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VIA ELECTRONIC MAIL

Secretariat
Committee on Payment and Settlement Systems
Bank for International Settlements
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Secretariat
International Organization of Securities Commissions
accessdata@iosco.org

Re: Consultative Report: *Authorities' access to trade repository data*

Ladies and Gentlemen:

CME Group Inc. (**CME Group**), on behalf of its derivatives trade data repository services (**Trade Repositories** or **TRs**), would like to express appreciation to the Committee on Payment and Settlement Systems (**CPSS**) and the Technical Committee of the International Organization of Securities Commissions (**IOSCO**) for the opportunity to comment on their consultative report: *Authorities' access to trade repository data* (the **Report**). In the Report, CPSS and IOSCO seek comment on the expected data access needs of regulatory authorities with respect to derivatives transactions.

CME Group (**CME**) is one of the world's largest and most diverse derivatives marketplace. CME Swap Data Repository Service provides public data on swap transactions and stores confidential trade and position data for regulatory purposes, in accordance with the Dodd-Frank Act. The Commodity Futures Trading Commission (**CFTC**) has approved CME Repository Service as a swap data repository (**SDR**) for credit default swaps, interest rate swaps, commodities and foreign exchange asset classes. CME is currently applying to the European Securities and Markets Authority to become a European trade repository to provide public data on exchange traded and OTC derivatives transactions and store confidential trade and position data for regulatory purposes, in accordance with the European Market Infrastructure Regulation.

I. Background and Executive Summary

We support the G20 objectives to strengthen the international financial system through regulatory reforms that will increase transparency in derivatives markets and reduce systemic risk. International standard setters and regional and national regulators must make every effort to avoid unintended consequences and ensure an appropriate level of regulatory consistency across jurisdictions.

The need for increased debate to ensure the most efficient means to share data collected by TRs among regulators internationally is self-evident. CME strongly supports many of the Report's suggestions and commends CPSS and IOSCO's efforts to make Recommendation 16 of the FSB's report a reality. Greater regulatory transparency of OTC derivatives markets will assist market participants and ensure better market performance. In order to assist with this effort, CME has made some recommendations which will allow regional and international reporting to maximize existing infrastructures. CME's suggestions are intended to reduce costs and complexity for regulators, market participants and TR operators.

Purpose and Scope of Access

CME understands that regulatory access is intended to create transparency to allow regulators to prevent the build-up of unsustainable exposures through monitoring and detecting risks in the markets.¹ Access to data should allow relevant authorities (**requesting regulators**) "effective and practical access" to data "that they require to carry out their respective regulatory mandates".² Access is therefore not intended to be unrestricted or unlimited and we endorse the approach of determining the minimum level of data access that authorities would typically require in support of their particular mandates to promote a common understanding between regulators and TRs.

¹ Page 2, paragraph 2.1

² FSB Recommendation 16, *Report on the Implementation of OTC derivatives market reforms* (October 2010)

II. Data access models

Regulatory Mandates, Confidentiality and Privacy Laws

CME understands the primary concerns addressed in the Report to be: (1) allowing requesting regulators sufficient (ideally standardized) permissions to access TR data; (2) legal restrictions on data provision; and (3) confidentiality. These concerns are largely addressed by matching specific regulatory roles covered by various mandate types to different levels of access (i.e. transactional, position or aggregate data), as set out in the data access mapping table at section 6 of the Report. As set out below, CME anticipates that the direct access model could create problems which can only be practically addressed by instead applying the regulatory cooperation model.

Direct Access Model, TR Discretion and TR Supervisors

The data access model:

The Report envisages that TRs will provide such data as is legitimately requested by authorities subject to legal restrictions and confidentiality considerations. Responsibility for determining the consistency between the data request and the requesting regulator's mandate lies with the TR.³

Consequently, a TR's exercise of its discretion takes a leading role under the direct access model. CME agrees that TRs and regulators could work to make a TR's use of its discretion easier and facilitate their negotiations. TRs could detail clear access requirements.⁴ Requesting regulators could provide full information regarding its mandate,⁵ assurances regarding the confidentiality and use of data,⁶ undertakings to delete data once it has been used,⁷ as well as implementing Chinese walls to prevent the movement of data between regulatory functions (where such functions receive different levels of access),⁸ and agreeing not to pass on data received, except in aggregate form, unless required by law.⁹ However, the TRs ability to provide data may be limited by blocking, secrecy or privacy laws and confidentiality requirements which restrict TR discretion.

The Report expects that a TR's discretion and negotiations between TRs and requesting regulators would be particularly relevant in respect of non-typical data requests.¹⁰ In the instances where the direct negotiation approach does not result in agreement (CME understands that the Report anticipates these to be limited to exceptional non-typical requests), a TR's own direct regulatory body (a **TR supervisor**) could determine whether the request should be satisfied¹¹ or indirect access could be sought via the TR supervisor's (or third regulator's) access permissions.¹² CME actively supports this concept where a TR is replaced in negotiations by a TR supervisor (or other appropriate regulator) and this concept is developed under the regulatory cooperation model below.

Shortcomings of the data access model:

Despite the leading role envisaged for TR discretion, the Report suggests that its policy should actually be designed to grant access "to the maximum extent permitted by law" subject to confidentiality safeguards.¹³ There is also a very real risk that TRs could be obliged to comply with requests by the conditions of their recognition or eligibility.¹⁴ This concern would be particularly relevant in respect of a TR's own direct regulatory bodies, if they were to lack a relevant mandate. Both of these factors undermine a TR's ability to negotiate with requesting regulators and prevent the effective role of TR discretion. The impotence of TR discretion in such situations merits intervention by a TR supervisor, as is encouraged by CME above. However, CME understands that TR supervisors

³ Page 31, paragraph 5.2

⁴ Page 28, paragraph 5.1

⁵ Page 31, paragraph 5.2

⁶ Page 26, paragraph 4.3.2.1

⁷ Page 26, paragraph 4.3.2.2

⁸ Page 26, paragraph 5.2

⁹ Page 26, paragraph 4.3.2.1

¹⁰ Page 28, paragraph 5.1

¹¹ Page 31, paragraph 5.2

¹² Page 24, paragraph 4.2.2

¹³ Page 28, paragraph 5.1

¹⁴ Page 4, paragraph 2.3

are not intended to play a consistent role in the provision of information to requesting regulators¹⁵ This leaves issues undermining TR discretion unresolved in the direct access model.

Legal requirements on requesting regulators of the TR's jurisdiction may also restrict access. A requesting regulator may be unwilling or unable meet prerequisites to receiving data, such as providing an indemnity or accepting the personal liability of its staff regarding information received.¹⁶ Where the legal framework does not permit direct access, the Report indicates that a TR supervisor (or other regulator with legal access permission) should ensure the relevant information is provided to the requesting regulator.¹⁷ In such cases, the Report recommends changing local legal frameworks in order to permit a TR to function effectively.¹⁸ These factors are beyond the scope of TR discretion to resolve. However, they could be resolved by increasing the role of TR supervisors and CME strongly supports TR supervisors providing access at their discretion or taking an active role with other relevant government authorities to change the law where necessary.

Regulator Cooperation Model

In order to avoid cross-border issues, the Report suggests that regulators that are likely to need to share information with each other should put relevant agreements in place that address all relevant obstacles.¹⁹ CME strongly advocate regulators sharing information they receive from TRs with other authorities on an ongoing basis to ensure all authorities can meet their mandates.²⁰

We believe that the regulator cooperation model in use by the U.S. Securities and Exchange Commission (**SEC**) provides a practical example of regulators sharing information. In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of financial services firms, including large complex financial conglomerates, the SEC has in place around the world Memoranda of Understanding (**MOUs**) on the exchange of information regarding the oversight of financial services firms.

The SEC has broad domestic authority to gather information on behalf of foreign securities regulators. The SEC shares that information through a variety of formal and informal mechanisms. This approach facilitates foreign securities authorities' ability to enforce their domestic laws and benefits the SEC's enforcement program as well. The MOUs provide a framework for information sharing. Each MOU is designed to fit the particular circumstances of the foreign market and the powers of the SEC's foreign counterpart. We encourage this model to be used in the oversight of the derivatives markets.

IOSCO has fully endorsed information sharing among securities regulators worldwide, with the multilateral MOU serving as the international benchmark for information sharing standards. IOSCO has also employed a variety of vehicles, such as resolutions, core principles and work programs, to establish a framework for information sharing on which its members can build to strengthen their securities laws. We strongly support IOSCO's efforts and recommend that these principles continue in the information sharing space among TRs and regulatory authorities.

CME believes that an inter-regulator cooperative solution should not be in addition to, but in replacement of, a direct access model based on TR discretion. Under such a cooperative model, TRs would provide data to a single local or regional regulator that would then share this information among other regulators under its own agreements, enhancing regulators ability to meet Responsibility E of the IOSCO Principles.²¹ This model also allows TRs to meet the IOSCO Principles more easily. Sharing data directly with a single regulator reduces the complexity of the legal basis for data provision, governance oversight and risk management, supporting Principles 1, 2 and 3, and reduces the risk of duplicated or providing inaccurate data, addressing Principles 21 and 24.

¹⁵ Page 23, paragraph 4.1.2

¹⁶ Page 23, paragraph 4.2

¹⁷ Page 29, paragraph 5.1

¹⁸ Page 24, paragraph 4.2.1

¹⁹ Page 24, paragraph 4.2.2

²⁰ Page 24, paragraph 4.2.2

²¹ CPSS-IOSCO, *Principles for financial market infrastructures*, April 2012. Available at www.bis.org/publ/cpss101a.pdf

The regulator cooperation model has three broad benefits when compared to the direct access model. Firstly, it eliminates complex, individually negotiated agreements between each TR and multiple international regulators, reduces the total quantity of agreements required and simplifies the provision of data by TRs. Secondly, it directly addresses the problems identified above where TR discretion is undermined and where solutions to issues fall beyond the power of TR discretion. Finally, the simplified process reduces TR operation costs, and removing the need for TR discretion removes operational risks, which both eradicate significant barriers to entry and thus increase competition in the TR services market.

The Report notes, and CME accepts, that this model does not ensure that a regulator providing indirect data access is able to put the required cooperative agreements into place.²² However, if a regulator cannot agree common terms to share data, a TR would have even less ability to do so. The direct access model implicitly accepts this fact by allowing for a TR to be assisted or replaced by a TR supervisor in its negotiations with a requesting regulator in the event of difficulties.²³

III. Cover Note Questions

Question C

Mapping table

We believe that the table summarizing the minimum typical data access levels for each mandate discussed in section 3 of the Report provides useful guidance for market participants and the financial services industry. CME believes, however, that requests for data access from regulatory authorities outside the home jurisdiction of the TR should be handled through the regulator cooperation model discussed in section II of this letter.

Question D

CME understands the need for regulatory authorities to respond to unusual market conditions or changes in their data access needs as markets develop over time.²⁴ The direct access model presented in the Report makes many useful suggestions for how TRs and requesting regulators might assist each other with negotiations, such as defining information required by the TR on the regulator's mandate and the regulator appropriately setting out its need for the data requested. Given that non-typical data requests are not standardized, it is difficult to predict what sort of information could be required by a TR. By contrast, developing a clear process for defining and obtaining necessary information is vital. The role of the TR supervisor in assisting this process is strongly supported by CME.

Nonetheless, if a TR supervisor were to act as the data source for international regulators under relationships governed by MOUs, the negotiation process could be avoided. Such MOUs should identify how non-typical requests will be dealt with in advance. Therefore the requesting regulator will receive data faster than by negotiating with the TR (with the possible involvement of the TR supervisor) and TRs will avoid unnecessary and unpredictable costs, thus reducing barriers to entry to the TR operator market.

Question E

Anonymized Data

The issue of whether data residing in a licensed repository should be anonymous from the perspective of market participants viewing their trade records should be evaluated. It is worth considering the market structure after applicable clearing mandates and mandatory centralized platform trading are realities. For example, if repositories are required to allow one counterparty to a trade to access trade records that feature an LEI for both sides of any particular trade then, obviously, it will be possible for that counterparty to ascertain the identity of the other side of the trade. This is clearly appropriate in

²² Page 24, paragraph 4.2.2

²³ Page 24, paragraph 4.2.2

²⁴ Page 23, paragraph 4.1.3

the case of bilaterally negotiated deals; the counterparties to such trades are obviously aware of the identity of their counterparty. However, this will not be the case when execution occurs on an anonymous matching platform. In such circumstances, the actual counterparties that matched on the anonymous platform will not know the other side at the execution or clearing level. If the executed trade is reported to a trade repository with both LEIs associated with the record, a counterparty could determine the other side's identity unless the trade repository masked the applicable LEI field. It may be from a policy perspective advisable to allow repositories to maintain anonymity at the repository level for trades where there is anonymity at the execution and clearing levels.

Question G

Centralized Model for Global Aggregated Data

The aggregation of data on a global basis will be necessary to provide a comprehensive and accurate view of the global OTC derivatives market. Certainly some level of harmonization across jurisdictions will be necessary to ensure data collected is usable for these specific purposes. CME believes it is important to establish global best practices on representing data. As discussed above, CME supports a collaborative regulator sharing model to achieve the aggregation objective once the data standards have been put in place.

Although it is advisable to harmonize data standards generally to facilitate aggregation, this does not mean that TRs should be required to operate in the same formats. TRs will necessarily operate in differing formats (e.g., FpML and FIXML) because their respective clients operate in different formats. To ensure the quality and integrity of data submitted to TRs (and therefore from TRs to regulators) the market participants should not change their reporting formats. This is particularly true for participants who trade using FIXML as this language is used throughout the process, from execution to clearing to reporting. Additionally, imposing a single language on TRs could force the same upon their clients. This would lead to extremely high transition and implementation costs for reporting which would significantly impact implementation times. Finally, using various reporting formats has the benefit of increasing competition among TR operators. TR operators will compete for clients by trying to bring asset classes into their operative ability faster than their competitors. This will lead to currently customized asset classes becoming standardized more quickly than would occur with reduced competition.

Question H

We recommend that CPSS and IOSCO adopt an international consensus on core data fields required to support the global financial system to adequately assess and mitigate systemic risk at a positional level. The core objectives of the Dodd-Frank Act and the European Market Infrastructure Regulation are to promote greater transparency through the supply of post-trade derivatives data to TRs. Financial instrument identifiers are necessary for a wide array of essential functions for financial market players and institutions, both in the front office (e.g., data analysis, price discovery, risk evaluation) and back office (e.g., clearing, settlement, transaction reporting). A system of identifiers and the rules for generating them is often called a "symbolology." In the industry today, a number of different financial instrument product IDs and taxonomies exist, each with its own coverage, advantages, and disadvantages (as discussed further in Question G). An effective approach for any class of OTC derivatives must have broad coverage, be widely available at a low cost, be flexible enough for use in multiple functions, allow mapping to alternative systems used in related functions, and be dynamic enough to immediately account for the many instruments that arise, expire, and change on a daily basis.

CME believes that developing unique identifier and unique product identifier standards is an essential building block of any regulatory framework for trade repositories. CME further believes regulators need 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 Swap, Counterparty and Product Identifiers

CME believes that the best unique counterparty identifiers system would feature a not-for-profit industry utility coordinating an international registry offered to market participants at no cost. The central utility should not be a TR itself and should not be a private business to avoid potential conflicts of interest. CME believes that any system of unique counterparty identifiers should include neutral codes that do not contain any visible or meaningful identifying information.

With respect to the development of unique product and transaction 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.

In our view, the best course of action is to implement reporting only after the most important foundational identifier conventions, such as legal counterparty identifiers and product codes, have been developed.

V. Conclusion

Again, we appreciate this opportunity to provide the Committee members with our comments. If you have any comments or questions about our submission, please feel free to contact me by telephone at +1 312 454 8974 or by e-mail at jonathan.thursby@cmegroup.com.

Sincerely,

Jonathan Thursby