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The Honorable Gary Gensler  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

Re: Request for Comment from the Chicago Mercantile Exchange Inc. to Adopt New Chapter 10 and New Rule 1001 of CME's Rulebook (IF 12-013)

Dear Chairman Gensler:

The Depository Trust & Clearing Corporation ("DTCC") submits this letter to the Commodity Futures Trading Commission ("CFTC" or "Commission") in response to its request for public comment on the Chicago Mercantile Exchange Inc.'s ("CME's") petition for approval of a rule ("Proposed Rule 1001").<sup>1</sup> DTCC will provide more comprehensive comments on Proposed Rule 1001 before the close of the public comment period.

The Commission must extend its arbitrarily truncated time period for comment on Proposed Rule 1001 to allow for the full 120 days required under the Commission's review standards applicable to the sound regulation of systemically important derivative clearing organizations ("SIDCOs"). Further, because the swap data reporting mechanics contemplated in Proposed Rule 1001 are novel and inconsistent with existing Commission rules, the CFTC should hold a public roundtable with interested parties to discuss the proposal.

***The Commission's 24 Day Notice and Comment Period Fails to Satisfy Regulatory Requirements***

As a threshold matter, the Commission does not provide an adequate public comment period for consideration of CME's Proposed Rule 1001. The 24 day comment period allowed by the Commission is deficient under both (i) the heightened review standard applicable to CME as a SIDCO; and (ii) the standard

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<sup>1</sup> The CME Rule Filings, New Chapter 10 and new Rule 1001 regarding swap data repository reporting; 12-391, available at <http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/ru1110912cme005.pdf>.

review period provided for the submission of new products, rules and rule amendments by derivatives clearing organizations (“DCOs”).<sup>2</sup>

SIDCOs are subject to heightened regulation and supervision to ensure they operate in a safe and sound manner, thereby mitigating systemic risk in the financial system and promoting financial stability.<sup>3</sup> As a SIDCO, CME must provide 60 days advance notice to the Commission before proposing a material change to its rules, procedures, or operations.<sup>4</sup> CME failed to adhere to and the Commission failed to enforce the 60 day advance notice requirement.

Further, because CME's proposed rule change “raises novel or complex issues,”<sup>5</sup> an additional 60-day review period is mandated by federal regulation.<sup>6</sup> Under no circumstance may CME’s proposed rule change be considered on an expedited basis by the Commission. Yet, the 24 days provided by Commission falls 96 days short of the 120-day time period determined prudent for consideration of a rule change with the potential to impact the level of risk in the financial markets and the financial stability of the United States.

Even if the Commission determined that the SIDCO procedural requirements should be ignored in CME’s instance, the 24 days provided likewise fall short of the 30-day public comment period required for review and consideration of proposed rules under the Commission’s standard procedures for certification of DCO rules.<sup>7</sup>

The Commission does not have the authority to unilaterally set the comment period for consideration of CME’s proposed rule change, blatantly ignoring the procedural framework set forth in its own regulations. Rather than improperly rush consideration of CME’s Proposed Rule 1001, DTCC requests the Commission extend its arbitrary, abbreviated deadline for comment to allow the full 120 days required under the Commission’s heightened review standards applicable to the prudent regulation of SIDCOs.

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<sup>2</sup> 17 CFR § 40.

<sup>3</sup> See section 805(a)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”); see also 17 C.F.R. § 40.10.

<sup>4</sup> See 17 C.F.R. § 40.10(a). The Commission’s rules establish that a change is material when there is a *reasonable possibility* that such change could affect the performance of essential clearing and settlement functions or the overall nature or level of risk presented by the SIDCO. See *id.* at § 40.10(a) and (b) (emphasis added); see also Letter from Larry Thompson, DTCC to Gary Gensler, CFTC (Nov. 20, 2012) (on file with author) (providing a thorough discussion of the reasonable possibility that CME Proposed Rule 1001 will affect the overall nature of level of risk presented by CME as a SIDCO).

<sup>5</sup> *Id.* at § 40.10(f).

<sup>6</sup> See Letter from Larry Thompson, DTCC to Gary Gensler, CFTC (Nov. 20, 2012) (on file with author) (discussing in detail the novel and complex issues raised by CME’s Proposed Rule 1001).

<sup>7</sup> See 17 C.F.R. § 40.6(c)(2).

***CME Proposed Rule Raises Novel and Complex Issues; Merits Public Hearing***

Since passage of the Dodd-Frank Act, the Commission has hosted numerous roundtables, advisory committee meetings, hearings, and public forums that allowed Commission staff, market participants, academics, and other interested parties to discuss the issues related to swap data reporting obligations and swap data repositories. These events were important for the rulemaking process and permitted Commission staff and market participants to clarify regulatory requirements and market participants' capabilities to comply with these new rules.

Proposed Rule 1001 raises novel and complex issues that have not been afforded the opportunity for review and discussion among market participants in an open forum before the Commission. Given the implications for the financial markets, closed-door conversations between the Commission and one interested party are not sufficient for the careful consideration warranted by this issue. Rather than only listen to the views of select market participants, the Commission should afford the opportunity for an open dialogue with all market participants directly impacted by CME's Proposed Rule 1001. A public debate with interested parties, representing a wide range of views, is needed for the Commission to formulate an accurate understanding of Proposed Rule 1001's potential consequences. In order to undertake the regulatory due diligence necessary for appropriate consideration of this issue, DTCC requests the Commission schedule a public roundtable to openly engage market participants in a robust, informed debate.

DTCC intends to supplement this letter with additional comments on Proposed Rule 1001 before the close of the public comment period.

Thank you for your consideration. We appreciate the opportunity to comment on this matter.

Sincerely yours,



Larry E. Thompson  
General Counsel

Cc: The Honorable Jill Sommers  
The Honorable Scott O'Malia  
The Honorable Bart Chilton  
The Honorable Mark Wetjen  
Dan Berkovitz  
Richard Shilts  
Jonathan Marcus  
Susan Nathan  
Eric Juzenas  
Nancy Markowitz