January 14, 2013

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

Re: Chicago Mercantile Exchange Inc. Amended Request to Adopt New Chapter 10 and New Rule 1001 of CME's Rulebook (12-391R)

Dear Chairman Gensler,

Moore Capital Management, LP ("Moore Capital") submits this letter to the Commodity Futures Trading Commission ("CFTC" or "Commission") in response to its request for comments on The Chicago Mercantile Exchange Inc.'s ("CME") Amended Submission #12-391R for approval of a new Chapter 10 and Rule 1001 ("Regulatory Reporting of Swap Data") of CME's Swap Data Repository ("SDR") Rulebook ("Rule 1001").[1] CME's Proposed Rule 1001 would require participants using CME's clearing services to allow data for trades cleared through CME's derivatives clearing organization ("DCO") to be reported to CME's own swap data repository ("SDR"), rather than allowing market participants a choice of official SDR.

Moore Capital is a registered commodity trading advisor and an active participant in the swaps market on behalf of its clients. SDRs were established under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") to bring transparency to the entirety of the swaps market. They play a central role in risk reduction, recording swap transaction data for both cleared and uncleared over-the-counter contracts and permitting fair and open access to basic swap data. However, SDRs can only effectively fulfill this role in an environment that promotes competition among service providers and allows for open and fair access to their services. CME's Proposed Rule 1001 will frustrate the competitive landscape and impair the ability of asset managers to quickly and accurately manage risks on behalf of their investors. Therefore, we urge the Commission to reject the approval of CME's Proposed Rule 1001.

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Request for Additional Time to Comment on Proposed Rule 1001

We believe that the comment period CFTC provided for CME's Proposed Rule 1001, scheduled to end on January 14, 2013, does not provide sufficient time for market participants to adequately examine and articulate their concerns regarding the effects of CME's Proposed Rule 1001 on issues such as user choice and data fragmentation. This brief window, spanning several major holidays, has been filled with many CFTC no-action requests, no-action relief, and exemptive orders related to pressing "day one" issues, overwhelming market participants.[2] Due to the complex and important issues raised by CME's Proposed Rule 1001, we respectfully request that the comment period on CME's Proposed Rule 1001 allow for at least sixty additional days of public review and comment from the date of publication on the CFTC website.

Concerns with CME's Proposed Rule 1001

A. The Need for User Choice

CME's Proposed Rule 1001 is anti-competitive and not in the public's interest as it eliminates counterparty choice of SDR, requiring instead that clearing house customers be subject to CME's own captive SDR services for the purposes of fulfilling swap data reporting obligations. The Commission implicitly endorsed a model for trade reporting that allows counterparty choice of the SDR. [3] Indeed, the CFTC expressly adopted the counterparty choice model in its initial FAQ guidance, which subsequently was withdrawn.

Market participants understood that the CFTC's final rules established user choice and consequently, they have expended significant resources in preparation for reporting in compliance with the rules. The uncertainty surrounding the possible approval of CME's Proposed Rule 1001 has caused market participants to ask for necessary delays in reporting certain required data. The CFTC already has granted some no-action relief to address these issues, delaying reporting of valuation data through June 20, 2013. Approving CME's Proposed Rule 1001 will impose significant additional costs as market participants would be forced to re-build and re-test their reporting platforms to account for reporting to CME's (and likely other DCO's) captive SDRs.

We are also concerned about CME's assertion that its provision of a duplicate (but not official) record of data to the SDR of the user's choice sufficiently addresses any anticompetitive effects of CME's Proposed Rule 1001. Market participants have no assurances that CME will not make it operationally difficult, or prohibitively expensive, to make the duplicate report. Any costs associated with reporting to multiple SDRs will be passed on to swap dealers, who in turn will pass the costs on to asset managers and their investors. Additionally, going forward, the costs of maintaining the data at (at least) two SDRs, with the attendant multiple reconciliation requirements, will also be passed on and likely will be paid for by investors.

Many asset managers may wish to restrict their data to a single repository in order to ensure that the asset manager and its clients are comfortable with the SDR's policies on issues like data sharing. By forcing market participants to share their data with CME's affiliated SDR, CME is effectively taking away

market participants' right to ensure that their data is managed in accordance with the information sharing and dissemination policies of their choice. Privacy and confidentiality issues may prevent global market participants from allowing the data to be sent to the SDR of choice if the CME is allowed to designate itself as the official SDR.

The Commission's SDR regulations clearly prohibit the type of anticompetitive bundling arrangements proposed in CME Rule 1001. Because the Commission realized the potential for increased market costs, CFTC Rule 49.27(a)(2) prohibits an SDR from tying the mandatory regulatory services with other ancillary services an SDR provides. [4] Rule 1001 and its effect of tying clearing services with SDR services will lead to an increase in costs across the industry and is exactly the type of conduct the Commission should be guarding against.

B. Avoiding Data Fragmentation

Additionally, CME's Proposed Rule 1001 essentially guarantees data fragmentation, undermining the goals of the Dodd-Frank Act by reducing the ability of regulators to view consolidated positions and patterns of abusive trading and also undermines the ability of asset managers to effectively manage risk through monitoring data reported to SDRs. Even if CME reports the cleared transaction to its own SDR and then provides a duplicative copy to an SDR of the customer's choice, the reporting scheme introduces additional points of failure and other risks into an already complicated system.[5] In addition to the costs associated with reporting to multiple SDRs, reporting data to multiple SDRs will require market participants to unnecessarily reconcile data, adding more unnecessary costs and burdens.

We support the Commission's goal of obtaining accurate market data in order to create stable markets for our clients. The creation of a complete audit trail will result in accurate liquidity reports, a core principle of the Dodd-Frank Act. The Commission's approval of CME's Proposed Rule 1001 will result in fragmented data, undermining this key legislative objective.

Conclusion

Congress did not intend for the CFTC to dilute SDRs' systemic risk management goals by allowing some market participants to thwart user choice and fragment the data for their own commercial gain. We recognize the difficult challenges the CFTC faces in determining how best to proceed in regulating new entities, like SDRs, in the marketplace. However, for the reasons detailed above, we urge the Commission to reject the adoption of CME's Proposed Rule 1001. Please feel free to contact me with any questions you may have on our comments at 212 782-7000.

Sincerely,

Anthony Deluca
Chief Financial Officer

Endnotes

[1] CME Rule Filing, New Chapter 10 and New Rule 1001 Regarding Swap Data Repository Reporting; New Submission Amending Submission 12-391, available at http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul120612cme001.pdf.

[2] Since December 6, 2012, the CFTC has released numerous no-action relief letters and other staff guidance.

[3] The Dodd-Frank Act includes several provisions that address swap dealer and major swap participants' recordkeeping and reporting requirements. Specifically, the statute requires that swap transactions must be reported to SDRs and records must be retained by the counterparties. The CFTC's Part 23 (recordkeeping, reporting, and duties) rules require swap dealers and major swap participants to comply with the CFTC's Part 43 (real-time public dissemination) and Part 45 (swap data recordkeeping and reporting requirements) rules, and to report all required information and data via electronic systems. Swap dealers and major swap participants must also retain transaction and position records, business records, records of data reported to an SDR, and records of real-time reporting data. See 17 CFR Part 45; RIN 3038-AD19; 77 F.R. 2136, 2149.

[4] See 17 CFR sec 49.27(a)

[5] The Commission recognized the opportunities for misreporting and misunderstanding the import of reported information. For this reason, in Part 45, the Commission emphasized the need for a complete audit trail following all reported trades over their life-cycles, including when they are novated and replaced by new, economically equivalent trades. Failure to carefully follow this audit trail will lead not only to failure to detect potentially dangerous market manipulation, but will likewise very easily lead to double counting, as there will be difficulty in linking the novation of old trades with the creation of economically equivalent new trades.