DTCC Data Repository
55 Water Street, 19th Floor
New York, NY 10041

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:

For and on behalf of the Board of DTCC Data Repository (U.S.) LLC ("DDR" or the "Company"), I submit this letter to the Commodity Futures Trading Commission ("CFTC" or "Commission") in response to its request for public comment on the Chicago Mercantile Exchange Inc.'s ("CME") petition for approval of a rule ("Proposed 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").

These firms have significant concerns with CME's Proposed Rule 1001. Should the Commission allow the adoption of the proposed rule: (i) it will erase significant efforts to develop and implement the Dodd-Frank trade reporting regime; (ii) it will run contrary to the fair and open access principles of the Commodity Exchange Act ("CEA"), (iii) DTCC Deriv/SERV LLC, the Company and firms will lose the investment of considerable time and resources spent in preparation for compliance with the existing reporting framework; and (iv) the financial markets will be susceptible to diluted systemic risk management capabilities, threatening the overall safety and soundness of the financial system.

The absence of specificity with respect to the day-to-day operational implications, including the fee structure and practical functionality, of Proposed Rule 1001 makes it difficult for affected market participants to provide meaningful, detailed comments on Proposed Rule 1001. The Commission's rules require it to not approve a new rule if it is "inconsistent with the [CEA] or the Commission's regulations."[2] As explained below, many Board members' firms have the following broad concerns with respect to the rule, which identify inconsistencies between Proposed Rule 1001 and the CEA and implementing regulations.

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[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] 17 C.F.R. 40.5(b).

I. PROPOSED RULE 1001 WILL ERASE SIGNIFICANT EFFORTS TO DEVELOP AND IMPLEMENT THE DODD-FRANK TRADE REPORTING REGIME

Many firms represented on the Company's Board have participated with CME in weekly calls with the Commission and the International Swaps and Derivatives Association ("ISDA"), on which the SDR selection was intensely debated with CME and the Intercontinental Exchange, Inc. ("ICE"). During these calls, representatives from customer firms of CME and ICE expressed a desire for a different approach than the one presented by CME and proposed in Proposed Rule 1001. Specifically, firms have opposed any bundling arrangement that frustrates their ability to select the SDR that will receive and maintain their swap data. In the last ten months, these firms have invested significant resources in governance, technology, operations, legal structure, and other areas to ensure a smooth transition.

It is for several reasons that many Board members' firms, which do business in multiple jurisdictions, have worked over the last year to create a robust and open global reporting environment that operates efficiently on an international basis, and ensures compliance with multiple reporting requirements. First, this approach mitigates the complexities of different jurisdictions' swap data reporting rules and is a more cost efficient alternative to several independent reporting platforms. Second, the reporting system also reduces burdens to regulators by efficiently netting and analyzing the data set (for U.S.-reported data by itself, or any wider global data set, that looks beyond a single DCO's exposures), a cost burden that ultimately must be borne by market participants. Finally, these efforts attempt to create an operating environment open to many service providers based on participant consent, and thereby fully in line with international standards,[3] rather than being conditioned on use of another service. This design intentionally protects each user's choice to select its service provider based on its own criteria.

To be clear, Board members' firms do not oppose the CME's operation of a DCO and an SDR. However, the bundling of clearing and trade reporting services, a concept previously considered and rejected, appears to be the solution offered to remedy an unidentified problem. While some customers might find this arrangement convenient and may choose to use CME for clearing and trade reporting, it certainly should not be forced upon those that prefer other service providers.

II. PROPOSED RULE 1001 VIOLATES STATUTORY PRINCIPLES OF FAIR AND OPEN ACCESS

The CEA mandates that DCOs allow fair and open access to clearing services for participation and membership. Specifically, the CEA's core principles for DCOs provide, "[t]he participation and membership requirements of each derivatives clearing organization shall – (I) be objective; (II) be publicly disclosed; and (III) *permit fair and open access*"[4] (emphasis added). With respect to the

[3] INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS, PRINCIPLES FOR FINANCIAL MARKET INFRASTRUCTURES (Bank for International Settlements and International Organization of Securities Commissions) (2012), *available at* http://www.bis.org/publ/cpss101a.pdf.

[4] CEA § 5b(c)(2)(C)(iii).

statutory requirement to permit fair and open access, the Commission has emphasized the importance of such principles in promoting competitive markets.[5]

Proposed Rule 1001 would condition a counterparty's access to CME's DCO on agreeing to report swaps to CME's affiliated SDR. Limiting a customer's choice of clearinghouse because of its SDR preference artificially confines that counterparty's ability to access a service that is required by the CEA to be fair and open.

Further, if Proposed Rule 1001 is adopted, firms may be unable to choose to report cleared swap transaction data to an independent SDR. CME states in its letter accompanying Proposed Rule 1001 that, "[t]he rule provides that all swaps cleared by CME's Clearing Division ("CME Clearing") shall be reported by CME Clearing to CME's swap data repository ("SDR")."[6] In the same letter, CME states that CME Clearing "should be the only entity with reporting obligations" regarding swap transactions it clears.[7] This language seems to be in contrast to the aforementioned fair and open access requirements mandated of DCOs.

III. In Preparation for Compliance, Firms Have Invested Significant Time and Resources Working with their Selected SDR

Market participants embraced the trade repository component of the G20 reform, and actively led development of a framework that would support high quality data, increased transparency with respect to publically available information, and efficient, low cost access for regulators to information. Proposed Rule 1001 will harm the global effectiveness of this reform. The CME proposal will prevent access to consolidated data envisaged by the G20 reform. CME, a dominant clearing house, will use its unique position to prevent large firms from reporting and controlling their swaps transaction data in an efficient manner. As a result, regulators will receive and have access to fragmented data split between multiple SDRs. Rule 1001 will also increase the likelihood of duplicative reporting and complexity, as the proposed structure will not meet international

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[5] In the preamble of the proposed rule on Risk Management Requirements for Derivatives Clearing Organizations, the Commission cites a November 2004 IOSCO report titled "Recommendations for Central Counterparties," a portion of which is mirrored in the statutory language of the DCO core principles. Specifically, the Commission cites from the report, "a CCP's participation requirements should be objective, publicly disclosed, and permit fair and open access . . . to avoid discriminating against classes of participants and introducing competitive distortions, participation requirements should be objective and avoid limiting competition through unnecessarily restrictive criteria, thereby permitting fair and open access within the scope of services offered by the CCP. Participation requirements that limit access on grounds other than risks should be avoided." (emphasis added). Risk Management Requirements for Derivatives Clearing Organizations, 76 Fed Reg. 3,698, 3,701 n.21 (Jan. 20, 2011) (citing *Recommendations for Central Counterparties*, CPSS Publ'n No. 64 (Nov. 2004), *available at:* http://www.bis.org/publ/cpss64.pdf).

[6] See CME Comment Letter at p. 1.

[7] *Id*; In its cover letter accompanying Proposed Rule 1001, CME suggests that through the clearing process, the original trade is terminated, resulting in a new swap whereby the original reporting obligation resets, and CME, as the DCO, becomes the counterparty with the right to select the official SDR. However, under Part 45, for reporting purposes, novation to the DCO through clearing does not constitute a new swap that terminates the original trade, and the DCO upon clearing may not insert itself as the entity with the right to select the official SDR – a right which rests with the original counterparty to the trade.

standards. If this proposed rule is adopted, other registered DCOs are likely to implement a similar requirement, further amplifying these negative consequences.

The representations of CME imply that it is the only party that would be impacted by this rule, but this assertion is not correct. All swap dealers and major swap participants have continuation data reporting obligations and will have to build appropriate control and reconciliation infrastructures to connect with CME's SDR infrastructure, an infrastructure that should be operationally separate from their DCO and execution platforms.

Dodd-Frank includes several provisions that address swap dealer and major swap participants' recordkeeping and reporting requirements. Specifically, the statute requires that swap transactions be reported to SDRs and records 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.

As market participants responsible for meeting these recordkeeping and reporting requirements,[8] many firms have been engaged in extensive efforts to prepare for compliance. In undertaking these extensive preparations, many firms have engaged with The Depository Trust & Clearing Corporation ("DTCC") in the development of DDR. Such engagement followed an industry open selection processes undertaken by ISDA and the Association of Financial Markets in Europe ("AFME"). ISDA and AFME reviewed several vendor SDR solutions, including the solution offered by CME, and selected DTCC and the DDR on merit.

For a number of months, the firms have undertaken the necessary steps to prepare to utilize the SDR that, in our determination, has the best systems in place. As part of firms' efforts, the firms have worked closely with DDR to establish detailed reporting templates and protocols, testing reconciliations with SDR data output formats, real-time messaging of submissions (to all parties), and scheduled full portfolio reports, ensuring full audit trails exist on transactions, including all necessary updates to reports on the acceptance of a swap in clearing. Additionally, firms have established ongoing valuation reporting processes with data feeds for reported trades.

Further, firms have focused on harmonization and standardization on a cross-jurisdictional basis, working to establish open standards for reporting and commonality – an effort aimed at aiding market participants in fulfilling reporting obligations and assisting regulators globally in analyzing data. Many foreign regulators have an interest in data from SDRs, but have to receive an indemnification agreement from foreign regulators requesting access to data in the SDR first.

[8] The Dodd-Frank Act requires the parties to each swap (whether cleared or uncleared) to report certain information to an SDR. See CEA § 2(a)(13)(G) (stating, "[e]ach swap (whether cleared or uncleared) shall be reported to a registered swap data repository"); see also CEA § 2(a)(13)(F) (noting, "[p]arties to a swap (including agents of the parties to a swap) shall be responsible for reporting swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.")

Allowing one DCO to require swaps reporting to its SDR will fragment the data among various SDRs, creating major challenges for market participants with regulatory responsibilities across jurisdictions and could impinge on foreign regulator access.

The due diligence that firms have undertaken has given such firms comfort in, among other things, DDR's functionality, business continuity planning, governance arrangements, capitalization, and scalability. Firms also have confidence in utilizing DDR's critical risk management functions, including reconciliation. In contrast, there has been virtually no information about CME's SDR, and prospective customers have not spent any time or resources planning for reporting to CME's SDR. Many firms therefore will not be sufficiently confident reporting data to an SDR for which connectivity is not tested and consistently available. A last-minute change to the reporting mechanisms, as requested by CME, risks jeopardizing many firms' ability to report in accordance with the Commission's required timelines and will likely result in duplicative reporting to meet internal requirements. As a result, if CME requires swap data reporting to its own SDR, or any SDR other than DDR, it will be impossible for many firms to be confident that they can timely comply with the swap data reporting requirements which may also impact firm's ability to understand if they have accurate trade information across multiple SDRs.

Accurate public and regulatory reporting of market exposures will be extremely difficult to achieve if these firms must report to multiple SDRs; such a requirement would result in the introduction of additional points of failure and other risks in an already complicated system. Large, systemically important financial institutions will have global reporting obligations, clear at multiple clearinghouses, and engage in significant bilateral trading. Given this framework, many firms strongly believe that having the ability to elect to store their respective trade data in a single trade repository is the only way to ensure that there are the proper controls around the accuracy and completeness of reported information.[9] Neither CFTC nor other SRO rules should frustrate any single market participant's efforts to fulfill its required regulatory reporting and recordkeeping obligations under Dodd-Frank or to improve the institution's own risk management functions and processes. Yet, this is exactly what CME's proposed rule threatens to do by fragmenting a firm's trading activity, which could ensure that CME's captive SDR is as dominant in the provision of SDR services as it is in the provision of clearing services.

IV. THE REPORTING FRAMEWORK MUST PROMOTE SYSTEMIC RISK MANAGEMENT AND A SOUND MARKET INFRASTRUCTURE

The G20 called for swaps to be reported to SDRs for systemic risk management purposes. Fragmentation of data defeats this purpose. Systemic risk analysis requires a view across the entire system to correctly determine centrality and, hence, systemic importance. This is particularly important when systemically important participants will operate with multiple DCOs (and,

[9] The opportunities for misreporting and misunderstanding the import of reported information are myriad. For this reason, the Commission, in part 45, has 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.

potentially, multiple FCMs). With increased collateralization and clearing, liquidity risks at clearing members and participants become significant to the system.

Fragmentation of data also increases the potential for duplication and the "gross-up" of data by not fully recognizing netting in positions. The public dissemination of such distorted data risks overstating liquidity, exacerbating market stress and could cause market destabilization. Therefore, reducing complexity and ensuring accuracy of data should be of primary importance to global regulators. The data fragmentation that will arise from the CME's Rule 1001 will hinder the risk management benefits that could come from a single, global data repository. The recent Joint Statement from regulators explicitly referred to a level playing field for market participants, intermediaries and infrastructures.[10] Further, improving the infrastructure of the swaps market on an open access basis will drive safety and soundness benefits in processes like portfolio reconciliation and collateral optimization.

Trade repositories serve as powerful tools for recording swap transaction data and permitting access to that data under the principles of fair and open access. As market participants, firms view trade repositories as performing a pivotal role in the establishment of a safer and more efficient market. To date, trade repositories have facilitated product and process standardization and expedited the introduction of other risk reducing processes, including central clearing, portfolio reconciliation, and portfolio compression. Firms expect trade repositories will continue to develop further risk mitigation, including more efficient credit risk, collateral, and margin processes, including collateral optimization, movement, and portability. However, such a framework will only persist in an environment that promotes competition among service providers and open and fair access to trade repositories.

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For the reasons detailed above, for and on behalf of the Board of the Company, I urge the Commission to reject the CME's Proposed Rule 1001. The market behavior sought to be accomplished by CME's Proposed Rule 1001 must be prohibited. This position is not specific in any way to CME, but should be applied to any service provider looking to tie such mandated regulated services or to introduce a market structure that eliminates all option on the part of market participants to select such service providers as best suit their business and risk management considerations and regulatory compliance implementation plans. Thank you for your consideration of these comments.

Sincerely,

Michael V. Dunn, Chairman
DTCC Data Repository (U.S.) LLC

[10] Joint Press Statement of Leaders on Operating Principles and Areas of Exploration in the Regulation of the Cross-border OTC Derivatives Market, December 4, 2012, *available at http://www.cftc.gov/PressRoom/PressReleases/pr6439-12.*