



August 1, 2023

Vincent McGonagle  
Director  
Division of Market Oversight  
U.S. Commodity Futures Trading Commission  
525 West Monroe Street, Suite 1100  
Chicago, IL 60661

**Re: Request for an Extension of No-Action Position Established in CFTC Staff Letter No. 22-03 with Respect to Compliance with the Block and Cap Amendments**

Dear Director McGonagle,

Chicago Mercantile Exchange Inc. (“**CME**”)<sup>1</sup>, along with the ICE Trade Vault, LLC (“**ICE Trade Vault**”), DTCC Data Repository (US) LLC (“**DDR**”) and KOR Reporting Inc. (“**KOR**”), all provisionally registered swap data repositories (collectively “Swap Data Repositories” or “**SDRs**”) that are subject to swap data reporting regulations<sup>2</sup> and amendments thereto<sup>3</sup> as promulgated by the U.S. Commodity Futures Trading Commission (“**CFTC**”, the “**Commission**”) under the Commodity Exchange Act of 1936 (“**CEA**”),<sup>4</sup> are writing to the Commission to request an extension of the no-action position taken by the Commission in CFTC Staff Letter No. 22-03 with respect to certain compliance deadlines associated therewith.

**I. Background**

As required by the CEA, the CFTC’s swap data reporting requirements first went into effect in 2012.<sup>5</sup> Subsequently, industry participants and the CFTC sought to provide additional

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<sup>1</sup> CME Group is the parent of CME. CME is registered with the CFTC as a derivatives clearing organization (“**DCO**”), as a designated contract market (“**DCM**”), and as a SDR. The CME SDR provides centralized recordkeeping for swaps and the public dissemination of swap transaction and pricing data in the interest rates, credit, foreign exchange, equity and other commodity asset classes.

<sup>2</sup> 17 C.F.R. Part 43; 17 C.F.R. Part 45; 17 C.F.R. Part 46; 17 C.F.R. Part 49 (collectively, the “**Reporting Regulations**”).

<sup>3</sup> See Final Rule, *Swap Data Recordkeeping and Reporting Requirements*, 85 Fed. Reg. 75503 (Nov. 25, 2020) [https://www.cftc.gov/sites/default/files/2020/11/2020-21569a.pdf?utm\\_source=govdelivery](https://www.cftc.gov/sites/default/files/2020/11/2020-21569a.pdf?utm_source=govdelivery); Final Rule, *Real-Time Public Reporting Requirements*, 85 Fed. Reg. 75422 (Nov. 25, 2020) [https://www.cftc.gov/sites/default/files/2020/11/2020-21568a.pdf?utm\\_source=govdelivery](https://www.cftc.gov/sites/default/files/2020/11/2020-21568a.pdf?utm_source=govdelivery); and Final Rule, *Certain Swap Data Repository and Data Reporting Regulations*, 85 Fed. Reg. 75601 (Nov. 25, 2020) [https://www.cftc.gov/sites/default/files/2020/11/2020-21570a.pdf?utm\\_source=govdelivery](https://www.cftc.gov/sites/default/files/2020/11/2020-21570a.pdf?utm_source=govdelivery) (collectively, the “**Reporting Regulations Amendments**”).

<sup>4</sup> 7 U.S.C. § 1a *et seq.*, as amended.

<sup>5</sup> 85 Fed. Reg. 75503  
<https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2011-33199a.pdf>.

specificity regarding swap data requirements and to harmonize the CFTC rules with globally standardized data elements. In November 2020, the Commission published its Reporting Regulations Amendments where it further defined swap data elements required to be reported to SDRs, added several new swap data elements, revised many existing swap data elements and provided uniform guidance for reporting of swap data elements to be reported to SDRs in a technical specification published by the Commission (“*Technical Specification*”).<sup>6</sup> The Reporting Regulations Amendments were effective January 25, 2021, and required parties to comply with the majority of the Reporting Regulations Amendments by May 25, 2022.

The Reporting Regulations Amendments also included amendments to CFTC regulation § 43.4(h)<sup>7</sup> (Post-initial cap sizes) and CFTC regulation § 43.6<sup>8</sup> (Block trades and large notional off-facility swaps) (collectively, the “*Block and Cap Amendments*”), with respect to which the compliance date was established as May 25, 2023.

On January 20, 2022, the CME SDR, DDR and ICE Trade Vault joined the International Swaps and Derivatives Association, Inc. (“*ISDA*”) in a request (the “*NAL 2022 Request Letter*”)<sup>9</sup> to the CFTC that it not recommend taking enforcement action for failing to comply with the recently adopted Amendments to Part 43, 45, 46 and 49 until December 5, 2022, and with the Block and Cap Amendments until December 4, 2023. This request was necessitated by significant operational and technological difficulties that the SDRs and ISDA members experienced while working to ensure compliance by the due dates. Specifically, the NAL 2022 Request Letter noted that the SDRs needed additional time to develop final message specifications consistent with the Version 3.0 Amendments to the Technical Specifications, the

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<sup>6</sup> See 17 C.F.R. § 45.13(a)(1), providing: “In reporting required swap creation data and required swap continuation data to swap data repository, each reporting counterparty, swap execution facility, designated contract market, and derivatives clearing organization shall report the swap data elements in appendix 1 to this part in the form and manner provided in the technical specifications published by the Commission pursuant to § 45.15”. The CFTC also published a revised final version of the Technical Specification during September 2021 (the “*Version 3.0 Amendment*”). See CFTC Technical Specification, Part 43 and 45, swap data reporting and public dissemination requirements, Version 3.0 (Sept. 30, 2021).

<sup>7</sup> See C.F.R. § 43.4(h), providing: “(1)The Commission shall establish, by swap categories, post-initial cap sizes as described in paragraphs (h)(2) through (8) of this section... [and] (10) Unless otherwise indicated on the Commission’s website, the post-initial cap sizes shall be effective on the first day of second month following the date of publication of the revised cap size.”

<sup>8</sup> See C.F.R. § 43.6, providing: “(a) Commission Determination. The Commission shall establish the appropriate minimum block size for publicly reportable swap transactions based on the swap categories set forth in paragraphs (b) and (c) of this section, as applicable...”. Further, § 43.6(g) provides: “Post-initial process to determine appropriate minimum block sizes – (1) Post-initial period. The Commission shall establish, by swap categories, the appropriate minimum block sizes as described in paragraphs (g)(2) through (6) of this section. No less than once each calendar year thereafter, the Commission shall update the post-initial appropriate minimum block sizes.”

<sup>9</sup> ISDA, DTCC Data Repository (U.S.) LLC, ICE Trade Vault, LLC, and CME Swap Data Repository, Letter Regarding a Request for an Extension of Compliance Date for Amendments to the Swap Data Reporting Rules – 17 CFR Parts 43, 45, 46, and 49, Jan. 20, 2022.

changes in the SDR Guidebooks, and the necessary modifications of the SDRs' and reporting counterparties' swap reporting systems.

The CFTC's Division of Data responded to the NAL 2022 Request Letter by issuing CFTC Letter No. 22-03 on January 31, 2022 (the "**CFTC NAL 22-03**"),<sup>10</sup> finding that operational and technological issues described in the NAL 2022 Request Letter were significant and that a no-action position was warranted, and stating that: "...the Division [of Data] will not recommend the Commission commence an enforcement action against an entity for failure to comply with the [Reporting Regulations] Amendments before December 5, 2022, and for failure to comply with the Block and Cap Amendments before December 4, 2023, provided that the entity comply with the Parts 43, 45, 46, and 49 regulations that were in effect on January 1, 2021."<sup>11</sup>

The Reporting Regulation Amendments also addressed two other data standards: the data transmission standard ISO 20022 and the Unique Product Identifier ("**UPI**").<sup>12</sup> On February 16, 2023, the Commission issued an order designating a UPI and product classification system in connection with swaps reporting (the "**UPI Order**").<sup>13</sup> The Commission ordered that by January 29, 2024, market participants, including entities such as SDRs, must use UPIs for reporting and recordkeeping in connection with credit, equity, foreign exchange, and interest rate asset classes.<sup>14</sup> The UPI framework is designed to enhance transparency in CFTC reporting and recordkeeping, as publishing a UPI alongside swap transaction and pricing data will enable market participants to review and compare reported swap transactions with a simple UPI lookup.<sup>15</sup>

Also, on March 10, 2023, the Commission announced the publication of Version 3.2 of the CFTC Technical Specifications ("**Version 3.2 Amendment**"),<sup>16</sup> an update of the previous Version

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<sup>10</sup> CFTC Letter No. 22-03, *Request for Temporary No-Action Position With Respect to Certain Obligations Under Parts 43, 45, 46 and 49 of the Commission's Regulations, as Amended* (Jan. 31, 2022).

<sup>11</sup> *Id.* at 3.

<sup>12</sup> See Final Rule, *Swap Data Recordkeeping and Reporting Requirements*, 85 Fed. Reg. 75533 (concluding that the Commission will mandate ISO 20022 "when the standard is developed") and 75540 (noting that "the Commission is currently heavily involved in international efforts to introduce UPIs ... [and] [t]he Commission expects UPIs will be available [for implementation] within the next two years").

<sup>13</sup> *Order Designating the Unique Product Identified and Product Classification System To Be Used in Recordkeeping and Swap Data Reporting*, 88 Fed. Reg. 11790 (Feb. 24, 2023); see also CFTC Release No. 8659-23 (Feb. 16, 2023).

<sup>14</sup> *Id.* at 11793.

<sup>15</sup> See *id.* at 11792 (stating that "the UPIs . . . for swaps in the covered asset classes identify and describe swap products with sufficient distinctiveness and specificity to enable the Commission . . . to fulfill [its] regulatory responsibilities" and "to assist in the real time reporting of swaps as provided in the CEA and the Commission's Regulations".)

<sup>16</sup> See *CFTC Technical Specification, Part 43 and 45 swap data reporting and public dissemination requirements*, Version 3.2 (March 1, 2023). <https://www.cftc.gov/PressRoom/PressReleases/8673-23>

3.1<sup>17</sup> that implements UPI for the applicable asset classes and provides guidelines for compliance with the specifications, also with a compliance date of January 29, 2024.

Finally, on April 19, 2023, the Commission announced<sup>18</sup> changes to the post-initial appropriate minimum block sizes determined pursuant to CFTC Regulation § 43.6(g)<sup>19</sup> and the post-initial cap sizes determined pursuant to Regulation § 43.4(h).<sup>20</sup> The Block and Cap Amendments, published by the CFTC on April 19, 2023, are scheduled to go into effect on December 4, 2023 (*i.e.*, almost 2 months before the compliance date for Version 3.2 Amendments to Technical Specification and the UPI Order).

## II. Discussion

CFTC NAL 22-03 outlined a no-action position on a failure to comply with the Block and Cap Amendments before December 4, 2023. Meanwhile, the Commission set January 29, 2024, as the compliance date with respect to both the UPI Order compliance requirements and Version 3.2 Amendments to the Technical Specifications, *i.e.*, almost 2 months after the December 4, 2023 date for implementing the Block and Cap Amendments. The disparate deadlines for compliance are unworkable from an operational and technological standpoint and would create significant inefficiencies for SDRs as discussed below.

Firstly, in the credit swaps asset class, because there are currently no standardized product fields, there is no way for an SDR to enforce product names, thereby making it impossible for SDRs to determine whether a swap is based on one of the product types enumerated in CFTC Regulation § 43.6I(2)(i)-(xii) without the UPI being (mandatorily) reported. The result of the current compliance schedule will be that, in the interim between the proposed compliance dates (*i.e.*, December 4, 2023 and January 29, 2024), SDRs will be unable to cap any swaps in the credit asset class pursuant to CFTC Regulation § 43.6(c)(2)(i)-(xii).

Moreover, assuming a solution for the credit swaps asset class existed, the expiration of the Commission's no-action position for the Block and Cap Amendments falling seven (7) weeks before the compliance date for UPI and Version 3.2, means SDRs will implement the new swap categories and cap sizes, deploy the changes to production, and then immediately thereafter begin work to public reporting to accommodate the UPI Order and Version 3.2 Amendments to the Technical Specifications with a timeline of less than two (2) months. Notably, the SDRs will need to modify and/or discard a

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<sup>17</sup> *CFTC Technical Specification, Part 43 and 45 swap data reporting and public dissemination requirements, Version 3.1* (Sept. 15, 2022) (updating the Technical Specifications from Version 3.0 with limited modifications to enhance uniform user reporting and ensure that SDRs do not erroneously reject swap data submissions due to the validations in Version 3.0.); *see generally CFTC Technical Specification, Part 43 and 45 swap data reporting and public dissemination requirements, Version 3.0* (September 30, 2021).

<sup>18</sup> CFTC Rel. No. 8691-23, *CFTC Staff Announces Revisions to Part 43 Block and Cap Sizes* (April 19, 2023).

<sup>19</sup> 17 C.F.R. § 43.6(g).

<sup>20</sup> 17 C.F.R. § 43.4(h).

portion of the technical work deployed for the December 4, 2023, deadline to accommodate UPI and Version 3.2 Amendments to the Technical Specifications changes, resulting in unnecessary cost and inefficiency.<sup>21</sup>


Additionally, to make the aforementioned changes within the seven-week interim period between scheduled compliance dates, allowing for sufficient testing time, development will need to occur in December of 2023, including during the holidays. Development in December is almost never advisable due to scarce resources during the holiday season, end-of-year code freezes and SDRs', reporting counterparties' and other market participants' system upgrades. Also, revising public dissemination of block and cap sizes at that time could impact SDRs' ability to deploy the necessary modifications to meet the January 29, 2024, deadline for UPI and Version 3.2 Amendments to the Technical Specifications.

### III. Requested No-Action Position

For the foregoing reasons, the undersigned request the Division of Market Oversight extend the no-action position taken by Commission Staff on the Block and Cap Amendments, currently December 4, 2023, to no sooner than January 29, 2024, to allow for the prerequisite UPI and swap reporting implementation under the amended CFTC Version 3.2 Technical Specifications.<sup>22</sup>

We thank the Commission for its consideration of our request. Please do not hesitate to contact us at [dhiraj.bawadhankar@cmegroup.com](mailto:dhiraj.bawadhankar@cmegroup.com), [melissa.ratnala@ice.com](mailto:melissa.ratnala@ice.com), [tmanuel@korfinancial.com](mailto:tmanuel@korfinancial.com) and [kdelp@dtcc.com](mailto:kdelp@dtcc.com) if you have any questions.

Sincerely,

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<sup>21</sup> SDRs anticipate that users will also have to modify some of the logic they implement to aid in their determination of whether a publicly reportable swap transaction qualifies as a block trade or a large notional off-facility swap.

<sup>22</sup> We note that the undersigned have previously raised concerns and requested an extension of the existing no-action relief for blocks and caps until no later than January 29, 2024, to align with UPI and Version 3.2. The Division of Data asked to defer the discussion of such an extension until after publication of Version 3.2, the post-initial blocks and caps and the finalization of the Guidebook. Those milestones have now occurred. The undersigned are also aware of a Request for Delay submitted by ISDA on behalf of its members on July 7, 2023, and do not object to ISDA's request to delay the effective date of new block thresholds and cap sizes from December 4, 2023, to December 4, 2024, if doing so would benefit the market.

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cc: Nora Flood, Chief Counsel, CFTC Division of Market Oversight  
Owen Kopon, Associate Chief Counsel, CFTC Division of Market Oversight  
Tom Guerin, Acting Director, CFTC Division of Data

Certification Pursuant to Commission Regulation § 140.99(c)(3)

As required by Commission Regulation § 140.99(c)(3), we hereby (i) certify that the material facts set forth in the attached letter dated August 1, 2023 are true and complete to the best of our knowledge; and (ii) undertake to advise the Commission, prior to the issuance of a response thereto, if any material representation contained therein ceases to be true and complete.

Sincerely,

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