CME Group

Craig S. Donohue
Chief Executive Officer

February 7, 2011

VIA E-MAIL AND ON-LINE SUBMISSION

David Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
secretary@cftc.gov

Re: Swap Data Recordkeeping and Reporting Requirements (RIN 3038-AD19); Real-Time Reporting of Swap Transaction Data (RIN 3038-AD08)

Dear Mr. Stawick:

CME Group Inc. ("CME Group"), on behalf of its four designated contract markets ("Exchanges" or "DCMs"), appreciates the opportunity to comment on two Commodity Futures Trading Commission (the "CFTC" or "Commission") proposed rulemakings regarding Swap Data Recordkeeping and Reporting Requirements[1] (the "Regulatory Reporting Release") and Real-Time Reporting of Swap Transactions[2] (the "Real-Time Public Reporting Release"). In the Releases, the Commission seeks comment on certain proposed rules to implement an entirely new and comprehensive system of trade reporting and recordkeeping with respect to swap transactions.

CME Group is the world's largest and most diverse derivatives marketplace. CME Group includes four separate Exchanges, including Chicago Mercantile Exchange Inc. ("CME"), the Board of Trade of the City of Chicago, Inc. ("CBOT"), the New York Mercantile Exchange, Inc. ("NYMEX") and the Commodity Exchange, Inc. ("COMEX"). The CME Group Exchanges offer the widest range of benchmark products available across all major asset classes, including futures and options based on interest rates, equity indexes, foreign exchange, energy, metals, agricultural commodities, and alternative investment products.

CME includes CME Clearing, a derivatives clearing organization and one of the largest central counterparty clearing services in the world, which provides clearing and settlement services for exchange-traded contracts, as well as for over-the-counter derivatives transactions through CME ClearPort®.

[1] See 75 FR 76574 (December 8, 2010).

[2] See 75 FR 76139 (December 7, 2010).

The CME Group Exchanges serve the hedging, risk management and trading needs of our global customer base by facilitating transactions through the CME Globex® electronic trading platform, our open outcry trading facilities in New York and Chicago, as well as through privately negotiated transactions. In addition, CME Group distributes real-time pricing and volume data through a global distribution network of approximately 350 licensed global data distribution partners serving approximately 350,000 price display subscribers and hundreds of thousands additional trading system users. CME's proven high reliability platform, coupled with robust administrative systems, represent vast expertise and performance in managing market center data offerings.

I. Background and Executive Summary

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("DFA") amends the Commodity Exchange Act ("Act") to, among other things, establish a comprehensive regulatory framework for the reporting of swap data, including real-time public dissemination of certain transaction information. A central purpose of Title VII was to increase transparency and efficiency in the swap markets.

In the Regulatory Reporting Release, the CFTC proposed a set of rules that would require market participants to make complete and detailed transaction reports for the purpose of establishing comprehensive confidential records that could be accessed by the Commission for regulatory purposes (the "Proposed Confidential Regulatory Reporting Rules"). In the Real Time Public Reporting Release, the CFTC proposed a set of rules that would require market participants to publicly disseminate abbreviated volume and price reports regarding swap trades for the purpose of providing transparency to market participants (the "Proposed Public Real Time Reporting Rules").

CME supports the CFTC's objectives. Enhancing the warehoused swaps information available to government officials will strengthen the CFTC's oversight ability. Greater regulatory transparency for swap transactions should benefit all market participants. In CME's view, however, the CFTC's proposed regulatory reporting regime does not appropriately utilize the existing infrastructure available in derivatives clearing organizations ("DCOs"). Under the Proposed Confidential Regulatory Reporting Rules, DCOs could be required to make confidential regulatory reports to an external non-DCO swap data repository ("SDR"). In CME's view, the complete set of non-public regulatory information regarding a cleared trade should be housed at the DCO that clears the transaction. The Commission should clarify in its final rules that each initial regulatory report for a cleared swap must be directly reported to the applicable DCO or SDR chosen by such DCO ("DCO-SDR"). This approach is the lowest cost and least burdensome method for implementing the regulatory reporting requirements.

The President recently published an opinion piece in the Wall Street Journal describing new operating principles for the U.S. regulatory system.[3] With respect to new regulations, he announced that his administration was "seeking more affordable, less intrusive means to achieve the same ends – giving careful consideration to benefits and costs." DCOs will

[3] See "Toward a 21st-Century Regulatory System," by President Barack Obama, published in the Wall Street Journal on January 18, 2011 at A17.

necessarily have already established connections with relevant execution venues and other market participants for cleared trades. These existing connections can be used for reporting purposes as well. Requiring entirely redundant reporting channels to non-DCO SDRs for cleared trades is at best unnecessary and costly and at worst could create unnecessary ambiguity about the true state of a trade or position.

II. Comments Regarding the Regulatory Reporting Release

a. DCOs Should Maintain Confidential Regulatory Reports for Cleared Trades Without a Reporting Obligation to any Non-DCO SDR.

As the CFTC has made clear, the public real time transaction reporting requirements in the DFA designed to enhance transparency are entirely separate from the confidential regulatory reporting that is required by the legislation. The general purpose of the non-public regulatory reporting requirements is to provide the CFTC with effective access to a complete and usable audit trail of swap transaction activity.[4] As such, non-public regulatory reports are intended to be held confidentially and cannot be commercialized under the CFTC's proposed rules without appropriate consent. The comments in this section apply to the CFTC's Proposed Confidential Regulatory Reporting Rules.

The Text of the DFA Shows Congress Did Not Expect DCOs to Make Confidential Regulatory Reports to Non-DCO SDRs

The DFA itself shows that Congress expected that DCOs would act as the final repositories of regulatory information for cleared swap trades. Section 729 of DFA is the clearest source of authority for the reporting requirement that applies to non-public and confidential regulatory reports. This provision adds new Section 4r of the CEA and provides:

SEC. 4r. REPORTING AND RECORDKEEPING FOR UNCLEARED SWAPS.

(a) REQUIRED REPORTING OF A SWAP NOT ACCEPTED BY ANY DERIVATIVES CLEARING ORGANIZATION. -

(1) IN GENERAL. - Each swap that is not accepted for clearing by any derivatives clearing organization shall be reported to—

(A) a swap data repository described in section 21; or

(B) in the case in which there is no swap data repository that would accept the swap, to

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[4] Chairman Gensler delivered a speech regarding implementation of the DFA in which he explained: "There are two types of transparency that Congress sought to bring to the swaps markets. The first is transparency to the regulators, which will include swap data repositories that will provide data to regulators in real time. The second type of transparency is to the public…" See Remarks, Implementing the Dodd-Frank Act, George Washington School of Law by Chairman Gensler on January 14, 2011 on the CFTC's website at:

http://www.cftc.gov/pressroom/speechestestimony/opagensler-65.html.

> *the Commission pursuant to this section within such time period as the Commission may by rule or regulation prescribe.*

New Section 4r on its face only applies to uncleared swaps. Under Section 4r, swaps that are not cleared by a DCO have to be reported to an SDR. CME believes new Section 4r only required uncleared swaps to be reported to an SDR because Congress expected that confidential regulatory information regarding cleared swaps would necessarily be maintained by DCOs.

There is a separate reporting provision found in Section 727, which added new Section 2(a)(13) to the Act. Section 727 is entitled "Public availability of swap transaction data," and its express purpose is to authorize the CFTC to adopt rules to "make swap transaction and pricing data available to the public" to enhance price discovery. Paragraph (G) of new Section 2(a)(13) specifically requires that:

> *"Each swap (whether cleared or uncleared) shall be reported to a registered swap data repository."*

Because this particular reporting requirement is found in Section 727, it is reasonable to conclude that it applies to the required price and volume reports that are to be distributed to the public for price transparency purposes. This type of reporting is separate from the Section 729 reporting that is intended to facilitate effective regulatory access to comprehensive swaps data. Section 729 only requires uncleared swaps to be reported to an SDR for regulatory purposes.

There are other provisions in the DFA that further evidence congressional intent to rely on DCOs as the natural repository for non-public regulatory information regarding cleared swap trades. For example, Section 725 of the DFA amended portions of the CEA that govern DCO registration, regulation and duties. These amendments are designed to ensure that the CFTC adopts rules subjecting DCOs to data collection and maintenance requirements for cleared swaps that are comparable to the corresponding requirements applicable to swaps data reported to an SDR. These changes seem designed to ensure equivalent regulation between DCOs that house cleared trades for regulatory reporting purposes and SDRs that house uncleared trades for the same purposes. If Congress had not expected DCOs to act as the repositories for non-public reporting information for cleared trades, the Section 725 amendments would not have been necessary.

In addition, the CFTC's semiannual and annual aggregate swap data reporting requirements in Section 727 show that Congress expected regulatory information regarding cleared swaps to be housed at DCOs. Paragraph (B) of new Section 2(a)(14) of the Act directs the CFTC to "use information from swap data repositories and derivatives clearing organizations" when preparing aggregated market reports. If Congress expected complete regulatory records to be reported to SDRs, it would not have been necessary to direct the CFTC to tap into DCOs in this way. CME believes Congress clearly intended for DCOs to be repositories of regulatory information for cleared trades.

There are Compelling Operational Reasons to Ensure That DCOs are not Required to Make Confidential Regulatory Reports to Non-DCO SDRs

There are also compelling operational reasons to ensure DCOs or DCO-SDRs act as final repositories for regulatory information regarding cleared trades. First, calling on DCOs or DCO-SDRs to play this role would be the lowest cost and least burdensome path available to the CFTC to implement the DFA's regulatory swap reporting requirements. Each DCO that currently clears swap transactions already possesses the majority of transaction records that would be required to be maintained under the CFTC's Proposed Confidential Regulatory Reporting Rules. Any required records that are not currently maintained by a DCO that clears a swap transaction can easily be reported to such DCO or DCO-SDR at the time a transaction occurs. DCMs and SEFs that are matching standardized swaps transactions will necessarily be required to establish connectivity with DCOs for the purpose of clearing. These connections could easily be used to facilitate reporting as well. Therefore, technology build outs would be as limited as possible.

Non-DCO SDRs would have to establish entirely new connections with DCOs, DCMs, SEFs, swap counterparties and regulators, as applicable, solely for the purpose of receiving confidential regulatory reports. Requiring redundant channels of connectivity to allow non-DCO SDRs to maintain a separate set of cleared trade information would be expensive. These costs would likely be passed on to end users. Further, such redundant reporting loops would introduce the potential for new points of failure or errors in the reporting chain.

There are other important reasons besides cost and efficiency to avoid creating a redundant warehouse of trades. A system that includes separate sets of trade details at a DCO and at a non-DCO SDR introduces potential ambiguity about the true state of a trade or position. When a trade is cleared on a DCO, such DCO must always be the holder of the "gold copy" of the trade. This is required because the DCO must margin the position, must calculate open interest, and must interact with the back office systems of its clearing members. These are the core functions of clearing and cannot be delegated.[5]

To the extent a DCO is required to report swap trades into a non-DCO SDR, and to maintain the state of the trade in the non-DCO SDR, the Commission would essentially be requiring DCOs to replicate many of its own data processing tasks in the SDR. It would require a time consuming and technologically difficult syncing process nearly every moment the DCO is in operation. This could potentially slow down the speed at which the DCO can clear trades, as it could be forced to hold up processing while it has connectivity issues with, or there are latencies with, an external party. This type of scheme would be highly wasteful and may not be technically possible without causing disruptions in the normal flow of DCO processing. To build a syncing process between a DCO and an SDR would also be extremely expensive, and even if built, would always result in the SDR copy of the data only being up to date as of the last "sync" with the DCO. If it is truly the Commission's goal to have immediate access to the most accurate and reliable picture of trades/positions, it is clear that it should be accessing data regarding cleared trades directly from the DCO.

Existing Non-DCO Repositories Are Not As Well Positioned as DCOs to Receive and Maintain Regulatory Reports for Cleared Trades

[5] Further, DCOs provide audit trails to their respective DCMs (and, in the future, SEFs) so that such entities can meet the core principle recordkeeping requirements.

The Regulatory Reporting Release references by name certain existing vendors that provide certain services (e.g., confirmation and affirmation services) to the current over-the-counter swap markets. The Release discusses prominent existing vendors in each swap asset class.

These entities currently do not have the capabilities possessed by a DCO like CME as far as cleared markets are concerned. Substantial work would be required to complete core regulatory warehousing functions. These existing vendors generally operate in batch mode and may not have the skills or technology to handle live data and constant streaming of messages and historical state changes of positions. Building these capabilities in existing vendors could be time consuming and there are likely to be growing pains even when finished. DCOs like CME have longstanding and demonstrated track records in these areas.

The current positioning of these vendors with market participants is better suited for servicing the uncleared markets. These entities would simply duplicate efforts of DCOs in connecting to SEFs and DCMs that match standardized swap trades. However, these entities will be well positioned to provide their varied services, including non-SDR add-on services, to the uncleared markets and such services will continue to be demanded for bilateral trades.

The CFTC's Stated Concerns Regarding DCOs are Unfounded

The Regulatory Reporting Release highlighted two concerns the Commission identified when considering the proper role for DCOs in the non-public regulatory reporting process. First, the CFTC stated that:

> "Allowing the first report of swap data concerning a swap to come from a DCO following clearing, or from a counterparty following full legal confirmation, would result in reporting delays that the Commission does not believe are desirable. Without reporting of primary economic terms data shortly following execution of a swap, regulators examining SDR data for regulatory purposes in many cases would not see the swap in question for hours or in some cases nearly an entire day (if initial reporting followed clearing), or even for days or weeks (if initial reporting followed full legal confirmation). This lack of complete swap data would frustrate fundamental purposes of financial reform, recognized not only by Congress in passing Dodd- Frank, but internationally."[6]

CME agrees that the first regulatory report of swap data should immediately follow the execution of a swap and should not be held until after clearing. However, it does not follow that a DCO should not be part of the reporting process due to this timing. In CME's view, the first report of the primary economic terms following the execution of a cleared swap should be required to be sent to the DCO (or DCO-SDR) that is clearing the trade. This first report can be sent to the appropriate DCO (or DCO-SDR) just as quickly as it could be sent to a non-DCO SDR.[7]

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[6] See page 76582.

[7] In fact, DCOs are also be fully capable of disseminating price and volume reports required under the Proposed Public Real Time Reporting Rules if initial terms reports are made to the DCO. CME Group currently distributes real-time pricing and volume data through its existing global distribution network of approximately 350 directly distribution partners serving approximately 350,000 price display subscribers and hundreds of thousands of additional trading system users. To the extent initial terms reports for

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However, because the DCO will as a matter of course be in possession of all subsequent regulatory reporting information, i.e., allocations, give-ups, transfers, swap confirmation data and all swap continuation data, additional external reporting would not be necessary to maintain the entire life cycle of any particular swap trade in one location.

Non-DCO SDRs would not have access to subsequent reportable events unless they received reports from a DCO. It is thus far more efficient to require the initial report for a cleared swap trade to be made to the relevant DCO clearing the trade or to a DCO-SDR. It also removes additional points where a failure in transmission or other error could occur.

The second concern highlighted in the Proposing Release addresses the issue of competition among SDRs:

> "It would also be undesirable to have all reporting of required swap creation data for cleared swaps done by DCOs, because such a limitation could have anti-competitive effects. Dodd-Frank explicitly permits DCOs to register as SDRs. However, the statute does not limit SDR registration to DCOs, and it contemplates free market competition between registered SDRs on a level playing field (as the existence of its antitrust provisions makes clear). If Commission regulations directed that all reporting of swap creation data for cleared swaps was to be done by DCOs, this could give DCOs a competitive advantage in comparison with other non-DCO SDRs, since non-DCO SDRs would not be able to offer data reporting to an SDR as part of a possible bundling of services to customers. The proposed regulations are designed to ensure fair competition in the provision of SDR services."[8]

As an initial matter, CME does not believe that a system that features DCOs as the sole repositories of regulatory information for cleared trades would be detrimental to the goal of promoting competition. It is apparent that there will be robust competition among DCOs to service the cleared market. Further, there will be active and vigorous competition among all players in the uncleared market.

Although we do not concede that competition would suffer if DCOs were to warehouse regulatory information for cleared trades, we think the CFTC's primary concern when designing the system should be on effectiveness and efficiency. The purpose of regulatory reports is to provide the Commission with the most accurate information available for market oversight purposes. Further, the Commission's proposed rules governing SDR registration and regulation generally prohibit commercializing any aspects of non-public regulatory swaps data.[9] Given these important regulatory purposes, and the reality that SDRs will generally be restricted from profiting from warehousing services, we do not understand why the Commission would choose to elevate the goal of SDR competition in the cleared market over the goals of effectiveness,

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trades that are cleared by CME are sent to CME immediately after execution, this existing data distribution network could easily be made available to facilitate widespread real time data dissemination.

[8] See page 76582.

[9] See 75 FR 80898 (December 23, 2010).

efficiency and cost to justify why DCOs should not be required to play this natural role. It is even more puzzling given that the text of the DFA suggests that Congress explicitly expected DCOs to play this role.

The Commission notes that the DFA did not limit SDR registration to DCOs. This is certainly true. Congress would not have limited SDR registration to DCOs because Congress understood that non-DCO firms would register as SDRs and compete to fill in the obvious warehousing service gap for uncleared trades.[10] CME believes that Congress expected regulatory warehousing to be a core service offered by DCOs and expected DCOs to compete vigorously against each other to offer clearing services. Allowing DCOs to compete to receive initial regulatory reports for cleared trades is in alignment with these expectations and does not foreclose competition among all firms for the uncleared market, where Congress expected non-DCO SDR competition to occur.

CME's Recommended Revisions to the Proposed Rules

Proposed Rule 45.7 requires that all swap data for a given swap be reported to a single SDR, which must be the SDR to which the required primary economic terms data for that swap was first reported. Thereafter, under the proposed regulation, all data reported for the swap by any registered entity or counterparty to the swap, and all corrections of errors and omissions in previously reported data, must be reported to that same SDR.

With respect to swaps trades effected on a DCM or SEF, or trades not effected on a DCM or SEF by Swap Dealers ("SDs") or Major Swap Participants ("MSPs"), the Regulatory Reporting Release states that "the choice of the SDR to receive the initial report shall be made in a manner to be determined by the Commission prior to the adoption of its final swap data reporting regulations."[11] The Proposing Release requested comment concerning how the initial choice of SDR should be made.

For all the reasons discussed above, CME believes the Commission's best course is to determine in its final rules that the initial terms report for a swap that is required to be cleared must be reported to the applicable DCO, or DCO-SDR, clearing the trade. This approach is most closely aligned with the text of the DFA. It is also the lowest cost and least operationally burdensome path available to implement confidential regulatory swap trade reporting requirements. It also avoids difficult issues that would be involved if non-DCO SDRs were allowed to maintain a redundant set of cleared trade records.

CME also does not believe that DCOs (or DCO-SDRs) performing regulatory warehousing services for trades they clear should be required to provide reporting services to the uncleared

[10] It is also true that the DFA permits but does not require DCOs to register as SDRs. See Section 728. It does not follow that Congress therefore expected that non-DCO SDRs should given responsibility to warehouse swaps data for regulatory purposes. The permissive registration provision is better read to provide for the possibility that DCOs might also choose to offer SDR-like services in the uncleared markets, in which case registration as an SDR would be necessary.

[11] See page 76593. With respect to the initial report of required primary economic terms made by a non-SD/MSP counterparty, the proposed regulations would provide that the non-SD/MSP counterparty making the reports shall choose the SDR to which the report is made. See page 76593.

market. The existing non-DCO swap repositories are well positioned to provide these services to the uncleared markets and should be called on to do so. The natural repositories for cleared trades, the DCOs, should be allowed to perform these services for the cleared sector.

b. The Development of Universal Identifiers should be Open, Transparent and Coordinated

CME understands the CFTC's desire to develop universal methods of identifying particular swap transactions, the legal entities that are parties to such transactions, and the product type involved in particular swap trades. Developing unique identifier standards is an essential building block of the CFTC's Proposed Confidential Regulatory Reporting Rules. CME believes the Commission needs to have realistic expectations regarding the time that will be required to achieve industry consensus on standards for unique identifiers. This critical first step must be completed before the industry can even begin the detailed technology implementation of swap reporting requirements.

Unique Counterparty Identifiers

The CFTC as a threshold matter should clarify its intended purpose for requiring counterparty identification. Is the CFTC simply trying to establish the identity of specific counterparties to a trade? Or, is its purpose to establish a counterparty's relationship with other entities (e.g., as an owner) or its role in a transaction (e.g., as a controller or adviser), or both? The best methods for achieving these objectives may differ. CME believes the first step in the process should be to define the intended goals. With this step accomplished it will be possible to design effective means.

CME believes that any system of unique counterparty identifiers should feature a not-for-profit industry utility coordinating an international registry offered to market participants at no cost. The central utility should not be an SDR itself and should not be a private business to avoid potential conflicts of interest. CME believes that any system of counterparty identifiers should include neutral codes that do not contain any visible or meaningful identifying information. CME notes that the development of an appropriate and ready to use system with these characteristics is likely to take years rather than months to finalize. The process is also likely to be expensive to establish and maintain on an ongoing basis.

There is another option to consider. The CFTC long ago established a large trader position system for futures which includes a method for identifying specific account owners and controllers, i.e., the CFTC form 102. This system is time tested and has proved its utility and relevance over and over again. The Commission could work on modernizing and updating this system and the form 102 to include necessary swap information. Using the large trader system to identify participants would be easier, less costly, and less risky than attempting to establish a new international method for identifying legal entities. This is a less disruptive alternative that could be implemented in shorter timeframes.

Unique Swap and Product Identifiers

As with counterparty identifiers, CME believes that it is important for the CFTC to clarify its purpose for collecting unique swap and product identifiers. For example, some have suggested that unique product identifiers could be useful in monitoring for exposure and position limits. However, due to the fact that portfolio level information including cash positions and derivatives

positions across asset classes is necessarily required for this type of monitoring, the mere use of unique product identifiers cannot by itself achieve this objective. CME believes that clearly establishing these purposes is a fundamental first step.

With respect to the development of unique product and swap identifiers for any purposes, CME does not believe that a single coordinating registry is necessary. Rather, the best approach is to engage in a transparent industry process that results in a standard set of agreed upon rules that can be applied free of charge. These rules should allow market participants with a reporting obligation to be able to generate required identifiers through their own application of the standards. The rules should be generally applicable across all asset classes and the process should not be owned by any particular private party. As with counterparty identifiers, there should not be any information in the code itself that could be used to identify counterparties.

This type of approach has been used in other contexts with success. For example, CME Group participated in an industry effort to develop FIX as an industry standard order routing and data dissemination protocol. CME stands willing to participate in a similar effort with respect to swap and product identifier standards.

Coordinate Development of Unique Identifiers with Other Regulators

The process for developing all three types of unique identifiers must be coordinated with other regulators to the maximum extent possible. Other U.S. and international regulators are currently evaluating the need for unique identifiers in other contexts. Given that market participants frequently transact in multiple jurisdictions and therefore are subject to multiple regulatory requirements, it makes sense to strive for compatible identification protocols to avoid the need for developing separate systems. In addition, to the extent required identification codes are designed to be compatible, regulators would be able to share information more effectively. Obviously, coordinating with other regulators would add time to an already complex and difficult project, however, CME believes it would be time well spent.

Do Not Implement Reporting Unless and Until Appropriate Standards are Developed

The CFTC's Proposed Confidential Regulatory Reporting Rules provide for a process whereby unique identifiers would be assigned by an individual SDR based on general principles set forth in the rules in the event that acceptable unique identification systems are not finally developed by the time of the effective date of the proposed regulations. CME strongly recommends removing these impractical alternative procedures. The swap data reporting requirements should not become effective unless and until industry wide and internationally coordinated standards for product, swap and counterparty identifiers are firmly in place.

c. Issues Regarding Ownership of Data

CME will provide separate comments to the Commission regarding its proposed rulemaking governing the registration and duties of SDRs.[12] Our comments will address how those

[12] See 75 FR 80898 (December 23, 2010). The comment period for this proposed rulemaking closes on February 22, 2011.

proposed rules should clearly restrict the ability of SDRs to commercialize regulatory reporting information entrusted to them to the extent they ultimately receive cleared trade information. If DCOs are required to report swap continuation data to non-DCO SDRs, the final rules must reflect that such reported information contains intellectual property owned by the submitting DCO, for example, derived settlement prices and curve values. Because of this, it should be clear that any non-DCO SDR possessing such information would under no circumstances be allowed to use any aspects of the DCO's intellectual property for commercial purposes without obtaining the express written consent of such DCO.

d. Continuation Data on Cleared Trades should be not be Submitted to Non-DCO SDRs

Under the current Proposed Confidential Regulatory Reporting Rules, swap markets (including DCMs and SEFs) could be obligated to submit certain pricing information that is contained in the current definition of swap continuation data to non-DCO SDRs regarding cleared trades. CME does not see any value in requiring these types of reports to a non-DCO as the central counterparty model breaks the originating trade and replaces it with positions between the DCO and original parties. It is those positions which should be reported on by the DCO in the continuation data set - this is a function solely available to the DCO.

e. Refine Definition of "Other Commodity" Asset Class

The Proposed Confidential Regulatory Reporting Rules separate swaps under the jurisdiction of the Commission into five general categories based on underlying assets: credit, interest rates, currencies, equity and "other commodities". Under current definitions, the final "other commodities" catch all category captures every outstanding swap under the Commission's jurisdiction other than those swept up in the first four categories. The Commission should provide greater clarity regarding the scope of this category and what it is intended to cover. This would be particularly important if the Commission's final rules continue to require that an SDR that accepts any swaps in a given asset class must stand willing and able to accept trades for every eligible trade in such asset class. It would be better to define the products in the "other commodity" asset class or assign a more descriptive category name. Should the Commission maintain some level of openness in qualifications for inclusion of the category, CME requests the detail of a procedure for admitting new eligible products with materially differing attributes going forward.

III. Comments Regarding the Public Real Time Reporting Release

a. "Widely Published" Needs Further Definition

The Proposed Public Real Time Reporting Rules require that reportable swap transaction information be publicly disseminated as soon as technologically practicable after the time at which the swap transaction has been executed. The Proposed Rules define "public dissemination" to mean publishing and making available swap transaction and pricing data "in a non-discriminatory manner, through the Internet or other electronic data feed that is widely published and in machine-readable electronic format." The term "widely published" is not defined and subject to interpretation.

CME has a well developed and extensive global network of approximately 350 directly connected vendor firms disseminating information regarding activity on its exchanges. The

public access afforded through this network obviously meets the widely published threshold in accordance with the transparency purposes of the DFA. However, under the current formulation of the Proposed Public Real Time Reporting Rules, entities that are attempting to discharge their public real time reporting responsibilities could attempt to distribute data to much smaller audiences. Even if distribution is non-discriminatory, but is in fact very narrow, the public transparency purposes of the DFA could be frustrated. CME believes that situations where an executing venue publishes required data only to a narrow set of participants should be avoided and the Commission should issue guidance as part of its final rulemaking to further these goals.

b. Determination of Appropriate Minimum Block Size

The Proposed Public Real Time Reporting Rules allow qualifying block trades and other large trades that meet the definition of a large notional swap to be withheld from public dissemination for up to fifteen minutes after execution. These rules are based on specific statutory directives from the DFA.

The Proposed Public Real Time Reporting Rules contemplate a system whereby SDRs are given the responsibility to calculate appropriate minimum block size thresholds and publish such thresholds to the market. These SDR calculations would be based on a prescribed regulatory formula. In general, the calculation involves a historical analysis of swap transaction sizes occurring over a set period of time, and an application of a threshold percentage of trades. Trade sizes that exceed the threshold would be exempt from the immediate publication requirements. Trade sizes falling below the calculated cutoff would not be eligible for delayed dissemination.

It is difficult to see how the current proposed process for determining appropriate minimum block sizes can work effectively in an environment with multiple SDRs operating in a given asset class. If five different SDRs were allowed to calculate and distribute minimum block sizes, it is likely that the market would be faced with five different published exempt minimum block sizes. Market participants would have incentives to make reports based on these differences. The Commission seems to have recognized these challenges given that that the Proposed Rules provide that, in the event multiple SDRs per asset class exist, the CFTC will determine the manner in which block thresholds will be calculated. However, there is no explanation how this determination would be made.

In CME's view, this issue is not reconcilable in a market structure that includes multiple SDRs, as is required by the DFA. The only viable option is to place the burden of calculating and disseminating appropriate block minimums on the Commission under a reasonable and specified formula. The Commission is the obvious party with access to the market-aggregated data that will be necessary to make such determinations.

CME Group believes that final rules governing blocks of swaps that involve instruments where there is an economically equivalent futures contract listed on a DCM should be comparable to the rules that govern block trades for such futures contracts, including but not limited to, size requirements, any restrictions placed on the percentage of blocks that may be done relative to the overall size of the relevant market, and reporting and recordkeeping requirements. Disparate rules for economically equivalent instruments will have the unintended consequence

of tilting the playing field in favor of one class of instruments, which is not the intent of the DFA.[13]

c. Revise Rules to Provide For Scheduled Maintenance Periods

The Proposed Public Real Time Reporting Rules requires SDRs that accept and publicly disseminate swap transaction and pricing data in real time to maintain hours of operation that allow them to receive and publicly disseminate swap transaction and pricing data twenty-four hours a day. The Proposed Rules permit SDRs to declare, on an ad hoc basis, special closing hours to perform system maintenance provided that reasonable advance notice of special closing hours is announced to the public and that such closures are not during active trading periods.

CME urges the Commission to revise its Proposed Rules to allow firms to have a scheduled and brief let down period on a daily basis for routine maintenance items and daily demarcation. These periods should extend for no less than 30 minutes and should be scheduled for time periods that are most opportune (i.e., when market activity is at low levels).

IV. Other Comments

a. Ensure Conformity to the Maximum Extent Possible Between CFTC and SEC Reporting Standards

Both the Commission and the Securities and Exchange Commission ("SEC") have proposed detailed sets of rules to implement the DFA's transparency directives. The SEC's rules apply to reporting and dissemination of security-based swaps and the CFTC's corresponding rules apply to all remaining swaps transactions. While the two sets of rules are distinct, they generally address the same general topics. However, the CFTC's and the SEC's proposed swap data reporting rules are not entirely conformed and deviate in certain respects.

We do not believe there are substantive differences in the characteristics of security-based swaps under the supervision of the SEC and swaps under the jurisdiction of the CFTC that justify disparate regulatory treatment from a transaction reporting perspective. For example, the SEC proposed rules allow delays in public dissemination of the notional size for qualifying block trades for periods of between 8 and 26 hours. In contrast, under the CFTC's Proposed Public Real Time Reporting Rules, the notional amount of a block is generally subject to a fifteen minute delay after execution. CME Group believes that final reporting rules governing swaps and security-based swaps should be comparable. Disparate rules instruments could have the unintended consequence of tilting the playing field in favor of one class of instruments. We strongly believe the agencies should make every effort to ensure the final rules that are adopted are conformed to the maximum extent possible.

The need for conformity and consistency is critical given the considerable effort that will be required for the industry to prepare for swap data reporting implementation. To the extent final

[13] Additional CME Group comments on the Commission's proposed rules for swap blocks may be found in forthcoming comment letters in response to the Commission's notice of proposed rulemakings on Core Principles and Other Requirements for Swap Execution Facilities and Core Principles and Other Requirements for Designated Contract Markets.

rules of the two agencies differ in significant ways, the industry, which includes many market participants that handle both swaps and security-based swaps, would be required to address such differences when building out technology systems to handle reporting requirements. Any requirements that would force development of two separate sets of systems would lead to increased and unnecessary costs. This is important because the industry, like the agencies themselves, is already stretched to its resource limits due to the implementation of many other aspects of the DFA.

b. Scope of Implementation Must Be Considered When Setting Effective Dates

The Commission must set final compliance dates that take into account the scope of the projects that will be involved in implementing the new swap data reporting requirements. It is certainly true that enhancing transparency in the swap markets is a primary goal of the DFA. However, it is equally true that successfully implementing a comprehensive set of systems to accomplish this goal is a process that is certain to take several years to complete entirely in order to implement effectively the goals of the DFA.

V. Conclusion

The CFTC has an obligation to consider carefully the benefits and associated costs with the rulemaking approaches it chooses to employ to implement statutory directives. With respect to regulatory reporting for cleared swap trades, the best approach is the one contemplated by the text of the DFA – DCOs should be the mandatory warehouses for non-public swap information. Requiring otherwise would significantly increase costs to market participants, would be operationally inefficient, and would be unnecessary.

CME Group thanks the Commission for the opportunity to comment on this matter. We would be happy to discuss any of these issues with Commission staff. If you have any comments or questions, please feel free to contact me at (312) 930-8275 or via email at **Craig.Donohue@cmegroup.com**, or Tim Elliott, Director and Associate General Counsel, at (312) 466-7478 or **tim.elliott@cmegroup.com**.

Sincerely,

Craig S. Donohue

cc: Chairman Gary Gensler
Commissioner Michael Dunn
Commissioner Bart Chilton
Commissioner Jill Sommers
Commissioner Scott O'Malia
Chairman Mary Schapiro
Commissioner Kathleen Casey
Commissioner Elisse Walter

Commissioner Luis Aguilar
Commissioner Troy Paredes