to ensure that the Commission continues to receive accurate and high-quality data on swap transactions for its regulatory oversight role, as well as address international swap reporting developments.

While ICC supports these goals, ICC appreciates this opportunity to provide comments regarding our substantial concerns that the Proposed Rules, if adopted, place unnecessary burdens and significant costs on the Clearing House with very little to no additional benefit with respect to the quality of the data. As further discussed below, ICC believes the Commission’s Proposal to add numerous new reportable data fields to Appendix 1 of Part 45 incorrectly places the burden of data collection, legal analysis, and other complexities on the Clearing House which are not appropriate and could lead to significant delays in accepting trades for clearing. Further, the Proposed Rules appear to ignore the fact that the Commission already has access to much of the information requested through its own resources and can undertake its own analyses (noting that the industry has already spent considerable resources over the years to implement swaps data reporting including the most recent implementation of UPI reporting as of January 29, 2024). Also,

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 88 Fed Reg 90046 (December 28, 2023)

³ In particular, see Title 17 CFR Chapter 1 Part 43 and Part 45 re: swap data reporting.



as further explained below, if adopted, the Proposed rulemaking will require significant systems related development and resources, and other associated expenses far in excess of the Commission's cost analysis of \$7,278.⁴

Proposal to Require Counterparty Designation Fields and Mandatory Clearing Field

As an initial matter, many of the new proposed mandatory fields would require a DCO such as ICC to collect information that is not currently captured and, further, has no relevance to the role of the Clearing House in fulfilling its primary role of clearing a swap trade. For example, with respect to the proposed Counterparty Designation fields (e.g. Swap Dealer (SD), Major Swap Participant (MSP), Non-SD/MSP⁵), the determination of a counterparty's regulatory registration that is applicable for each trade often involves a jurisdictional legal analysis at the counterparty level. Such analysis is specific to each counterparty and each trade and is not feasible to impose on the DCO nor is it necessary information in order to clear a swap trade. Further, ICC respectfully notes that current SDR reporting now includes the Counterparty LEI field. Accordingly, the Commission already has the information needed to check against its own registers for applicable counterparty designations.

Likewise, many of the new proposed data fields require information that should be provided by market participants at the pre-clearing level and should not be imposed on the DCO as a "reporting counterparty" under CFTC SDR regulations. For example, the proposed "Large notional off-facility swap election indicator"⁶ should not be applicable to cleared trades as it is not related to clearing nor is the Clearing House a party to the trade execution. Similarly, even the proposed "Yes" or "No" indicator of whether the transaction is subject to mandatory clearing⁷ is an obligation to be undertaken by market participants at the pre-clearing level such that they are aware of whether a swap is required to be submitted to a clearing house. The Commission has the authority to mandate certain swaps be subject to clearing (as do other US and non-US regulatory authorities) and each market participant should be making the underlying legal analyses for themselves based on the product, jurisdiction and execution counterparties.⁸ From the Clearing House point of view, if the Clearing House lists a product as clearing eligible and its clearing participant submits the trade for clearing with the information required by the clearing house for clearing (i.e., a much smaller subset of required fields than SDR reporting), then the trade will be accepted for clearing regardless of mandatory clearing requirements or large notional election indicators.

If the newly proposed fields are required but then not submitted to the Clearing House by the market participants, then the Clearing House would need to delay its acceptance of a trade for clearing in order to first consult with clearing participants, market participants and their respective lawyers as to the required information, regulatory registrations and other relevant facts. Such

⁴ See footnote 138 of the Proposed Rule (88 Fed Reg at 90061) estimating at the high end 78 hours of Reporting Entity time using an hourly rate of \$93.31.

⁵ See Proposed Rule, Appendix A Technical Specifications, fields 28, 29 and 30 (88 Fed Reg at 90072).

⁶ See Proposed Rule, Appendix A Technical Specifications, field 140 (88 Fed Reg at 90076).

⁷ See Proposed Rule, Appendix A Technical Specifications, field 14 (88 Fed Reg at 90071).

⁸ ICC notes that it publishes a list of all instruments that are clearing eligible at ICC and such list contains an indicator of whether CFTC mandatory clearing applies. See "CDS Cleared Contracts" from <https://www.ice.com/clear-credit>.



delays would conflict with CFTC Reg. 39.12(b)(7) which specifies how the DCO will accept or reject each trade submitted to it for clearing as quickly as would be technologically practicable if fully automated systems were used. It is also not feasible to require the Clearing House to require its clearing participants to provide the new fields and then serve as a pass through because inevitably there will be a large number of errors or omissions (especially where one or both of the underlying counterparties to the trade is a non-US entity). Such errors and omissions will then lead to non-stop reporting and remediation work by the Clearing House under current CFTC Reg. 45.14 in order to obtain and analyze data to fix the error or omission. ICC does not believe it is appropriate for Commission rules to place a burden on DCOs to backstop the compliance functions of other market participants. Moreover, the DCO's legal relationship is with its clearing participants and the DCO does not maintain a legal relationship with the underlying clients of a clearing participant.

For the reasons set forth above, ICC requests that the Commission not require new data fields for which it already has the information and resources to make its own determination or, at a minimum, if the Commission continues to require these new fields, the Commission should clarify that such fields are not required with respect to cleared trades.

Proposal to Require Equivalent USD Notional Amounts

ICC is also concerned with the proposal to add "USD equivalent regulatory notional amount".⁹ This is another example of requiring complex determinations to be made that could actually lead to more inconsistency in reported data. For example, OTC CDS trades do not trade nor clear with a USD equivalent value today where the trade notional amount is a non-USD currency. Numerous questions would arise such as: What exact FX rate should be applied? What if the FX currency market is closed at time of trade submission? and Is this a field to be mandated for trades executed between non-US parties who are not required to provide this data in their jurisdictions? For this reason, we believe this is another area where the CFTC can make their own assumptions and determinations in order to arrive at the desired information which will also have the benefit of ensuring consistency in the approach to USD conversion. Again, if such a requirement is imposed on the Clearing House, ICC is concerned that this could lead to significant delays in accepting trades for clearing and/or imposing on the clearing house the burden of "remediating" newly generated errors/omissions. Last, as this information is not used by the industry today for trading and clearing, ICC believes that applying such a requirement will significantly delay SDR reporting and generate post clear alpha termination failures due to late alpha reporting not aligning with clearing SDR reporting times.

Proposal to Require Underlier ID (Other)¹⁰

For the proposed 'Underlier ID (Other)' field, this field would require an alternate data value where a Unique Product Identifier (UPI) would be identified as 'OTHER' in the ANNA DSB Unique Product Identifier (UPI) utility. It's not clear what the value of this new data element would be and yet it may have a material high implementation cost due to its complexity and potential need of

⁹ See Proposed Rule, Appendix A Technical Specifications, field 42 (88 Fed Reg at 90072).

¹⁰ See Proposed Rule, Appendix A Technical Specifications, field 126 (88 Fed Reg at 90075).



sourcing of data from third parties. More guidance is required in order to understand what is to be required for this field.

ICC respectfully questions the benefit of requiring a UPI (and USI) and its value if the Commission is now proposing to require the industry to provide additional product identifier reference data. Accordingly, ICC requests the Commission to provide the industry more time to analyze the UPI global implementation, which is still in progress, before moving forwards with this proposed data field update.

Historical Open Positions

Lastly the Commission's cost benefit analysis process continues to fail to capture the complexity and costs associated with the impact of field updates related to historical open positions (i.e., those positions that are open on the implementation date of the new rules). Reporting entities are required to develop costly time intensive updates to historical records either on the rule implementation date or when a lifecycle event occurs on a historical open position as the SDR validation rules would flag the newly required information as "omitted".

The efforts to collect such historical data have significant implementation costs with questionable benefit. Accordingly, if the Commission proceeds with adopting the proposed new data fields, ICC is requesting relief from the strict CFTC Reg. 45.14 notice requirements with respect to errors or omissions that would arise due to the difficulties in updating new fields for historical open positions.

Conclusion

ICC appreciates the opportunity to comment on the Proposed Rules and the engagement of the Commission and its staff in the rulemaking process. ICC requests that the Commission continue to consider the different types of swap reporting counterparties impacted by the Proposed Rules including the unique role of the Clearing House. Last, if the Commission proceeds with the Proposed Rules, we respectfully ask that the Commission provide more guidance as outlined above and adopt a realistic compliance implementation period that allows for industry-wide coordination and roll out.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stanislav Ivanov', followed by a stylized flourish.

Stanislav Ivanov
President
ICE Clear Credit LLC



AMSTERDAM ATLANTA CALGARY CHICAGO HOUSTON LONDON NEW YORK SINGAPORE WINNIPEG

Cc: Clark Hutchison, Director, Division of Clearing and Risk
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