

Gaw, Michael J.

From: Eady, Thomas
Sent: Friday, March 21, 2014 2:10 PM
To: Seidel, Heather; Berman, Gregg; Gaw, Michael J.; Gilbert, George; Sabella, Christian; Curley, Peter J.; Mooney, Jeffrey S.; Chaffee, Marta; Park, Stephanie; Byrne, Justin; Leibert, Marc; Polonsky, Max; Lai, Gena; Fitzgerald, Elizabeth L.; Noakes, Claire; Shanbrom, Andrew; Jacob, Abraham
Subject: FW: Letter to CFTC re cleared data flow
Attachments: DTCC March 10 2014 Collazo Email to CFTC [REDACTED].pdf

fyi

From: Collazo, Marisol [REDACTED]
Sent: Friday, March 21, 2014 2:07 PM
To: Eady, Thomas
Subject: Letter to CFTC re cleared data flow

Tom,

As discussed, attached is the letter we recently submitted to the CFTC regarding cleared data flows and what information we receive from the clearing houses. We have redacted Exhibit B and C as it contains actual data provided by CME.

Look forward to our discussion later this afternoon. Joining me on the call will be Paul Gottlieb and Carolyn Walsh. Paul is our DDR Counsel and Carolyn is our external counsel who has been researching the cleared data flows for us.

Marisol

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From: Collazo, Marisol
Sent: Monday, March 10, 2014 10:30 PM
To: Gussow, Laurie (LGussow@CFTC.gov)
Cc: Gottlieb, Paul
Subject: Response to inquiry on processing CME data

Dear Ms. Gussow

In response to your February 11, 2014 information request, we have prepared the following response. As a preliminary matter, DTCC and DDR are responding to the series of factual questions you have asked concerning CME "termination notices." We are pleased to have the opportunity to do so. In responding, DTCC and DDR do so without prejudice to the allegations and arguments they have made and may make in the pending litigation *DTCC and DDR v. CFTC*, Civ. Action No. 1:13-cv-00624-ABJ (D.D.C.), and expressly preserve those allegations and arguments.^[1]

To respond to the questions, we have reviewed correspondence between CME and DDR related to this matter, done an analysis of the CME data files, and compared the data elements contained therein relative to those required by Part 45. We have also examined the form and content of the CME data files relative to the requirements in the DDR technical specifications document adopted pursuant to DDR Rule 3.3.1 and Part 4. That document, which is posted on the DDR website, provides guidelines for both the mechanics and necessary data elements of submissions to DDR by reporting counterparties.

Our response begins with a background section that highlights DDR's work with Derivatives Clearing Organizations (DCOs) to implement the swaps reporting regime and summarizes the data flow issues that we faced. We then provide a narrative response to each of your questions. Finally, for your information, we have provided three exhibits: Exhibit 1 is a November 11, 2012 letter; Exhibit 2 is a spreadsheet illustrating DDR's assessment of the data elements contained in the CME files relative to the Part 45 data requirements and DDR technical specifications; and Exhibit 3 is an actual CME data file that is representative of the data files prepared by CME. We note that confidential treatment has been requested with respect to Exhibits 2 and 3.

We intend this letter to be responsive to your questions. Please feel free to contact me if you have any questions about these materials. Further, we would be happy to discuss the contents of this letter, as well as any other matters related to reporting at your convenience, if that would assist you in your review of the Part 45 swaps reporting process.

Background on Coordination with DCOs to Implement Reporting

November 2011 through October 2012: DDR had commenced work to implement swaps reporting before the Part 45 rules were adopted by the CFTC in January 2012, including numerous calls and meetings with entities that were expected to become reporting counterparties. Under the Part 45 swaps reporting implementation timeline set forth by the CFTC, DCOs were to start reporting cleared swap information to registered SDRs on October 12, 2012. Accordingly, from November 2011 through October 2012, DDR had initiated discussions with three DCOs (LCH, CME, and ICE) to identify and rectify possible reporting issues and thereby ensure a smooth launch on October 12, 2012. With respect to

^[1] This case challenges the changed FAQs in October 2012, approval of CME Rule 1001 in March 2013, and approval of ICE Rule 211 in April 2013.

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LCH, DDR engaged in numerous discussions and meetings over several months where DDR explained its transmission protocols and requirements and worked with LCH to make any necessary adjustments so that the necessary connections and data transmission procedures were in place on the start date. On October 12, LCH was able to commence submitting data files to DDR with respect to novated swap trades; the LCH files contained the required Part 45 data fields and were transmitted in accordance with DDR's established filing protocols as set forth in its technical specifications document. LCH continues to submit these reports daily, and DDR incorporates the data from these reports into its data records, resulting in a complete record of activity for linked swap transactions, including the relevant USIs for Alpha trades, as well as data related to the resulting Beta and Gamma swaps.

With respect to CME, in early 2012, DDR engaged in several preliminary conversations regarding CME Clearing's transmission of cleared swaps data to DDR (these discussions took place before CME filed its SDR registration application). After CME filed its SDR application, there were no further conversations. However, just prior to the DCO reporting start date of October 12, 2012 DDR committed to the CFTC Chairman that it would work with CME to establish, on an interim basis, an alternative method that CME could utilize to report cleared swap data given that it had not developed its connections and procedures to meet DDR's filing protocols.

Specifically, in order to give CME time to develop procedures and conduct testing so that they could eventually report pursuant to DDR technical specifications, DDR offered to allow CME initially to use a "drop copy" procedure whereby CME would make data available on a CME server so that DDR could retrieve the data file and then store the data in a DDR server where it could be made available to the CFTC upon request. However, once CFTC granted no-action relief to CME, DCO communications with CME ceased. We were advised by CME that it no longer was interested in pursuing the establishment of a data feed that complied with DDR technical specifications. DDR notes that CME data provided by this "drop copy" procedure cannot be ingested into the DDR database because it lacks the necessary attributes to aggregate. DDR anticipated that this interim procedure would be utilized by CME only until CME was able to comply with DDR's established SDR message delivery mechanism. CME has never complied with DDR's established SDR reporting technical specifications and continues to make its data available via the "drop copy" procedure.

With respect to ICE, throughout 2012, DDR had engaged in several conversations regarding the possibility of ICE sending cleared swaps data to DDR. ICE worked with DDR and completed testing so that its data files could be accepted by DDR pursuant to the established DDR technical specifications. Beginning on October 12, 2012, when DCO swaps reporting commenced, DDR received from ICE Clear technically compliant files containing information about Alpha swaps that have been novated. However, ICE has not included in these files information about the resulting Beta and Gamma swaps. ICE has been sending this information to DDR since October 2012. DDR has not accepted these files because ICE is not a party to the Alpha swap originally submitted to DDR and thus DDR does not process these files as termination messages. DDR would need to hear from the relevant reporting counterparty party or an agent authorized by that party that the trade has been terminated. Otherwise, DDR has no way of knowing that the termination is a proper report. DDR has informed ICE that it believes that the proper protocol for handling continuation data for cleared swaps is for ICE to report the novation (to which ICE is a party) with the resulting Beta and Gamma swap transaction data and sufficient information to link to the Alpha swap transaction.

January – March 2013. There were no communications between DDR and CME staff during this period. During this time, consistent with the commitment made to the CFTC Chairman, DDR developed an automated procedure to check the CME "drop copy" server each day to ascertain whether any files

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had been placed there. Based on its daily scans of the CME server during this period, DDR found only two files placed by CME in the drop copy (on January 5, 2013 and January 9, 2013).

March 2013. Apparently, as a result of counterparty inquiries to CME related to information to be provided to DDR pursuant to CME Rule 1001, CME started posting files in its "drop copy" server in late March (as noted, DDR is not aware of any CME efforts to develop filing procedures that comply with DDR requirements). DDR examined these data files and discovered that there were a number of missing data fields, including the USI, LEI, and Transaction/Message Type, and that DDR could not process the files because it had many questions about the formatting and nature of the data.

April 2013 through December 2013: DDR and CME staff engaged in conference calls and exchanged emails to discuss the data files CME had been placing in the "drop copy" server. DDR repeatedly advised CME that the information provided by CME did not appear to comply with the Part 45 data elements; in particular, the USI and LEI were absent from the files so that DDR is unable to reconcile the retrieved CME files with data on the Alpha trades reported to DDR by a reporting party to the original Alpha trade.

Contrary to CME assertions about sending trade level data to DDR, DDR notes that it has never received any trade level data from CME. Further, as previously explained, data made available to DDR is not sent or "pushed" to DDR, as CME has never made arrangements to satisfy DDR's technical specifications for acceptance of data; CME simply posts the data files on a server where DDR must access and process the files.

Most recently, in November 2013, there was a series of calls and emails with CME staff to address issues related to the CME file format. DDR provided guidance to CME with respect to submitting data. Based on these conversations, DDR understood that CME was working on delivering the reports to DTCC in the DDR format via a CSV file submission. However, there were no communications after November 20, 2013 and DDR has received no further responses from CME regarding this matter.

Current status: There are no ongoing discussions with CME. As noted, CME has not provided any updates or responded to DDR requests since November 20, 2013. The last outreach to CME was on December 11, 2013 by Alan Bendel of DDR who attempted to obtain an update on onboarding to DDR and any additional changes that would be needed to obtain the CME file into the correct format for DDR to process.

Response to Specific DMO Questions Relating to Data Flows from CME

1. When did CME first attempt to submit termination notices to DDR?

CME has resisted reporting any data to DDR since the onset of regulatory reporting on October 12, 2012. As DTCC explained in a November 11, 2012 letter to the CFTC (attached as Exhibit 1), at the start of reporting, DTCC "made clear to CME and the CFTC that DTCC's SDR can accommodate CME in receiving the cleared swap transaction data required to be reported pursuant to the Part 45 Rules in a cost-effective manner and has offered to work with the CME to ensure smooth implementation of the necessary systems to allow for timely reporting and compliance." Notwithstanding this offer, and as illustrated in the spreadsheet included as Exhibit 2, CME has *never* submitted continuation data to DDR in a manner sufficient to ensure that the information in DDR concerning cleared swap transactions is current, accurate, and includes all changes to any of the primary economic terms of the swap.

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CME first began using its “drop copy” procedure, whereby CME would make its data available on a CME server so that DDR could retrieve the data, in January 2013. To date, DDR has retrieved a total of 1,027 files. Of this total, there were only 294 files with unique data, as the others either contained no data or were duplicate files. The last data file was retrieved by DDR pursuant to its automated procedures on January 16, 2014. (A representative sample of these files is included as Exhibit 3). The message type for these data files was not identified, and the files do not contain many necessary data elements required by Part 45, including importantly a USI for the cleared Alpha transaction that had previously been reported to DDR. Further, in reviewing the data submitted, only 17 distinct LEIs have been reported by CME with respect to the transactions. Given the large volume of transactions cleared by CME and the large number of entities that are listed as counterparties for swaps reported to DDR, it would appear that the number of counterparties resident in the CME data must greatly exceed the 17 for whom CME has reported LEIs.

2. What was the mechanism for submitting these messages (FTP, MQ, etc.)?

As explained above, CME does not “submit” the messages to DDR. Rather, CME places data files on CME’s server and DDR must check the server and retrieve the files when they are posted. However, Part 45, in section 45.13(b), provides that an SDR can specify its filing facilities, methods and data standards, which DDR has memorialized in its technical specifications document posted on the DDR Website. DDR currently has over four hundred reporting counterparties, including swap dealers, MSPs, end users, and DCOs such as LCH, that comply with DDR’s reporting protocols. None of the 294 unique files containing data from the CME comply with these requirements and, moreover, the files do not have all of the necessary fields, such as the USI, making it impossible for DDR to process the data in these files.

3. Were the original messages complete or were they rejected?

CME’s data files are not complete messages. Specifically, in order to ensure that there is a way to trace from the bi-lateral Alpha swap through novation to the resulting Beta and Gamma swaps, DDR needs to receive specific messages with Part 45 compliant data to maintain accurate data in the DDR. In contrast, with respect to LCH and ICE Clear, DDR worked with these DCOs to ensure that the necessary connections and data transmission procedures were in place on the reporting start date so that transmitted data includes a complete record of activity for cleared swap transactions, including the relevant USIs for Alpha trades as well as data related to the resulting Beta and Gamma swaps.

With respect to the CME data files, because required Part 45 data elements are missing, including USIs and LEIs, DDR could not incorporate the CME data into its SDR and cannot even determine what trade is purportedly being cleared. As noted above, DDR engaged in a series of communications with CME representatives in order to instruct CME how to cure the data defects. In general, these communications have neither resulted in actual submissions by CME nor any significant improvements in data quality with respect to the files placed in the “drop copy” server, as CME’s data files continue to *not* include all required Part 45 fields. Challenges also remain with ICE, the other DCO that desires to report cleared transaction data to a different SDR than where the Alpha transaction is reported. As noted above, ICE has chosen not to report the novation and the resulting information related to the Beta and Gamma swaps with sufficient detail to link that data to the Alpha swap reported to DDR. Instead, it has submitted data purporting to be considered final termination data for the Alpha swap, even though ICE is not a party to the Alpha transaction. Because ICE is not a party to the swap executions originally submitted to DDR, DDR does not process these termination messages.

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In addition to concerns about whether DDR is receiving proper continuation messages from CME, DDR has been informed that counterparties have requested that data reported to the CME SDR also be reported to DDR pursuant to CME Rule 1001. Specifically, DDR has been informed by CME that both RBS and Mitsubishi amongst other counterparties wanted CME to provide continuation data to DDR so that they could reconcile their portfolios.

CME Rule 1001 provides, "For all swaps cleared by the Clearing House, and resulting positions, the Clearing House shall report creation and continuation data to CME's swap data repository for purposes of complying with applicable CFTC rules governing the regulatory reporting of swaps. **Upon the request of a counterparty to a swap cleared at the Clearing House, the Clearing House shall provide the same creation and continuation data to a swap data repository selected by the counterparty as the Clearing House provided to CME's swap data repository under the preceding sentence**" (emphasis added).

As such, the rule contemplates that the same creation and continuation data would be contained in the "secondary SDR" as is contained in the "primary SDR" to allow counterparties to reconcile all of their data in the "secondary" SDR if they so desired. However, as noted above, the data files placed on the server by CME do not include all of the fields required by Part 45, so that it is impossible to link the cleared swap transaction data to the initial Alpha swap transaction report and precludes DDR from maintaining a complete record of swap transaction activity for any individual counterparty exercising their prerogative under CME Rule 1001.

4. If they were rejected, do we have any sense of the major causes of rejection?

The files were not "rejected," as they have never been submitted through the DDR protocol. Moreover, because the CME files did not include the necessary data elements, there was insufficient information for DDR to process the data and incorporate it into DDR's SDR data base. For example, since the CME files did not include complete or accurate USIs for the Alpha, Beta, or Gamma swaps, DDR could not link the information contained in CME's "drop copy" files to any swap transactions reported to DDR. While the data files did not contain information sufficient to link the clearinghouse data to the bilateral swap transaction data in DDR, DDR has stored CME's files in a separate database and retained all messages received from CME for inspection by the CFTC.

5. When was DDR first able to successfully process CME's termination messages?

DDR has never rejected the CME data files and CME has never sent any valid messages to DDR via existing DDR protocols. Moreover, since essential data elements were not included, the data files are not able to be processed by DDR.

6. Confirmation Data: The CFTC is interested in knowing what information appears on the confirmation messages. Specifically, they are interested in any data elements that are not required under Part 45.

Again, the attached file (Exhibit 3) is representative of the data made available via the CME "drop copy" process. DDR does not believe that this information is intended to be a confirmation message, as it is not presented to DDR as such, and is missing critical data elements.

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Should you wish to discuss this information further, please contact me at 212-855-2670 or mcollazo@dtcc.com.

Sincerely yours,

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Enclosure – Exhibits: (1) November 11, 2012 Letter; (2) DDR Analysis of CME Data Files[REDACTED]; (3) Sample CME Data File[REDACTED]

EXHIBIT 1



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November 11, 2012

The Honorable Gary Gensler
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Dear Chairman Gensler:

The Depository Trust & Clearing Corporation (“DTCC”) submits these comments to the Commodity Futures Trading Commission (“CFTC” or “Commission”) in connection with the Commission’s authority under section 21 of the Commodity Exchange Act (“CEA”), which establishes registration requirements, statutory duties, core principles and certain compliance obligations for registered swap data repositories (“SDRs”).¹

On November 8, 2012, the Chicago Mercantile Exchange, Inc. (“CME”) filed suit against the Commission in the United States District Court for the District of Columbia seeking judicial review of, and a permanent injunction against, complying with various rules designed to implement the Dodd-Frank Act’s regulatory regime.

DTCC has significant concerns with the potential negative consequences of a judicial challenge or Commission action to remove the necessity for a legal dispute. The Commission cannot undertake changes to its rules, which have been published for nearly a year (and relied upon for business planning), without conducting adequate notice, comment, and consideration of the costs and benefits of amending its rules. DTCC is currently considering its possible responses to the suit and resulting Commission activity, including possible judicial recourse.

¹ The DTCC Data Repository (U.S.) LLC (“DDR”), a DTCC subsidiary, is provisionally registered to operate an SDR pursuant to part 49 of the Commission’s regulations for interest rate, credit, equity and foreign exchange asset classes. On September 26, 2012, DDR submitted an amended Form SDR, which is pending before the Commission, to serve the other commodity asset class. On October 12, 2012, the DDR began to receive trades from market participants pursuant to part 45 of the Commission’s regulations.

CME's actions seek to do more than enjoin the reporting of cleared swaps data to SDRs. Rather, CME's suit threatens to dismantle and disrupt the entire regulatory regime statutorily mandated by the Dodd-Frank Act in order to preserve CME's exclusive access to data that it acquires through its role as a derivatives clearing organization ("DCO"). This commercial gain would come to the detriment of market participants who have spent an entire year planning, and investing hundreds of millions of dollars, to comply with these rules. Importantly, it would also frustrate the ability of regulators to rely on SDRs to identify and mitigate global systemic risk to financial markets.

CME's challenge comes 15 months after the finalization of rules for SDRs² and 10 months after the adoption of the final swap data recordkeeping and reporting rules ("Part 45 Rules")³ became effective. This lengthy delay suggests that CME's challenge is prompted not by concerns with the costs of reporting data on cleared swaps to SDRs, but in response to swap counterparties, those responsible for swap transaction reporting, choosing to report to SDRs other than CME's captive SDR. A spokeswoman for the International Swaps and Derivatives Association recently reiterated swap counterparties' desires to report cleared swap transaction data from various DCOs to an unaffiliated SDR when she said in a statement, "[p]roliferation of swap data repositories and fragmentation of market data can be harmful to regulatory transparency."⁴ The Commission in response to CME's law suit, or otherwise, should not dismantle and disrupt the entire regulatory regime statutorily mandated by the Dodd-Frank Act in order to preserve CME's exclusive access to the data that it acquires through its role as a DCO.

As Chairman Gensler has proudly proclaimed, "[a]s of October 12, bright lights began to shine on the swaps market with reporting to swap data repositories of *cleared* interest rate and CDS transactions."⁵ CME's recent actions will work to bring down a dark shade on the Chairman's proud accomplishments and prevent the development of the needed transparency for systemic risk oversight.

Background

On October 12, 2012, the CFTC's Part 45 Rules, along with the CFTC's and SEC's joint rulemaking defining the terms "swap" and "security-based swap," became effective. On that date, the Commission began requiring compliance with a comprehensive regulatory regime for cleared and uncleared swaps, requiring swap

² See Swap Data Repositories: Registration Standards, Duties and Core Principles, 17 C.F.R. Part 49.

³ Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2,136 (Jan. 13, 2012).

⁴ CME lawsuit opens new front against US finance watchdogs, Reuters, November 9, 2012, available at <http://www.reuters.com/article/2012/11/09/cme-swaps-lawsuit-idUSL5E8M9FHL20121109>.

⁵ Remarks by Chairman Gary Gensler before the Securities Industry and Financial Markets Association's 2012 Annual Meeting, October 23, 2012, available at <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-125> (emphasis added).

execution facilities, designated contract markets, DCOs, swap data repositories, swap dealers, and major swap participants to comply with the Part 45 Rules with respect to credit swaps and interest rate swaps. On the October 12 implementation date, DDR and other provisionally-registered SDRs⁶ began receiving swaps transaction reports pursuant to the CEA and the Commission's regulations, providing a centralized location for trade information to aid in regulatory market surveillance and systemic risk oversight. As of October 12, 2012, only a limited number of entities were required to comply with the Part 45 Rules, including DCOs.⁷ To date, among the CFTC registered DCOs, only LCH.Clearnet Limited ("LCH") is reporting its swaps transactions to the DDR.

CME operates four exchanges,⁸ serving all major asset classes, and provides clearing through CME Clearing and CME ClearPort. On June 7, 2012, CME filed its Form SDR application with the CFTC to operate an affiliated SDR ("CME SDR"), which is pending Commission approval. On October 15, 2012, we understand that the CFTC granted CME no-action relief that provided CME did not have to comply with the Part 45 Rules until October 26, 2012.⁹ The CFTC then extended that relief until the close of business on November 13, 2012.¹⁰ DTCC has made clear to CME and the CFTC that DTCC's SDR can accommodate CME in receiving the cleared swap transaction data required to be reported pursuant to the Part 45 Rules in a cost-effective manner and has offered to work with the CME to ensure smooth implementation of the necessary systems to allow for timely reporting and compliance.

Cleared Trades Must Be Reported to Swap Data Repositories

It is DTCC's understanding that CME is resisting reporting data regarding cleared swaps to DTCC's SDR as requested by the counterparties to the trade because it wants to: (1) require counterparties to trades cleared through its DCO to report the required data to its own captive SDR; or (2) ignore the swap data reporting regime established under the Dodd-Frank Act. While CME alleges that the requirement to report to a non-affiliated SDR imposes costly, cumbersome or duplicative requirements on CME, DCOs other than CME have already established the

⁶ DDR submitted its Form SDR on October 31, 2011 and received provisional registration September 19, 2012. ICE Trade Vault submitted its Form SDR on November 4, 2011 and received provisional registration on June 27, 2012. CME's submitted its application on June 7, 2012 and is still pending. INFX SDR, Inc. submitted its application on June 8, 2012 and is still pending.

⁷ Swap execution facilities do not yet exist because the Commission's rules promulgating their core principles and other requirements are not finalized. Pursuant to the Commission's staff guidance issued on October 10, 2012, swap dealers are not required to register as swap dealers, and thus comply with the part 45 rules, until December 31, 2012.

⁸ Chicago Mercantile Exchange Inc., the Board of Trade of the City of Chicago, Inc., the New York Mercantile Exchange, Inc. and the Commodity Exchange, Inc.

⁹ A copy of the no-action relief is not publicly available.

¹⁰ A copy of the subsequent no-action relief is not publicly available.

reporting mechanisms and the required data field. One registered DCO has commenced reporting to DTCC's SDR; LCH began reporting its completed transaction data for interest rate swaps to DTCC's SDR on the October 12, 2012 implementation date.

Such efforts to resist data reporting obligations circumvent the reporting framework envisioned by the Dodd-Frank Act, which provides that "[e]ach swap (whether cleared or uncleared) shall be reported to a registered swap data repository."¹¹ The plain language of the statute requires that both cleared and uncleared trades be reported to a registered SDR.¹² The Dodd-Frank Act does not suggest that allowing the Commission access to the data already maintained by DCOs suffices to satisfy the requirement to report all trades to a registered SDR. Were such an interpretation accurate, the Dodd-Frank Act provision allowing DCOs to register as SDRs would be entirely unnecessary.¹³

As set forth in section 21(b)(2) of the CEA, the Commission has the authority to prescribe data collection and maintenance standards specific to SDRs.¹⁴ While such standards must be comparable to the data standards imposed on DCOs, the DCO standards may not supplant the separate data standards mandated for registered SDRs, and DCOs may not stand-in for registered SDRs as repositories of data.¹⁵

Unlike DCOs, SDRs must possess the ability to provide swap transaction data to regulators on a broad scale to assist in identifying and mitigating systemic risk. Under section 5b(k)(1) of the CEA, a DCO is required to "provide to the Commission all information that is determined by the Commission to be necessary to perform each responsibility of the Commission under this Act." Section 5b(k)(4) authorizes the Commission, upon request to share information collected from registered DCOs with the Federal Reserve Board, the Securities and Exchange Commission, each appropriate prudential regulator, the Financial Stability Oversight Council, the Department of Justice, and any other person that the Commission determines to be appropriate, including foreign financial supervisors (including

¹¹ CEA § 2(a)(13)(G).

¹² Section 727 of the Dodd-Frank Act consistently distinguishes between trades that are required to be cleared and trades that are actually cleared, referring to (i) swaps that are "not subject to the mandatory clearing requirement" but "are cleared" and (ii) swaps that are "required to be cleared" but "are not cleared." Congress understood the difference between swaps that are required to be cleared and the actual act of clearance. In this instance, a "cleared swap" does not refer to pre-clearance status; rather, a "cleared swap" refers to swaps that have actually been cleared and are, therefore, required to be reported.

¹³ CEA § 21(a)(1)(B). "(B) REGISTRATION OF DERIVATIVES CLEARING ORGANIZATIONS.—A derivatives clearing organization may register as a swap data repository."

¹⁴ CEA § 21(b)(2).

¹⁵ See CEA § 21(b)(3). "The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations in connection with their clearing of swaps."

foreign futures authorities), foreign central banks, and foreign ministries (collectively, “regulatory authorities”).

By contrast, section 21(c) of the CEA requires an SDR, on a confidential basis, upon request, and after notifying the Commission of the request, to make available all data obtained by the SDR, including individual counterparty trade and position data, to regulatory authorities. As noted by the CFTC in the preamble to its final rules governing swap data repositories, “part 49, together with such Dodd-Frank Act requirements as mandatory clearing and trading, will promote greater price efficiency and increased competition for swaps and other related financial instruments. Part 49’s provisions relating to regulator access will permit the Commission, other domestic regulators and foreign regulators to examine potential price discrepancies and other trading inconsistencies in the swaps market.”¹⁶ There is a critical distinction in the role of an SDR, as compared to a DCO, in identifying and mitigating systemic risk. The SDR, as a source of timely swap transaction data, is able to provide direct data to regulatory authorities, upon request, without the additional step of seeking Commission authorization or approval.

Any effort by CME to continue to resist reporting cleared data to a registered SDR contravenes the Dodd-Frank Act’s reporting mandate and frustrates the goal of providing market transparency to both regulators and the public. Rather, under the reporting framework mandated by the Dodd-Frank Act, both cleared and uncleared trades must be reported to an SDR registered with the Commission in conformance with Commission regulations governing the registration and regulation of SDRs.¹⁷

Principles of Fair and Open Access set forth in the Dodd-Frank Act Prohibit DCOs from Conditioning use of Their Clearing Services on Use of Their Captive Repositories

CME’s efforts to disregard the vitally important transparency regime mandated by Dodd-Frank are not new. On September 24, 2012, DTCC raised concerns about the conformance of CME’s pending SDR application with the requirements of the CEA and the Commission’s regulations promulgated thereunder (“September 24 Comment Letter”). Those concerns were based on an assumption in the cover letter accompanying CME’s Form SDR application, as the stated assumption violated certain fair and open access provisions of the CEA.¹⁸ (A copy of the September 24 Comment Letter is attached herewith.)

¹⁶ Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 Fed. Reg. 54,538, 54,574 (Sept. 1, 2011).

¹⁷ See Swap Data Repositories: Registration Standards, Duties and Core Principles, 17 C.F.R. Part 49.

¹⁸ The CME’s assumption contemplates that, as a condition of membership or participation, a DCO can dictate to a clearing member or participant how it carries out distinct business and compliance activities, including SDR reporting.

The CEA mandates that DCOs allow fair and open access to clearing services for participation and membership. Specifically, the CEA's core principles for DCOs provide, "[t]he participation and membership requirements of each derivatives clearing organization shall – (I) be objective; (II) be publicly disclosed; and (III) *permit fair and open access*"¹⁹ (emphasis added). With respect to the statutory requirement to permit fair and open access, the Commission has emphasized the importance of such principles in promoting competitive markets.²⁰

Further, section 49.27 of the Commission's regulations provides that, "consistent with the principles of open access . . . a registered swap data repository shall not tie or bundle the offering of mandated regulatory services with other ancillary services that a swap data repository may provide to market participants."²¹ This position was affirmed in Frequently Asked Questions (FAQ) on the Reporting of Cleared Swaps, indicating that "[m]arket participants may choose to use a DCM's, SEF's or DCO's SDR for reporting swap transactions, but a DCM, SEF or DCO as part of its offering of trading or clearing services cannot require that market participants use its affiliated or 'captive' SDR for reporting. Such a result would be inconsistent with the intent of sections 21 and 49.27(a) of the Commission's Regulations relating to the reporting of transactions."²²

As a result, a registered entity offering SDR services cannot tie those SDR services together with non-SDR services offered by the registered entity. To condition the use of clearing services on the use of SDR services runs directly counter to the DCO core principle of fair and open access, which fails if the member or participant is unable to use a clearing platform without ceding to the clearer the right to dictate how the member or participant carries on other business and compliance activities.

¹⁹ CEA § 5b(c)(2)(C)(iii).

²⁰ In the preamble of the proposed rule on Risk Management Requirements for Derivatives Clearing Organizations, the Commission cites a November 2004 IOSCO report titled "Recommendations for Central Counterparties," a portion of which is mirrored in the statutory language of the DCO core principles. Specifically, the Commission cites from the report, "a CCP's participation requirements should be objective, publicly disclosed, and permit fair and open access . . . to avoid discriminating against classes of participants and introducing competitive distortions, participation requirements should be objective and avoid limiting competition through unnecessarily restrictive criteria, thereby permitting fair and open access within the scope of services offered by the CCP. Participation requirements that limit access on grounds other than risks should be avoided." (emphasis added). Risk Management Requirements for Derivatives Clearing Organizations, 76 Fed Reg. 3,698, 3,701 n.21 (Jan. 20, 2011) (citing *Recommendations for Central Counterparties*, CPSS Publ'n No. 64 (Nov. 2004), available at: <http://www.bis.org/publ/cpss64.pdf>).

²¹ Swap Data Repositories: Registration Standards, Duties and Core Principles, 17 C.F.R. § 49.27(a)(2).

²² CFTC, Frequently Asked Questions (FAQ) on the Reporting of Cleared Swaps (Oct. 10, 2012).

DCOs May Not Disregard the Counterparty's Right to Select SDR

Under the Dodd-Frank Act, the responsibility to report a derivatives transaction rests with the counterparties to the trade.²³ Market participants have been clear that, along with this responsibility, counterparties want to select the SDR to which data is reported. While the final rules do not preclude counterparties or registered entities from choosing to report to existing DCOs as registered SDRs, or to SDRs chosen by DCOs, if they so chose for business or cost benefit reasons, a DCO should not be allowed to use its central market position as a clearing organization to dictate where a cleared swap is reported. Rather, only in the absence of contrary instruction by the counterparties to the trade, may a DCO determine to report to its own captive SDR, rather than a centralized, unaffiliated SDR designated for reporting by the counterparties. The Frequently Asked Questions (FAQ) on the Reporting of Cleared Swaps, consistent with the Dodd-Frank Act and the Commission's rulemakings, correctly affirm that "(unless otherwise agreed to by the counterparties and the DCO) the selection of the particular SDR to which the swap data is reported for the resulting swaps due to clearing is to be determined by the counterparties to the original swap."²⁴

The regulatory oversight purposes of the Dodd-Frank Act will be frustrated if, through such tying or bundling practices, DCOs unilaterally report to captive SDRs, resulting in fragmented data across multiple SDRs. In rejecting counterparty reporting instructions, DCOs subvert the intent of the Commission's regulation requiring all swap data for a given swap to be reported to a single SDR.²⁵ For purposes of market oversight (*e.g.*, prevention of market manipulation, price distortion, and disruptions of the delivery or cash settlement process) and prudential regulation (*e.g.*, ensuring adequate capital and margin for transaction and monitoring position limits), it is critical that swap data is reported to and maintained by one SDR throughout the life of the contract.

Allowing DCOs to report cleared trades to their own captive SDRs, distinct from the original SDR selected by the counterparties to the trade, has costs, as the Commission has noted, namely risking fragmentation of a counterparty's swaps activity, and preventing regulators from seeing an accurate, consolidated presentation of counterparty position, position limit violations, and patterns of manipulative or abusive trading practices. Further, fragmenting trade data for a single transaction across multiple SDRs will impose unnecessary costs and burdens

²³ The Dodd-Frank Act requires the parties to each swap (whether cleared or uncleared) to report certain information to an SDR. (CEA § 2(a)(13)(G) ("[e]ach swap (whether cleared or uncleared) shall be reported to a registered swap data repository"). Further, under Section 2(a)(13)(F) of the CEA, "[p]arties to a swap (including agents of the parties to a swap) shall be responsible for reporting swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.")

²⁴ CFTC, Frequently Asked Questions (FAQ) on the Reporting of Cleared Swaps (Oct. 10, 2012).

²⁵ Swap Data Record Keeping and Reporting Requirements, 17 C.F.R. § 45.10.

on the counterparties to the trade, as it will require them to unnecessarily reconcile their data across multiple SDRs.

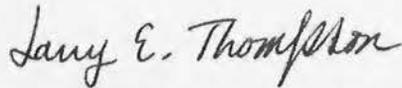
Protecting counterparty's choice of SDR and imposing the obligation to ensure that it is reported accurately on the counterparty has the benefit of providing for accurate audit trail, to the benefit of the public.

Conclusion

Because of the seriousness of the issues raised in this letter and extensive investment that DTCC and market participants have made to comply with the rule that was finalized over a year ago, we have every expectation and request that before any action is taken by the Commission that would alter the status quo our views will be considered. Further, we request a meeting with the Commissioners before any action is taken.

Thank you for your consideration. We appreciate the opportunity to comment on this matter.

Sincerely yours,



Larry E. Thompson
General Counsel

Cc: The Honorable Jill Sommers
The Honorable Scott O'Malia
The Honorable Bart Chilton
The Honorable Mark Wetjen
Dan Berkovitz
Richard Shilts
Jonathan Marcus
Susan Nathan