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January 14, 2013

David A. Stawick
Secretary
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, 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

[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

[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
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cc:

Chairman Gary Gensler
Commissioner Jill E. Sommers
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