Gaw, Michael J.

From:	Collazo, Marisol [redacted]
Sent:	Monday, March 24, 2014 3:01 PM
To:	Eady, Thomas; Gaw, Michael J.
Cc:	Waddle, Jeffrey T.
Subject:	Follow up
Attachments:	Comments re CME Rule 1001_final.pdf

Tom/Michael,

The attachment is the copy of the comments to Rule 1001 that was submitted by the industry and trade associations on behalf of its members. Thinking further about the discussion on impact to dealers and our client base, the reason you have not heard much noise about this issue with SEC is because the proposed SEC rules as they stand do not create this fragmentation and cost burden to the industry. I think it would capture the dealers by surprise if the SEC changed this rule. While any option is possible, there has been a long held view that the SEC proposed model provides for a better defined process flow approach that achieves data quality, assigns proper ownership of who should report, and provides the most cost efficiencies for the industry as a whole.

Please advise if you should have any further question.

Best regards,

Marisol

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Jonathan E Beyman
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January 14, 2013

David A. Stawick
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Re: Chicago Mercantile Exchange Inc. Amended Request to Adopt New Chapter 10 and New Rule 1001, Submission #12-391RC, IF #12-014

Secretary Stawick:

Citigroup Inc. ("Citi") appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the "Commission") in response to its request for public comment on the amended request by the Chicago Mercantile Exchange Inc. ("CME") for approval of adoption of new Chapter 10 and new Rule 1001 (together, the "Proposed Rule").[1] The Proposed Rule would require swap data for all swaps cleared through CME's derivatives clearing organization ("DCO") to be reported to CME's swap data repository ("SDR").

As a preliminary matter, Citi supports an open and competitive market amongst DCOs and SDRs, which tends to reduce costs and increase innovation and is fully consistent with the Commodity Exchange Act (the "Act") and Commission regulations thereunder. Accordingly, to the extent that CME wishes to compete to provide SDR services, we would be supportive of them doing so.

The Proposed Rule, however, would undercut competition by making reporting to CME's captive SDR compulsory in a manner inconsistent with the Act and Commission regulations, in particular the requirements to report data for a given swap to a single SDR, fair access requirements and the risk management, recordkeeping and reporting requirements applicable to swap dealers ("SDs") and major swap participants ("MSPs"). For these reasons, we respectfully request that the Commission deny approval of the Proposed Rule. At a minimum, if the

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[1] This letter is provided in response to CME's most recent amendment to its submission of the Proposed Rule. *See* Regulation 40.5 Request for Expedited Approval: Chicago Mercantile Exchange Inc., Submission #12-391: Adoption of New Chapter 10 ("Regulatory Reporting of Swap Data") and Rule 1001 ("Regulatory Reporting of Swap Data"), dated November 9, 2012; CME submission #12-391R amending CME submission #12-391, dated December 6, 2012; CME submission #12-391RC amending CME submission #12-391R, dated December 14, 2012.

Commission does not deny approval, it should stay effectiveness of the Proposed Rule to prevent serious disruptions to data integrity, facilitate further consideration of the policy issues implicated by the Proposed Rule, and provide market participants with the requisite time to build out the significant infrastructure, technology, and connectivity solutions that would be necessary to achieve compliance with the Proposed Rule.

I. Background

The Proposed Rule would make reporting to CME's SDR compulsory for all market participants clearing swaps through CME's DCO. Since Citi and other market participants have already undergone the cost-intensive process of selecting and establishing connectivity with their chosen SDR, the Proposed Rule would create significant duplicative burdens and additional issues, without countervailing benefits. The following is a brief summary of the implementation efforts already undertaken, the operational issues that would be created if Citi were forced to report to CME's SDR, and the additional implementation steps that would need to be taken in order to satisfy the requirements of the Proposed Rule.

A. Implementation Efforts Already Undertaken

Pursuant to an industry-wide request-for-proposal, the industry selected the Depository Trust & Clearing Corporation ("DTCC") as the SDR to which reports of swap data would be made to satisfy the Commission's real-time and regulatory reporting requirements. Following this selection, considerable time and resources have been devoted to ensuring that the DTCC solution meets the requirements of the Act and Commission regulations. Spanning a more than 15 month period, this effort has included creating a data model, developing messaging specifications, designing process flows, creating reconciliations of the data, writing, reviewing and signing off on documents satisfying internal and external business conduct requirements, testing, and the successful implementation of these systems with regard to swaps in the rate and credit asset classes.

Citi has chosen to utilize DTCC as its SDR and as a result has built the necessary real-time connectivity to support reporting to DTCC's SDR. Mandating the use of an additional SDR would create a host of issues. Upon execution, bilateral transactions are sent to the SDR for reporting of real-time and PET data. Once the trades are cleared, firms expected the DCOs to feed the cleared trades to the originating SDR, novating the originating trade with the cleared trades. It is at this point the originating firm would obtain the replacement unique swap identifier ("USI") for the cleared transaction, through its connection and messaging with the SDR. In this flow, firms would establish one connection with the SDR and send and receive messages related to its activity. Firms would use that same connection to pass continuation data such as valuations to the SDR. In addition, firms would use that same connection to receive a full accounting of the positions to reconcile the SDR activity against the firm's books and records, pursuant to recordkeeping requirements applicable to SDs.

B. Additional Burdens of Connecting to CME's SDR

For Citi to establish the necessary connectivity to the CME SDR, it will need to implement the following steps:

- Citi will need to terminate the bilateral position in DTCC's SDR, while not retracting the real-time price information that was already disseminated for the transaction. Currently, the expectation is that the DCOs will perform this function upon clearing the bilateral trade and report the cleared trades, with a reference to the bilateral trade USI, to DTCC's SDR.

- Citi's reporting infrastructure is built upon the ISDA-governed FpML data model (supported by the industry for SDR reporting) and will need to be extended to support CME's SDR's data specification.

- Citi currently receives near real-time notification from DTCC's SDR when a trade is reported against it by a counterparty, to ensure its positions in the SDR are accurately updated intraday. Citi also uses these messages to update its trades with the USIs generated by the reporting party. Citi will now be required to build a similar messaging connectivity to CME's SDR, to be notified of cleared trades and their USIs reported to CME's SDR, when Citi is the counterparty.

- Citi will have to build a non-messaging based connectivity to CME's SDR to receive end-of-day position reports for reconciliation with Citi's books and records.

- Citi will need to submit end-of-day valuations to CME's SDR for all cleared USIs, where Citi is the counterparty.

As illustrated by these steps, there are a number of significant technical and operational difficulties involved with reporting to CME's SDR. Given that specifications from CME regarding the required data model or connectivity options are not yet available, Citi is unable to determine the size of the effort needed to satisfy the operational requirements described above. Based on our experience building the necessary interfaces to DTCC's SDR, however, it will certainly require a very significant and time-consuming effort entailing substantial costs. It is likely that little, if any, of the infrastructure and systems that have been developed by the industry for the selected DTCC SDR solution can be readily applied to the CME's SDR.

C. Operational Issues and Costs

As referenced above, under the Proposed Rule, Citi, and each other affected market participant, would now need to establish a connection with another SDR to receive USIs in real-time, feed valuation data and reconcile the additional SDR's activity against its books and records. It is important to note that this would be a new connection with CME's SDR. Because data maintained in CME's DCO reflects *positions* and data maintained in the SDR reflects *individual transactions*, Citi would need to reconcile those transactions to ensure that the SDR activity is accurate. Citi would also be required to keep track of which transactions are in which SDR and, if rules like the Proposed Rule proliferate to other DCOs, Citi would be required to

keep track of transactions across multiple SDRs. Citi would also need to create additional messages and procedures to exit the bilateral transactions out of the original SDR. While CME has proposed to feed a copy of the cleared trade to any SDR requested by the reporting party, this would not eliminate the requirement for Citi to implement a new data model and messaging specifications to support exiting the original trade, obtaining the USI and developing reconciliations to the CME SDR. All of these steps would be required by each affected market participant with each additional SDR.

The creation and maintenance of this type of infrastructure would result in a substantial cost. Compulsory creation of duplicative infrastructure for multiple SDRs creates no competitive advantage, only additional expense. Each additional SDR will replicate the infrastructure and accompanying cost. Thus, if ten DCOs decide to create their own SDRs and Citi is required to use them under similar rules to the Proposed Rule, the infrastructure cost will be multiplied by a factor of ten. Each such connection would also create an additional point of potential failure. Moreover, this multiple SDR structure would create a complex web of connectivity and additional requirements to keep track of where the "golden copy" of each trade is held at any given time.[2] Finally, because SDs are responsible for ensuring the data held at an SDR is accurate, Citi would be required to build platforms for the reconciliation of data with each SDR. This multiplicity of cost would be replicated at each SD.

Beyond imposing additional costs on individual SDs and other market participants, the duplication and fragmentation of swap data that would result from the Proposed Rule have the potential to create significant systemic risk to the market as a whole. As discussed below, Commission rules requiring reporting of swap data for any given swap to a single SDR work to reduce overall risk by minimizing the points of connectivity within the reporting process and, by extension, points of potential failure. The industry's selection of DTCC as a common SDR to hold all aggregate trade data further mitigates this risk. The complex web of data transmission and swap data duplication that would be created by the Proposed Rule, however, would undermine these efforts and multiply the potential for disruptions and inaccuracies in data flows, with resulting knock-on effects in the swaps market and broader financial markets. Furthermore, the proposed approach raises systemic concerns because the Commission and other regulators' real time access to accurate swap data and market participant exposures could be compromised by the fragmentary nature of data reporting and storage under the Proposed Rule.

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[2] We also note that Citi will need to perform regulatory reporting in multiple jurisdictions around the world. Citi chose DTCC's SDR and global trade repository ("GTR") solution for its global reporting requirements. DTCC will provide a common interface allowing Citi to report transactions to DTCC's GTR to meet those reporting obligations. As a GTR, data held at DTCC is expected be available to foreign regulators in order to meet swap data reporting requirements in other jurisdictions. The ability of Citi to meet multi-jurisdictional regulatory requirements would be frustrated if swap data is held in a different SDR (or potentially many different SDRs) because Citi expects that all relevant swap data will need to be maintained and available to foreign regulators through DTCC as the selected GTR solution.

II. Inconsistency with the Act and Commission Regulations

Under Commission rules applicable to the submission of proposed rules by certain registered entities, including DCOs, the Commission must withhold approval of any proposed rule that it finds to be inconsistent with the Act or Commission regulations.[3] The best interpretation of the Act and applicable Commission regulations is that reporting parties should have the choice of where to report swap data. Accordingly, once a reporting party has chosen an SDR, the DCO should not be permitted to overrule that decision. As the Proposed Rule is fundamentally inconsistent with the statutory and regulatory intent manifest in the Act and Commission regulations, it should not be approved.

A. Reporting to a Single SDR

The Proposed Rule would violate Commission Rule 45.10, which requires that "all swap data for a given swap must be reported to a single [SDR], which shall be the [SDR] to which the first report of required swap creation data is made" pursuant to Commission rules.[4] Under Rule 45.10, all continuation data for a given swap, including both life cycle and valuation data, must be reported to the SDR to which the initial report of creation data was made.

CME contends that Rule 45.10 does not prevent it from choosing to report swap data for cleared swaps to its own SDR, even though the original swap was reported to a different SDR chosen by the reporting party,[5] because the original swap and the two resulting swaps are different swap transactions. This contention is based on CME's reading of Commission Rule 39.12(b)(6), which refers to the extinguishment of the original swap and replacement by two offsetting swaps facing the DCO.[6] However, in adopting and later interpreting Rule 39.12(b)(6), the Commission and staff have expressly described the Rule as pertaining to "novation" of the original swap, rather than termination.[7]

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[3] Provisions Common to Registered Entities, 76 Fed. Reg. 44776, 44794 (July 27, 2011).

[4] Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136, 2208 (Jan. 13, 2012) (the "Reporting Rule").

[5] For swaps accepted for clearing after the applicable reporting deadline for the reporting counterparty, the reporting counterparty must report swap creation data, including primary economic terms ("PET") data and confirmation data, to the SDR of its choosing. For swaps accepted for clearing before the applicable reporting deadline for the reporting counterparty and before the reporting counterparty reports any PET data, the DCO must report creation data and the reporting counterparty is excused from reporting. Reporting Rule, 77 Fed. Reg. at 2199. However, this excusal is voluntary and the reporting counterparty *may* report PET data, in which case the DCO would only be responsible for reporting confirmation data.

[6] Derivatives Clearing Organization General Provisions and Core Principles, 76 Fed. Reg. 69334, 69437 (Nov. 8, 2011) (the "DCO Rule").

[7] *See* DCO Rule, 76 Fed. Reg. at 69361 (referring to the process of extinguishment and replacement under Rule 39.12(b)(6) as novation); *see also* Frequently Asked Questions (FAQ) on the Reporting of Cleared Swaps (Nov. 28, 2012) (discussing clearing as the process whereby the original swap is "novated and extinguished, replaced by different swaps" between each counterparty and the DCO).

Under Part 45 of the Commission's rules, a novation is considered a life cycle event subject to continuation data reporting and is distinct from termination.[8] A novation, like any other instance where a new swap is generated from an original swap, must be reported to the same SDR as the initial creation data for the original swap. In particular, the data report for a new swap resulting from a novation necessarily contains data for the original swap, in particular the original swap's USI, which is to be used by the Commission and the parties to the original swap to track that it has been replaced via novation. In this way, data pertaining to the swaps resulting from a novation constitutes "data for a given swap" within the meaning of Rule 45.10, such that the requirement to report to the same SDR applies. Any other reading of Rule 45.10 would substantially undermine the purpose of the rule, requiring the Commission to examine data across multiple SDRs to determine a swap's disposition.[9] As the Commission notes in its discussion of Rule 45.10, "[the] important regulatory purposes of the Dodd-Frank Act would be frustrated, and [the] regulators' ability to see necessary information concerning swaps could be impeded, if data concerning a given swap was spread over multiple SDRs."[10] However, such fragmentation of data between SDRs would be precisely the result under the Proposed Rule.

B. Access Requirements and Competitive Concerns

Under the Act, DCOs must have participation and membership requirements that permit "fair and open access."[11] Similarly, under Commission rules, an SDR "shall not tie or bundle the offering of mandated regulatory services with other ancillary services that [the SDR] may provide to market participants."[12] Both DCOs and SDRs are also subject to antitrust provisions of the Act and Commission regulations which prohibit the adoption of rules that result in an unreasonable restraint of trade or "impose any material anticompetitive burden."[13]

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[8] Reporting Rule, 77 Fed. Reg. at 2197.

[9] We also note that permitting a swap resulting from a novation to be reported to a different SDR than the original swap would set a troubling precedent for other circumstances where swaps resulting from post-trade events could be reported to a different SDR. For example, the exercise of a previously-reported swaption results in a "new" swap reflecting such exercise. Similarly, a manager may enter into an original swap with a SD and subsequently allocate that swap to its clients, resulting in multiple post-allocation swaps. In prime brokerage transactions, a client, acting on behalf of a prime broker, enters into an original swap with the executing dealer, and then enters into an offsetting swap with the prime broker once the original swap is given up to the prime broker. In each of these cases, the new swap(s) is required to be linked to the original swap, in recognition that the data for the new swap(s) is relevant to the original swap.

[10] Reporting Rule, 77 Fed. Reg. at 2168.

[11] CEA §5b(c)(2)(C)(iii)(III).

[12] Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 Fed. Reg. 54538, 54587 (Sep. 1, 2011) (the "SDR Rule").

[13] For DCOs: CEA §5b(c)(2)(N); DCO Rule, 76 Fed. Reg. at 69446. For SDRs: CEA §12(f)(1); SDR Rule, 76 Fed. Reg. at 54582.

The Proposed Rule would allow CME to abuse its market power, as one of a handful of DCOs clearing swaps in the marketplace, to provide significant commercial benefits to CME and to save CME the cost of reporting to DTCC in compliance with DTCC's rules and technical requirements,[14] all at the expense of the market participants clearing swaps through CME. As a result, the Proposed Rule would be inconsistent with fair and open access requirements applicable to DCOs, prohibitions against tying or bundling of mandated services that are applicable to SDRs, and general antitrust provisions of the Act set forth above. CME's counterarguments to this reality are fallacious.

In its submission of the Proposed Rule, CME contends that the rule merely sets forth how it will meet its own regulatory reporting obligations and so would not implicate open access, anti-tying or antitrust rules. On the contrary, the Proposed Rule would create significant obligations for other market participants that would require connectivity with CME's SDR. For example, SDRs are required to confirm the accuracy of reported data with counterparties via a notification, acknowledgement and correction process.[15] SDs and other reporting counterparties would therefore be required, at substantial incremental time and expense, to establish systems to facilitate this process on an ongoing basis with regard to data reported by CME's DCO to its SDR. In addition, SDs and MSPs are responsible for ongoing daily reporting of valuation data,[16] which under Rule 45.10 would need to be reported to the same SDR as the initial report of creation data (and therefore, under the Proposed Rule, to CME's SDR).

CME also suggests that the preamble to the SDR Rule[17] and the cost-benefit analysis for the Reporting Rule[18] support the view that it is acceptable for CME, as a DCO, to choose the SDR to which reports shall be made. CME's reading of the relevant language cannot be sustained. CME would interpret the language to mean that DCOs have the flexibility to mandate the SDR to which data would be reported. However, this interpretation would be subject to Rule 45.10's requirement to report to a single SDR, as preamble guidance clearly cannot override an explicit regulatory provision. Accordingly, it cannot apply to swaps for which the reporting party has already provided data to another SDR. Additionally, the language could be interpreted to permit a DCO and its affiliated SDR to offer bundled clearing and reporting solutions to participants, notwithstanding applicable fair and open access requirements. However, to be consistent with the foregoing provisions, the offer could only be voluntary and not compulsory for participants.

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[14] Pursuant to the industry-wide selection process described above, virtually all SDs have chosen DTCC as the SDR to which they will report swap data.

[15] SDR Rule, 76 Fed. Reg. at 54579.

[16] Reporting Rule, 77 Fed. Reg. at 2202.

[17] "[T]he rules and regulations of a particular SEF, DCM or DCO may provide for the reporting to a particular SDR." SDR Rule, 76 Fed. Reg. at 54569.

[18] "[T]he final rules do not preclude counterparties or registered entities from reporting swap data to existing DCOs registered as SDRs, or to SDRs chosen by DCOs, if they so choose for business or cost-benefit reasons." Reporting Rule, 77 Fed. Reg. at 2184.

Additionally, CME argues that the Proposed Rule would not violate anti-competitive provisions because it does not have significant market power in the market for SDRs, citing statistics regarding DTCC's share of the interest rate swap market as support. Even accepting this assertion as true, however, CME's market power in the SDR market is irrelevant. Rather, it is CME's substantial market position in the *clearing* market that creates competitive concerns. It is well recognized as fundamentally inappropriate and anticompetitive for a vendor to seek to condition use of its services that have been mandated by regulation on the use of other ancillary services. By effectively making reporting to its SDR a condition to clearing swaps through its DCO, CME is seeking to force market participants to use its SDR services. Given the substantial costs involved with connecting to a new SDR, this tying of services under the Proposed Rule is clearly inconsistent with statutory and regulatory prohibitions against the creation of any material anticompetitive burden.

Finally, CME suggests that DTCC's interpretation of the rules, i.e. that the Proposed Rule is inconsistent with the Act and Commission regulations, could lead to significant added cost for DCOs because they would need to report to multiple SDRs as chosen by their participants. This circumstance, however, is purely hypothetical, because in reality the industry has elected to use DTCC as the SDR to which swap data will be reported.[19] The cost for CME and other DCOs will therefore be significantly less than CME is suggesting. Moreover, in their capacity as centralized reporting nodes for other market participants, DCOs are well and uniquely positioned to handle the necessary connectivity to, at most, a limited number of SDRs and to recoup the associated costs from their membership. In contrast, if the Proposed Rule were adopted, the multitude of captive SDRs affiliated with DCOs that would seek to create similar tying requirements would be a significant driver of additional, and redundant, costs across all SDs, MSPs and other reporting counterparties. Already, two other DCOs, ICE Clear Credit and ICE Clear Europe, have taken the same position as CME. More can be expected to follow suit. Each one that does further fragments data cohesion and multiplies the costs and burdens on the industry as a whole. Indeed, if the Commission had anticipated CME's interpretation, it is doubtful that the reporting rules could have sustained the cost-benefit analysis necessary for adoption. When it anticipated the possibility of DCOs choosing SDRs, the Commission articulated such decisions as cost-saving measures; the compulsory character of the Proposed Rule would reach the opposite result of what the Commission intended.

C. SD and MSP Obligations

Finally, we note that the Proposed Rule would also be inconsistent with other Commission rules applicable to SDs and MSPs. As noted above, contrary to Rule 45.10 and Commission policy goals, the Proposed Rule would result in the splitting of data for a given swap between multiple SDRs.[20] The resulting fragmentation or duplication of swap data would

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[19] Leading to CME's issuance of the Proposed Rule.

[20] This would be true whether or not a reporting counterparty follows the Proposed Rule and the requirements of Rule 45.10 by reporting the original swap creation data to CME's SDR, because in most cases SDs will seek to have duplicate data reported to their chosen SDR.

create serious difficulties for SDs and MSPs in their ability to comply with Commission rules applicable to them.

- For example, under Commission Rule 23.600, SDs and MSPs are required to establish a risk management program designed to monitor and manage the risks associated with their swaps activities.[21] Pursuant to the risk management program, SDs and MSPs must identify and monitor credit, liquidity, settlement and other applicable risks and provide periodic risk exposure reports. The ability of SDs and MSPs to successfully undertake this process would be undermined by the fragmentation of swap data between multiple SDRs, since they could not access data for their transactions in an integrated manner through reports at a single SDR containing a common data format.

- In addition, SDs and MSPs are subject to extensive recordkeeping requirements, including daily trading and position records.[22] SDs and MSPs are responsible for the accuracy of records of their swap transactions, including those reported to and maintained at the SDR. The Proposed Rule would multiply the burdens associated with recordkeeping and, with multiple sets of records, increase the likelihood of inaccurate data.

For each of the reasons discussed herein, Citi respectfully requests that the Commission deny approval of the CME's Proposed Rule.

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[21] Swap Dealer and Major Swap Participant Recordkeeping, Reporting and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 Fed. Reg. 20128, 20205 (Apr. 3, 2012) ("Internal Business Conduct Standards").

[22] Internal Business Conduct Standards, 77 Fed. Reg. at 20202-04.

We would be happy to discuss any of these issues in greater depth should you wish to do so.

Very truly yours,

/s/ Jonathan E Beyman
Jonathan E Beyman
Global Head – Institutional Clients Group Operations & Technology

cc:

Chairman Gary Gensler
Commissioner Jill E. Sommers
Commissioner Bart Chilton
Commissioner Scott D. O'Malia
Commissioner Mark Wetjen
Ananda Radhakrishnan, Director of the Division of Clearing and Risk
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Deutsche Bank

January 7, 2013

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Re: Chicago Mercantile Exchange Inc. Amended Request to Adopt New Chapter 10 and New Rule 1001 (Submission # 12-391; IF # 12-014)

Dear Ms. Warfield:

Deutsche Bank AG ("**DB AG**", and together with its affiliates, "**Deutsche Bank**"), appreciates the opportunity to provide this letter to the Commodity Futures Trading Commission (the "**CFTC**" or the "**Commission**") in response to its request for public comment on the Chicago Mercantile Exchange Inc.'s ("**CME**") request for approval of adoption of new Chapter 10 and new Rule 1001 (the "**Proposed Rule**").[1] Under the Proposed Rule, all users of CME clearing services, including swap dealers ("**SDs**") and major swap participants ("**MSPs**"), would be required to permit creation and continuation data for swaps cleared by CME's derivatives clearing organization ("**DCO**") to be reported to CME's own swap data repository ("**SDR**"), and would effectively be required to use CME's SDR to satisfy certain of their own swap data reporting obligations.

We are concerned that, if adopted, the Proposed Rule would effectively eliminate reporting counterparties' choice of SDR in contravention of Commission Regulations and related guidance, statutory principles of fair and open access to clearing services and regulatory prohibitions on anticompetitive practices by DCOs and SDRs. In reliance on such authority, including Commission guidance that reporting counterparties may select the SDR to which cleared swap data is reported, market participants have undertaken significant investments to collaborate with the SDR of their choosing to develop and implement the technological systems and infrastructure required to establish reporting functionality. If the Proposed Rule were approved, reporting counterparties would be required to incur similarly significant costs in order to connect with CME's SDR (and potentially other DCO-SDRs). In addition, the Proposed Rule would lead to a fragmented, weakened and costly swap reporting infrastructure with few corresponding benefits to market participants or regulators. Therefore, we respectfully request that the Commission decline to approve the Proposed Rule.

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[1] Regulation 40.5 Request for Expedited Approval: CME Submission #12-391: Adoption of new Chapter 10 ("Regulatory Reporting of Swap Data") and Rule 1001 ("Regulatory Reporting of Swap Data"), dated November 9, 2012; CME Submission #12-391R amending CME Submission # 12-391, dated December 6, 2012; CME Submission #12-391RC amending submission 12-391R, dated December 14, 2012, available at http://sirt.cftc.gov/sirt/sirt.aspx?Topic=ClearingOrganizationRulesAD&Key=25037 (last accessed January 7, 2013).

Approval of the Proposed Rule Would Effectively Force SDs and MSPs to Use CME's SDR In Contravention of Statutory and Regulatory Requirements and Policies

Arrangements that restrict reporting counterparties' choice of SDR in respect of swaps cleared by a DCO do not serve the best interests of market participants. Yet if approved, the Proposed Rule would effectively force SDs and MSPs to use CME's SDR in order to access CME's clearing services. Such a result is plainly inconsistent with statutory principles of fair and open access to clearing enacted by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**"), Commission Regulations that prohibit SDRs from bundling the provision of reporting functions with other services, and the Commission's stated policy of leaving the choice of SDR to the reporting counterparty.

The Commodity Exchange Act ("**CEA**"), as amended by the Dodd-Frank Act, unambiguously reflects a Congressional commitment to principles of fair and open access to DCO clearing services.[2] By the same token, Commission Regulation § 49.27(a)(2) prohibits an SDR from tying or bundling the offering of mandated regulatory services with other ancillary services that an SDR may provide.[3]

Moreover, the Commission's discussion of the swap data reporting regime expressly contemplates that reporting counterparties may choose the SDR to which creation data is reported in the context of a cleared swap.[4] Commission Regulations § 45.3(b) and (c) and related guidance provide that if a swap is accepted for clearing before the reporting counterparty reports creation data within a specified timeframe, the reporting counterparty is excused from reporting required swap creation data. This notwithstanding, Commission Regulations § 45.3(b) and (c) and the relevant authority clearly contemplate that a reporting counterparty may select an alternate process by which the reporting counterparty submits creation data to the SDR of its choosing.

In comments to the Commission's proposed swap data reporting rule, CME had suggested that the Commission require creation data for a cleared swap be transmitted to a DCO or an SDR affiliated with a DCO. In rejecting CME's suggestion, the Commission noted that "because the final rule does not require each cleared swap to be reported to an SDR affiliated with the DCO that clears the swap, in some circumstances DCOs may incur some increased costs, relative to an environment in which all cleared swaps must be reported to a DCO–SDR."[5] In addition, the Commission stated:

> For an off-facility, cleared swap with respect to which the reporting counterparty makes the initial [primary economic terms] data report, the DCO would incur incremental costs if the reporting counterparty chooses to report to an SDR other than the DCO–SDR. In this

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[2] See CEA section 5(b)(c)(2)(c)(iii) (DCO participation and membership requirements shall permit fair and open access).

[3] See also Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 Fed. Reg. 20128 (Apr. 3, 2012) (final rules intended to promote open access to clearing services through various prohibitions on wrongfully influencing a futures commission merchant's decision to provide clearing services).

[4] Swap Data Recordkeeping and Reporting Requirements, 17 CFR Part 45; RIN 3038–AD19; 77 F.R. 2136, 2185-86 (Jan. 13, 2012).

[5] Id.

circumstance the DCO would be required to report confirmation data and continuation data to the SDR receiving the initial report, and thus to assume the costs necessary to establish connectivity to that SDR and transmit data to it.[6]

Notwithstanding the above, because the Proposed Rule provides that CME will report creation data for all swaps it clears to its own SDR, CME seeks to preclude a reporting counterparty from selecting the SDR to which creation data is transmitted and instead require that such data be reported to its SDR, in direct contravention of Commission Regulations and guidance upon which market participants have relied.

Furthermore, Commission Regulation § 45.10 requires all swap data to be reported to the SDR to which the swap creation data was first transmitted.[7] Because the Proposed Rule prevents the reporting counterparty from choosing the SDR to which swap creation data is initially reported, Commission Regulation § 45.10 would effectively require reporting counterparties to report to CME's SDR in order to fulfill regulatory obligations in respect of swap continuation data, including swap valuations that SDs and MSPs must independently generate and report to an SDR under Commission Regulation § 45.4(b)(2)(ii). Therefore, the net effect of approving the Proposed Rule would be to require all swap data be reported to CME's SDR in order for a swap user to access CME's clearing services. Tying the use of CME's clearing function to a customer's use of its SDR clearly violates statutory principles of fair and open access as well as regulatory prohibitions on bundling of SDR and other services. As noted above, it is also inconsistent with the release published in connection with the Commission's final Swap Data Recordkeeping and Reporting Requirements, which clearly indicates the Commission envisioned a regime in which reporting counterparties may opt to transmit swap data to SDRs other than the DCO's SDR.[8]

The Proposed Rule permits a counterparty to request that CME provide duplicate swap data to an SDR selected by the counterparty. Not only is this undertaking vague and insufficient to address the issues arising from fragmentation of swap data discussed further below,[9] it does not change the fact that reporting counterparties have no choice but to permit creation data reporting to CME's SDR as a condition of accessing CME's clearing services. Moreover, under the Proposed Rule and Commission Regulations, SDs and MSPs would be forced to report independently generated valuation data to the DCO-SDR, and the reporting of duplicate information by the DCO to a reporting counterparty's SDR of choice would not satisfy this obligation.[10] Such a regime fails to leave a reporting counterparty's choice of SDR to be

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[6] Id.

[7] Id. at 2143 (right to select SDR to which a swap is reported effectively determined through interaction of two key aspects of reporting rule: (i) requirement that all data reported for a swap be reported to same SDR that received initial report, and (ii) requirement that SEF, DCM or reporting counterparty make initial data report depending on method of execution. "[I]n practice this meant that the...reporting counterparty would choose the SDR for off-facility swaps.").

[8] Id. at 2149.

[9] For example, for a duplicate report to be of any value, the data contained in such report would need to be of the same standard, quality and format as that of the SDR selected by the reporting counterparty to receive such report.

[10] See 77 F.R. at 2154; Letter from Richard Shilts, Director, CFTC Division of Market Oversight, to Mr. Robert G. Pickel, Chief Executive Officer, International Swaps and Derivatives Association, Inc., Re: Time-Limited No-Action Relief for Swap Dealers and Major Swap Participants From Compliance With Reporting Obligations Under 17 CFR § 45.4(b)(2)(ii), December 17, 2012, 2 ("The obligation of the DCO to provide

influenced by market forces and possible market innovations, contrary to the Commission's expressed policy favoring competition among DCO-SDRs and non-DCO-SDRs.[11] Any potential cost efficiencies arising from the consolidation of clearing and SDR functions within a single DCO should serve as factors in the reporting counterparty's choice of SDR; such efficiencies do not justify approval of a regime that eliminates such choice entirely.

Approval of the Proposed Rule Would Significantly Increase Burdens on Regulators and Market Participants, Result in Fragmentation of Swap Data Infrastructure and Increase Systemic Risk

Among the considerable efforts and coordination industry members have undertaken in order to comply with the Dodd-Frank reporting regime, the International Swaps and Derivatives Association ("**ISDA**") and the Association of Financial Markets in Europe ("**AFME**") conducted an open merit-based selection process in respect of prospective SDR vendors, including CME. After considering various proposals, ISDA and AFME selected DTCC Deriv/SERV LLC ("**DTCC**") and the DTCC Data Repository (U.S.) LLC ("**DDR**"). Accordingly, many swap market participants have invested substantial resources in developing and implementing systems to function with the DTCC. Firms have worked extensively with DDR in developing an efficient and robust SDR infrastructure, including by establishing detailed reporting templates and protocols, reconciliations, capacity for real-time messaging and scheduled full portfolio reports, full transaction audit trails, necessary updates to reports upon the acceptance of a swap for clearing, and procedures for ongoing reporting of swap valuation data.

In contrast, the CME SDR was developed without the involvement of many firms, despite the fact that the Proposed Rule would effectively require that firms report to the CME SDR to fulfill their regulatory obligations, including the obligation to report valuation data under Commission Regulation 45.4(b)(2)(ii). Approval of the Proposed Rule would require reporting counterparties to devote substantial resources to the development and implementation of a CME-specific reporting infrastructure despite the fact that such counterparties would not otherwise choose to report to the CME SDR. Because a reporting counterparty would be required to conform its systems and infrastructure to an SDR developed without its input, such costs would likely exceed those already incurred in connection with an SDR chosen by the reporting counterparty. Moreover, approval of the Proposed Rule would likely lead other DCOs to adopt similar arrangements in respect of their own SDRs, leading to a multiple SDR environment of dramatically increased complexity. Such an environment would significantly increase costs to market participants, and would burden regulators with the oversight of a fragmented and complex reporting system.

If the Proposed Rule were approved, DCOs other than CME would likely seek to enact similar rules in respect of their own SDRs. As a result, approval of the Proposed Rule would set a precedent giving rise to a proliferation of DCO-SDRs to which swap counterparties must transmit required data in order to access the DCO's clearing services. Widespread DCO adoption of the arrangement contemplated by the Proposed Rule would have many unnecessary and undesirable consequences.

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valuation data for the cleared swap under regulation 45.4(b)(2)(i) is independent of the obligation of the SD or MSP to provide valuation data for the same cleared swap under regulation 45.4(b)(2)(ii)").

[11] Id. (In context of reporting obligations in respect of off-facility swaps, "the Commission believes that requiring that all cleared swaps be reported only to DCOs registered as SDRs or to SDRs chosen by a DCO would create a non-level playing field for competition between DCO-SDRs and non-DCO SDRs.").

Increased Burdens on Market Participants

We are concerned that adoption of the Proposed Rule would lead to additional and unnecessary burdens on market participants, including (i) the added costs of establishing connectivity to each DCO-SDR in order to receive its clearing services, (ii) the added costs of overcoming the challenges inherent in a fragmented SDR environment, and (iii) decreased ability to fulfill regulatory reporting obligations in non-U.S. jurisdictions. Such costs could be avoided if a reporting counterparty were able to fulfill its reporting obligations in respect of all of its swap positions by reporting to a single SDR of its choosing.

If the Proposed Rule were adopted, additional messaging, reconciliation and data workflow would need to be developed and implemented in accordance with the standards dictated by the CME SDR. Adoption of similar measures by other DCOs would impose similar additional costs by requiring market participants to establish reporting capability in accordance with the various procedures and protocols unique to each DCO-SDR. To the extent counterparties must become involved in the development and implementation of reporting functionality in respect of multiple SDRs, including DCO-SDRs the reporting counterparty must use in order to access the DCO's clearing services, approval of the Proposed Rule would multiply reporting compliance costs, unnecessarily consuming limited resources and ultimately resulting in higher costs to swap end users.

In addition to the costs inherent in establishing connectivity to multiple SDRs, the fragmentation of swap data across DCO-SDRs that would result from approval of the Proposed Rule would impose additional burdens. In a fragmented SDR environment, market participants would be required to establish mechanisms to overcome the challenges to effective swap data transmission and reconciliation posed by the disparate standards and processes of various SDRs.[12] Yet despite the significant investment such efforts would entail, the quality, accuracy and consistency of swap data in a fragmented SDR environment would likely be inferior relative to that of a centralized model.

Furthermore, a fragmented SDR environment would undermine reporting counterparties' ability to comply with reporting obligations in non-U.S. jurisdictions, including obligations arising as a result of European Market Infrastructure Reform ("**EMIR**") and expected reporting obligations in other regions. In recent years, market participants and regulators in the U.S. and abroad have made substantial efforts to achieve global harmonization and standardization across disparate regulatory regimes. The fragmentation of data among various SDRs that would result from approval of the Proposed Rule would create significant compliance challenges for market participants with regulatory responsibilities in multiple jurisdictions, particularly where swap data is stored in an SDR that is not registered with or otherwise subject to the jurisdiction of a non-U.S. regulator. Such data may be stored in a form that is inconsistent with foreign regulatory requirements, and jurisdictional limitations could impede foreign regulators' access to necessary data.

Finally, a fragmented SDR environment would inhibit market participants' efforts to develop necessary services for their clients. For example, a multiple SDR regime would severely

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[12] For example, in order to avoid duplicative reporting, additional interoperability between SDRs would be required to ensure the off-facility swap is removed from the reporting counterparty's chosen SDR once the swap has been accepted for clearing and data has been reported to the DCO-SDR.

complicate implementation of services such as portfolio compression and portfolio reconciliation, which are required to satisfy new regulatory mandates.

Increased Regulatory Oversight Burdens

As the Commission has recognized, in a fragmented SDR environment, the Commission and other regulators would be impaired in their ability to use the swap data in SDRs for purposes of the Dodd-Frank Act.[13] Among such purposes is that of systemic risk management, which requires the ability to timely and accurately assess risks across the entire swap market. In a fragmented SDR regime, a complete and accurate view of the markets would require aggregation of data from multiple SDRs, which would entail substantial resource demands on market participants as well as U.S. and foreign regulators.

A fragmented SDR environment would undermine the efforts of regulators and market participants to achieve global harmonization and standardization across regulatory reporting and transparency regimes in recent years, leaving foreign regulators with inadequate access to necessary swap data. Moreover, approval of the Proposed Rule could create a perception that the Commission is engaged in protectionism of local infrastructure providers, which could incite retaliatory measures from foreign regulators and detract from efforts to enhance international coordination.

* * *

For the reasons discussed above, we urge the Commission to reject the adoption of Proposed Rule 1001. We thank the Commission for consideration of our comments. If you have any questions, please do not hesitate to call the undersigned.

Respectfully submitted,

Chip Goodrich
Managing Director and Senior Counsel
Deutsche Bank AG

John Messina
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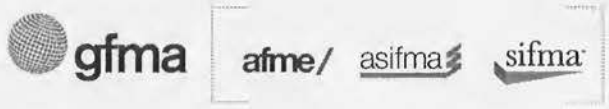
[13] Id. at 2149.



January 7, 2013

The Honorable Gary Gensler
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW.
Washington,
DC 20581

RE: Chicago Mercantile Exchange Inc. ("CME") Submission # 12-391

Dear Chairman Gensler:

The Global Foreign Exchange Division ("**GFXD**") of the Global Financial Markets Association ("GFMA") welcomes the opportunity to comment on behalf of its members on the proposal made by the Chicago Mercantile Exchange Inc. ("**CME**") in its amended submission # 12-391R dated December 6, 2012 (the "**Submission**"), which requests the Commission to approve of a new Chapter 10 and Rule 1001 (the "**Proposed Rule**") of the CME's Swap Data Repository ("**SDR**") rulebook.

The GFXD was formed in cooperation with the Association for Financial Markets in Europe ("**AFME**"), the Securities Industry and Financial Markets Association ("**SIFMA**") and the Asia Securities Industry and Financial Markets Association ("**ASIFMA**"). Its members comprise 22 global foreign exchange market participants[1], collectively representing more than 90% of the foreign exchange dealer market[2]. Both the GFXD and its members are committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with the Commodity Futures Trading Commission (the "**Commission**").

Summary

Our members believe that the Commission should not approve the Proposed Rule for multiple reasons. The intention of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**") was to promote accountability and transparency in the derivatives market, including requiring designated clearing organizations ("**DCO**") such as the CME to "permit fair and open access"[3]. The Proposed Rule, which would require all swaps cleared with the CME to be reported to the CME's SDR, violates this principle on its face. Furthermore, the Commission has clearly indicated that "consistent with the principles of open access... a registered swap data repository shall not tie or bundle the offering of mandated regulatory services with other ancillary services that a swap data repository may provide to market participants.[4]" The Proposed Rule would tie the use of the CME's clearing function to a customer's use of the CME's SDR in violation of this rule. We emphasize that the concerns raised in this letter are not exclusive to the CME and the Proposed Rule but apply generally to any DCO that seeks to require all swaps cleared with it to be reported to a specific SDR.

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[1] Bank of America Merrill Lynch, Bank of New York Mellon, Bank of Tokyo Mitsubishi UFJ, Barclays Capital, BNP Paribas, Citigroup, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Morgan Stanley, Nomura, Royal Bank of Canada, Royal Bank of Scotland, Société Générale, Standard Chartered Bank, State Street, UBS, and Westpac.

[2] According to Euromoney league tables.

[3] CEA section 5(b)(c)(2)(C)(iii), as amended by Dodd-Frank.

[4] 17 C.F.R. § 49.27(a)(2).

In the Submission, the CME claims that such concerns are irrelevant because after a swap is cleared, the CME "should be the only entity with reporting obligations for the resulting swaps"[5], and the rule therefore only applies to the CME. However, swap dealers and major swap participants ("SDs/MSPs") remain obligated to report daily valuation data even if a swap is cleared with the CME[6], so would be forced to report to the CME's SDR, which imposes on SDs/MSPs the additional costs of creating informational links with multiple SDRs, increases fragmentation of swap data and thereby reduces swap market transparency for regulators.

In addition, the Submission fails to address the cost concerns of the Proposed Rule that have been raised by parties such as the Depository Trust & Clearing Corporation ("**DTCC**")[7], since various market participants have expended significant time and expense toward designing and establishing information technology systems and infrastructure to comply with rules for swap data reporting promulgated by the CFTC as well as foreign regulators. These efforts were undertaken on the assumption that the Commission would not permit DCOs to create anti-competitive standards such as the Proposed Rule.

I. The Proposed Rule removes reporting party choice as to the SDR and forces SDs/MSPs to use the CME's SDR.

The Commission's final rules on Swap Data Recordkeeping and Reporting Requirements (the "**Reporting Release**")[8] set out clear and distinct responsibilities for the reporting of swap transactions. They do so in a manner that promotes efficiency and minimizes the overall costs of regulatory reporting. The Reporting Release rightly places greater obligations on those parties that are best suited to manage them. It also sets out an important principle that "all swap data for a given swap must be reported to a single SDR, which must be the SDR to which required primary economic terms data for that swap is first reported"[9]. Not only does this provide regulators with better and more efficient access to swap data without the need to reconstruct a swap's lifecycle through data that is fragmented across multiple SDRs[10], it is also more efficient from the perspective of the Reporting Counterparty.

Because the Commission has identified that certain parties, and in particular SDs and MSPs, have ongoing obligations to report swap continuation data, we believe it is important to give those parties the choice as to which SDR they wish to report. This allows them to choose the SDR that best suits their needs: a choice which may take in to account wider reporting responsibilities. For example, a U.S. counterparty that only trades cleared swaps may find it optimal to report all of its swap data to an SDR that is linked to a DCO (but should not have the designation forced upon it). However, many SDs/MSPs have additional regulatory concerns that would cause reporting swap data to another SDR to be more efficient, such as Part 23 reconciliation requirements or reporting obligations to foreign regulators. For example, for a swap executed between a European SD/MSP and a counterparty that is a U.S. Person, the SD/MSP will be required to report swap data in accordance with the CFTC rules as well as the European regulatory regime. A DCO's captive SDR may not meet the European regulator's requirements or may choose not to register with the European regulatory authorities (to the extent any such registration is required), so a rule that requires the SD/MSP to report swap data to the DCO's captive SDR would force the European SD/MSP to report swap data to multiple SDRs and may even be in contravention of the rules of the European regulator. However, there may be other SDRs which comply with both regulatory standards, and would therefore be far more efficient for an SD/MSP to use. Therefore, the appropriate way to satisfy reporting obligations (including obligations of foreign regulators) will be to report swap

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[5] See page 2 part 5) of the Submission.

[6] Commission Rule 45.4(b)(2)(ii).

[7] See the comment letter on the Proposed Rule to the CFTC from dated November 20, 2012 (the "**DTCC Letter**").

[8] See 17 CFR Part 45; RIN 3038–AD19; 77 F.R. 2136 (Jan. 13, 2012).

[9] See Reporting Release at 2168.

[10] The Commission believes that important regulatory purposes of the Dodd-Frank Act would be frustrated, and that regulators' ability to see necessary information concerning swaps could be impeded, if data concerning a given swap was spread over multiple SDRs. See Reporting Release at 2168.

data to an SDR of such party's choice – something that would not be fully taken into account in a simple cost-benefit analysis of the various swap reporting scenarios. Accordingly, we strongly believe that the counterparties to the original swap should be able to select the SDR to which the reporting is made (including for cleared swaps), as provided in the Commission's original (and now withdrawn) FAQ guidance.

In refuting the concerns raised by DTCC to the Proposed Rule, the CME ignored these important market participant concerns and relied almost exclusively on its argument that the Proposed Rule only relates to "the manner by which CME Clearing is meeting and will meet *its* regulatory reporting obligations" because the Proposed Rule, on its face, is only applicable to the CME[11]. However, this argument is not persuasive because it ignores the ongoing obligations of SDs/MSPs to report valuation information as well as the fact that the Reporting Release explicitly contemplates a different reporting regime.

A. SD/MSP Reporting Obligations

In the Submission, the CME argues that "Consistent with its role as the central counterparty, CME...should be the only entity with reporting obligations for the resulting swaps and related positions.[12]" However, this provision ignores the obligation of SDs/MSPs to report valuation data even for cleared swaps, as per Commission Rule 45.4(b)(2)(ii), which provides that "valuation data for the swap must be reported as follows: (i) By the derivatives clearing organization, daily; and (ii) If the reporting counterparty is a swap dealer or major swap participant, by the reporting counterparty, daily.[13]" This rule clearly establishes that the CME will not be the only party that is required to report swap data to the SDR with respect to cleared swaps.

The obligation of SDs/MSPs to report valuation data will entail a significant effort on their part. SDs/MSPs cannot simply rely on the valuation prepared by the DCO, but will instead apply their own calculations and methodologies to determine the correct valuation for each swap. In order to do so, SDs/MSPs will need to have full and accurate access to all data for such swap, including life cycle events that may alter their valuation of such swap. Forcing SDs/MSPs to report swap data to multiple SDRs will only exacerbate these difficulties, as they will need to reconcile the swap data in their records with swap data being reported by DCOs to multiple SDRs and also ensure that the information contained in each SDR is accurate and up to date[14]. Given the ongoing SD/MSP valuation reporting requirements, it would increase efficiency and decrease the likelihood of the mis-valuation of swaps if SDs/MSPs were permitted to select the SDRs to which to report their swaps data.

The CME cannot argue that this obligation is extinguished when the swap is cleared, because the Commission Rule and the Reporting Release make it clear that valuation reporting by the SD/MSP is in addition to any such reporting by the CME[15]. As Commission Rule 45.10 provides that all swap data for a given swap must be reported to the SDR to which the swap creation data was made, the Proposed Rule would require all SDs/MSPs to report valuation data to the CME's SDR for any swap cleared by the CME. Therefore, the CME's argument that the Proposed Rule only affects the CME's reporting obligations is simply incorrect – the direct effect of the Proposed Rule will be to require all SDs/MSPs to

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[11] The CME is relying on the language in the Proposed Rule that states "the Clearing House shall report", rather than a reference to all parties. Submission, Appendix A.

[12] See page 2 part 5) of the Submission.

[13] Emphasis added.

[14] We note that this should not be a problem for DCOs, as they will already have all relevant information for their own valuation reporting obligations because of their role in clearing the swap.

[15] After considering comments received, the Commission has determined that for cleared swaps where the reporting counterparty is a non-SD/MSP, a DCO's valuation is sufficient for regulatory purposes....Because prudential regulators have informed the Commission that counterparty valuations are useful for systemic risk monitoring even where valuations differ, the final rule requires SD and MSP reporting counterparties to report the daily mark for each of their swaps, on a daily basis. Reporting Release, at 2154.

report valuation data for swaps cleared by the CME to the CME's SDR. As such, the CME's contention that this rule "does not impose any condition precedent on a CME clearing member" is simply untenable.

B. The Reporting Release

In the Reporting Release, the Commission stated that the CME had recommended that initial data reporting for cleared swaps should be made to a DCO or an SDR chosen by the DCO. However, the Commission expressly chose not to adopt such a rule, and noted that "because the final rule does not require each cleared swap to be reported to an SDR affiliated with the DCO that clears the swap, in some circumstances DCOs may incur some increased costs, relative to an environment in which all cleared swaps must be reported to a DCO–SDR."[16] The Commission further went on to state that:

> For an off-facility, cleared swap with respect to which the reporting counterparty makes the initial PET data report, the DCO would incur incremental costs if the reporting counterparty chooses to report to an SDR other than the DCO–SDR. In this circumstance the DCO would be required to report confirmation data and continuation data to the SDR receiving the initial report, and thus to assume the costs necessary to establish connectivity to that SDR and transmit data to it.[17]

In both instances the Commission's language clearly indicates that in certain circumstances reporting parties other than DCOs would be permitted to select the SDRs to which their swaps should be reported, in particular if the PET data was reported by the SD/MSP to another SDR. Indeed, the Commission plainly stated that the party who makes the first swap data report for the swap "in effect choose[s] the SDR"[18]. However, the Proposed Rule would require the CME and SDs/MSPs to report swap data to the CME's SDR only, which expressly contradicts the Commission's language in the Reporting Release.

Furthermore, the Commission clearly did not intend to require each cleared swap to be reported to an SDR affiliated with the DCO.[19] The Proposed Rule would, in effect, frustrate the Commission's intent because it would permit the CME to achieve by a Commission-approved DCO rule what it could not achieve by a Commission rule. Since the Commission refused to grant the CME's request in the Reporting Release, we urge the Commission to refuse to permit it by means of a DCO rule instead.

II. The Proposed Rule is Anti-Competitive

The Commodity Exchange Act (the "**CEA**") mandates fair and open access to clearing services,[20] and that an SDR "shall not [a]dopt any rule or take any action that results in any unreasonable restraint of trade; or [i]mpose any material anticompetitive burden on the trading, clearing, or reporting of transactions."[21] These principles are key in promoting a strong SDR market by encouraging competition. As the Commission noted in the Reporting Release:

> requiring that all cleared swaps be reported only to DCOs registered as SDRs or to SDRs chosen by a DCO would create a non-level playing field for competition between DCO–SDRs and non-

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[16] Reporting Release at 2186.

[17] Reporting Release at 2187 (emphasis added). The Reporting Release does continue to state that "if the DCO chooses to register as an SDR, as explicitly permitted by the statute and anticipated by these commenters, the reporting counterparty would be able to reduce its costs by selecting the DCO–SDR as the SDR receiving the initial report, and thus avoid the need to send data separately to an SDR for regulatory reporting purposes and to a DCO for clearing purposes." However, in this context "reporting counterparty" clearly does not refer to the DCO itself, since the initial PET report referenced in the first sentence would be made by one of the original counterparties if the swap is not accepted for clearing prior to the relevant deadline.

[18] Reporting Release at 2168.

[19] See Reporting Release at 2149 .

[20] See CEA § 5b(c)(2)(C)(iii).

[21] See CEA § 21(f)(1).

> DCO SDRs. The Commission also believes that it would make DCOs collectively, and could in time make a single DCO–SDR, the sole recipient of data reported concerning cleared swaps.[22]

Yet the Proposed Rule would create exactly such a non-level playing field for non-DCO SDRs and would allow the CME to accomplish by DCO rule a market position that the Commission rightly feared.

In addition, the Proposed Rule would create a condition precedent for the use of clearing services in violation of Commission Rule 49.27, which prohibits SDRs from tying or bundling "mandated regulatory services with other ancillary services that a swap data repository may provide to market participants". The Commission was conscious of this, confirming to Commissioner Bart Chilton that "a registered SDR, consistent with the principles of open access, shall not tie or bundle the offering of mandated regulatory services with other ancillary services that an SDR may provide to market participants.[23]" Congress was also concerned about this issue, repeatedly expressing concern regarding the applicability of anti-bundling provisions to DCOs.[24] The Proposed Rule would clearly violate the Commission's rules on bundling as well as the spirit of Dodd-Frank's commitment to the efficiency and transparency of the swaps market.

The CME's proposal is also inconsistent with the approach taken to SDRs by other regulators. For example, the Committee on Payment and Settlement Systems ("CPSS") and the International Organization of Securities Commissions ("IOSCO") issued a paper in April 2012 which stated that "[A] TR [trade repository] should not engage in anti-competitive practices such as product or service tying.... A TR should also not develop closed, proprietary interfaces that result in ... barriers to entry with respect to competing service providers ... ." [25] (An SDR would be a trade repository for these purposes.)

In the Submission, the CME attempted to dismiss these concerns by arguing that the Proposed Rule was only relevant to the CME's reporting obligations and that the anti-competitiveness concern is "overblown"[26]. Neither argument is persuasive.

As already discussed above in part I.A. of this letter, the Proposed Rule would require all SDs/MSPs that clear swaps with the CME to report valuation data to the CME's SDR. Therefore, the CME's claim that the rule cannot be anti-competitive because it only clarifies how the CME will fulfill its reporting obligation is incorrect. With respect to the anti-competitive concerns, the CME observed that another leading DCO, LCH.Clearnet Limited ("**LCH**"), does not require reporting to LCH's SDR. However, if the Proposed Rule is approved, there will be nothing to prevent LCH from promulgating a similar rule. The Commission should not leave competition in the SDR market to the good graces of the DCOs.

A requirement that reporting for all swaps cleared with the CME must use the CME's SDR will ultimately tilt the SDR market against SDRs that are not affiliated with a DCO, which would discourage competition and lead to less efficiency and higher SDR prices for consumers. In addition, the Proposed Rule would bundle the CME's clearing and reporting services, in violation of the spirit of Dodd-Frank, the Commission's rules and Congressional concerns that no such bundling should occur.

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[22] Reporting Release, at 2149.

[23] Commodity Futures Trading Commission (CFTC), Open Meeting to Discuss a Final Rule on Derivatives Clearing Organization General Provisions and Core Principles; a Final Rule on Position Limits for Futures and Swaps; and a Notice of Proposed Amendment to Effective Date for Swap Regulation (Oct. 18, 2011) (colloquy between The Honorable Bart Chilton and Mr. Ananda Radhakrishnan).

[24] For example, Continuing Oversight of the Wall Street Reform and Consumer Protection Act: Hearing Before the Senate Comm. on Agriculture, Nutrition, and Forestry, 112th Cong. 74 (2011).

[25] CPSS-IOSCO, "Principle for Financial Market Infrastructures" (April 2012) Section 3.18.4; available at http://www.bis.org/publ/cpss101a.pdf

[26] Submission, pages 5-6: DTCC Argument 2: Violation of Fair and Open Access Principles and page 7: DTCC Argument 3: Violation of Anti-Competitive Provisions.

III. The Proposed Rule would weaken reporting infrastructure and increase costs

As a result of the Proposed Rule, a swap could effectively be reported to more than one SDR, which would increase the risks of errors in reporting of data. As recognized in the Submission, immediately after executing an off-facility swap, SDs/MSPs would be required to report it to an SDR for real time reporting (Part 43) purposes and would be required to report the primary economic terms ("**PET**") data to an SDR if the swap was not accepted for clearing by the relevant deadline. There is no requirement (and there should be no requirement) that the SD/MSP make such reports to the CME's SDR. However, under the Proposed Rule, once cleared through the CME, the original swap would be extinguished, and the CME would report the swap to its SDR. This could result in the use of more than one SDR and risks fragmentation of information in the swap market, which the Commission has stated it is trying to avoid.[27] The Commission addressed fragmentation by requiring that all swap reporting must be made to the SDR to which the initial swap was reported. The purpose of this rule would be undermined if reporting for a swap before and after acceptance for clearing went to separate SDRs.

In addition, if SDs/MSPs are required to report swap data to each DCO's captive SDR, it will require SDs/MSPs to develop operational connections to each SDR of a DCO. This additional burden would come on top of the need to pay for the DCO's SDR either directly or by paying more generally for clearing services. Given that use of DCOs for clearing will be mandatory, the costs for using DCOs should be as low as possible and DCOs should not be permitted to effectively force SDs/MSPs to pay for additional services beyond clearing.

Finally, over the past year, many market participants have spent considerable time, effort and expense preparing to comply with the Commission's swap reporting rules. Relying on Commission Rules in Part 45 and 49, as well as the Commission guidance in the Reporting Release that it would not permit DCOs to dictate which SDRs could be used by its participants, SDs/MSPs have focused on creating reporting systems with single access points for regulatory reporting. The Proposed Rule would require SDs/MSPs to restructure the operations and plans that they have already developed for reporting.

Conclusion

For the reasons set forth above, we urge the Commission to reject the Proposed Rule.

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We appreciate the opportunity to share our views on the Proposed Rule. Please do not hesitate to contact me at +44 20 7743 9319 or at jkemp@gfma.org should you wish to discuss any of the above.

Yours sincerely,

James Kemp
Managing Director
Global Foreign Exchange Division, GFMA[28]

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[27] Reporting Release, 77 F.R. 2149.

[28] The Global Finanical Markets Association (GFMA) brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA.

ISDA Safe, Efficient Markets

January 7, 2012

Ms. Sauntia Warwick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Chicago Mercantile Exchange Inc. Amended Request to Adopt New Chapter 10 and New Rule 1001 (IF 12-014)

The International Swaps and Derivatives Association, Inc. ("**ISDA**") is writing in response to the request of the Commodity Futures Trading Commission (the "**Commission**") for comment on the submission by the Chicago Mercantile Exchange Inc. ("**CME**") of its amended petition for approval of the aforementioned proposed rule (the "**Proposed Rule**").

ISDA's mission is to foster safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products. ISDA has more than 800 members from 58 countries on six continents. These members include a broad range of OTC derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers.

ISDA is aware of other comments that raise questions about the Proposed Rule's effects on competition and procedural issues relating to the appropriate comment period. ISDA agrees that the Proposed Rule should not be approved because it is fundamentally anticompetitive and will lead to reporting inefficiencies. ISDA's further purpose in submitting this letter is to urge the Commission to be sensitive to the interdependence between the Proposed Rule and other aspects of its reporting regime and to address these in a unified and concurrent manner.

I. Reporting Parties Should Have the Choice of Reporting Models and SDRs

ISDA believes that market participants should have the choice of whether to use a DCO-affiliated SDR or maintain data pertaining to their swaps in one or more SDRs of their choosing. Although the Commission notes in its release accompanying its Part 45 rules[1] that there might be cost efficiencies in combining the submission of swaps for clearing with SDR reporting, we think those efficiencies would be limited at best and would seem to run exclusively to the benefit of the DCO tying its clearing and SDR services. Many reporting parties see greater value in being able to maintain entire swap portfolios, including cleared and uncleared swaps, in a single SDR utility. This will permit reporting parties and the Commission to have an unfragmented view of aggregate risk exposures. Furthermore, market participants have made considerable

[1] 77 Federal Register 2136, 2186.

investments in building and testing connectivity to their chosen SDRs not just to comply with reporting obligations but also to enhance their ability to manage other processes, including internal risk management and responding to ad hoc queries from multiple regulators in a timely and efficient manner.

Although data can be compiled from multiple SDRs to achieve these ends (and some market participants might well choose to employ multiple SDRs), ISDA believes that reporting parties should have the ability to make that choice in view of their own particular risk management processes and their own assessments of costs and benefits. If the Proposed Rule is approved, market participants would be precluded from adopting a single-SDR model and could only approximate its objectives through a sub-optimal dual reporting model, with the attendant disadvantages and compliance uncertainties described below.

ISDA notes that market participants may have regulatory responsibilities in multiple jurisdictions. Meeting these responsibilities in an efficient manner is dependent on foreign regulators having access to data in accordance with the Commission's recent interpretative statement on Section 21(d) of the Commodity Exchange Act.[2] Depriving market participants of the flexibility to select the SDR(s) in which their data is lodged could create significant challenges for market participants with regulatory responsibilities in multiple jurisdictions and could impinge on foreign regulator access to data. Even though individual DCO-affiliated SDRs may choose to register in non-U.S. jurisdictions, as a practical matter these challenges will remain unless every DCO-affiliated SDR registers in every jurisdiction where a reporting party may have regulatory obligations.

II. Disadvantages and Uncertainties Resulting from CME's Dual-reporting Model

By including in the Proposed Rule an option for clearing members to select a second SDR to which CME would also report, CME appears to be addressing arguments that the Proposed Rule constrains the choices of market participants. However, this dual-reporting alternative is insufficient to eliminate the disadvantages that would result from approval of the Proposed Rule.

A. Cost and Compliance Uncertainties

The Proposed Rule is silent on who would bear the costs of dual reporting and the maintenance of DCO-affiliated SDRs. Imposing this cost (directly or indirectly) on clearing members would alter previously made cost-benefit decisions and distort choices that would otherwise have been made on the basis of the clearing member's individualized circumstances. Allowing the CME to report creation data to its SDR would impose on SD/MSP reporting parties (whether or not they elect CME's dual-reporting option) an obligation to report valuation data to CME's SDR pursuant to Rule 45.4(b)(2)(ii), necessitating a new build out of connectivity for this

[2] Section 21(d) of the Commodity Exchange Act requires SDRs to receive a confidentiality and indemnification agreement from foreign regulators requesting access to data in the SDR. The CFTC has issued an interpretive statement to the effect that a registered SDR is not subject to the confidentiality and indemnification agreement provisions of Section 21(d) if (i) such registered SDR is also registered, recognized or otherwise authorized in a foreign jurisdiction's regulatory regime; and (ii) the data sought to be accessed by a foreign regulatory authority has been reported to such registered SDR pursuant to the foreign jurisdiction's regulatory regime. 77 Fed. Reg. 65177.

purpose. If the CME model were adopted by other DCOs, the result would be a requirement to build a web of redundant and unnecessary connectivity from each SD/MSP reporting party to each DCO.[3]

Commission staff have recognized the problems stemming from required valuation reporting if the DCO chooses an SDR and have temporarily addressed them in CFTC No-Action Letter No. 12-55, which provides time-limited relief to SDs and MSPs from the obligation to report valuation data for cleared swaps as required by Rule 45.4(b)(2)(ii). However, even if the Commission were to make such relief permanent and adopt it in rulemaking or exemptive action, other compliance difficulties and uncertainties for reporting parties would be created by approving the Proposed Rule and would need to be addressed by the Commission.

A market participant that wishes to approximate the benefits of the single-SDR approach despite the DCO's reporting to its affiliated SDR may choose either to report all data to its chosen SDR itself or to request that the clearing house report the data on its behalf, or perhaps a combination of these approaches. In either case, the Commission must address the application of Rule 45.10 (Reporting to a Single SDR) and Rule 45.12 (Voluntary Supplemental Reporting). In particular, the Commission would need to make clear that the reporting party would not be considered to violate Rule 45.10 by virtue of reporting data to its chosen SDR. In addition, the Commission should stipulate that the report made by the DCO to its affiliated SDR would be considered the 'voluntary' report for purposes of Rule 45.12.

Further, to support dual-reporting the Commission would be obliged to address uncertainties regarding reporting parties' duties to maintain current and accurate information. Rule 45.4(a) states that "reporting counterparties and [DCOs] required to report swap continuation data must do so in a manner sufficient to ensure that all data in the [SDR] remains current and accurate...." Rule 45.14(a) states that each registered entity and swap counterparty that is required to report swap data "shall report any errors or omissions in the data so reported." Rule 45.14(b) requires each non-reporting party that "discovers any error or omission" with respect to reported swap data to "promptly notify the reporting party of each such error or omission." The Commission would need to make clear that fulfilling a reporting party's obligations under the cited rules does not require the reporting party to interact with or monitor reports in the DCO-affiliated SDR and therefore the reporting party not selecting the DCO-affiliated SDR as its chosen SDR would have no responsibility or liability for the actions or omissions of such SDR with respect to any swap data it retains.

Market participants obliged to cope with sub-optimal dual (in fact, multiple) SDR reporting will have limited ability to assist the Commission in its monitoring of systemic risk by gathering aggregate information back from SDRs not chosen by them reflecting the SDRs' own information. Any such aggregate information reporting responsibility must belong to the SDRs, not to the market participants burdened with an unwieldy SDR reporting structure.

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[3] Without commenting on the merits of CME's argument that Part 45 imposes unnecessary and redundant costs on it, ISDA notes that the costs of building connectivity among a relatively small number of DCOs and SDRs will be far less than the costs of an entire network of new connectivity linking SDs and MSPs with each DCO-affiliated SDR. Further, ISDA notes that CME could contract with its SD clearing members to have the SDs report to an SDR on behalf of CME pursuant to Rule 45.9.

Putting aside the foregoing specific comments, the issues emerging from discussion of the CME Proposed Rule illustrate the difficulties inevitably encountered by a regulatory reporting system other than a single SDR utility model. We must re-emphasize that a single global SDR, containing all trades within an asset class, is the only tool that will give regulators the access to positions and activity of all market participants, the access contemplated and requested by policymakers globally. With SDR fragmentation, it becomes necessary to aggregate across SDRs to see such a view. Without the adoption of the single SDR per asset class model, aggregation of information across multiple asset classes must be rationalized, possibly by the use of yet another information gathering agent, an aggregator, acting as a kind of SDR of SDRs. At best, this will require another layer of complexity, and significant cost with no benefit. At worst, without an internationally coordinated mandatory requirement for SDRs to submit to a global aggregating SDR, the entire underlying premise of the SDR is largely destroyed. The industry has invested significant resources in developing its reporting infrastructure; such investment will be largely undermined in a world of multiple SDRs.

B. Text of the Proposed Rule

The second sentence of the Proposed Rule states:

> "Upon the request of a counterparty to a swap cleared at the Clearing House, the Clearing House shall provide the same creation and continuation data to a swap data repository selected by the counterparty as the Clearing House provided to CME's swap data repository under the preceding sentence."

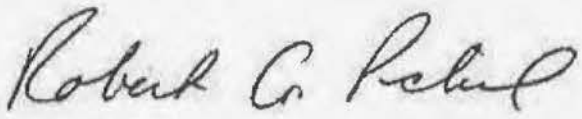
ISDA suggests that the text is seriously deficient in the absence of a statement that the request may be made in connection with the submission of the swap for clearing, or on a relationship basis for all swaps submitted by the counterparty. In addition, any such rule would need to state that CME will provide data to the designated SDR in conformity with the data standards of the recipient SDR, as required by Rule 45.13 and will timely provide unique swap identifiers for cleared swaps to the reporting party.

III. Conclusion

ISDA believes that the Proposed Rule is anticompetitive and would impose added costs and connectivity requirements on market participants, thus distorting choices, frustrating assumptions and wasting investment already committed in the earlier construction of reporting systems. CME's proposal does not adequately consider the Proposed Rule's interaction with other Commission reporting rules and would create compliance uncertainties that the Commission would need to address. Furthermore, the reporting model contemplated by the Proposed Rule will lead to a more fragmented reporting structure, resulting in aggregation and reconciliation challenges for both market participants and the Commission. For the foregoing reasons, ISDA does not support approval of the Proposed Rule.

Thank you for your consideration of these comments. Please contact me or ISDA staff if you have any questions or concerns.

Sincerely,



Chief Executive Officer
ISDA

J.P.Morgan

January 11, 2013

Ms. Sauntia Warfield
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street
Washington, DC 20581

Re: Comments in Response to The Chicago Mercantile Exchange Inc.'s Amended Submission #12-391R: Adoption of New Chapter 10 (Regulatory Reporting of Swap Data) and Rule 1001 (Regulatory Reporting of Swap Data)

Dear Ms. Warfield:

JPMorgan Chase & Co., its subsidiaries and affiliates (collectively "JPMorgan") appreciate the opportunity to provide comments in response to The Chicago Mercantile Exchange Inc.'s ("CME") Amended Submission #12-391R dated December 6, 2012.[1] CME's amended submission requests that the Commodity Futures Trading Commission ("CFTC" or the "Commission") review and approve proposed Chapter 10 and Rule 1001 of CME's Swap Data Repository ("SDR") Rulebook through the CFTC's formal approval process under CFTC Rule 40.5.[2] CME's proposed Rule 1001 generally provides that CME's clearinghouse will report swap "creation and continuation data" to CME's captive SDR for all swaps cleared at CME's clearinghouse.[3]

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[1] CME submitted an amended request to its original submission dated November 9, 2012. The amended request can be found at: http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul120612cme001.pdf.

CME's original submission can be found at:
http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul110912cme005.pdf.

[2] *See* 17 CFR sec. 40.5 (Voluntary submission of rules for Commission review and approval). CME requests that proposed Rule 1001 become effective on the next business day following the date of the CFTC's approval.

[3] The text of CME's proposed Rule 1001 provides:

> For all swaps cleared by the Clearing House, the Clearing House shall report available creation and continuation data to CME's [SDR] for purposes of complying with applicable CFTC rules governing the regulatory reporting of swaps. Upon the request of a counterparty to a swap cleared at the Clearing House, the Clearing House shall provide the same creation and continuation data to [an SDR] selected by the counterparty as the Clearing House provided to CME's [SDR] under the preceding sentence.

JPMorgan submits this letter to express our serious concerns regarding CME's proposed Rule 1001 for several reasons that are detailed in sections I and II below.[4] In short, we respectfully request that the Commission disapprove CME's proposed Rule 1001 and similar arrangements proposed by other swap market utilities for two primary reasons. First, anticompetitive tying arrangements such as CME's proposed Rule 1001 are inconsistent with the plain language and intent of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") and the CFTC's regulations,[5] which establish a comprehensive reporting and recordkeeping framework for swap data. Second, if the Commission approves CME's proposed Rule 1001 (or similar arrangements proposed by other swap market utilities), it would likely delay compliance with the CFTC's reporting timelines and result in additional costs for reporting counterparties who already have spent hundreds of millions of dollars over the last year in order to comply with the CFTC's Reporting Rules.

JPMorgan strongly supports the Dodd-Frank Act's goal of increasing transparency in the swaps market. To that end, JPMorgan is committed to the effective implementation of the CFTC's Reporting Rules. In advance of our registration with the Commission as a swap dealer, we built a comprehensive reporting infrastructure, established connections with an SDR of our choosing, tested internal systems, conducted real-time messaging submissions and participated in industry-sponsored *fora* to identify and address a myriad of interpretive issues regarding swap data reporting. Notwithstanding these good faith efforts to comply with the CFTC's Reporting Rules, we are uncertain of how to meet full compliance with those rules given CFTC staff's recent withdrawal of certain interpretive questions regarding reporting requirements for cleared swaps and the Commission's consideration of CME's proposed Rule 1001.

I. The Commission should disapprove CME's proposed Rule 1001 and any similar anticompetitive tying arrangement that is proposed by a swap market utility because these types of arrangements are inconsistent with the plain language of the Commodity Exchange Act ("CEA"), the CFTC's regulations and the CFTC's interpretations thereof.

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[4] JPMorgan's concerns are applicable to any similar anticompetitive arrangement in which a swap market utility ties or bundles essential services such as clearing, reporting or execution with other services regardless of whether those other services are ancillary. Under these arrangements, a swap market utility prevents a market participant from utilizing essential services unless such participant also utilizes the utility's other services.

[5] The CFTC's reporting and recordkeeping framework for swaps data are found in Part 45 (reporting and recordkeeping of swap data), Part 43 (real-time reporting of swap data) and Part 46 (reporting of pre-enactment swaps) (collectively, the "CFTC's Reporting Rules"). *See Swap Data Recordkeeping and Report Requirements*, 77 FR 2136 (Jan. 13, 2012); *Real-time Public Reporting of Swap Transaction Data*, 77 FR 1182 (Jan. 9, 2012), which was later corrected by 77 FR 2909 (Jan. 20, 2012); and *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 77 FR 35200 (Aug. 13, 2012).

The plain language of the CEA prohibits anticompetitive tying arrangements such as CME's proposed Rule 1001. Section 21(f)(1) of the CEA prohibits an SDR from adopting any rule or taking any action that results in any unreasonable restraint of trade or imposing any material anticompetitive burden on the trading, clearing, or reporting of transactions.[6] Based on a plain reading of the statutory language, CME's proposed Rule 1001 would impose a material anticompetitive burden on market participants who wish to clear their swaps and report those swaps to the SDR of their choice. In practice, CME's proposed rule would unreasonably force market participants such as JPMorgan to establish data connections to CME's captive SDR and to report required swap continuation data to that SDR if we choose to clear on CME's clearinghouse. Such reporting would occur notwithstanding the fact that we have already established open SDR connections, which would be used for the reporting of swap creation data ahead of clearing under CFTC Rule 45.3. In addition, CME's proposed Rule 1001 would impose material anticompetitive burdens on CME's competitors operating derivatives clearing organizations ("DCOs") and those operating or seeking to operate registered SDRs.

CME's amended submission mischaracterizes its reporting obligation with respect to cleared swaps under Part 45 of the CFTC's regulations. CME's amended submission requests that the Commission amend its rules to remove what CME describes as duplicative reporting obligations for DCOs under Parts 39 and 45 of the CFTC's regulations.[7] CME's amended submission and its proposed Rule 1001 fail to acknowledge, however, the key difference between a DCO's reporting obligations under Parts 39 and 45 of the CFTC's regulations and the rights and responsibilities of reporting counterparties under Part 45.[8] As a result of their failure to acknowledge this difference, CME's proposed rule in effect would: (1) override the rights and responsibilities of reporting counterparties under CFTC regulations to select and submit required swap creation data for bilateral swaps to an SDR of the reporting counterparties' choosing; (2) incorrectly treat swap data resulting from the clearing of a bilateral swap as new swap creation data;[9] (3) lead to data fragmentation of swap data in violation of the CFTC's regulations; and (4)

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[6] *See* 7 U.S.C. 24a(f)(1) (2012).

[7] *See* CME's amended submission at 1-2.

[8] The term "reporting counterparty" is defined in CFTC Rule 45.1 as "the counterparty required to report swap data pursuant to [Part 45], selected as provided in [CFTC Rule] 45.8."

[9] CME's proposed Rule 1001 informally refers to the term "swap creation data." Part 45 of the CFTC's regulations actually uses the term "required swap creation data" and defines that term to mean "all primary economic terms data for a swap in the swap asset class in question, and all confirmation data for the swap." 17 CFR sec. 45.1. For cleared swaps, CFTC Rule 45.3(b) requires DCOs to report confirmation data to include the primary economic terms ("PET") data along with the "internal identifiers assigned by automated systems of the [DCO] to the two transactions resulting from novation to the clearing house." *Id.* While CFTC Rules 45.3(b) and (c) require a DCO to report all confirmation data for a swap that is accepted for clearing, Part 45 still requires the reporting counterparty (not a DCO) to report PET data for a bilaterally executed swap to an SDR as soon as technologically practicable after execution. *See* 17 CFR sec. 45.3(b)(1).

be inconsistent with the CFTC's stated objectives with respect to real-time public reporting under Part 43 of the CFTC's regulations.

1) *Overrides reporting obligations of reporting counterparties.* The determination of who has the reporting obligation with respect to bilateral swaps is set forth in CFTC Rules 45.8 and 45.10.[10] In contrast to the assertions made in CME's amended submission, a DCO only has a reporting obligation for required swap creation data under Part 45 when: (1) an uncleared, bilateral swap is submitted and accepted for clearing; and (2) the reporting counterparty to the uncleared, bilateral swap does not submit the swap creation data within the applicable reporting deadlines. CFTC Rules 45.3(b)(1) and 45.10 state that the reporting counterparty (as determined by CFTC Rule 45.8) chooses the single SDR into which the required swap creation data is reported. For cleared swaps, CFTC Rule 45.10(b) provides that the reporting counterparty notifies a DCO of the identity of the SDR into which it has reported data with respect to such swaps. Only in the case when a reporting counterparty has not submitted PET data to an SDR, does a DCO have the right to choose the SDR into which required swap creation data is reported.[11] In this instance (and only in this instance), CFTC Rule 45.10 provides that DCOs must notify the swap counterparties of the identity of the SDR into which the DCO reported required swap creation data. If a DCO had the right to choose the SDR for all cleared swaps, the CFTC's regulations would have expressly provided this right. Thus, when a reporting counterparty like JPMorgan decides to report its PET data within the applicable reporting deadlines for an uncleared, bilateral swap, it has the implied right to choose its SDR.[12]

2) *Incorrectly treats data resulting from the creation of two cleared swaps as new swap creation data.* Moreover, CME's amended submission incorrectly treats as new "swap creation data" the swap data that results from the novation of a bilaterally-executed swap. In particular, CFTC Rule 45.3 contemplates that cleared swaps are the result of a novation of an original bilateral swap, which is given up to a DCO for clearing.[13] Through the clearing process, the DCO creates two separately cleared swaps, one with

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[10] *See* 17 CFR secs. 45.8 and 45.10.

[11] *See* 17 CFR sec.45.3(b)(1). DCOs do have a reporting obligation to report confirmation data. However, this obligation does not supplant or supersede a reporting counterparty's obligation to report PET data with respect to a bilateral swap before it is cleared.

[12] This implied right is supported by CFTC Rule 45.10(b)(1)(ii), which provides that at the time the bilateral swap is submitted for clearing, the reporting counterparty shall transmit to the DCO the identity of the SDR where swap creation data was reported and the unique swap identifier for the original, bilateral swap.

[13] *See* 17 CFR sec. 45.3.

the reporting counterparty and the other with the non-reporting counterparty. A novation is defined as a "life cycle event" under CFTC Rule 45.1.[14] CFTC Rule 45.3 provides that life cycle events are reportable as "required swap continuation data." Thus, CME's treatment of a novation through clearing as anything but a life cycle event is inconsistent with the CFTC's regulations.[15]

3) *Would lead to data fragmentation.* If PET data for the original, bilateral swap is reported into the SDR of the reporting counterparty's choosing and, post clearing, subsequent required swap creation and continuation data is reported into CME's captive SDR, this reporting of data into two SDRs would result in a violation of CFTC regulations and in data fragmentation with respect to a bilateral swap that is subsequently cleared.[16] CFTC Rule 45.10 requires that all data for a given swap be reported to a single SDR, which is the original SDR into which the PET data report for the original bilateral swap is made. As noted above, since a novation is a life cycle event, required swap continuation data relating to the two cleared swaps at a DCO (which were created through the novation of the original, bilaterally-executed swap) must be reported into the SDR where the reporting counterparty has already submitted PET data relating to the original swap. Notwithstanding the transparency goals of the Dodd-Frank Act and the CFTC's Reporting Rule, CME proposed Rule 1001 would result in less transparency to the Commission since CME's proposed rule would spread swap data across numerous SDRs.

4) *The CFTC's stated objectives in its real-time public reporting rulemaking supports the rejection of CME's proposed Rule 1001.* In the adopting release to the CFTC's real-time public reporting rulemaking, the CFTC made clear that the "reporting party" has the reporting obligation with respect to bilateral swaps that are presented for clearing.[17] In response to a comment regarding whether a DCO should be authorized to be the reporting party when a bilateral swap is cleared, the CFTC's adopting release states that "[t]he

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[14] CFTC Rule 45.1 provides that a "life-cycle event" includes by example changes to a swap resulting from an assignment or novation, including novations that occur through clearing. *See* 17 CFR sec. 45.1.

[15] The same principle should apply when a DCO performs portfolio compression and netting exercises. That is, cleared swaps that are the result of portfolio compression and netting exercises undertaken by a DCO should be reported by the DCO into the SDR chosen by the party to the original uncleared swap (and which is now facing the DCO under the cleared swap).

[16] We appreciate that the Commission has issued time-limited no-action letter to address this concern in the interim (expiring on June 30, 2013). *See* CFTC No-Action Letter 12-55 (Dec. 10, 2012). This no-action letter, however, does not eliminate a reporting counterparty's obligation to report required swap continuation data for cleared swaps after the expiry of the relief set out in the no-action letter. The letter merely delays until July 1, 2013 what will become a significant operational problem for reporting counterparties.

[17] *See* 77 FR at 1198, 1237. Part 43 uses and defines the term "reporting party" instead of "reporting counterparty." The definitions of "reporting party" under Part 43 and "reporting counterparty" under Part 45 are nearly identical.

> Commission agrees that the reporting party to an off-facility swap which is cleared should be able to contract with third parties (including DCOs or confirmation/matching service providers) to meet its reporting obligations under [P]art 43 ."[18] The adopting release then goes on to state that "[i]n this circumstance, the Commission notes that the obligation to report remains with the reporting party."[19] While the CFTC's regulations do not require Part 43 swap data and Part 45 swap data to be sent to the same SDR, its regulations do create an incentive to do so. Specifically, the Commission states in its cost-benefit analysis to Part 43, "the Commission has reduced the costs of reporting by coordinating the data fields in Appendix A to part 43 with those data fields that are expected to be required in [P]art 45 . . . [t]his coordination is expected to reduce costs by allowing reporting parties . . . to send one set of data to an SDR for the purpose of satisfying the requirements of both rules."[20] Thus, CME's proposed Rule 1001 would be inconsistent with the CFTC's objective in reducing costs arising out of compliance with the CFTC's Reporting Rules.

The text of the CFTC's regulations expressly prohibits anticompetitive tying arrangements such as CME's proposed Rule 1001. CFTC Rule 49.27(a)(1) provides, in relevant part, that a registered SDR shall provide its services to market participants on a fair, open and equal basis.[21] Further to this mandate, CFTC Rule 49.27(a)(2) prohibits a registered SDR from tying or bundling the offering of mandated regulatory services with other ancillary services that an SDR may provide to its market participants.[22] Although the Commission did not define the term "ancillary services," it made clear that bundling arrangements that tie non-SDR services with SDR services are prohibited.[23] Notwithstanding the plain language of CFTC Rule 49.27(a)(2), CME's proposed Rule 1001 would do just that: unlawfully bundle a non-SDR service (*i.e.*, clearing) with its SDR services.

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[18] *Id.* at 1198.

[19] *Id.* at n.148.

[20] 77 FR at 1237.

[21] *See* 17 CFR sec. 49.27(a); *Swap Data Repositories: Registration Standards, Duties and Core Principles*, 76 FR 54538 (Sept. 1, 2011).

[22] *See id.*

[23] For reasons not stated in the adopting release for Part 49 of the CFTC's regulations, the Commission decided not to address comments raised by the Depository Trust & Clearing Corporation ("DTCC") and MarkitSERV, which expressly spoke to these issues. *See* 76 FR at 54570. Instead, the Commission chose to address these comments in CFTC staff's frequently asked questions document on reporting cleared swaps, which is discussed below.

Anticompetitive tying arrangements such as CME's proposed Rule 1001 violate one of the CFTC's stated objectives in its Part 45 adopting release. Part 45 of the CFTC's regulations generally places reporting obligations on one of the counterparties to a swap transaction and designates that counterparty as the reporting counterparty to the original bilateral swap.[24] As noted above, the right to select and use an SDR is the right of the reporting counterparty in all but one instance. The one instance or exception to this general rule is when: (1) a swap is submitted and accepted for clearing before the applicable reporting deadline; and (2) the reporting counterparty does not submit the PET data report within such deadline. CME's proposed rule would convert the one exception into the general rule. This result is not only unfounded, it is inconsistent with the Commission's stated objectives in its Part 45 adopting release. In particular, the preamble to the CFTC's adopting release for Part 45 notes that "requiring that all cleared swaps be reported only to DCOs registered as SDRs would create a non-level playing field for competition between DCO-SDRs and non-DCO-SDRs."[25] CME's proposed Rule 1001, if approved, would contravene this objective; *i.e.*, it would promote the non-level playing field that the Commission expressly sought to prevent in issuing Part 45.[26]

CFTC commissioners' and CFTC staff's interpretive statements support the rejection of anticompetitive tying arrangements such as CME's proposed Rule 1001. Since the adoption of the CFTC's Reporting Rules several months ago, CFTC commissioners and CFTC staff have provided interpretive guidance upon which market participants have relied in anticipation of the compliance dates for those rules. That interpretive guidance supports the rejection of anticompetitive tying arrangements such as CME's proposed Rule 1001.

1) *CFTC Staff Guidance*. The clearest guidance regarding these arrangements was set forth in CFTC staff's Frequently Asked Questions in the Reporting of Cleared Swaps ("FAQs"), which was published on October 9, 2012.[27] In response to the question of "[m]ay a DCM, SEF or DCO that is also registered as an SDR or legally affiliated with an SDR require counterparties to use their 'captive' SDR for reporting swap

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[24] *See* 77 FR at 2198.

[25] 77 FR at 2186 (emphasis added).

[26] As a rebuttal to comment letters submitted in opposition to its proposed rule, CME's amended submission makes reference to DTCC's ownership structure to suggest that reporting to DTCC unfairly advantages other market participants. On September 19, 2012, the Commission provisionally approved DTCC's SDR registration application, which included information regarding DTCC's ownership structure. We think CME's reference in its amended submission to DTCC's ownership structure is irrelevant to the legal analysis of whether the forced reporting of required swap continuation data to CME's captive SDR is consistent with the CEA, CFTC regulations and CFTC commissioner and staff interpretations of Parts 45 and 49 of the CFTC's regulations.

[27] CFTC staff's FAQ can be found at:
http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/clearedswapreporting_faq_final.pdf.

transactions," CFTC staff emphatically said "no." In particular, CFTC staff unambiguously stated:

> As set forth in [CFTC Rule] 49.27(a) of the Commission's Regulations, SDRs are prohibited from tying or bundling the offering of mandated SDR services with other "ancillary" services. In this situation, the DCM, SEF or DCO, as a registered SDR, would be tying/bundling its SDR services with its offering of trading or clearing services. Market participants may choose to use a DCM's, SEF's or DCO's SDR for reporting swap transactions, but a DCM, SEF or DCO as part of its offering of trading or clearing services cannot require that market participants use its affiliated or "captive" SDR for reporting. Such a result would be inconsistent with the intent of Section 21 and [CFTC Rule] 49.27(a) of the Commission's Regulations relating to the reporting of transactions.[28]

Following CFTC's staff publication of its FAQ document, market participants continued to build their reporting infrastructures in reliance on CFTC staff's interpretive guidance. Over a month later, however, CFTC staff withdrew this question notwithstanding the industry's reliance on the CFTC's adopting releases to Parts 45 and 49, as well as CFTC staff's FAQ document on the reporting of cleared swaps. With most of the deadlines for reporting already in effect, JPMorgan and all other market participants would now have to conduct detailed requirements analysis, build, test and implement connectivity to CME's affiliated SDR, and any other DCO that wishes to impose bundled clearing and reporting arrangements, per our obligations as a reporting counterparty under Part 45. This build-out would further increase development costs for reporting counterparties in order to comply with the CFTC's Reporting Rules.

2) *Commissioner-Staff Colloquy at CFTC Open Meeting.* In addition to the publication of CFTC staff's FAQs, Commissioner Bart Chilton and the CFTC's Director for the Division of Clearing and Risk, Ananda Radhakrishnan, engaged in a colloquy during an open meeting to discuss the CFTC's final rulemaking adopting core principles for DCOs.[29] In particular, Mr. Radhakrishnan affirmed to Commissioner Chilton that "a

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[28] *Id.*

[29] CFTC, *Open Meeting to Discuss a Final Rule on Derivatives Clearing Organization General Provisions and Core Principles; a Final Rule on Position Limits for Futures and Swaps; and a Notice of Proposed Amendment to*

registered SDR, consistent with the principles of open access, shall not tie or bundle the offering of mandated regulatory services with other ancillary services that an SDR may provide to market participants."[30]

3) *CFTC Chairman Gary Gensler's Statements to Senate Agriculture Committee Chairwoman Debbie Stabenow.* CFTC Chairman Gary Gensler has made statements under oath to Congress that are consistent with Mr. Radhakrishnan's affirmation and CFTC staff's interpretation regarding the prohibition of anticompetitive tying arrangements such as CME's proposed Rule 1001. On December 1, 2011, Senate Committee on Agriculture, Nutrition and Forestry Chairwoman Debbie Stabenow asked Chairman Gensler to answer a question regarding the CFTC's treatment of clearing and reporting tying arrangements. In a written response dated May 1, 2012, Chairman Gensler stated that "[f]or DCOs that also choose to register and serve as SDRs, the anti-bundling provisions in the SDR final rule will apply." Thus, Chairman Gensler's statements provide further color as to the Commission's intent when it issued Part 49 of the CFTC's regulations.

II. The Commission should disapprove CME's proposed Rule 1001 and any similar anticompetitive tying arrangement because such arrangements would create significant and costly operational challenges for reporting counterparties and would unnecessarily delay compliance with the CFTC's established reporting timelines.

CME's proposed Rule 1001 would unnecessarily delay compliance with the CFTC's reporting timelines. The sudden change in the CFTC's position with respect to anticompetitive tying arrangements would unnecessarily delay compliance with the CFTC's reporting timelines. As noted above, JPMorgan and other market participants who fall within the definition of "reporting counterparty" have invested significant sums over a multi-year period in order to build reporting infrastructures, have hired and trained employees and have tested connectivity to other registered SDRs in anticipation of those reporting timelines. Anticompetitive tying arrangements such as CME's proposed Rule 1001 in practice would force a reporting counterparty to report its required swap continuation data for all cleared swaps to a DCO's affiliated and captive SDR notwithstanding the fact that the reporting counterparty may choose to submit PET data to its chosen SDR. These arrangements would require JPMorgan and other market participants to invest significant amounts of additional time and money (on top of what already is in place and

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Effective Date for Swap Regulation (Oct. 18, 2011) (colloquy between CFTC Commissioner Bart Chilton and Mr. Ananda Radhakrishnan).

[30] *Id.*

has been spent) to establish and test connectivity to CME. Indeed, JPMorgan and other market participants would have to spend similar amounts of time and money if any other swap market utility put in place similar tying arrangements.

CME's proposed Rule 1001 does not specify how reporting services will be priced. CME's proposed Rule 1001 is deficient in that it does not provide adequate notice to market participants regarding CME's proposed pricing structure for its reporting services. Specifically, CME's proposed rule states that it will send swap trade data to an additional SDR if instructed by the counterparties to such trade. The proposal is silent, however, as to the costs or process associated with sending such data to an additional SDR. It is expected that reporting counterparties would be responsible for paying the fees associated with the reporting of PET data and required swap continuation data. In effect, CME's proposed Rule 1001 would require reporting counterparties to pay for the reporting of confirmation data as well as required swap continuation data irrespective of the fact that the reporting counterparty already has paid to report PET data to a different SDR. As such, CME's proposed Rule 1001 would inhibit market participants' ability to choose an SDR with pricing that they find economically acceptable. Moreover, CME's proposal to provide duplicate reporting to an SDR at the request of the reporting counterparty would not relieve the reporting counterparty from having to report into CME's SDR and would unnecessarily increase the costs of reporting for reporting counterparties under Part 45. Finally, it is important to note that regardless of the fee schedule that CME sets at the outset, JPMorgan and other market participants would become captive users of CME's SDR. As a result, JPMorgan and others would not be able to move their reporting to another SDR if at some point in the future CME decides to raise their fees to exorbitant amounts.[31]

Anticompetitive tying arrangements such as CME's proposed Rule 1001 would likely increase operational and systemic risks. Anticompetitive tying arrangements would likely increase operational and systemic risks since swap data would be fragmented across multiple SDRs for swaps within the same asset class. Counterparties would have to submit required swap continuation data and reconcile positions across multiple SDRs rather than just one or two SDRs within the same asset class. These arrangements would make it difficult for us to manage our operational risks if we are forced to report and clear at the same swap market utility. In addition, if clearing and reporting are inextricably linked, factors other than risk reduction may drive the decision over which clearinghouse we use.

[31] JPMorgan and other market participants have an economic incentive to reduce the costs associated with compliance with the CFTC Reporting Rules. Contrary to the assertion made by some, we believe that no additional burdens would be placed on reporting counterparties or non-reporting counterparties if the Commission were to reject CME's proposed Rule 1001.

We respectfully disagree with CME's assertion that reporting required swap continuation data to CME's captive SDR is the "easiest, fastest, and cheapest . . . ."[32] Indeed, reporting swap data to CME's affiliated SDR is the "easiest, fastest and cheapest" method of reporting for CME. This method, however, is not the "easiest, fastest and cheapest" for reporting counterparties who would have the obligation to report PET data and required swap continuation data across multiple SDRs for the same asset class.

III. **Conclusion.**

As noted above, JPMorgan is committed to the effective implementation of the CFTC's Reporting Rules and full compliance with the CFTC's interpretive guidance of those rules. However, we are concerned that the CFTC's sudden change of position with respect to anticompetitive tying arrangements would not only prevent JPMorgan and other similarly situated market participants from complying with the timelines set forth in the CFTC's Reporting Rules, it would create new costs and burdens in addition to increasing operational and systemic risks. The CFTC's withdrawal of interpretive statements on the reporting of cleared swaps depreciates the value of the CFTC's future interpretive releases or FAQs regarding reporting and creates unnecessary regulatory uncertainty. Unfortunately, this uncertainty dis-incentivizes market participants from investing in infrastructure to implement financial reforms until all interpretive issues are clarified.

[32] *See* CME's amended submission at 2.

Thank you for your consideration of our concerns. Again, we appreciate the opportunity to comment on this matter. Please feel free to contact the undersigned or Carl E. Kennedy if you have any questions regarding our comments.

Very truly yours,

Alessandro Cocco/CEK

Alessandro Cocco
Managing Director,
Associate General Counsel

cc: Chairman Gary Gensler
Commissioner Jill Sommers
Commissioner Bart Chilton
Commissioner Scott D. O'Malia
Commissioner Mark Wetjen
Dan Berkowitz, General Counsel
Ananda Radhakrishnan, Director of the Division of Clearing and Risk
Richard Shilts, Acting Director of the Division of Market Oversight

sifma

Invested in America

January 7, 2013

The Honorable Gary Gensler
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW.
Washington, DC 20581

RE: Chicago Mercantile Exchange Inc. Submission # 12-391R

Dear Chairman Gensler:

The Securities Industry and Financial Markets Association ("**SIFMA**")[1] welcomes the opportunity to comment on the proposal made by the Chicago Mercantile Exchange Inc. ("**CME**") in its submission # 12-391R dated December 6, 2012 (as amended on December 14, 2012, the "**Submission**"), which requests that the Commodity Futures Trading Commission (the "**Commission**") approve a new Chapter 10 and Rule 1001 (the "**Proposed Rule**") of the CME's Swap Data Repository ("**SDR**") rulebook.

The Global Foreign Exchange Division ("**GFXD**") of the Global Financial Markets Association ("**GFMA**") and the International Swaps and Derivatives Association ("**ISDA**"), among others, have submitted letters expressing their respective recommendations that the Commission should not approve the Proposed Rule. We support these recommendations.

The GFXD letter highlights that the Proposed Rule, by requiring that all swaps cleared with the CME be reported to the CME's SDR, would violate the principles of fair and open access established by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**")[2] and reinforced by the Commission,[3] and that it would create reporting inefficiencies, weaken reporting infrastructure and increase costs. The ISDA letter raises concerns about the interdependence between the Proposed Rule and other aspects of the reporting regime, and urges the Commission to address these in a unified and consistent manner. Further, we note that the concerns raised in the GFMA and ISDA letters are not exclusive to the CME and

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[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

[2] CEA section 5(b)(c)(2)(C)(iii), as amended by Dodd-Frank.

[3] 17 C.F.R. § 49.27(a)(2).

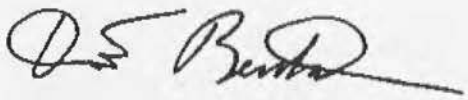
the Proposed Rule, but apply generally to any DCO that seeks to require all swaps cleared with it to be reported to a specific SDR.

SIFMA joins GFXD and ISDA in urging the Commission to reject the Proposed Rule.

* * *

SIFMA and its members appreciate the opportunity to offer our perspectives on the Submission. If you have any questions with respect to the matters discussed in this letter, or require any further information, please feel free to contact the undersigned at (202) 962-7400 or kbentsen@sifma.org.

Sincerely,



Kenneth E. Bentsen, Jr.
Executive Vice President
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