January 27, 2020

Via Electronic Submission

Christopher Kirkpatrick
Secretary of the Commission
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

RE: Joint Comments Certain Swap Data Repository and Data Reporting Requirements RIN Number 3038-AE32

Dear Mr. Kirkpatrick:

The Chicago Mercantile Exchange Inc. ("CME"), DTCC Data Repository (U.S.) LLC ("DDR") and ICE Trade Vault, LLC, ("ICE Trade Vault"), (each an "SDR" and collectively, the "SDRs"), appreciate the opportunity to provide the Commodity Futures Trading Commission ("CFTC" or the "Commission") with comments regarding the proposed amendments to parts 23, 43, 45 and 49 of the Commission's regulations ("Proposed Amendments"). Each SDR is currently operational as a provisionally registered Swap Data Repository.

The SDRs support the Commission's efforts to improve the accuracy of data reported to, and maintained by, swap data repositories. We would like to commend the CFTC Staff's efforts to reach out to the SDRs and the industry to facilitate a dialogue about the operational issues involved with reporting accurate data. We believe that such coordination is a helpful and efficient process. However, there are a number of Proposed Amendments that raise concerns for the SDRs and these are described below.[1] In addition, the anticipated part 43 and part 45 rule changes could impact these comments or other sections of the Proposed Amendments. Therefore, we support the Commission's proposal to re-open the comment period for these Proposed Amendments when the changes to part 43 and part 45 are released and reserve the right to further comment on the proposed amendments to parts 23, 43, 45 and 49 at such time.

I. Section 49.11 – Verification of Swap Data Accuracy

We want to thank the Commission for recognizing that the role SDRs play in data accuracy is a topic that needs to be addressed. The SDRs support the Commission's efforts to improve reported data quality and believe that the changes in proposed §49.11 and proposed §45.14 will make the process of swap data verification align with the practical operational realities of verification as well as address which entities should be responsible for improved data accuracy and how to best accomplish that goal. The

[1] The topics discussed in this letter are those on which the SDRs have a common interest and are united in our concerns and proposed modifications. Each of the SDRs may also submit their own separate comment letters addressing additional points in the Proposed Amendments.

SDRs, however, do have significant concerns with the requirement in proposed §49.11(c) for an SDR to receive a response from a reporting counterparty in order to satisfy §49.11(c) verification requirements. These concerns, as well as additional points, are discussed in greater detail below.

A. 49.11(a) Obligation for accurate reporting

We believe the Commission's proposed approach, which places the responsibility for the accurate submission of data on reporting counterparties is the correct approach to verification and will be effective in meeting the Commission's data accuracy goals.[2] As the Commission recognizes in the preamble to the Proposing Release, the reporting counterparties are in the best position to verify swap data with the SDR[3] to which the data was reported and, thereby, ensure that the data submitted to SDRs is accurate. The single-sided reporting framework established by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank")[4] and implemented by corresponding changes to the Commodity Exchange Act ("CEA")[5] and the regulations promulgated thereunder would be undercut significantly if the non-reporting counterparties were required to be involved in a verification process with an SDR. This is because the only way for an SDR and a non-reporting counterparty to safely and securely communicate about swap data would be to require the non-reporting counterparty to become a member of the SDR to which the trade was reported.[6] Dodd-Frank and the resulting regulations place the burden to report accurate data squarely with a reporting counterparty and these newly proposed amended regulations logically follow the same approach by placing the responsibility to verify accuracy with the reporting counterparty as well, thereby maintaining the single-sided reporting framework established by Dodd-Frank. Prescribed data elements and validation requirements further bolster the effectiveness of this approach and the Proposed Amendments as described in paragraph III below.

B. 49.11(c) Verification requirements

The SDRs strongly disagree, however, with the proposed requirement for SDRs to receive from a reporting counterparty verification of data accuracy or a notice of discrepancy in order for the SDR to comply with its obligations under proposed §49.11.[7] As was recognized by the Commission in the preamble, such a requirement places the SDR in a position where it is entirely dependent on the actions of

[2] Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044 at 21055 (May 13, 2019) [hereinafter *Proposing Release*), question 2.
[3] Id. at 21052.
[4] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).
[5] Dodd-Frank Title VII, establishing new Swap Market regulation for cleared and uncleared swaps, 7 U.S.C. 1 et seq.
[6] "Member" is used throughout this letter to refer to registered clients of an SDR who have executed the appropriate membership documents. A non-reporting counterparty who is a member is able to review the accuracy of trades on which it is named and follow procedures set out by the SDR for correcting such data.
[7] As proposed, §49.11(c) states "[i]n order to satisfy the requirements of this section, the swap data repository shall receive from each reporting counterparty for each open swaps report (i) a verification of data accuracy…or (ii) a notice of discrepancy….". Proposing Release, 84 FR at 21103.

the reporting counterparty to meet the SDR's own regulatory requirements.[8] While we are appreciative of the Commission clarifying that an SDR would not be responsible for failing to satisfy the requirements of §49.11 where an SDR made the effort but the reporting counterparty failed to respond, there remains a question as to what an SDR must do to meet the standard of a "full, good-faith effort". Potentially, SDRs would have to expend significant resources chasing reporting counterparties who have not provided verification of data accuracy or a notice of discrepancy in order to establish the SDR made a "full, good-faith effort to comply." In addition, the Proposed Amendments do not include a discussion of the additional costs on SDRs to make such an effort, nor an analysis of whether the costs of complying with §49.11(c) by both SDRs and reporting counterparties would result in increased levels of data accuracy sufficient to warrant imposing the obligations.

An SDR must be in a position to control compliance with its own regulatory responsibilities. To enable an SDR to control its own regulatory compliance and in light of the other points discussed regarding §49.11(c), we recommend the requirement for an SDR to receive from each reporting counterparty a verification of data accuracy or a notice of discrepancy be removed and replaced with an obligation on reporting counterparties to maintain, and make available to the Commission upon request, evidence that verification was conducted and any necessary corrections were submitted to the SDR. The reporting counterparty obligations together with SDR methods, or policies and procedures, for their members to review and, if necessary, correct reported data, is a reasonable method to ensure that the review was done without imposing unnecessary costs on SDRs and reporting counterparties alike.[9]

The reporting counterparty's responsibility for verifying the accuracy and making any necessary corrections is further reinforced, as described by the Commission in the release, by adoption of proposed §45.14(a) requiring the reporting counterparty to compare its books and records against the open swap report to determine if the swap data maintained by the SDR and reported to the CFTC is complete and accurate.[10] This, together with the correction procedures already provided by SDRs, strengthens the reporting regime generally.

[8] Id. at 21054 ("The Commission also clarifies that, given the separate proposed companion requirements for reporting counterparties, an SDR would not be responsible for failing to satisfy the requirements of § 49.11 in the instance where an SDR made a full, good-faith effort to comply with proposed § 49.11, and followed its policies and procedures created pursuant to proposed § 49.11 in doing so, but was prevented from fulfilling the requirements because of a reporting counterparty failing to meet its responsibilities to respond to the open swaps report as required under proposed § 45.14(a).").
[9] Proposed §49.14(a)(2) and (3) should have conforming changes removing the requirement to respond back to the SDR with a verification or discrepancy message and instead require the reporting counterparty to follow the SDR's policies and procedures for corrections.
[10] Proposing Release at fn 86 and at 21067.

The SDRs believe that an obligation on the SDR to receive verification of accuracy or notice of discrepancy messages imposes an unnecessary duty that would require building this functionality.[11] The combination of (i) the requirements under proposed §49.11 for SDRs to deliver open swaps data back to clients, (ii) the requirement under proposed §45.14 for clients to review this data and make any corrections, (iii) the inclusion of a requirement for reporting counterparties to have policies and procedures for verifying accuracy and making any necessary corrections, (iv) the inclusion of a correction indicator in the proposed technical specifications and (v) the existing SDR correction procedures, are the steps necessary to provide the Commission with accurate data in an efficient manner.[12] These requirements provide a solid foundation for accurate data. Should swap data subsequently be found to be inaccurate, the Commission has a basis on which to investigate whether a reporting counterparty has complied with the reporting and reconciliation requirements[13] and can request from the SDR a list of corrections made by the firm on that trade.

In addition, implementing an entirely new process around a verification message type would be a costly endeavor for reporting counterparties, third parties, and the SDRs.[14] The Commission should not require the implementation of a new process without a clear benefit to data accuracy.

In accordance with the above, the SDRs submit that the only response that should be delivered to an SDR by its member is data indicated as a correction in accordance with what we believe will be proposed part 45 technical specifications. The SDRs would maintain the record of any such correction as per proposed §49.10 to be able to report these to the Commission if requested.

C. Other 49.11 comments

1. 49.11(b) Open Swaps Report

a. Open Swaps Report – Recipients

Proposed §49.11(b) requires an SDR to distribute an open swaps report to reporting counterparties. The SDRs believe reporting counterparties are the appropriate recipients of this information but note that an SDR can only provide an open swaps report to reporting counterparties when they are members of the

[11] In addition, an SDR has no way to enforce compliance with this requirement and would have no "stick" should a member fail to send such a message. Thus, a requirement for these messages may not result in more accurate data.
[12] We believe that the action type of "correction" in the proposed technical specifications would provide an indication that a discrepancy has been identified and corrected. It is our understanding that the Commission intends to define in the proposed technical specifications that the action type of correction indicates an action that corrects erroneous data in a previously submitted transaction as opposed to a modification action which updates or includes negotiated terms.
[13] Swap dealers and major swap participants are required to complete portfolio reconciliation for uncleared swaps. 17 CFR §23.502.
[14] The preamble notes that the costs associated with adding a verification or discrepancy response "would largely be borne by the three existing SDRs." Proposing Release, 84 FR at 21084. However, reporting counterparties and third-party service providers and vendors would also have costs to build new messages, process them, maintain them and modify their reporting systems to accommodate them.

SDR. Without this existing relationship, the SDR would have no way to communicate with or provide the report to the reporting counterparty. In instances where the reporting counterparty is not known to the SDR, the only entity the SDR can distribute the open swaps report to is an entity that is a member that provided the data. To reflect this reality, the SDRs believe that the first sentence of this proposed rule should be modified to state that an SDR "shall, on a regular basis, distribute to its members a report[15] of their open swaps (including to a reporting counterparty's intermediary which is a member)." This captures situations where a reporting party who is not a member uses a service provider, agent or delegates reporting to its counterparty and, in each case, that entity must be a member in order to receive the open swaps report.

b. Open Swaps Report – Format

The SDRs are concerned that use of the word "report" in the term "open swaps report" does not account for the possibility of existing or emerging technologies that could provide data in a more effective and cost-efficient manner (for example, it is not clear that "report" could be interpreted to allow for the ability to directly access data through a portal). The SDRs suggest the term "open swaps report", therefore, be added as a defined term and defined broadly to refer to whatever format an SDR makes the required data elements available to the SDR member. Alternatively, a new sentence could be added to the introduction in §49.9 stating "Wherever 'open swaps report' is used, it is intended to refer to any format an SDR makes the required data elements available to its members as required by this section." This is preferable to an interpretation in the preamble because it codifies the definition in a manner that is clear and applicable to future developments.

c. Open Swaps Report - Content

The SDRs believe the Commission should be prescriptive as to the data elements used to create the open swaps report[16] and that those data elements should be the same data elements sent to the Commission. By "prescriptive" we mean that part 45 should be clear as to which data elements are required in the open swaps report;[17] what values are acceptable for those elements (which we expect to be defined in the technical specifications); and permission for SDRs to validate submissions and reject any that do not meet the prescriptive requirements.[18] Such an approach would (i) avoid inconsistencies in what should be similar data sets submitted to each of the SDRs and (ii) allow the data to be aggregated by the Commission. Ideally, the data elements proposed by the Commission will be harmonized both domestically with the U.S. Securities and Exchange Commission as well as globally, following the efforts by the International Organization of Securities Commissions working groups. This would enable reporting counterparties to build to a common data set that would be consistent between SDRs and trade

[15] While we use the term "report" here, note the proposed clarification of this term in paragraph I.C.1.b., below.
[16] As discussed in paragraph I.C.1.b. above, open swaps report is not intended to refer to a report, but rather the sum of the required data elements in whatever format SDRs make them available.
[17] We believe this is covered in §49.11(a)(1) of the Proposed Amendments, although additional prescription is needed for the order in which the data elements appear in the report as well as header names.
[18] We would expect that this would be defined/clarified by the technical specifications that the Commission intends to publish and, if so, then there would be no need for permission for an SDR to be able to validate and reject as that would be the normal course of business.

repositories, more globally, reducing associated implementation costs,[19] and would enable aggregation of data globally for research purposes and to address systemic risk.

Given that verification of the data maintained by the SDRs is the goal, the SDRs do not believe it is necessary or advisable to require the verification of each and all swap data messages,[20] particularly because not all messages will result in, or correspond to, data maintained by the SDRs.[21] Furthermore, while verification of each message may be done by some reporting counterparties as part of their internal processes to verify the open swaps report data, the cost of creating and maintaining a system to verify each message would be significant to the SDRs and the industry.[22] More importantly, there does not appear to be a corresponding benefit to verifying transaction messages compared to what can be achieved with the verification of open swaps data. Should open swaps data be inaccurate, a firm could review the transaction messages. However, the most effective and efficient verification is to the open swap in its "final" state, not the interim iterations of messages that would result in the final state. In any case, the interim iteration messages are available should a review be necessary.

The SDRs do not object to reporting counterparties being required to verify the completeness and accuracy of swap transaction and pricing data submitted pursuant to part 43,[23] but not in the same report. The SDRs note they currently make swap transaction and pricing data submitted pursuant to part 43 available to reporting counterparties who are members of the SDR.[24]

d. Open Swaps Report – Frequency of Distribution

The SDRs agree with the frequency requirements associated with the open swaps report set forth in proposed §49.11(b)(2)-(3) but believe that the Commission should recognize these as minimum

[19] The SDRs all provide a report similar to the open swap reports today and, therefore, do not anticipate significant costs to build a new version of it. However, requiring a prescriptive set of data elements to be included in the report would potentially require some level of development and would have associated costs. Until revised parts 43 and 45, specifically the technical specifications, are finalized, it is not possible to estimate the cost and time to build. The SDRs believe more prescriptive and consistent data elements are necessary and that the benefits outweigh the costs, assuming the finally agreed upon data elements are reasonable.

[20] Proposing Release, 84 FR at 21055, question 6.

[21] For example, a transaction that is rejected by the SDR for any reason including, but not limited to, validation failures, may never end up in the SDR. Moreover, for those transactions for which the next message is subsequently accepted, the subsequent message in each case will contain at least one data element that is different from the message that was rejected.

[22] The Commission should recognize that any new message types such as these impose development costs on SDRs, the reporting counterparties, and all third parties or vendors who also must build the message types and modify their reporting systems to add them.

[23] Proposing Release, 84 FR at 21055, question 9.

[24] ICE Trade Vault and CME currently require members to report a single stream of data which contains both part 43 and part 45 data fields. ICE Trade Vault and CME make common data elements from part 43 and part 45 available to reporting counterparty members to view.

requirements.[25] To do so, the regulations should be modified to include the words "at least" before the applicable time periods for SDRs to make the swap data report available. This would provide SDRs with flexibility to provide the report more frequently, at their own discretion. Should an SDR, however, elect to increase the frequency with which it delivers the open swap report, that should not increase the reporting counterparty's obligation to review the report beyond what is being proposed in the Proposed Amendments. To minimize the burden on reporting counterparties, proposed §45.14(a)(1) should be revised to require a reconciliation to the open swaps report at least weekly or monthly (depending upon the nature of the reporting counterparty).

e. Open Swaps Report – Method of Distribution

In the preamble to proposed §49.11(b), the Commission states that it is "not proposing to prescribe how an SDR must distribute the open swaps reports to reporting counterparties."[26] The SDRs agree with this approach, but are concerned that use of the word "distribute" in the text of proposed §49.11(b) could imply an obligation on the SDRs to actively send information to reporting counterparties. To avoid any potential ambiguity and clearly align the language of proposed §49.11(b) to the Commission's stated position, the SDRs believe the word "distribute" in proposed §49.11(b)(1)-(3) should be replaced with the words "make available". In addition, a conforming change to replace the word "distributed" with "made available" in proposed §49.11(c)(i) should also be made. These modifications would make clear that an SDR may fulfill its requirements under this section by either actively sending information to reporting counterparties ("push") or by allowing reporting counterparties connect to the SDR systems to retrieve the data ("pull").

2. 49.11(d) part 40 filings

The SDRs believe §49.11(d) is not required and should be deleted given the proposed combination of various requirements relating to the obligation of a reporting counterparty member to review submitted data and, if needed, follow SDR procedures to correct as discussed in paragraph I.B. above.

3. Phased Approach

Our comments are intended to modify the Proposed Amendments to best address the issue of data accuracy in a cost effective and operationally sound way. Our experience in Europe has shown that most gains in data accuracy come from mandating technical specifications, utilizing defined values/formats and imposing validations. Thus, our recommendation is that the Commission remove from the final rules the requirement for an SDR to receive (and a reporting counterparty to provide) verification of data accuracy or a notice of discrepancy and place reliance on the availability of the open swaps report and the existing duty to correct data. As a first phase, we suggest the Commission monitor whether the other changes that are adopted (i.e., the implementation of technical specifications and validations, proposed amendments to

[25] Id., questions 7 and 8.
[26] Id. at 21055, question 3.

§45.14, etc.) provide the desired improvements to data accuracy. If not, additional measures or new processes can be revisited and implemented in a later phase.

II. Section 49.10 – Acceptance of Data

The proposed amendment to §49.10 adds an additional subsection, §49.10(e), which proposes a new requirement that an SDR "shall" correct errors and omissions in SDR data previously reported to an SDR and correct omissions not previously reported "regardless of the state of the swap that is the subject of the SDR data."[27] Use of the term "shall" results in shifting the obligation to report accurately onto the SDR. In addition, to report such errors or omissions regardless of the state of the swap (for example, the swap to which the correction or omission refers could be matured, terminated or otherwise closed, which is referred to hereafter as "dead") creates operational issues for SDRs and the industry. These points are discussed further below.

A. Obligation to correct errors and omissions on reporting counterparty.

As noted in paragraph I.A., above, we believe the responsibility for the accurate submission of data is appropriately placed on reporting counterparties as the parties in the best position to verify swap data with the SDR. Therefore, it follows that the obligation to correct errors and omissions should also rest with the reporting counterparty. This approach would limit the cost to market participants of complying with the proposed amended rules as firms already correct errors via the current reporting structure and are provided information regarding their submissions in order to review them for accuracy.[28] By retaining the responsibility of accuracy and completeness of reporting on the reporting counterparty, the Commission can ensure that the audit trail of corrections submitted by the reporting entity is retained in the SDR and prevent manual errors being caused by the SDR misinterpreting the correction and/or omission instructions.[29]

Moreover, the proposed rule requires an SDR to correct omissions for swap transaction data that was not previously reported. As drafted, the language implies than an SDR is aware of swap transaction data not previously reported. As the SDR is not counterparty to transactions, it would be impossible for the

[27] Id. at 21103.

[28] The Commission notes in the preamble to proposed §49.10(e) that it "believes that the costs would not be significant and largely related to any needed updates to [SDR] error and omission correction systems," that the Commission "is largely clarifying the SDR's existing duties", and that "the costs of the proposed paragraph would be mitigated by the fact that SDRs currently routinely correct data errors and omissions and disseminate the corrections as required." Id. at 21083. This represents a misunderstanding of SDR activities. SDRs do not currently correct errors and omissions, rather they make available facilities for reporting entities to meet their obligations to make such corrections. Further, these conclusions appear to be based on the false premise that for the SDR to make such corrections, it would simply need to expand existing functionality. This is not factually accurate. In order for an SDR to take on the new obligation of making corrections, rather than allowing a reporting entity to submit corrections themselves, would necessitate significant changes to the SDR's systems.

[29] Certain SDRs already provide an Event field indicating that a submission is an amendment to a previously submitted swap and it is our understanding that the proposed technical specifications will include an action type of "correction" in any case.

SDR to be aware of swap transaction data that was required to be reported but was not. The only entities that would be aware of an omission would be the reporting and non-reporting counterparties. As previously stated, the SDR obligation is to provide a facility for correcting errors and omissions of previously submitted and/or omitted data and the SDR should not be tasked with additional responsibilities especially where it would have no knowledge of whether a trade had occurred and failed to be reported.

The SDRs suggest the Commission revise this language by removing the word "shall" in proposed §49.10(e) and delete proposed §49.10(e)(2) entirely to eliminate any ambiguity around whether an SDR is responsible for correcting errors or omissions of data on behalf of a reporting entity. The obligation of the SDR should be clearly stated in the regulations (without needing reference, for example, to explanatory language in the preamble) that SDRs must have policies and procedures for accepting and recording swaps data, including the submission of corrections of errors and omissions in SDR data previously reported; must accept and record swaps not previously reported (omissions);[30] and disseminate such corrected SDR data to the public.[31] This also is consistent with the proposed amendments to §45.14(b) which place on any swap execution facility, designated contract market, or reporting counterparty the obligation to "submit corrected swap transaction and pricing data to the swap data repository that maintains the swap transaction and pricing data for the relevant swap or correctly report swap data for a swap that was not previously reported to a swap data repository…."[32]

B. Obligation to correct errors and omissions regardless of the state of the swap.

The requirement in proposed §49.10(e) to correct errors and omissions regardless of the state of the swap places an additional obligation on the SDR to make swap data accessible to reporting parties for modification, even if the swap is dead. This requirement would be costly for the SDRs as data will need to be maintained in a readily accessible format for an unlimited amount of time and the SDR will be unable to archive the data in accordance with its internal policies and procedures. Dead swaps that are no longer retained by an SDR because the required retention period has expired should not be required to be made available for corrections and this should be explicit in the rule and explained in the preamble.

Further, we recommend that corrections of errors and submission of swaps that were omitted from reporting must follow current validations regardless of the state of the swap, including dead swaps, throughout the retention period. In order to clarify this point, the SDRs recommend that the Commission amend proposed §49.10(e) and any relevant commentary to make clear that any entity submitting swap

[30] It should be noted that a swap that was not ever submitted can be submitted even today using existing SDR functionality for submission of a new swap, however, it must meet current validations. This point is discussed in more detail in paragraph II.B., below.

[31] We believe the obligation for SDRs to have policies and procedures for accepting and recording swaps data, including data correcting errors and omissions, adequately addresses any gap that may appear to have existed in the rules. Also, proposed §49.15 adequately sets out the duty of an SDR to publicly disseminate swap transaction and pricing data submitted pursuant to part 43. However, should the Commission desire to clarify that errors and omissions must be processed by the SDR and disseminated (where required by part 43), we believe that would be an appropriate comment in the preamble, rather than as proposed in the rule.

[32] Proposing Release, 84 FR at 21098.

data must comply with the then current technical specifications of the SDR and that SDRs are not required to make accommodations for swap data that is unable to comport with the then current technical specifications.

We base this recommendation on significant thought and consideration to the challenges faced by our respective European trade repositories upon implementation of recent updates to the European Market Infrastructure Regulation ("EMIR") validations.

Some of the persuasive considerations we examined include:

- There is no ambiguity in the industry around requirements when only one technical specification is used at any given time;
- When validations are updated by regulation, it will be clear to all submitting parties what changes will be expected and when;
- One set of validations at a time means consistency in data reported to the Commission;
- The Commission will not have to build for the ability to ingest and maintain multiple data sets with varying formats; and
- Multiple sets of validations present operational challenges related to their support and maintenance by SDRs, reporting counterparties and the Commission.

We note that there are significant costs and challenges to maintain multiple sets of validation rules depending on when the data was submitted. There also will be complexity introduced if the proposed technical specifications amend an existing field that has already been implemented by the SDR. To illustrate, if the SDR currently supports a field as a 3-character code and the Commission proposed the field value as binary in its final technical specifications, the SDR would need to modify its database to be able to support data field values in both formats just in case there are any corrections or omissions that come in on a swap originally submitted using the 3-character code. This would result in downstream impacts to client and regulator reports which would have to be designed to accommodate multiple validation options or result in multiple sets of reports. Either of these outcomes would further frustrate the Commission's ability to aggregate data.

To further illustrate, part 45 Appendix 1 lists 'Clearing Indicator' with 'Yes/No' data values.[33] We understand the proposed technical specification changes this field definition to 'indicator of whether the transaction has been cleared or is intended to be cleared' with data values of 'Y/N/I'. Since the definition of the data element as well as the allowable values is different, applicable reports would have to include both columns to identify whether the trade was cleared or intended to be cleared. Only one of the columns would be populated and, in this example, the determination of which column would be populated would be based on when the first time the transaction being modified was submitted. This maintenance across all the proposed field changes is very costly, provides significant operational challenges and potentially negatively impacts system performance.

[33] 17 C.F.R. pt. 45 app 1.

We, therefore, recommend the Commission require, that in addition to all new swaps having to comply with the current technical standards, reporting counterparties must conduct an "upgrade" of all open swaps to comply with the current technical standards. The reporting entities would be responsible to upgrade to the current technical standards when submitting new swaps, when modifying/terminating open swaps or when the SDR does not have all the data required from the original submission.[34] Dead swaps would not be required to be upgraded when new validations are issued. However, if a correction of a dead swap is necessary, then the dead swap, if still within the retention period, may be resubmitted in compliance with current technical standards.

III. 49.12 – Swap Data Repository Recordkeeping Requirements

The SDRs support a robust retention period, but we believe the proposed additional ten-year retention period following a five-year period after termination of a swap is excessive. The Commission should harmonize the SDR retention periods with that of Europe and other Commission regulated entities such as designated contract markets, derivative clearing organizations and swap execution facilities which have five-year and seven-year retention periods. The SDRs recommend, therefore, a 7-year retention following final termination of the swap, during which time the records would be readily accessible by the SDR and available to the Commission. This is consistent with European retention periods and gets closer to a harmonized global standard. The Commission ingests the data from all the SDRs into its internal systems, in any case, and, therefore, the Commission can itself retain relevant data in accordance with its own recordkeeping policies.[35] We further recommend the same retention period of seven years should apply to all part 43, 45, 46 and 49 data.

[34] We note that in Europe, where trade repositories have had differing validations at different points in time, there were circumstances where it was impossible for the reporting counterparty to be able to upgrade a swap to comply with current technical standards for a variety of reasons, including, but not limited to, the fact that the information to populate new fields either was not captured or was not a term of the swap at the time of execution. However, creating a reporting regime based on exceptional edge cases introduces system complexity and maintenance costs for all market participants and the Commission. Based on extensive discussions on the topic, the SDRs are of the opinion that requiring reporting counterparties to comply with the current technical standards for all open swaps (upgrade) best meets the Commission's goal of increased quality, accuracy and completeness of swap data and justifies any additional costs related to performing the upgrade.

[35] At the time current retention rules were adopted, our understanding was that the CFTC considered the SDRs would be the golden source of data. The Commission, however, began ingesting the data maintained by the SDRs. We believe ingestion by the CFTC is significant enough now to warrant a review of whether SDRs must maintain swap data for ten additional years in archival storage.

IV. Section 49.13 – Monitoring, Screening, and Analyzing Data

A. 49.13(a) Obligation to monitor, screen and analyze.

Currently, §49.13 generally requires an SDR to: (i) monitor, screen, and analyze all swap data in its possession as the Commission may require, including for the purpose of any standing swap surveillance objectives that the Commission may establish as well as ad hoc requests; and (ii) develop systems and maintain sufficient resources as necessary to execute any monitoring, screening, or analyzing functions assigned by the Commission.[36] As the Commission noted in the preamble, the amendments to proposed §49.13 are intended to provide more detail about the tasks that the Commission may require an SDR to perform.[37]

While the SDRs appreciate the Commission's efforts in this area, we believe that the amendments to proposed §49.13, as currently written, could be interpreted to exceed the scope of the Commission's authority by imposing obligations on SDRs that are not consistent with the CEA. Section 21(c)(5) of the CEA requires SDRs to "establish automated systems for monitoring, screening, and analyzing swap data".[38] The SDRs have operated thus far with the understanding that this means SDRs must provide the Commission with direct electronic access to the data SDRs receive, based on criteria defined by the Commission. The SDRs do not believe that Section 21(c)(5) should be expansively interpreted as authority to require SDRs to make calculations and assessments; interpret data; or develop systems to conduct market surveillance, all of which are activities similar to those of a self-regulatory organization ("SRO").

Furthermore, we note the Commission itself stated in the preamble that it "would not expect SDRs to perform any of the Commission's regulatory functions…."[39] However, certain of the proposed amendments to §49.13(a)(1) would require SDRs to provide information to the Commission relating to "the calculation of market participant swap positions, including for purposes of position limit compliance…", "swap counterparty exposure to other counterparties and standard market risk metrics", "compliance with Commission regulations", and "market surveillance",[40] thus requiring the SDRs to perform regulatory functions. SDRs are not included in the definition of an SRO,[41] therefore, it would not be appropriate for the Commission to promulgate regulations which, in effect, result in SDRs acting as SROs.

It is also important to note that certain of the above requirements are impractical because no single SDR would have the data necessary to provide the Commission with meaningful information. For example, proposed §49.13(a)(1)(iv) would require an SDR to utilize the swap data it maintains to calculate market participants' swap positions for purposes of position limit compliance, risk assessment, and compliance with other regulatory requirements.[42] However, because of the nature of swap reporting, a market

[36] 17 C.F.R. §49.13.
[37] Proposing Release, 84 FR at 21057.
[38] 7 U.S.C §24a(c)(5).
[39] Proposing Release, 84 FR at 21057.
[40] Id. at 21104 (proposed §49.13(a)(1)(iv), (v), (viii) and (iv), respectively).
[41] 17 CFR §1.3 (self-regulatory organization is defined as a contract market, a swap execution facility or a registered futures association).
[42] Proposing Release, 84 FR at 21104.

participant's swap positions could be maintained at multiple SDRs (e.g., bilateral swaps at DTCC and cleared swaps at CME or ICE).[43] Thus, the data held at any one SDR regarding a market participant's swap positions is likely to be incomplete. In order to create the most useful picture, the data from each SDR would have to be aggregated by the Commission and then (and only then) could market participant compliance with position limits and any hedge exemptions be analyzed.[44]

Therefore, while an SDR could most certainly provide the Commission with the open positions they maintain aggregated by uniform product identifier ("UPI") and legal entity identifier ("LEI") (once a harmonized UPI system has been implemented), we believe such data would be of limited value (it would be very difficult, if not impossible, for the Commission to aggregate data sent to it in an aggregated form by each SDR). Such oversight must be conducted by the Commission, who is the only entity with a complete view of a counterparty's overall swap position and visibility into the availability of any potential hedge exemptions. As a result, we request responsibility for this task be removed from the list of SDR tasks. Alternatively, the proposed rule should be clear that the SDRs may be requested to provide the data, but it would be up to the Commission to perform calculation of positions for purposes of position limit compliance, risk assessment, and compliance with any other regulatory requirements. We would note, however, that should the Commission decide to include this as an SDR required task, then requiring SDRs to create a process whereby the counterparties whose positions were calculated could challenge and/or correct the results would be incredibly burdensome, requiring new and separate workflows for all reporting counterparties and SDRs to record and resolve disputed calculations. Estimating the cost and effort required in such an effort is impossible given this would sit outside the core data reporting and processing functionalities utilized since inception. [45]

As the foregoing discussion indicates, we believe that in its current form, certain language in the Proposed Amendments would inadvertently but fundamentally change the nature and scope of an SDR's regulatory obligations. We do not believe that this change was intentional, and do not believe that the Commission expects SDRs to engage in the type of data analysis that appears to be required under the Proposed Amendments. Accordingly, we suggest that the Commission revise the language of proposed §49.13(a)(1) to (1) eliminate references to the SDR comparing information from different categories and/or over multiple periods of time; and (2) clarify that the SDR provides information to the Commission and it is the Commission that may analyze it for accuracy, timeliness, and quality, etc., as enumerated in (i) – (xi) of

[43] Swap data is often reported to different SDRs as participants could be a reporting party for some transactions and a non-reporting party for others. As such, the SDRs do not have a holistic view of a market participant's portfolio or aggregate positions.

[44] Current §49.12(e) requires an SDR to "establish policies and procedures to calculate positions for position limits and for any other purpose as required by the Commission, for all persons with swaps that have not expired maintained by the registered swap data repository." 17 C.F.R. §49.12(e). The SDRs note each SDR will have differing methods and processes for the calculation of positions. If the Commission desires to have positions created uniformly across SDRs, the Commission should clearly define position calculations in its rulemakings. The SDRs also suggest the Commission leverage the existing part 45 field list should the Commission define position calculations in a proposed rule. The Commission has not prescribed part 45 fields that indicate whether a trade is a bona-fide hedge or speculative. This results in the SDRs having no visibility into the treatment of the transaction for purposes of a hedge exemption.

[45] Proposing Release, 84 FR at 21059, question 12.

the proposed amended rule.

We also believe the Commission's estimation of the costs that may be imposed on SDRs if §49.13(a) is adopted as proposed is not accurate. The Commission's estimation does not quantify the costs of the tasks an SDR may be required to perform under the proposed regulation, but rather generically states that that they expect "…the costs would be mitigated by the fact that SDRs currently perform monitoring, screening and analyzing tasks at the request of Commission staff and therefore have systems and resources in place that may be leveraged for any new requests".[46] While that assertion is true to some degree, the expansion of the tasks an SDR might be asked to perform if §49.13(a) is adopted as proposed could be interpreted to include tasks that are substantially different in nature to those the SDRs are currently performing. There are several tasks contained on the list that are much more complex (e.g., monitoring position limits, determining risk, etc.) than the tasks SDRs currently perform and which would require significant development to implement. Accordingly, we do not believe that the Commission can avoid quantifying the costs that the Proposed Amendments would impose on SDRs by assuming that these costs would be insignificant, particularly if the expected tasks include a greater level of complexity or are expected to be completed on a more regular basis than SDRs are currently performing.

We acknowledge that the Commission has stated that "[e]ach requested task would need to be evaluated independently to determine the SDR's ability to perform the task and then determine the exact content of the report and the delivery requirements."[47] We also recognize that "[t]he Commission expects the requests would be reasonable based on available SDR resources and would take into account an understanding of what is possible given the data maintained by the SDRs."[48] However, we believe it is necessary to either reconsider the adoption of the Proposed Amendments or to add some reasonability constraints into the regulation itself. For example, adding a requirement that obligates the Commission to conduct an objective evaluation before making a novel request for information would serve as a reasonable constraint on the broad scope of the Commission's authority under proposed §49.13. We are concerned that in the absence of any such reasonable constraints, the Proposed Amendments could impose significant costs on the SDRs that would ultimately be borne by their members.

B. 49.13(b) Maintenance of staff.

Section 49.13(b) currently requires an SDR to "establish and maintain sufficient information technology, staff, and other resources to fulfill the requirements in … §49.13 …."[49] The proposed amendments replace "and maintain" with "and at all times maintain".[50] If interpreted literally, this proposed change would impose significant additional fixed costs on SDRs by precluding them from ramping up or scaling down their information technology staff or other personnel as regulatory demands increase/decrease. We do not believe that the Commission intended for this minor change in language to

[46] Id. at 21085.
[47] Id.
[48] Id. at 21086.
[49] 17 C.F.R. §49.13(b).
[50] Proposing Release, 84 FR at 21104.

have such a significant potential impact.[51] Accordingly, in order to avoid any ambiguity on this point, we request that the Commission delete the phrase "at all times" from the language of proposed §49.13(b). Removing this language will keep the current operational requirements for SDRs intact while permitting the SDRs to continue to staff their operations in a flexible manner based on regulatory demands.

Separately, we note that the Proposed Amendments would permit the Commission to direct the SDRs to provide them with virtually any information,[52] in any format,[53] and in any timeframe.[54] The open-ended nature of these requirements would make it extremely difficult for an SDR to make a good faith assessment of what resources would constitute "sufficient information technology, staff, and other resources to fulfill the requirements [of §49.13]" as required by proposed §49.13(b).

C. 49.13(c) Notification of failure to report.

Finally, we note that §49.15(c) has been incorporated into proposed §49.13(c) which has been expanded to include parts 45 and 46 and requires an SDR to promptly notify the Commission of any swap transaction for which the SDR "is aware" was not received in conformity with the regulation.[55] We are concerned that the amended language could be interpreted to require SDRs to search for reporting noncompliance, something that the Commission clarifies in its comments is not required.[56] Reporting counterparties have an obligation to notify the Commission when they have reporting issues, as do SDRs. The Proposed Amendments deal with reporting of data that was previously omitted from reporting. With these requirements in place, it is not clear what additional benefit is provided by §49.15(c) and its expansion to include parts 45 and 46. We recommend that §49.15(c) as has been incorporated into proposed §49.13(c) be deleted in its entirety. Alternatively, we request that the Commission provide SDRs with more certainty regarding their duty by revising the text of proposed §49.13(c) to clarify that an SDR's

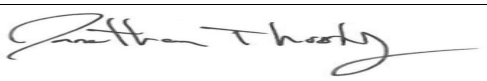
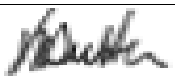
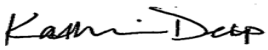
[51] Id. at 21086 ("the Commission believes that the incremental costs would not be significant compared to the application of the baseline of the current requirements to perform monitoring, screening and analyzing tasks.")
[52] Id. at 21104 ("All monitoring, screening and analyzing requests shall be at the discretion of the Commission").
[53] Id. at 21107 ("a swap data repository shall submit SDR data reports and any other information required under this part to the Commission, within the time specified, using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission.").
[54] Id. at 21104 ("All monitoring, screening and analyzing requests shall be fulfilled within the time specified by the Commission.").
[55] Id. at 21058. The Commission assumes that SDRs could know when a reporting counterparty fails to submit data in a timely manner because the SDRs "can quickly compare when the swap was executed and when the swap data was received." Id. at 21059. This data point exists within the reporting systems of SDRs, but SDRs do not, and have no duty to, monitor submissions in this way. As noted above, SDRs should not be obligated to perform SRO like activities. SDRs, however, could create a report or otherwise provide access to the information in order for the Commission to monitor. Either of these options would involve costs to the SDR to build depending on the requirements.
[56] Id. at 21086 ("the Commission is not requiring SDRs to actively search for reporting noncompliance as part of this proposed section").

obligation to notify the Commission is only with respect to swap transactions where the SDR has been informed by the reporting counterparty that swap data was not received.[57]

* * * * *

The SDRs look forward to working with the Commission to continually improve data accuracy and the reporting rules generally. Please do not hesitate to contact us if you have any questions regarding our comments.

Sincerely,

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

cc: Ross Pazzol, CME Inc, Assistant General Counsel
Laura Torphy, CME Swap Data Repository, Chief Compliance Officer
Igor Kaplun, CME SDR Business Manager
Melissa Ratnala, ICE Trade Vault, LLC, Chief Operating Officer
Joe Tramontana, ICE Trade Vault, LLC, Chief Compliance Officer

Mark Bramante, DTCC Data Repository (U.S.) LLC, Chief Compliance Officer
Debra Cook, DTCC Data Repository (U.S.) LLC, Counsel

[57] There have been instances over the years where a member firm informs an SDR that it failed to report and needs guidance on how and when to report the transactions. In this case, the SDR reports to the Commission that it has received such information and informs the member that it will be making such a report pursuant to the SDR's duty under [current] 49.15(c) if applicable. However, there is no way for an SDR independently to determine that one of its members is failing to report. An SDR can provide a report to the Commission regarding which transactions failed validations, however, the SDR cannot necessarily determine if the transaction was subsequently resubmitted, modified or terminated.