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January 14, 2013

Ms. Sauntia S. Warfield
Assistant Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Review Process of The Chicago Mercantile Exchange Inc.'s Submission for Adoption of New Chapter 10 (Regulatory Reporting of Swap Data) and Rule 1001 (Regulatory Reporting of Swap Data)

Dear Ms. Warfield:

The Depository Trust & Clearing Corporation ("DTCC"),¹ in conjunction with its provisionally registered swap data repository ("SDR"), DTCC Data Repository (U.S.) LLC ("DDR"), submits this letter to the Commodity Futures Trading Commission ("CFTC" or "Commission") to request clarification regarding the formal process through which the Commission intends to review and make an approval determination on The Chicago Mercantile Exchange Inc.'s ("CME") Amended Submission #12-391R dated December 6, 2012,² to adopt new Chapter 10 and Rule 1001 of the CME's derivatives clearing organization's ("DCO") Rulebook ("Rule 1001").³

¹ The Depository Trust & Clearing Corporation ("DTCC") provides critical infrastructure to serve all participants in the financial industry, including investors, commercial end-users, broker-dealers, banks, insurance carriers, and mutual funds. DTCC operates as a cooperative that is owned collectively by its users and governed by a diverse Board of Directors. DTCC's governance structure includes 344 shareholders.

² The Chicago Mercantile Exchange Inc. ("CME") submitted an amended request to its original submission dated November 9, 2012 ("Amended Request"), *available at* <http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul120612cme001.pdf>. CME's original submission is *available at* <http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul110912cme005.pdf>. CME also submitted a "corrected" Rule 1001, dated December 14, 2012, "to correct a typographical error per CFTC staff's request." The December 14, 2012 submission was not posted to the CFTC's Rule 1001 public comment page until December 28, 2012, at the earliest. The corrected request is *available at* <http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul121412cme001.pdf>.

³ DTCC has submitted prior comments to the Commission in connection with CME's proposed Rule 1001. *See* Letter from Larry Thompson, General Counsel, DTCC, to the Honorable Gary

In prior submitted comments, DTCC detailed its concerns with the procedures followed by the CFTC in connection with CME's Rule 1001 and certain attendant matters.⁴ As the comment period on Rule 1001 draws to a close and the opacity of the Commission's process remains a serious concern, DTCC requests, at a minimum, simple clarification on the process the Commission intends to adhere to in evaluating whether to approve Rule 1001.

CME's Rule 1001 Submissions and Commission Comment Periods

On November 28, 2012, the Commission issued a press release seeking public comment regarding Rule 1001, which provided that comments in response to the request should be submitted by December 21, 2012. On December 6, 2012, CME submitted an amended Rule 1001 to the Commission. On December 10, 2012, following CME's submission of amended Rule 1001, the Commission extended the timeframe for public comment regarding CME's amended request until January 7, 2013. CME also submitted a "corrected" Rule 1001, dated December 14, 2012, "to correct a typographical error per CFTC staff's request."⁵ This most recent submission was not posted to the CFTC's Rule 1001 public comment page until December 28, 2012, at the earliest. On January 7,

Gensler, Chairman, CFTC, CFTC Industry Filing 12-014 (Nov. 20, 2012), *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58974&SearchText>; Letter from Larry Thompson, General Counsel, DTCC, to the Honorable Gary Gensler, Chairman, CFTC, CFTC Industry Filing 12-014 (Dec. 5, 2012), *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58975&SearchText>; Letter from Larry Thompson, General Counsel, DTCC, to the Honorable Gary Gensler, Chairman, CFTC, CFTC Industry Filing 12-014 (Dec. 7, 2012), *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58976&SearchText>; Letter from Larry Thompson, General Counsel, DTCC, to the Honorable Gary Gensler, Chairman, CFTC, CFTC Industry Filing 12-014 (Dec. 20, 2012), *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59009&SearchText=>; Letter from Larry Thompson, General Counsel, DTCC, to the Honorable Gary Gensler, Chairman, CFTC, CFTC Industry Filing 12-014 (Jan. 3, 2013), *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59025&SearchText=>; Letter from Larry Thompson, General Counsel, DTCC, to the Honorable Gary Gensler, Chairman, CFTC, CFTC Industry Filing 12-014 (Jan. 8, 2013), at 15-17, *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59041&SearchText=> [collectively, hereinafter DTCC Comments on Rule 1001]. *Correction:* The DTCC letter, dated January 8, 2013, mistakenly indicated that the Commission's rules and policies relied upon by market participants were finalized in "early 2011" rather than just "2011."

⁴ *See id.*

⁵ The "corrected" request is *available at* <http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul121412cme001.pdf>. DTCC disagrees that the "corrected" submission merely addresses typographical errors. In the corrected submission, CME removed throughout the word "available" prior to "creation and continuation data," a substantive revision not merely correcting an errant comma or missing punctuation. Nevertheless, removal of the word "available" highlights recognition that the data available to DCOs under the CFTC's Part 39 rules is limited in scope as compared to the data required to be reported to SDRs under the Commission's Part 45 rules. For example, under Part 39, DCOs do not generally receive block trade indicators and pre-allocation data.

2013, the CFTC announced a further extension of the public comment period to January 14, 2013.

Review Period of Rule 1001

The Commission's formal review and approval process under CFTC Rule 40.5 provides for a 45-day review period.⁶ In particular, CFTC Rule 40.5(c) provides that, unless the submitting entity is notified otherwise, "[a]ll rules submitted for Commission approval . . . shall be deemed approved by the Commission . . . 45 days after receipt by the Commission, or at the conclusion of [an extended period of review]" if the submission (i) adheres to certain procedural requirements; (ii) is not inconsistent with Commodity Exchange Act or the Commission's regulations;⁷ and (iii) "the registered entity does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period other than for correction of typographical errors . . . or other non-substantive revisions."⁸

As noted above, CME's amended request to its original submission is dated December 6, 2012.⁹ However, as also noted above, CME submitted a "corrected" Rule 1001, dated December 14, 2012, "to correct a typographical error per CFTC staff's request."¹⁰ This most recent submission was not posted to the CFTC's Rule 1001 public comment page until December 28, 2012, at the earliest. For purposes of the 45-day review period under CFTC Rule 40.5, DTCC requests that the Commission clarify whether it contemplates the commencement of the review period as triggered from December 6, December 14, or December 28. As the CME's corrected Rule 1001 submission was not made available for public notice and comment until December 28, at the earliest, DTCC believes the 45-day review period should commence as of December 28.

Commission regulations also authorize the Commission to extend the initial 45-day review period for an additional 45 days if, in relevant part, "the proposed

⁶ DTCC previously submitted extensive comments regarding CME's status as a systemically important DCO ("SIDCO"), noting that the Commission must follow elevated procedural safeguards in reviewing Rule 1001. *See* DTCC Comments on Rule 1001, *supra* note 3. However, the Commission appears to have chosen to ignore DTCC's comments regarding following the required SIDCO procedures. Additionally, in a December 20, 2012 letter, DTCC requested that the public comment period on Rule 1001 be extended to allow 60 days for the consideration of CME's December 6, 2012 submission. *See id.* The Commission did not respond to DTCC's request.

⁷ As DTCC has detailed previously, CME's Rule 1001 is inconsistent with the CEA and the Commission's regulations. *See id.*

⁸ 17 C.F.R. § 40.5 (2012) (emphasis added).

⁹ *See supra* note 2. CME's original submission is available at <http://www.cftc.gov/stellent/groups/publici@rulesandproducts/documents/ifdocs/ru1110912cme005.pdf>.

¹⁰ *See supra* note 5.

rule raises novel or complex issues that require additional time for review or is of major economic significance”¹¹ As evidenced by the extent of carefully reasoned comment letters submitted by a host of market participants, Rule 1001 presents novel and complex issues.¹² In addition to DTCC’s prior comments¹³ on Rule 1001, DTCC is simultaneously submitting a report by the economic consulting firm, NERA, highlighting the potentially serious antitrust and cost-benefit questions raised by proposed Rule 1001, which the Commission should analyze before acting on Rule 1001. In order to adequately consider these and other issues raised by market participants, the Commission should extend the initial review period by an additional 45 days.

In any case, DTCC believes that market participants and other regulators need clarification regarding the process the Commission intends to follow. Therefore, DTCC requests that the Commission make public, through an announcement on its website, the formal process through which the Commission will review Rule 1001, including (i) when the original 45-day clock expires; (ii) whether the Commission intends to exercise its authority to extend the review period; (iii) the length of the extended review period; and (iv) when such extended period will expire.

* * *

Should the Commissions wish to discuss these comments further, please contact me at 212-855-3240 or lthompson@dtcc.com.

Sincerely yours,



Larry E. Thompson
General Counsel

¹¹ 17 C.F.R. § 40.5(d)(1).

¹² See CFTC Public Comment File for Rule 1001, available at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1302>; see also, specifically, DTCC Comments on Rule 1001, *supra* note 3.

¹³ See *supra* note 3.