March 27, 2017

Via Electronic Submission

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

Re: Proposed Amendments to Swap Data Access Provisions of Part 49 and Certain Other Matters (RIN 3038-AE44)

Dear Mr. Kirkpatrick,

Chicago Mercantile Exchange Inc. ("CME"), DTCC Data Repository (U.S.) LLC ("DDR")[1] and ICE Trade Vault, LLC, ("ICE Trade Vault"), (collectively, the "Swap Data Repositories" or "SDRs") appreciate the opportunity to provide comments to the Commodity Futures Trading Commission ("CFTC" or "Commission") regarding the Proposed Amendments to Swap Data Access Provisions of Part 49 and Certain Other Matters (the "Proposal").[2]

The SDRs commend the Commission for its continued focus on making the derivatives markets safer and more transparent and for taking steps to ensure that foreign and domestic authorities have appropriate and efficient access to the swap data maintained by the SDRs. To that end, the SDRs note that the Proposal seeks to implement the repeal of the Commodity Exchange Act ("CEA") § 21(d)(2) indemnification requirement mandated by the Fixing America's Surface Transportation Act (the "FAST Act"),[3] which is necessary to facilitate the sharing of swap data among regulators. However, the SDRs believe that certain provisions in the Proposal require further collaboration among the Commission and the SDRs, and taking into account domestic and foreign regulator needs, before the Proposal can be finalized to fully address certain important issues, and avoid unnecessary and burdensome costs.

Specifically, and as discussed more fully below, the SDRs note the following key points with respect to the Proposal:

- The SDRs support the improvements to current regulations set forth in the Proposal. In particular, the SDRs appreciate the Commission's efforts to reduce regulatory burdens for SDRs with respect

[1] DTCC provides services for a significant portion of the global OTC derivatives market and has extensive experience operating repositories to support derivatives trade reporting and enhance market transparency. DTCC's Global Trade Repository service supports reporting across all five major derivatives asset classes and exchange traded derivatives in nine jurisdictions across 33 countries.

[2] Proposed Amendments to the Swap Data Access Provisions of Part 49 and Certain Other Matters, 82 Fed. Reg. 8,369 (Jan. 25, 2017).

[3] *See* Pub. L. 114-94 (Dec. 4, 2015).

to the execution of confidentiality agreements, and to set forth an appropriateness determination process for foreign regulators and non-enumerated domestic regulators.

- SDRs cannot affirmatively determine whether the swap data requested by an Appropriate Domestic Regulator ("ADR") or an Appropriate Foreign Regulator ("AFR") is within the current scope of the ADR's or AFR's jurisdiction. The SDRs believe the determination as to scope of jurisdiction must rest solely with the Commission.
- The proposed requirement for SDRs to maintain copies of data reports and other aggregation of data provided in connection with the request or access should be amended to avoid imposing unnecessary regulatory costs on SDRs by allowing the saving of metadata around reports rather than the actual reports and allowing for the generation of a single pre-formatted data report for all regulators.
- Requests by the Commission for any regulatory report or for the provisioning of data by the SDRs to an ADR or AFR must be in writing.
- Where appropriate, notifications to SDRs from the Commission related to limits to or revocation of access to swap data must be in writing.
- Certain provisions related to access by market participants should be amended to extend such access to include entities responsible for reporting data to an SDR (e.g., Swap Execution Facilities ["SEFs"], Designated Contract Markets ["DCMs"]) to promote increased data quality. In addition, counterparties who have executed a participant agreement should be able to instruct the SDR with respect to the sharing of that data (e.g. Service Providers). Further, revisions are needed to the masking provisions set forth in § 49.17(f)(2) so as to ensure anonymity of the opposite counterparty is maintained.
- The Commission should be mindful of the impact to the broader market resulting from compliance costs associated with this Proposal.

II. Improvements to § 49.17 and § 49.18 in the Proposal

The SDRs agree with the revisions to proposed § 49.17(d)(2), which would permit a "domestic regulator that has regulatory jurisdiction over an SDR registered with it pursuant to separate statutory authority… to access SDR data reported to such SDR pursuant to such separate statutory authority irrespective of whether such domestic regulator has a memorandum of understanding "MOU" or similar information sharing agreement with the Commission or been designated to receive direct electronic access by the Commission."[4] Similarly, the SDRs support the proposed revisions to § 49.17(d)(3), which would facilitate a foreign regulator's access to SDR data where such SDR is "registered, recognized, or otherwise authorized by a foreign jurisdiction's regulatory regime, and where such swap data has been reported to the SDR pursuant to the Foreign Regulator's regulatory regime."[5]

The SDRs believe that recognizing the separate jurisdictional authority of another domestic regulator or foreign regulator would further appropriate information sharing necessary for regulatory oversight and global systemic risk mitigation purposes. Accordingly, the SDRs also support the deletion of § 49.18(c) and agree that it is not appropriate to require a domestic or foreign regulator to comply with CEA § 8 and any other relevant statutory confidentiality provisions (other than non-CEA statutory confidentiality requirements applicable to the domestic or foreign regulator) where such domestic or foreign regulator

[4] 82 Fed. Reg. at 8,372-73.
[5] 82 Fed. Reg. at 8,373.

has regulatory responsibility over an SDR and seeks access to SDR data that was reported to the SDR pursuant to such regulator's supervisory authority.

In addition, the SDRs note that certain changes reflected in the Proposal would reduce burdens on SDRs and promote consistency in the SDRs' application of these rules. Specifically, the SDRs support the transfer of responsibility for the execution of confidentiality arrangements from SDRs to the Commission, as set forth in proposed §§ 49.17(d)(6) and 49.18. This transfer of responsibility would significantly reduce regulatory costs and inefficiencies for SDRs. As noted in the preamble, proposed §§ 49.17(d)(6) and 49.18 would obviate the need for SDRs "to negotiate confidentiality agreements with a potentially large number of ADRs and AFRs."[6] Further, the SDRs support the publication of a form for a confidentiality arrangement for use by ADRs and AFRs as proposed as Appendix B to Part 49 as a tool to promote consistency and further reduce regulatory burdens.[7]

The SDRs also support proposed § 49.17(h) with respect to an appropriateness determination for foreign regulators and non-enumerated domestic regulators, which would require such regulators to file an application with the Commission to become "appropriate." We believe that a MOU or other information sharing arrangement alone, by their nature, have the potential for imprecise language and bespoke arrangements that would not provide sufficient indication of a regulator's "appropriateness."

Finally, the SDRs agree that the proposed amendments to the timing of notification as described in § 49.17(d)(4)(i) (upon the initial request rather than upon *each* request) will reduce the burdens on SDRs and provide greater operational efficiencies. Other comments on the notification requirement are discussed below.

III. SDR Verification Obligations in Connection with ADR or AFR Requests for Data Access

Jurisdictional Determination Must Be Made by the Commission

Under proposed § 49.17(d)(4)(iii), an SDR cannot provide an ADR or AFR with access to swap data maintained by the SDR unless it has determined "that the swap data to which the [ADR] or [AFR] seeks access is within the then-current scope of such [ADR's] or [AFR's] jurisdiction, as described and appended to the confidentiality arrangement requirement by § 49.18(a)." SDRs are not the appropriate entities to determine the scope of a regulator's jurisdiction. They do not possess the means to do so correctly with current data fields. Requiring the SDRs to attempt to make a jurisdiction determination based on general descriptions appended to the confidentiality arrangement under § 49.18(a), will likely lead to inconsistent interpretations and determinations by SDRs. SDRs should not be placed in this position. Instead, we believe the conclusion as to whether the swap data an ADR or AFR is seeking access to is within the ADR's or AFR's jurisdiction should be determined by the Commission.

The Commission is in the best position to determine whether the swap data requested by an ADR or an AFR is within the scope of the ADR's or AFR's jurisdiction. The SDRs do not have, and are not required to have information sufficient to determine whether requested swap data is within the ADR or AFRs scope of jurisdiction. To the extent that the Commission is considering having the SDRs play any role in determining whether swap data it receives is subject to the jurisdiction of any particular ADR or AFR, it

[6] *See* 82 Fed. Reg. at 8,376.
[7] *See* 82 Fed. Reg. at 8,376.

would be necessary to amend the current Part 43 and Part 45 fields to provide the SDRs with the basis to make these determinations. In our view, the Commission should address this issue in the context of its discussions with ADRs and AFRs regarding confidentiality arrangements pursuant to § 49.18(a). The important principle is that SDRs should not be expected to make interpretations about jurisdictional questions from ambiguous data points.

The Commission should have the responsibility to describe what is required of SDRs in completely unambiguous terms so that there is no room for inconsistent application among SDRs. The SDRs responsibilities must be limited to providing access to the ADRs and AFRs in accordance with the specific, appended jurisdictional information clearly set forth in the documents describing the confidentiality arrangements negotiated by the Commission pursuant to § 49.18.(a).

The SDRs, therefore, suggest that subsection § 49.17(d)(4) (iv) be removed completely. Additionally, subsection § 49.17(d)(4) (i) and (iii) should be modified to remove the requirement that an SDR determine whether swap data to which the ADR or AFR seeks access is within the then-current scope of such ADR's or AFR's jurisdiction. Furthermore, the negative requirement not to provide access unless the appropriate determination has been made should be replaced with a positive requirement to provide access that comports with the determination made by the Commission which is clearly defined in the confidentiality arrangement. Moreover, subsection § 49.17(d)(4) (iii) should be modified to state that any requested change in an ADR's or AFR's scope of jurisdiction, as described in the confidentiality arrangement, should be agreed to between the Commission and the ADR or AFR and the information appended to the confidentiality arrangement should be amended accordingly and provided to the SDRs for implementation. This approach more closely aligns with the Commission's desired outcome of consistent access for specific types of regulators across SDRs.

Issues Related to Part 43 and Part 45 Data Fields

The current Part 43 and Part 45 data fields do not yield information that would allow an SDR to identify trades that fall within an ADR or AFR's jurisdiction definitively. Thus, ADRs and AFRs should be required to provide an itemized list of Parts 43 and 45 data fields (*e.g.*, legal entity identifiers ("LEIs") of the reporting counterparty and non-reporting party, the unique product identifier ("UPI"), an indication of whether a swap is a mixed swap, etc.) and parameters for such data fields that determine and instruct the SDRs as to which swaps fall within an ADR or AFR's jurisdiction (as well as for purposes of consistency and clarity). This unambiguous, detailed list will ensure, among other things, that the SDRs grant access in a consistent manner.

The SDRs also believe that such a comprehensive, unambiguous list of Parts 43 and 45 data fields is necessary because there are no Parts 43 or 45 data fields that by themselves identify swaps that fall within an ADR or AFR's jurisdiction. With respect to AFRs, for example, there is currently no geographical field required under Parts 43 or 45 data that SDRs collect and maintain that can be used to determine the data that would fall within an AFR's jurisdictional scope (*e.g.*, one or more of the counterparties domiciled in the AFR's jurisdiction, trades are executed in that jurisdiction, or a trader is located within that jurisdiction). The sole Part 45 data field with a geographical component—"an indication of whether the reporting counterparty is a U.S. person," which is a "Yes" or "No" field—is not conclusive for the purpose of determining the data that would fall within an AFR's jurisdiction. This data field does not provide the level of detail necessary to determine the country of domicile, booking location, or trader location in every instance. Under the current definition of U.S. person it is possible for a U.S. person to

be subject to the jurisdiction of an AFR, which renders the field unreliable for the purpose of conclusively determining whether the swap falls within jurisdiction. Therefore, without an unambiguous listing of the data fields and parameters for such fields, it would be difficult, if not impossible, to determine the scope of data maintained by an SDR that is within an AFR's jurisdiction.

By requiring an ADR or AFR's jurisdiction to be delineated in terms of Parts 43 and 45 data fields, as the SDRs recommend, the security controls established by an SDR according to those parameters would prevent access to data that is outside the scope of an ADR or AFR's jurisdiction.

For these reasons, the SDRs believe that a list of Parts 43 and 45 data fields and associated parameters should be required as part of the confidentiality arrangement executed between such ADR or AFR and the Commission. This would not only enable an SDR to fulfill its verification obligations as described above, but it would also ensure that each SDR uses the same criteria to grant access to an ADR or AFR. Specifically, proposed § 49.18(a) should be amended to require Exhibit A to the confidentiality arrangement form in Appendix B to Part 49 (or another addendum to the form) to describe an ADR or AFR's jurisdiction in terms of Parts 43 and 45 fields and specific parameters. In addition, the description of Exhibit A in the form confidentiality arrangement[8] should be revised to state that the "description of scope of jurisdiction" must include a list of Parts 43 and 45 fields and specific parameters.

Cost-Benefit Analysis

In addition, the SDRs note that the cost-benefit analysis in the Proposal does not fully account for all the costs associated with providing the required access and underestimates the costs it has considered. The "Commission estimates that the burden on an SDR associated with setting up access restrictions to match a requesting entity's scope of jurisdiction will include twenty hours of programmer analyst time, five hours of senior programming time, and one hour of attorney time, for a total of 26 hours."[9] The SDRs believe this estimate is vastly underestimated and will depend upon the exact requirements of access.[10] This estimate, and by extension, the cost for SDRs, would increase as the number of data fields required to be analyzed in a determination of scope of access (*e.g.*, LEIs, UPI, and UPI equivalent) increases. The Commission also does not estimate the cost of "customer service" required to assist regulators from time to time in accessing and understanding the data. The addition of 300 new users would most certainly require staffing augmentation, the cost of which would have to be determined once the requirements are further clarified.

IV. Recordkeeping Requirements

Recordkeeping Requirements Generally

The SDRs believe that the proposed requirement for SDRs to maintain copies of data reports and other aggregation of data provided in connection with the request or access should be amended to avoid imposing unnecessary costs. Proposed § 49.17(d) requires an SDR to maintain records "of the details of

[8] *See* 82 Fed. Reg. at 8,391.
[9] *See* 82 Fed. Reg. at 8,381.
[10] For example, CME believes the initial set up cost will be between of 400 and 950 hours. Further, creating a new user interface that is capable of allowing ad-hoc requests by an ADR or AFR would result in incurring set-up costs of thousands of hours, dependent upon the scope of the search function required.

such initial request and of all subsequent requests by such [ADR or AFR] for such access." In preamble discussion, the Commission states "[t]hese records shall include, at a minimum, the identity of the requestor or person accessing the data; the date, time and substance of the request or access; and *copies of all data reports or other aggregation of data provided* in connection with the request or access."[11] As a preliminary matter, the SDRs request that this additional detail as to what constitutes the "details of such initial request and of all subsequent requests" be included in the rule itself rather than merely mentioned in the preamble.

Section § 49.17(d)'s recordkeeping obligation, requiring that SDRs maintain data reports would render providing direct electronic access financially burdensome, challenging to implement, and most importantly, increases security concerns because the Proposal has the potential to require an SDR to propagate a given data set more than once. The Commission indicated that this requirement would allow the Commission to "monitor ADRs' and AFRs' access requests from time to time to ensure they remain within their scope of jurisdiction and, relatedly, to ensure that SDRs have been monitoring this access issue."[12] As an alternative to maintaining such reports, the SDRs suggest pre-formatted data reports be created and made available for download by all regulators so that the record of access to such reports be easily identifiable, in lieu of maintaining logs of queries and query conditions that are tied to providing direct electronic access. Given the increasingly cost-intensive technological environment, the SDRs believe that the access to data be provided to the ADRs and AFRs, as proposed, using only pre-formatted reports, maintaining the flexibility provided by regulators to deliver those reports electronically or otherwise.[13] In this way, the parameters of the reports and the logic which is used to populate the reports is all that should have to be maintained. The Commission would be able to utilize such evidence to determine what data had been provided to the requestor for the purpose of confirming appropriate access.

With respect to the "other aggregation of data provided in connection with the request or access" referenced in the preamble discussion, the SDRs have concerns with respect to any requirement to provide aggregated data to ADRs or AFRs. Accordingly, the SDRs request that the Commission specify that SDRs would not be required to provide ADRs or AFRs with aggregated data and that SDRs are only required to provide the transaction data, in the form of pre-formatted reports as suggested, so all regulators are able to aggregate such data as necessary. Having to produce reports of aggregated data would be a heavy drain on SDR resources as anonymizing data will be time consuming. Further, as an SDR's duties do not include aggregation of data, the SDRs do not have the analytic tools that regulators have to aggregate data.

Cost-Benefit Analysis

For the recordkeeping requirements, the Commission estimates that each SDR would incur an annual burden of 280 hours.[14] As proposed, the regulation requires SDRs to maintain copies of all data reports provided in connection with the request or access. To meet such an obligation and produce such data reports in a timely manner SDRs, at a minimum, would need to develop a method for cataloging, archiving, indexing, and retrieving the reports and ensuring security for the propagated data set, as well as

[11] *See* 82 Fed. Reg. at 8,381 (emphasis added).
[12] *See* 82 Fed. Reg. at 8,386.
[13] The SDRs propose the Commission establish a single pre-formatted report which can be utilized by all SDRs and provided to qualifying ADRs and AFRs.
[14] *See* 82 Fed. Reg. at 8,381.

maintaining the records themselves. Accordingly, the SDRs estimate that there would be an additional annual burden associated with set up.[15]

V. Notifications

Pursuant to proposed provision 9 in Appendix B to Part 49, an ADR or AFR is required to notify the Commission before complying with any legally enforceable demand for Confidential Information. This requirement should be expanded to include notification to SDRs as well. SDRs should be notified of such demands for Confidential Information in the event that they are party to legal agreements that require notification to clients, in such circumstances.

The SDRs also believe that notifications to SDRs from the Commission related to access to swap data should be in writing. For example:

- Proposed § 49.17(d)(4)(iii) should specify that any request by the Commission to the SDR to suspend, limit, or revoke access to swap data should be provided in writing.
- Proposed § 49.17(h)(4) permits the Commission to "revisit, reassess, limit, suspend or revoke" an appropriateness determination, but the provision does not set forth a process for providing a notification to SDRs of such a change. To ensure that all SDRs are aware of any changes in status with respect to an appropriateness determination, we suggest that § 49.17(h)(4) be revised to require the Commission to provide a written notice to SDRs of such change.
- Proposed § 49.18(a) should be modified to require the Commission to notify the SDR in writing if and when a confidentiality arrangement is no longer in effect.
- Proposed § 49.18(d) should specify that any request by the Commission to the SDR to suspend, limit, or revoke access be provided in writing.

VI. Access by Market Participants

Certain provisions related to access by market participants should be amended to promote greater data quality and protect the anonymity of counterparties where necessary.

The SDRs believe that proposed § 49.17(f)(2) should be amended to allow reporting entities who execute a participant agreement, and that submit data to SDRs, such as SEFs, DCMs and third-party service providers ("Service Providers"), to access data related to swap that were executed on or pursuant to their rules, in the case of SEFs and DCMs, or submitted by them on behalf of swap counterparties, in the case of Service Providers. In addition, counterparties who have executed a participant agreement should be able to instruct the SDR with respect to the sharing of that data. This amendment would help to promote greater data quality by allowing reporting entities to confirm the accuracy of the swap data that was transmitted to and maintained by an SDR.

Further, as currently enacted, some SDRs may find it difficult to mask certain data and information that may be accessed by counterparties to a swap if the swap is executed "anonymously on a swap execution facility or designated contract market, and cleared in accordance with Commission regulations in §§ 1.74,

[15] For example, CME believes that in addition to the Commission's estimated annual burden of 280 hours, the setup costs would involve a burden of two to four times the estimated annual cost or approximately 560 to 1120 hours.

23.610, and 37.12(b)(7) of this chapter." Currently, there are no Parts 43 or 45 data fields that an SDR can use to determine whether a swap was executed "anonymously," (*e.g.,* on a central limit order book or "CLOB"). Moreover, since most SEFs and DCMs offer multiple execution methods (i.e., CLOB, Request for Quote or "RFQ", etc.), including methods in which the counterparties are known to each other, the LEI of a SEF or DCM cannot be used as a proxy for identification of those swaps executed anonymously.

Moreover, we note that since masking is based in part on whether the swap was "cleared in accordance with Commission regulations in §§ 1.74, 23.610, and 37.12(b)(7)", unless the Commission modifies the regulation to require swaps that are intended to be cleared in accordance with Commission regulations in §§1.74, 23.610, and 37.12(b)(7) to be masked, there is a period of time during which masking will not occur (i.e., the period before the original SDR receives a termination message from the derivatives clearing organization "DCO" that cleared the swap). Therefore, by extension there is a period of time during which SDRs are out of compliance with the obligations of this section.

Lastly, § 49.17(f)(2) specifies certain data fields that should be masked, *e.g.*, identity or LEI of the other counterparty or the other counterparty's clearing member. However, the SDRs note that there are other Parts 43 and 45 data fields that, if not masked, may reveal the identity of a counterparty, *e.g.,* if the swap will be allocated, if the swap is a post-allocation swap, the LEI of the agent, an indication of the counterparty purchasing or selling protection, Payer (fixed rate), Payer (floating rate leg 1), and Payer (floating rate leg 2).

Accordingly, so as to protect the anonymity of the other counterparty, the SDRs recommend that § 49.17(f)(2) be amended to require an SDR to mask any and all fields that contain the LEI or name of the other counterparty or its clearing member for swaps executed anonymously on a SEF or DCM, as determined by the Commission, and cleared in accordance with Commission regulations in §§ 1.74, 23.610, and 37.12(b)(7).

VII. Other Ministerial Changes

The Commission is "proposing to make a number of . . . changes to part 49 to more consistently refer to the defined term 'swap data'."[16] While the SDRs support these changes and believe the consistency will promote clarity as to the data to which ADRs and AFRs may be granted access, the SDRs note that the term "swap data" is defined under § 49.2(a)(15) as "specific data elements and information set forth in part 45 of this chapter that is required to be reported by a reporting entity to a registered swap data repository." The SDRs request that the Commission confirm that SDRs may provide ADRs and AFRs with Part 43 data in addition to Part 45 data. This clarification is important because the SDRs use a combined message for Parts 43 and 45 reporting, making separation of Part 43 data from Part 45 data exceedingly difficult.

Under § 49.17(e), the Commission proposes to amend "data and information" to "swap data and information." The SDRs believe the more appropriate term instead is "swap data and SDR Information" (as SDR Information is defined in § 49.2), to ensure a third-party Service Provider may have access to all necessary data and information.

---

[16] *See* 82 Fed. Reg. at 8,378.

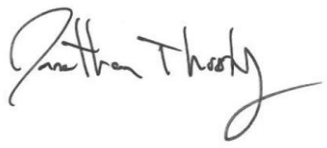
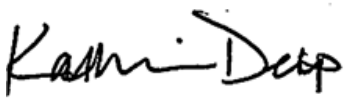
VIII. Compliance Date

In terms of a compliance date, the Commission should provide sufficient lead time for SDRs to implement the necessary technology safeguards to limit access according to a regulator's scope of jurisdiction, purchase additional hardware, or hire additional staff, if needed. Further, if the Commission's estimate is accurate that a total of 300 entities will seek access to SDR data, the SDRs believe that a phased approach to provide access to data is warranted to minimize the risk of "a large number of new demands on SDRs' systems . . . [decreasing] SDR systems reliability, efficiency or speed,"[17] (*e.g.*, beginning with the ADRs specifically enumerated as appropriate in § 49.17(b)(1)). We suggest the Commission work with the SDRs to set an appropriately mutually agreeable timeframe by which compliance with the final regulation must be achieved. The SDRs request the Commission take into account not only the lead time to compliance but also other factors influencing the deployment of new technology including, but not limited to, development freeze periods imposed at year end and coinciding obligations to meet other compliance deadlines both domestic and foreign.

* * *

The SDRs appreciate the opportunity to provide comments on the Proposal for the Commission's consideration. Should the Commission wish to discuss these comments further, please feel free to contact any of the undersigned representatives of the SDRs.

Sincerely**,**

Jonathan Thursby President, CME Swap Data Repository	Katherine Delp Business Manager	Kara Dutta General Counsel
Chicago Mercantile Exchange Inc.	DTCC Data Repository (U.S.) LLC	ICE Trade Vault, LLC
		

CC: Tim Elliott, CME Inc., Executive Director & Associate General Counsel
Debra Cook, DTCC Data Repository (U.S.) LLC, Counsel
Trabue Bland, ICE Trade Vault, LLC, President

[17] *See* 82 Fed. Reg. at 8,375.