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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: Comments in Response to The Chicago Mercantile Exchange Inc.'s Amended 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”),<sup>1</sup> in conjunction with its provisionally registered swap data repository, DTCC Data Repository (U.S.) LLC (“DDR”), submits the attached report by the economic consulting firm, NERA. The report identifies antitrust and cost-benefit questions that the Commission should address in its review of The Chicago Mercantile Exchange Inc.’s proposed Rule 1001.

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

Sincerely yours,

Larry E. Thompson  
General Counsel

Enclosure

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<sup>1</sup> 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.



# **CME PROPOSED RULE 1001: ANTITRUST AND COST-BENEFIT ISSUES**

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January 14, 2013

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## I. Overview of Submission

NERA Economic Consulting (“NERA”) was commissioned by Patton Boggs LLP, on behalf of DTCC Data Repository, to address certain antitrust and cost-benefit issues raised by CME’s Proposed Rule 1001 (“Rule 1001”). The primary audience for this report is the CFTC (“Commission”) as well as the various stakeholders involved in the implementation of the Swap Data Repository (“SDR”) reporting requirements of the Dodd Frank Act and public and private entities that are potentially affected by the implementation of CME Rule 1001.

While all of the mechanical workings of CME Rule 1001 are not necessarily clear at this time, NERA has reviewed this rule, as well as various materials related to the rule including relevant statutes, regulations, and correspondence between various stakeholders and the Commission.

The remainder of this submission is broken into three main sections. Section II contains a summary of the primary issues raised in the submission. Section III contains an analysis of the various antitrust and competition issues that arise in relation to Rule 1001. The submission finishes with an identification and analysis of issues related to the costs and benefits of Rule 1001.

## II. Summary

- Rule 1001 raises potentially serious antitrust questions.
  - Rule 1001 explicitly institutes a tying arrangement by CME for the provision of clearing services (the tying service) and SDR services (the tied services). In order to evaluate the effect of Rule 1001 on competition, the Commission should consider the potentially anticompetitive effects of this tying arrangement.
  - Rule 1001 would likely change the ability of various parties to negotiate terms and conditions for the provision of various services. In order to evaluate the effect of Rule 1001 on competition, the Commission should consider whether the rule would give CME more market power than it otherwise would have (if any) in the provision of such services.
  - In principle, a proponent of Rule 1001 might argue that someone wanting to compete head-to-head with CME’s tied services (under its Rule 1001) could simply provide clearing services as well as SDR services. The Commission should consider whether Rule 1001’s tying would introduce barriers to entry for would-be SDR competitors to CME.
  - The Commission has recognized the possibility that the provision of SDR services (for at least some types of swaps) could tip toward a small number of providers (or even a single provider), even in a competitive marketplace. In order to evaluate the effect of Rule 1001 on competition, the Commission should consider whether, by leading to tipping toward derivatives clearing organizations (DCOs) in general (and CME in particular) in SDR services, the rule would cause the market to tip to an outcome different from the competitive outcome.

- While certain cost savings have been posited by CME, it is not clear how much of any such DCO cost savings or efficiencies would be passed along to SDR service customers or SDR data purchasers.
- When considering the benefits of any such cost savings, the Commission must also consider the additional costs, risks, and benefits to other stakeholders of Rule 1001. Many different cost, risk, and benefit issues arise when contemplating the implementation of Rule 1001 relative to the status quo market rules.
- Several different types of stakeholders in the provision and use of SDR services and/or SDR data sales, including regulatory agencies, swap market participants, and non-counterparty SDR data purchasers and data vendors, could incur incremental costs and face heightened risk as a result of the imposition of Rule 1001.

### III. Antitrust Issues Related to Rule 1001

The core principles set forth in the Dodd-Frank Act specify that a DCO may not (i) “adopt any rule or take any action that results in any unreasonable restraint of trade;” or (ii) “impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.”<sup>1</sup> Additionally, regulations governing commodity exchanges state:

The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this chapter, as well as the policies and purposes of this chapter, in issuing any order or adopting any Commission rule or regulation...<sup>2</sup>

These core principles serve as the primary motivation and guidance for the economic analyses of various antitrust issues in this section of the submission.

#### A. Background

We understand from DTCC’s January 8, 2013 submission to the Commission that, based on reporting to date and as evidenced in recent no-action relief requests, without CME Rule 1001 in effect, many SDs and MSPs have chosen to direct reporting of all of their U.S. trades to particular SDRs.<sup>3</sup> We further understand from DTCC’s submission that this is consistent with the Commission’s Part 45 Rules for reporting of initial and continuation swap data to SDRs.<sup>4</sup>

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<sup>1</sup> CEA § Section 5b(c)(2)(N), as amended by the Dodd-Frank Act.

<sup>2</sup> U.S.C. 19(b), “Antitrust laws.”

<sup>3</sup> Letter from Larry E. Thompson, General Counsel, DTCC, to Sauntia S Warfield, Assistant Secretary, CFTC, CFTC Industry Filing 12-014 (January 8, 2013) available at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59041&SearchText=>.

<sup>4</sup> *Id.*

With respect to its final Part 45 rules for swap reporting, the Commission considered competition issues concerning who chooses the SDR:

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. The Commission also believes that it would make DCOs collectively, and could in time make a single DCO-SDR, the sole recipient of data reported concerning cleared swaps. On the other hand, the Commission believes that giving the choice of the SDR to the reporting counterparty in all cases could in practice give an SDR substantially owned by swap dealers (SDs) a dominant market position with respect to swap data reporting within an asset class or even with respect to all swaps. The Commission believes that the rule as proposed favors market competition, avoids injecting the Commission into a market decision, and leaves the choice of SDR to be influenced by market forces and possible market innovations.<sup>5</sup>

That is, citing competition grounds, the Commission rejected CME's earlier proposal to require that for all cleared transactions the data be reported to DCO-SDRs; the Commission instead stated that it wants to leave "the choice of SDR to be influenced by market forces and possible market innovations." CME's proposed Rule 1001 is intended to change the choice of SDR for some swap transactions, from other SDRs to itself, tilting the Commission's "level playing field" toward itself.

## **B. Issues to Consider for Analysis of Antitrust and Competition**

### ***1. How Might SDRs Realize Revenues?***

Subject to laws and regulations, an SDR may attempt to realize revenues through one or more of the following types of activities:

- Charge the reporting parties for accepting creation data and continuation data.
- Charge reporting parties for access to their own swap data held by the SDR.
- Charge non-reporting parties for access to their own swap data held by the SDR.
- Charge third parties, such as data vendors, for access to data (with identification information removed) on swaps.
- Charge counterparties for Commission (or other regulator) requests to access the data.<sup>6</sup>

Any analysis of competition among SDRs should consider how SDRs hope to profit from their operations.

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<sup>5</sup> Federal Register, Vol. 77, No. 9, Friday, January 13, 2012, p. 2149. See similar language on p. 2186.

<sup>6</sup> According to 45.2(h), "Copies of all such records shall be provided, at the expense of the entity or person required to keep the record, to any representative of the Commission upon request" (p. 2199).

## **2. How Might Rule 1001 Give Market Power to DCO-Affiliated SDRs?**

Given the Commission requirement that all data for a given swap be held by the SDR to which the initial data for the swap were reported, an SDR may have some degree of market power with respect to activities after that initial reporting. For example, suppose that the initial reporting party negotiates a low price for an SDR to accept the data to be reported by that party; this negotiation may or may not cover prices to be charged by the SDR for continuation data or for data access. A change in the reporting status of a party (such as is implied by CME's proposed Rule 1001) might therefore affect the prices that the party would pay for various services.

In order to evaluate the effect of CME's proposed Rule 1001 on competition, the Commission should consider the various revenue and pricing options available to different SDRs and how the proposed Rule 1001 would change those revenues and pricing options. For example, a swap dealer may be able to negotiate with an SDR that it can choose (in competition with other SDRs), but it may be unable to similarly negotiate with a DCO that will choose itself as the SDR.<sup>7</sup> Of course, as the Commission has noted, it is possible that DCOs may have cost advantages in self-reporting their own cleared transactions; if so, then these cost advantages could lead to pricing advantages in data reporting for the transactions in question, even without Rule 1001.

## **3. Should Rule 1001's Tying between Clearing and SDR Services Be Considered Anticompetitive?**

CME's Proposed Rule 1001 amounts to tying: a would-be customer for clearing services (the tying good) for any swap transaction would be unable to use those services without also restricting it to using CME's SDR services for those same transactions. Putting aside whether tying should be judged on a *per se* or rule of reason standard, it can be seen here that volume diverted to CME's SDR would be unavailable to other SDRs. The provision of SDR services is likely to exhibit economies of scale (SDRs with large volumes will have lower average costs than those with small volumes) and scope (SDRs with large volumes of swap data to sell to third parties will be more successful than those with small volumes). As a result, by diverting volume from other SDRs to itself (and this diversion is the purpose of the tie), CME will make it more difficult for other SDRs to succeed in the marketplace.<sup>8</sup>

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<sup>7</sup> We understand that for a cleared swap where a dealer trades with a customer counterparty, the customer, not the swap dealer, chooses the clearinghouse. Under Rule 1001, the customer's choice of CME as the clearinghouse would effectively choose the CME SDR for transaction reporting.

<sup>8</sup> Such a tie can possibly have further effects in clearing itself. For example, if swap dealers want to concentrate their data in a small number of SDRs (in order to simplify their access to their own data), then swap dealers who are unable to choose their own SDRs for transactions that they clear on CME might therefore choose to use the CME-SDR for other transactions as well, such as transactions for which the swap dealers might otherwise have used a different DCO for clearing. The potential impacts of the tie embodied in CME's proposed Rule 1001 therefore might be seen not only in SDR markets but also in clearing markets.

In order to evaluate the effect of CME's proposed Rule 1001 on competition, the Commission should consider the potentially anticompetitive effects of the tying arrangement that would be put in place by Rule 1001. Such an analysis would consider the extent of market power that CME has (or would have) in clearing relevant swaps, the effect of the tie on competition in markets for SDR services, and whether those effects in turn could increase CME's market power in clearing itself.

The Department of Justice ("DOJ") has previously commented on the vertical integration and lack of competition in futures markets, stating that "exchange control over open interest and clearing have impeded entry and the development of meaningful competition in execution services."<sup>9</sup> Allowing tying of clearing and SDR services could increase the existing vertical integration, potentially further impeding competition among commodities exchanges and clearinghouses. See further discussion in the cost-benefit section below.

#### ***4. Would Rule 1001's Tying between Clearing and SDR Services Introduce Barriers to Entry for Would-Be SDR Competitors?***

The fact that CME's proposed Rule 1001 would involve a tie between clearing and SDR services might lead some analysts to conclude that no real problem exists—SDRs who want to compete with the CME-SDR would merely need to integrate into clearing services. If entry into clearing is trivially easy, then such a position might have merit. If, however, entry into clearing is expensive, competition in clearing is difficult (e.g., due to entrenched positions of incumbents), or both, then such a position would have no merit; it would ignore the substantial entry barriers into the combined clearing-SDR space being imposed on other would-be SDRs by CME's tie.

#### ***5. Would Rule 1001 Lead to Tipping toward DCOs in General (and CME in Particular) in SDR Services?***

Swap dealers and major swap participants (and possibly others) are likely to want to track their own exposures to economic and counterparty risks from their swaps. To do so, they will need access to information that is similar to what the Commission wants on their swaps. They might choose to keep track of this information themselves, to use particular SDRs to maintain this information for them, or to contract with other parties to maintain this information for them.<sup>10</sup> A market participant may also choose to outsource to its SDR the maintenance of its required trading records, as opposed to maintaining internal records for extended periods of time after a transaction has matured. It seems clear that such a market participant would prefer to deal with as few SDRs as it can, in order to minimize the effort and expense of obtaining the complete, up-to-date regulatory data on its swaps.

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<sup>9</sup> DOJ comments on Review of the Regulatory Structure Associated with Financial Institutions (TREAS-DO-20070018), January 31, 2008.

<sup>10</sup> The Commission has recognized (§45.9) that market participants may want to use third parties to facilitate their provision of data to SDRs. Federal Register, Vol. 77, No. 9, Friday, January 13, 2012.



It therefore seems likely that only a small number of SDRs will succeed in the marketplace, even in a competitive marketplace. That is, even a competitive market might “tip” to a small number of SDRs. To some extent, the Commission has recognized this possibility. In rejecting mandatory reporting of cleared swaps to DCO-SDRs, as quoted above, “The Commission also believes that it would make DCOs collectively, and could in time make a single DCO-SDR, the sole recipient of data reported concerning cleared swaps.”<sup>11</sup>

CME’s proposed Rule 1001 could well have impacts much like those of mandatory reporting to a DCO-SDR. Both versions of reporting for cleared transactions, however, could go beyond making “DCOs collectively” the “sole recipient of data reported concerning cleared swaps.” Instead, both versions of reporting for cleared transactions could make “DCOs collectively” (and possibly CME in particular) the “sole recipient” (or at least the major recipient) of data for *all* swaps, not just for cleared swaps. That is, the reporting changes intended to be brought about by CME’s Rule 1001 could substantially concentrate swap data (not just data on swaps cleared by CME) in the CME-SDR. This means that the tying under CME’s Rule 1001 could cause the market to tip to an outcome that differs from the competitive outcome.

A related issue is whether such tipping toward the CME-SDR, if it occurs, would be essentially irreversible. For example, suppose that the Commission permits CME to go forward with Rule 1001. CME’s clearing customers might then invest primarily in connections to the CME-SDR rather than in connections to other SDRs. If the Commission later reverses its decision concerning Rule 1001, CME’s SDR customers may then find it cost-effective to continue using the CME-SDR rather than to make additional investments in connections to other SDRs. Under these circumstances, the additional volume that CME would gain from the temporary operation of Rule 1001 might have a long-lived effect on the ability of other SDRs to compete with the CME-SDR.

In order to evaluate the effect of CME’s proposed Rule 1001 on competition, the Commission should consider the extent to which the SDR marketplace might be susceptible to tipping toward a dominant SDR provider and the extent to which CME’s proposed Rule 1001 would take advantage of any such susceptibility.

## ***6. What Is Happening and Will Likely Happen in the Marketplace?***

We understand that some data reporting for swaps is already taking place. The Commission should review and consider the initial developments that have occurred, or are occurring, in the market for SDR services. Market participants have already taken significant actions to prepare to report transactions and are already reporting transactions. Understanding these initial developments in the reporting for each of the different types of swap products may help the Commission understand the evolving competitive outcome and how Rule 1001 may alter that

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<sup>11</sup> Federal Register, Vol. 77, No. 9, Friday, January 13, 2012, p. 2149.

outcome by tying SDR services to DCO clearing of trades. We also understand that in 2013 mandatory clearing of major categories of swaps will be phased in, with additional data reporting on swaps also being phased in. The Commission should consider how markets for DCO and SDR services are likely to be structured after these regulatory phase-ins. The Commission would then be in a position to also examine how, if SDR services are allowed to be tied to clearing services, future implementation of data reporting regulations and mandatory clearing of some swaps would affect developments in the provision of SDR services.

## IV. Cost-Benefit Issues Related to Rule 1001

### A. Background

Section 15(a) of the Commodity Exchange Act (CEA) requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act.<sup>12</sup> Such assessments need to be conducted by the Commission with respect to the following “areas of market and public concern”:<sup>13</sup>

1. protection of market participants and the public;
2. efficiency, competitiveness and financial integrity of futures markets;
3. price discovery;
4. sound risk management practices; and
5. other public interest considerations.

These “areas of market and public concern” serve as the primary motivation and guidance for the identification and analyses of the various economic cost, risk and benefit issues in this section of the submission. Certain cost-benefit issues relate to more than one of the five “areas of market and public concern” listed above, or indeed may transcend all these issues together. Other cost-benefit issues can be more readily classified under a specific “area of market and public concern.” As such, we have organized this analysis by first addressing general cost-benefit issues related to the imposition of Rule 1001. We then address the more specific cost-benefit issues of Rule 1001 as these relate to specific “areas of market and public concern.”

As explained in the following sections, there are several different types of stakeholders in the provision and use of SDR services and/or SDR data sales, including regulatory agencies, swap market participants, and non-counterparty SDR data purchasers and data vendors, which could incur incremental costs and face heightened risk as a result of the imposition of Rule 1001. While certain cost savings have been posited by CME, it is not clear how much of any such DCO

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<sup>12</sup> “A Review of Cost-Benefit Analyses Performed by the Commodity Futures Trading Commission in Connection with Rulemakings Undertaken Pursuant to the Dodd-Frank Act”, Office of the Inspector General of the Commodity Futures Trading Commission, June 13, 2011, p. 3.

<sup>13</sup> Ibid.

cost savings or efficiencies would be passed along to SDR service customers or SDR data purchasers. The Commission should consider whether such savings can justify any incremental costs and risks of Rule 1001, in particular the additive costs and risks of compliance for reporting parties.

## **B. General Cost-Benefit Issues**

### **1. Potential Cost of Implementation Savings by Incumbent DCOs**

While CME has argued that a DCO like itself is the “easiest, fastest, and cheapest” provider of SDR services for the trades it clears, it is important to consider the costs to the buyers of SDR services as well as the SDRs’ costs of providing them. Whether or not lower costs for the DCOs will translate into materially lower costs for SDR service customers remains unclear. As we address in our discussion of antitrust concerns, Rule 1001 raises the possibility that DCOs will obtain substantial market power in SDR services and be able to raise the price of SDR service (and possibly also of data sales) above competitive levels. In that event, the DCOs’ lower cost of providing SDR services would likely translate into higher profits for DCO-SDRs but is unlikely to translate into lower costs to its customers for SDR services.

*As such, the Commission should consider whether the potential for some undisclosed amount of cost savings by DCOs can be justification alone for the proposed rule when the potential for market power is introduced to the market for SDR service and market data customers/vendors. To do this, the Commission should endeavor to independently measure the potential cost savings by DCOs in providing SDR services and estimate how much of that savings would be transferred to the market via lower SDR service pricing, lower market data pricing for SDR customers. Any estimated cost savings should be weighed against an estimate of the higher SDR service pricing and market data pricing which may result if Rule 1001 enables DCOs to gain market power.*

**Areas of Market and Public Concern:** (1) protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets

**Potentially Affected Parties:** Swap market participants, non-counterparty SDR data purchasers and data vendors, Non-DCO SDRs, DCOs

### **2. Bolstering Vertical Integration in the Trade Execution and Clearing Space**

DOJ has previously commented on the winner-take-all nature of futures markets, where a single exchange ends up with an overwhelming share of liquidity and open interest, and stated that competition occurs primarily in the immediate wake of the introduction of a new contract. DOJ has attributed this to “the control exercised by futures exchanges over clearing services”—very close to bundling—in contrast to equity and options exchanges, which do not control open interest, fungibility or margin offsets. It noted that concentration has been avoided in other “financial markets where regulatory policy facilitates competition among exchanges.”

DOJ further argued that all efforts at entry into existing financial futures markets with competing products had failed in the previous decade, although they induced temporary competitive responses from the dominant exchanges. It found that entry efforts, while unsuccessful, resulted in substantial beneficial effects: lower prices, increased innovation, or expanded choice. DOJ further noted that “exchange control over open interest and clearing have impeded entry and the development of meaningful competition in execution services.”<sup>14</sup>

As such, the Commission should consider *whether allowing DCOs to add to their existing vertical integration in the trade execution and trade servicing space further increases the barriers to entry for commodities exchanges or commodities clearinghouses and if it would create barriers to entry for independent SDRs*. The Commission should perform a study to determine if additional vertical integration via tying of SDR services to execution and clearing services would have an impact on competition in existing execution and clearing services markets.

**Areas of Market and Public Concern:** (1) protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets

**Potentially Affected Parties:** Swap market participants, non-counterparty SDR data purchasers and data vendors, Non-DCO SDRs, DCOs

### ***3. Regulatory Picking of the Winners and Losers in Ancillary Trade Services Markets***

While, even in an initially competitive market, there may be a tendency for SDR market participants to select a few dominant SDR service providers, or perhaps ultimately matriculate to only one SDR, it is not clear why regulators would want, or should, act to limit competition at the outset of new regulation.

As such, the Commission should consider *whether regulatory agencies should have the power, and use any such power, to effectively choose the winner (or at least influence it, by allowing tying) in trading markets or if it should allow competition and a market-based determination of the selection of providers of services such as SDRs*. The Commission should review the extent to which DCOs have market power in clearing for the relevant transactions and how Rule 1001 would affect behavior by customers, competition in the SDR space, and competition in the clearing space. See our discussion of antitrust issues for greater detail.

**Areas of Market and Public Concern:** (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets

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<sup>14</sup> DOJ comments on Review of the Regulatory Structure Associated with Financial Institutions (TREAS-DO-20070018), January 31, 2008.

**Potentially Affected Parties:** Swap market participants, non-counterparty SDR data purchasers and data vendors, Non-DCO SDRs, DCOs

## **C. Specific Cost-Benefit Issues**

### **1. *Would systemic risk and market oversight surveillance efforts be affected by having the DCO be the reporting entity?***

Per CME's proposal, DCOs would always be the reporting entity for swap counterparties, even if the original swap contract was formed between two SD counterparties. Under such a framework, the DCOs would fulfill the reporting requirements for all transactions that they clear, and no other entities would be reporting transactions involving the DCO. In addition, the DCOs themselves bear substantial counterparty risk in the swaps and derivatives markets and pose potential default risks.

When considering Rule 1001, the Commission should analyze *if the proposed framework where DCOs take on the reporting requirements that would otherwise fall to an SD/MSP (major swap participant) would have an adverse impact on systemic risk monitoring and market surveillance efforts.* The Commission should also analyze the systemic risk impacts of forcing all cleared swap reporting to come from entities that are large and systemically important market operators who are exposed to a large network of large trading counterparties.

**Areas of Market and Public Concern:** (2) efficiency, competitiveness, and financial integrity of futures markets

**Potentially Affected Parties:** Swap market participants, DCOs, Non-DCO SDRs

### **2. *Fragmentation of SD/MSPs records (between DCOs and among independent SDRs) when they might otherwise all gravitate to one SDR per reporting entity***

It is likely that, if given the choice, a reporting SD or MSP would opt to report all their transactions to one SDR. Forcing reporting entities' trades to the DCOs would result in forced separation of these entities reportable transactions when they would otherwise reside in one SDR.

When considering Rule 1001, the Commission should analyze *if such forced fragmentation is desirable from the SD/MSP perspective, or if it has potential adverse consequences to the goals of the SDR program.*

**Areas of Market and Public Concern:** (1) protection of market participants and the public

**Potentially Affected Parties:** Swap market participants, DCOs, Regulatory Agencies

### **3. Higher costs to swap counterparties that would otherwise be the reporting counterparty who elect an SDR other than their DCO**

Those counterparties that have the right to elect the SDR for a trade and choose to have duplicate copies sent to their SDR of choice will incur higher costs as a result of Rule 1001. They will first have to pay a price for clearing that embeds the DCOs SDR charge. Based on CME's proposal, they will then incur additional fees to have a duplicate copy sent to their SDR of choice. Of course, they will also have to pay for having the duplicate transaction record maintained at their SDR of choice. If DCO-SDRs obtain market power, as discussed in the antitrust section and above, a resulting increase in the cost of the tied clearing and SDR services would further increase these costs.

When assessing any potential cost savings under Rule 1001, *the Commission should also weigh the additional costs that the reporting counterparty would incur if it chooses to use an SDR other than the DCO and therefore maintain "duplicate" and original trade records.* The Commission should independently estimate these additional costs, and compare to the potential cost savings measured for incumbent DCOs.

**Areas of Market and Public Concern:** (1) protection of market participants and the public

**Potentially Affected Parties:** Swap market participants

### **4. Sensitivity of SD/MSPs to having their transaction data automatically deemed "commercial and business use" and publicly sold/disclosed by the DCO**

Under its proposal, CME has presumed to take on the rights of the reporting party for the swaps which are cleared through its DCO. By taking on the rights of the reporting party, CME may also seek to control whether the data fields from a swap in its SDR could be made commercially available for sale to the public. The loss of the SD/MSP ability to control whether its swap data are sold may be detrimental to these entities. SDs/MSPs presumably would not want to cede control on an issue that raises both commercial sensitivities of having their data available for public purchase as well as the loss of any resale value of their data.

When considering Rule 1001, *the Commission should analyze the potential adverse impacts to SD/MSP of their ceding control of the commercialization of their data residing at DCO SDRs under this proposed framework.*

**Areas of Market and Public Concern:** (1) protection of market participants and the public; (5) other public interest considerations

**Potentially Affected Parties:** SD/MSP

## **5. Potential for inconsistent/inaccurate records between official and duplicate copies**

Any data reporting process raises the potential for operational risk. Operational risk can manifest in the form of inaccurate records at initial trade entry as well as in ongoing data maintenance and storage deficiencies.

When considering Rule 1001, *the Commission should analyze the potential operational risks associated with duplicate records and, in particular, analyze the amount of additional operational risk duplicate records may pose.*

**Areas of Market and Public Concern:** (1) protection of market participants and the public; (4) sound risk management practices

**Potentially Affected Parties:** Swap market participants, Regulatory Agencies, non-DCO SDRs, DCOs

## **6. Additional data re-aggregation costs for regulatory agencies querying and gathering data in a targeted regulatory collection and review process**

When using data stored in SDRs, regulatory agencies may have to collect data across several SDRs in order to arrive at a complete data set. Depending on how the data are collected and reprocessed by the regulators, the prospect of having certain SD/MSPs trades fragmented across several DCOs, and the introduction of potential duplicate records, may add to data aggregation costs and risks.

When considering Rule 1001, *the Commission should analyze the potential additional costs and risks associated with regulatory agencies' re-aggregating reported data when conducting reviews and analyses of swap market participants' activities.*

**Area of Market and Public Concern:** (5) other public interest considerations

**Potentially Affected Parties:** Regulatory Agencies

## **7. Additional re-aggregation costs for SDs/MSPs gathering their SDR swaps data in a regulatory collection/review process**

An SD/MSP may have to collect data across several SDRs in order to arrive at a complete data set of its reported trades. It follows that a SD or MSP would want to aggregate its trading data in order to form the same pool available to the regulator. If the SDs or MSPs data are forced to be fragmented across several DCOs, this fragmentation and the presence of duplicate trades may add to data aggregation costs and risks.

When considering Rule 1001, *the Commission should analyze the potential additional costs and risks to SDs and MSPs who will likely be re-aggregating data when conducting their own reviews and analyses of their reported swap market data.*

**Area of Market and Public Concern:** (1) protection of market participants and the public;  
(5) other public interest considerations

**Potentially Affected Parties:** SD/MSPs

***8. SD/MSPs with on-going valuation requirements face redundant costs of providing ongoing valuations and lifecycle amendments at multiple SDRs***

Those SD/MSPs that elect an SDR other than the DCO-SDR that cleared their swap would face costs and risks associated with providing valuations to several SDRs, rather than reporting only to the SDR of their choice. Maintaining multiple daily valuation feeds may raise the cost and risks of compliance for reporting counterparties.

When considering Rule 1001, *the Commission should analyze the potential additional costs and risks to SD/MSPs that would be forced to maintain ongoing valuation systems and processes with several different SDRs.*

**Areas of Market and Public Concern:** (1) protection of market participants and the public;  
(5) other public interest considerations

**Potentially Affected Parties:** SD/MSPs



## Appendix A: Contact Information

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## Appendix B: List of Acronyms

|      |                                      |
|------|--------------------------------------|
| CME  | Chicago Mercantile Exchange          |
| CFTC | Commodity Futures Trading Commission |
| SDR  | Swap Data Repository                 |
| DCO  | Derivatives Clearing Organization    |
| SEF  | Swap Execution Facility              |
| DCM  | Designated Contract Market           |
| OTC  | Over the Counter                     |
| PET  | Primary Economic Terms               |
| CEA  | Commodity Exchange Act               |
| DOJ  | Department of Justice                |
| SD   | Swap Dealer                          |
| MSP  | Major Swap Participant               |