



January 7, 2013

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Commodity Futures Trading Commission
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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.

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

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

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.

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

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.

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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
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¹³ Id. at 2149.