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Statement of the Shadow Financial Regulatory Committee on

Restricting Access to Regulatory Data

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The Chicago Mercantile Exchange (CME) has accused researchers at the Commodities Futures Trading Commission (CFTC) of making illegal use of sensitive market data provided by private sources for research purposes. The Commodity Exchange Act prohibits the disclosure of trading positions and trade secrets. The CME alleges that CFTC research may have allowed outsiders to infer proprietary high-frequency trading strategies. The concerns have led to a short-term disruption of the research program of the CFTC over the last several months as the CFTC investigates these allegations.

Limitations on the use of research data raise issues of broad relevance and import for the financial regulatory process, and not just for markets directly regulated by the CFTC. For example, empirical analyses and related research are valuable and crucial for understanding high-frequency trading. Even where genuine confidentiality issues arise, those concerns are mitigated by the passage of time. The SFRC believes that it is sufficient to constrain the use only of recent data. Older data have the potential to inform our understanding of the underlying markets without revealing current trading strategies, given the staleness of the data and their underlying context. For example, the case for allowing the Federal Reserve not to release data describing the various Maiden Lane portfolios became steadily weaker as the underlying events receded to the distant past.

It is essential that regulatory policies and actions reflect an informed assessment of the empirical realities of the markets. Scholarly research on regulatory issues serves the public interest because it is crucial to the ability of financial regulators to understand financial markets and market participants to critique the work of regulators. Additionally, the inability of staff to publish analyses based upon such data would prevent the regulator from recruiting the talented staff that is necessary to analyze market data through the types of innovative lens that are crucial for understanding complex and sophisticated financial and commodities markets. This perspective is strongly reinforced by the recent rulings of the District of Columbia Circuit Court of Appeals, which have emphasized to regulators the crucial importance of including a credible cost-benefit analysis to achieve favorable judicial review. Meaningful analyses and research reports can be undertaken only if the regulator is in a position to staff such projects and recruit the type of talent and skills that would be needed to undertake them.