CME Group

January 16, 2013

Ms. Sauntia S. Warfield
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

RE: Regulation 40.5 Request for Approval: Chicago Mercantile Exchange Inc. Submission # 12-391RC: Adoption of new Chapter 10 ("Regulatory Reporting of Swap Data") and Rule 1001 ("Regulatory Reporting of Swap Data")

Dear Ms. Warfield:

The Chicago Mercantile Exchange Inc. ("CME") submits this letter to the Commodity Futures Trading Commission ("CFTC") in support of its Amended Submission #12-391RC ("Proposal," attached for ease of reference) for approval of new Chapter 10 and Rule 1001 of CME Clearing's Rulebook. This letter addresses concerns raised by some commenters, especially the Depository Trust & Clearing Corporation ("DTCC"), and explains why those concerns are misguided, exaggerated or, in many cases, plainly wrong as a matter of law or fact. CME urges the CFTC to approve Rule 1001 without delay.[1]

In summary, Rule 1001 meets the standard for approval under the Commodity Exchange Act ("CEA") and CFTC Rules. Under CEA § 5c(c)(5)(A), the CFTC must approve Rule 1001 "unless the Commission finds that the new rule . . . is inconsistent with [the CEA and CFTC regulations]." *See also* 17 C.F.R. § 40.5(b). Nothing in the CEA or CFTC regulations is inconsistent with Rule 1001 because Rule 1001 merely identifies how a derivatives clearing organization ("DCO") that accepts swaps for clearing will discharge **its, and only its**, obligation under Part 45 to report the cleared swap data the DCO already maintains in its capacity as a DCO to a selected swap data repository ("SDR"). DTCC strains to find something in the CEA and CFTC regulations that is inconsistent with Rule 1001, but without distorting the meaning and import of Rule 1001, or the applicable law, it fails. Astonishingly, DTCC does not stop there; it further claims that CME would violate the antitrust laws by reporting cleared swap data it maintains in its DCO to its SDR as provided in Rule 1001. DTCC's complaints have no merit. Here, in brief is why.

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[1] CME first submitted Rule 1001 for CFTC approval on November 9, 2012. On December 6, 2012, we submitted an amended filing that thoroughly addressed concerns raised by DTCC about Rule 1001. On December 14, 2012, CME submitted a second amended filing to correct an inadvertent error in the December 6, 2012, filing.

1. Rule 1001 is entirely consistent with the CFTC's swap reporting rules.

Rule 1001 merely details how CME Clearing, as a DCO, is satisfying and will satisfy its reporting obligations under Part 45 of the CFTC's regulations for swaps that it clears. Part 45 requires all swap data to be reported to an SDR. Part 45 is silent on who chooses the SDR for cleared swaps, but nothing in the CFTC's regulations is inconsistent with a DCO choosing the SDR for cleared swaps. Rule 1001 thus fills a gap. In doing so, Rule 1001 is entirely consistent with CFTC regulations. Despite DTCC's contentions, Rule 1001 does not force counterparties to report to a "captive SDR." Nor does Rule 1001 create or increase any risk to the financial system.

a. Clearing extinguishes the original swap under CFTC and DCO rules.

A key objective of the Dodd-Frank Wall Street Reform and Consumer Protection Act is the reduction of credit risk through central counterparty clearing. By law, when a swap is accepted for clearing, that swap is "extinguished" and replaced by two new swaps. 17 C.F.R. § 39.12(b)(6). As CFTC Rule 39.12(b)(6) states, DCOs "shall have rules providing that, upon acceptance of a swap by the derivatives clearing organization for clearing . . . [t]he original swap is extinguished." The process by which the original swap is extinguished and replaced by two resulting swaps with the DCO as the buyer to the seller and the seller to the buyer of the original swap is the essence of central counterparty clearing. It is not, as DTCC has repeatedly suggested, a method to "pervert" or "subvert" the CFTC's reporting rules. *See* DTCC Comment Letter, at 17, 21 (January 8, 2013).

After the original swap is extinguished and replaced, it ceases to exist. As the CFTC staff noted in its guidance, "[o]nce novated, the original swap is accordingly terminated so that there are no additional reporting obligations with respect to the original swap beyond the date of execution and/or termination, whichever is later." *See* Frequently Asked Questions (FAQ) on the Reporting of Cleared Swaps – Revised, CFTC, at 2 (November 28, 2012).[2]

b. Under Rule 1001, CME Clearing simply chooses to report its cleared swap data to CME's SDR for the resulting swaps.

Rule 1001 does not restrict or otherwise impact any market participant's right to report data for an original swap to the SDR of its choosing under CFTC rules. When CME Clearing accepts the original swap for clearing, it will notify this original SDR that the original swap has been accepted for clearing and extinguished. The original SDR would publicly report this event as required by the CFTC's rules. No further reporting obligations exist – or logically could exist – for the original swap from that moment forward.

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[2] Available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/clearedswapreportingredline_fa.pdf.

As for the resulting cleared swaps, under Rule 1001, once a swap is accepted for clearing, CME Clearing would report creation and continuation data for the two resulting swaps and related cleared swap positions to CME's SDR. Pursuant to Rule 1001, upon request of CME Clearing's counterparty to a resulting swap, CME Clearing would send a report of the same data it reported to CME's SDR to an SDR chosen by the counterparty.

This reporting process is consistent with the CFTC's Part 45 reporting rules. The fact that original swaps that are submitted to clearing are terminated upon acceptance for clearing is unarguable. Any reporting process that does not account for these principles would not create an accurate audit trail. The process also is the most cost-effective way of implementing the CFTC's duplicative reporting requirements. The CFTC's regulations governing DCOs undoubtedly require CME Clearing to report to the CFTC the same substantive data for cleared swaps that DCOs are required to report under Part 45 to SDRs. *See* 17 C.F.R. § 39.19.[3] Yet, DTCC claims that if CME uses the process laid out in Rule 1001 to fulfill the CFTC's reporting requirements, CME would somehow reduce transparency and "introduce to the swaps market the very systemic risk sought to be mitigated through the creation of SDRs." DTCC Comment Letter, at 17 (January 8, 2013).

DTCC fails to provide any basis for how Rule 1001 would increase systemic risk. This is because **copying data from CME Clearing into CME's SDR, as Rule 1001 contemplates, does not create any risk, let alone systemic risk.** Moreover, as stated in the Proposal, CME Clearing has been reporting data for interest rate and credit default swaps that it clears to CME's SDR since the CFTC granted provisional registration to CME's SDR on November 20, 2012. Rule 1001 codifies this existing practice. No one has identified any systemic risk associated with this activity. Nor has anyone suggested how reporting to CME's SDR reduces transparency for Part 45 reports to the CFTC or other government officials. The CFTC has been able to access this cleared swap data through its authority to access the cleared swap data of a DCO and through its authority to access the cleared swap data through a registered SDR.

c. Part 45 allows DCOs to choose the SDR for cleared swaps.

The text of Part 45 is silent as to whether a DCO selects the SDR for cleared swaps. That said, the preambles to both Part 45 and Part 49 clearly contemplate that a DCO can do what CME Clearing has done here: adopt rules identifying the SDR to which it will report. As the CFTC stated in its preamble to Part 49, "the rules and regulations of a particular SEF, DCM or

[3] Specifically, CFTC Rule 39.19(c)(5) [Requested Reporting] states that, "Upon request by the [CFTC], a derivatives clearing organization shall file with the [CFTC] such information related to its business as a clearing organization, including information relating to trade and clearing details . . . ." With respect to recordkeeping, CFTC Rule 39.20(a)(1) states that "[e]ach derivatives clearing organization shall maintain records of all activities related to its business as a derivatives clearing organization" and clarifies that "such records shall include . . . records of all cleared transactions, including swaps."

DCO may provide for the reporting to a particular SDR." Swap Data Repositories: Registration Standards, Duties, and Core Principles, 76 Fed. Reg. 54538, 54569 (September 1, 2011). Rule 1001 does exactly that. The CFTC also stated in its preamble to Part 45 that, "[CEA] section 21(a)(1)(B) allows DCOs to register as SDRs, and that the 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." Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136, 2184 (January 13, 2012). By acknowledging that DCOs can register as SDRs and choose the SDR for cleared swaps, the CFTC's statements undercut DTCC completely. Thus, Rule 1001 is consistent with the CFTC's intent when it adopted Parts 45 and 49.

DTCC has attacked CME Rule 1001 by misconstruing Part 45's reporting regime to provide in all circumstances a seemingly absolute right of swap dealers and, in some instances, other counterparties to choose the SDR for reporting under Part 45. *See* DTCC Comment Letter, at 18-19 (January 8, 2013). These arguments ignore Part 45's actual provisions: Part 45 does not give swap dealers or other counterparties SDR choice in most scenarios. For example, a SEF will report creation data for swaps executed on its facility to an SDR of its choice. *See* 17 C.F.R. § 45.3(a). A DCM would similarly choose the SDR to receive the initial report of a DCM-executed swap. *See Id.* Thus, swap counterparties who transact on SEFs and DCMs will not be able to select the SDR of record for original swaps. Those swaps that are executed on SEFs and DCMs – for which swap dealers and other counterparties will not have any right to choose the SDR for Part 45 reporting under CFTC rules – will constitute a large part of the swap market when the CFTC's clearing mandates take effect. CFTC regulations also provide DCOs with the ability to select the SDR of record for original swaps that are executed "off-facility;" that is, even original swaps that are submitted within applicable clearing deadlines are reported to the SDR selected by the DCO. *See* 17 C.F.R. § 45.3(b)(1). Part 45 only reserves the right of a swap counterparty – including swap dealers – to select the SDR of record for bilateral, off-facility swaps that are not cleared. *See* 17 C.F.R. § 45.3(c). Nothing in Rule 1001 disturbs that right.

Current practice is instructive. Today, swap dealers are reporting original swaps to the SDR of their choice. Once the original swap is accepted for clearing by CME Clearing, it is extinguished and CME Clearing reports the resulting swaps to CME's SDR. No commenter has shown why that process is flawed or otherwise inadequate. It should be allowed to continue as codified in Rule 1001.

d. Rule 1001 does not force parties to report to a "captive SDR."

DTCC continues to misrepresent that Rule 1001 will force market participants to report to CME's "captive SDR." *See* DTCC Comment Letter, at 5 (January 8, 2013). As discussed, Rule 1001 does not restrict or impact any market participant's right to report data for an original swap to the SDR of its choosing under CFTC rules. Once a swap is cleared and extinguished, the Part 45 rules allow the DCO to choose the SDR to which the DCO will submit Part 45

reports for the resulting swaps. Swap dealers should not be required to make any reports to the SDR the DCO chooses.

Commenters and DTCC have questioned whether CFTC Rule 45.4(b)(2) causes swap dealers or major swap participants to report daily valuation data to CME's SDR. CME Clearing will provide daily valuation reports to CME's SDR under Part 45 and Rule 1001 and, in our view, the DCO's daily valuation should be sufficient. For now, of course, no swap dealers are required to provide valuation reports for cleared swaps because of the no-action relief the CFTC has provided. *See* Time-Limited No-Action Relief for Swap Dealers and Major Swap Participants from Compliance With Reporting Obligations Under 17 C.F.R. § 45.4(b)(2)(ii), CFTC Letter No. 12-55 (December 17, 2012). We support this decision and strongly suggest that the CFTC make the no-action relief permanent.[4]

If the CFTC decides not to extend or codify the no-action relief for swap dealers, CME's SDR is ready and able to accept valuation data reports from swap dealers and major swap participants if they disagree with the DCO's valuation. Our methods of accepting data do not require dealers or any other market participant to build or test elaborate connectivity technology and would not impose significant additional costs on these large entities.

2. Approving Rule 1001 will not violate the APA.

DTCC misses the mark by arguing that approving Rule 1001 would contravene the Administrative Procedure Act ("APA") by "effectively amend[ing] the CFTC's regulations." *See* DTCC Comment Letter, at 14 (January 8, 2013). Unlike CFTC regulations, any DCO's rules are of limited, not general, applicability. Thus, a DCO's rules cannot be mistaken for CFTC regulations and cannot be said to "effectively amend" the CFTC's regulations.

Although DTCC's APA allegations are not entirely clear, they may be nothing more than DTCC repackaging its concern that Rule 1001 is inconsistent with the CFTC's regulations. If so, the argument proves too much. The CEA plainly requires the CFTC to approve a DCO's new rule "unless" the rule is "inconsistent" with the CEA or CFTC rules. *See* CEA § 5c(c)(5)(A); *see also* 17 C.F.R. § 40.5(b). And, the APA requires the CFTC to act "in accordance with" the CEA. *See* 5 U.S.C. § 706(2)(a). Thus, the CFTC will not violate the APA if it simply applies the statutory approval standard.

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[4] As we noted in the Proposal, when the CFTC adopted the Part 45 rules, it expressed the intent to assign reporting duties to registered entities or swap counterparties that "have the easiest, fastest, and cheapest" access to the set of data in question. *See e.g.*, Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136, 2155 (Jan. 13, 2012). In the context of cleared swaps, this is unquestionably the DCO. The CFTC could give further effect to this policy by applying its Part 45 rules so that neither counterparty to an original swap would have any reporting obligations for resulting swaps and related positions.

3. Rule 1001 is the most efficient and cost-effective method of reporting cleared swaps.

Contrary to DTCC's statements, Rule 1001 will reduce, rather than raise, costs to market participants. CME Clearing already generates and maintains all records for all substantive data required to be reported to an SDR with respect to cleared swaps. *See* 17 C.F.R. § 39.20. Transferring these records to CME's SDR will require minimal costs, and CME's SDR has already determined not to charge for any mandatory reporting services through at least September 13, 2013. Market participants that elect to have CME Clearing report cleared swap data to an SDR in addition to CME SDR may be assessed a fee designed to cover costs we incur in making the report. We expect this fee to be modest. Market participants, of course, may avoid this fee (and any fees attendant to storing a duplicate copy of cleared swap data at the other SDR) by choosing not to request this service. We note that market participants that choose this service effectively will be deciding that their cleared swap data should be kept in triplicate, one copy at each of: CME Clearing, CME's SDR, and a second SDR.

4. Rule 1001 prevents data fragmentation.

Rule 1001 ensures that complete data for swaps cleared by CME Clearing will be retained in at least two places: CME Clearing and CME's SDR. As fully explained in our Proposal, the data will be retained in a way that provides full traceability back to the original swap, which may or may not be reported to CME's SDR.

If Part 45 was interpreted to prohibit CME Clearing from reporting data for resulting swaps to its SDR of choice (i.e., CME's SDR), then it would be possible that resulting swaps could be reported to differing SDRs by CME Clearing's counterparty to each leg of the novated swaps. This result, not CME Rule 1001, would lead to data fragmentation. In fact, if swap counterparties, rather than DCOs, were allowed to select the SDR for cleared swaps a swap counterparty could choose to report cleared swaps to multiple SDRs and result in obfuscation of such counterparty's true position at the SDR level (which could only be determined by looking at clearinghouse data). DCOs that clear swaps, such as CME Clearing, have access to all data for the swaps they clear. By allowing the DCO to choose the SDR for the resulting swaps, the CFTC will enable DCOs to prevent having this data set fragmented among multiple SDRs.

5. Rule 1001 does not allow for improper commercialization of data.

DTCC also erroneously claims that Rule 1001 violates the Rule 49.17(g) requirement that SDRs may not commercialize the swap data they accept. *See* DTCC Comment Letter, at 13 (November 20, 2012). DTCC's concern here stems from a backward understanding of Rule 49.17(g)'s application. Rule 49.17(g) applies only to SDRs and prohibits SDRs from using "for commercial or business purposes" the swap data that they accept and maintain. *See* 17. C.F.R. § 49.17(g). If DTCC has its way, and CME Clearing is forced to report its swap data to an unaffiliated SDR, then CME Clearing would be free to commercialize the swap data that it maintains as a DCO. However, under Rule 1001, with CME Clearing reporting to its affiliated

SDR, Rule 49.17(g) would restrict CME SDR from commercializing its data. By taking data that would not otherwise be subject to the commercialization restriction and placing the data into the hands of its SDR, thus making the data subject to the restriction, CME Clearing cannot be said to violate Rule 49.17(g).

6. Rule 1001 is consistent with the CEA's anticompetitive provisions and other U.S. antitrust laws.

DTCC's antitrust claim is based on a far-fetched allegation that Rule 1001 would result in a "tying" arrangement in violation of the antitrust provisions of the CEA and other antitrust laws. *See* DTCC Comment Letter, at 8 (January 8, 2013). Rule 1001 creates no tying arrangement and raises no other antitrust concerns. DTCC's astonishing view seems to be that CME's vertical integration with its organically grown (as opposed to acquired) SDR is itself somehow anticompetitive. However, both economic theory and antitrust doctrine have long recognized the efficiencies – particularly the elimination of double marginalization – that flow from vertical integration. As discussed in the preceding points, Rule 1001 will be a cost-effective and economically efficient means of satisfying CME Clearing's regulatory reporting obligation.

Unlawful tying occurs when a seller conditions the sale of a product in which the seller has market power (i.e., the tying product) on the buyer's purchase of a second product (i.e., the tied product) that the buyer does not want to purchase at all or may want to purchase elsewhere. *See Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 12 (1984). Thus, there are two fundamental requirements for a tying claim: (1) two separate products, and (2) coercion based on market power. Put together, the *sine qua non* of a tying claim is the ability of a seller to coerce a buyer into a second, unwanted transaction.

Here, it is difficult to distill DTCC's argument. DTCC seems to be asserting that CME Clearing has market power in the provision of swap clearing services (the tying service). Furthermore, DTCC seems to allege that CME Clearing is coercing swap market participants to purchase CME's SDR services (the tied service) in order to be able to purchase swap clearing services from CME Clearing, when swap traders would prefer to purchase the service of reporting the resulting swaps to DTCC or some other SDR.

a. There is no tying because DTCC has no evidence that CME Clearing has or would use market power to coerce market participants into using CME SDR.

The Supreme Court has made clear that "the essential characteristic of an invalid tying arrangement lies in the seller's exploitation of its control over the tying product to force the buyer into the purchase of the tied product." *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. at 12. DTCC has provided no evidence, nor can it, that CME Clearing has market power in the purported tying service, which would be the provision of swap clearing services. Nor has DTCC suggested that swap traders have no choice but to clear swaps through CME Clearing. For good reason. CME Clearing is one of several providers of swap clearing services registered with the

CFTC, and is not even the largest provider of such services. In fact, the CFTC has found that LCH.Clearnet clears 60% of all cleared interest rate swaps. *See* Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 47170, 47173 (Aug. 7, 2012). Thus, if any provider of swap clearing services could be said to have market power, it would be LCH.Clearnet, and it is extremely doubtful that CME Clearing has market power sufficient to support a tying claim. Fundamentally, CME's lack of market power in the alleged tying service (clearing services) precludes any tying claim against it under the antitrust laws.

b. There is no tying because Rule 1001 does not tie the sales of two separate products together.

DTCC has also not provided any evidence of a second, unwanted and coerced transaction for the tied service that swap market participants must purchase in order to obtain swap clearing services from CME Clearing.

DTCC's argument requires treating the regulatory reporting obligation that the CFTC imposes on DCOs as a separate, tied product for which there is a distinct demand function capable of yielding a price. *See Eastman Kodak Co. v. Image Technical Servs.*, 504 U.S. 451, 462 (1992) (two products element of tying claim met only if there is "sufficient consumer demand so that it is efficient for a firm to provide [one] separately from [the other]"). DTCC has not provided any facts or arguments, nor could it, to support the absurd notion that CME Clearing's regulatory reporting obligation is a product at all, let alone one that can be "tied." DTCC has not shown how CME can "sell" its regulatory reporting obligation or force someone to buy it.[5] Indeed, there is no second product at all between the market participants and CME Clearing. Instead, CME Clearing has an independent regulatory obligation to report to an SDR the resulting swaps to which it has become a counterparty through the DCO's novation process, and has chosen, through Rule 1001, to require CME Clearing to make those reports to CME SDR. As a result, in the absence of a second transaction in which CME Clearing requires swap market participants to pay a fee to CME Clearing to carry out its regulatory reporting obligations, there can be no tying claim under the antitrust laws. Accordingly, as with its other arguments, DTCC's antitrust claims have no basis in law or fact.

7. Rule 1001 is consistent with fair and open access principles.

Part 45 allows DCOs to select an SDR for the swaps they clear. The CEA expressly allows a DCO to register as an SDR. *See* CEA § 21(a)(1)(B). No legal requirement prevents a DCO that is registered as an SDR from choosing to report data for swaps that it clears to its

[5] The tied service might be viewed, in the alternative, as SDR services. However, even under this view, DTCC's tying argument still fails because here it is CME Clearing, not the swap market participants that purchase clearing services, that procure these services as required by law. *See De Jesus v. Sears, Roebuck & Co., Inc.*, 87 F.3d 65, 71 (2d Cir. 1996) ("an illegal tying arrangement requires that at least two products and/or services be purchased *by the same individual*") (emphasis added).

affiliated SDR. Yet, DTCC persists in claiming that Rule 1001 would "illegally tie CME's SDR and DCO services by requiring its clearing customers *as a condition to using its clearing services* to have CME direct their cleared trades to CME's own captive SDR." *See* DTCC Comment Letter, at 3 (January 8th, 2013). According to DTCC, this alleged tying and bundling of services is "contrary to the fair and open access core principles" for DCOs. *Id*.

In the Proposal, CME addressed at length DTCC's misguided arguments surrounding fair and open access to services. As we have discussed, contrary to DTCC's claims, Rule 1001 creates no condition to using CME Clearing. Additionally, as discussed above regarding the antitrust allegations, Rule 1001 does not involve any tying or bundling of services. Rather, Rule 1001 simply explains how CME Clearing will meet its reporting obligations as a DCO. Therefore, Rule 1001 does not contravene fair and open access principles.

8. The review process for Rule 1001 has been proper.

Contrary to DTCC's claims, CME's status as a systemically important derivatives clearing organization ("SIDCO") has no bearing on Rule 1001. SIDCOs indeed have procedural requirements under CFTC Rule 40.10, including advance notice of proposed changes to rules, but this applies only in very limited circumstances. *See* 17 C.F.R. § 40.10(a). For Rule 40.10 to apply, the rule change must be "material" in the sense that "there is a reasonable possibility that the change could affect the performance of essential clearing and settlement functions or the overall nature or level of risk presented by the [SIDCO]." See 17 C.F.R. § 40.10(b).

The procedural requirements under CFTC Rule 40.10 are inapplicable here. Rule 1001 poses no "reasonable possibility" of affecting "the performance of essential clearing and settlement functions." The rule has no effect on CME Clearing's actual clearing and settlement functions. Moreover, Rule 1001 merely requires that CME Clearing send swap data it already maintains as a DCO to CME's SDR. This has absolutely no effect on "the overall nature or level of risk presented by" CME. If anything, by reducing data fragmentation in the ways discussed above, Rule 1001 fosters systemic stability by increasing transparency for regulators.

DTCC further alleges that the comment process has been defective because of CME's December 14th amended submission. *See* DTCC Comment Letter (January 3, 2013). Despite DTCC's contentions, the reason for the December 14th submission was the inadvertent inclusion of the word "available" before the phrase "creation and confirmation data" in the December 6th submission. The word "available" was not in our original submission and as a technical matter should not have been included in the revised submission. The following week, CFTC staff called CME's attention to the added word and requested that CME submit a corrected filing. CME promptly did so. Accordingly, removing "available" from the rule text was not a material change (which DTCC's letter confirms by its silence) and should not have any effect on the duration of the comment period.

For the reasons stated in the Proposal and this letter, the CFTC should approve Rule 1001. CME appreciates your consideration of Rule 1001. Should you have any questions, please do not hesitate to contact me at 312.930.3488 or via email at Kathleen.Cronin@cmegroup.com.

Sincerely,

Kathleen M. Cronin, Esq.
Managing Director and General Counsel

cc: Chairman Gary Gensler
Commissioner Jill Sommers
Commissioner Bart Chilton
Commissioner Scott O'Malia
Commissioner Mark Wetjen

APPENDIX 1: Proposal

SUBMISSION COVER SHEET

Registered Entity Identifier Code (optional) 12-391RC Date: December 14, 2012

***IMPORTANT*: CHECK BOX IF CONFIDENTIAL TREATMENT IS REQUESTED.** ☐

ORGANIZATION	Chicago Mercantile Exchange Inc.

FILING AS A: ☐ **DCM** ☐ **SEF** ☒ **DCO** ☐ **SDR** ☐ **ECM/SPDC**

TYPE OF FILING

- **Rules and Rule Amendments**
  - ☐ Certification under § 40.6 (a) or § 41.24 (a)
  - ☐ "Non-Material Agricultural Rule Change" under § 40.4 (b)(5)
  - ☐ Notification under § 40.6 (d)
  - ☒ Request for Approval under § 40.4 (a) or § 40.5 (a)
  - ☐ Advance Notice of SIDCO Rule Change under § 40.10 (a)
- **Products**
  - ☐ Certification under § 39.5(b), § 40.2 (a), or § 41.23 (a)
  - ☐ Swap Class Certification under § 40.2 (d)
  - ☐ Request for Approval under § 40.3 (a)
  - ☐ Novel Derivative Product Notification under § 40.12 (a)

RULE NUMBERS	1001
DESCRIPTION	

Correction to CME Submission No. 12-391R (Adoption of new Chapter 10 and new Rule 1001 regarding swap data repository reporting).

Tim Elliott
Executive Director and Associate General Counsel
Legal Department

December 14, 2012

VIA E-MAIL

Ms. Sauntia S. Warfield
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RE: Regulation 40.5 Request for Approval: Chicago Mercantile Exchange Inc. Submission # 12-391RC: Adoption of new Chapter 10 ("Regulatory Reporting of Swap Data") and Rule 1001 ("Regulatory Reporting of Swap Data")

Dear Ms. Warfield:

The Chicago Mercantile Exchange Inc. ("CME"), pursuant to Commodity Futures Trading Commission ("CFTC" or "Commission") Regulation 40.5, hereby voluntarily submits for Commission review and approval an amended request to adopt new Chapter 10 ("Regulatory Reporting of Swap Data") and Rule 1001 ("Regulatory Reporting of Swap Data") of CME's Rulebook. This submission corrects CME Submission No. 12-391R, which was originally submitted on December 6, 2012. Please note that we are submitting 12-391RC to correct a typographical error per CFTC staff's request.

CME submits the chapter and rule below for Commission review and approval under section 40.5 of the CFTC's regulations. The 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"), as permitted by the Preamble to the CFTC's final rules on the registration and regulation of SDRs, specifically: "the rules and regulations of a particular SEF, DCM or DCO may provide for the reporting to a particular SDR." *See* Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 Fed. Reg. 54538, 54569 (Sep. 1, 2011).

Rule 1001 will be adopted pursuant to CME Rule 230.j. CME requests that Rule 1001 becomes effective on the next business day following the date of the Commission's approval.

Application of Rule 1001

Under the Commodity Exchange Act ("CEA") and CFTC rules, a DCO, like CME Clearing, must maintain records of "all activities related to its business as a [DCO]," including information about the swaps it clears, and provide "all" of that information to the CFTC upon request. 17 C.F.R. §§ 39.19 (addressing reporting requirements) and 39.20 (addressing recordkeeping requirements); s*ee* also CEA § 5b(k). CME Clearing has always complied with these requirements. The CFTC's Part 45 rules require a DCO to report this same data to an SDR so that the SDR also can maintain the data and give the CFTC access upon request. CME believes the Part 45 rules are duplicative because DCOs already have an obligation to store all of a DCO's cleared swap data and provide such data to the CFTC upon request.

Nevertheless, Rule 1001 is designed to implement the Part 45 rules. Rule 1001 requires CME Clearing to comply with its Part 45 cleared swap reporting duties by reporting to CME's SDR. Currently, CME Clearing is complying with Part 45 by providing reports of its cleared swaps to CME's SDR, the SDR selected by CME Clearing. Rule 1001 is consistent with this current practice and the current practice of

other swap-clearing DCOs to select the SDR to which they will report cleared swap data, rather than leaving that selection to a third party.[1]

Rule 1001 in the Context of the Reporting of an Over-the-Counter ("OTC") Swap that is Cleared.

To avoid any confusion, we have set out below a step by step description of how Part 45 and Rule 1001 will operate for purposes of reporting of an OTC swap that is cleared by CME Clearing.

1) Party A (a swap dealer[2]) and Party B (a commercial end user) enter into an original swap OTC.[3] Party A is the reporting counterparty because Party A is the swap dealer. 17 C.F.R. §§ 43.3(a)(3) (for purposes of real-time public reporting) and 45.8(a) (for purposes of regulatory reporting).

2) As soon as technologically practicable after execution, Party A reports Part 43 swap transaction and pricing data for the original swap to an SDR of its choosing. 17 C.F.R. § 43.3(a)(1). That SDR will publicly report the swap transaction and pricing data as provided in Part 43.

3) Party A also reports Part 45 primary economic terms ("PET") data for the original swap to an SDR as soon as technologically practicable after execution unless:

- The original swap is submitted for clearing to CME Clearing (the DCO chosen by Party B[4]) and is accepted for clearing by CME Clearing prior to the applicable reporting deadlines for Part 45 PET data; and
- The swap is accepted for clearing before Party A actually reports any PET data to an SDR. 17 C.F.R. §§ 45.3(b)(1), (c)(1)(i) or (c)(2)(i).

If the two conditions above are satisfied, Party A would then be "excused from reporting required [Part 45] swap creation data for the swap." 17 C.F.R. §§ 45.3(b)(1), (c)(1)(i) or (c)(2)(i). Even if the two conditions are not satisfied, under Rule 1001, CME Clearing would report Part 45 creation/confirmation data for the original swap to CME's SDR.

4) Once the original swap is accepted for clearing, it will be extinguished and replaced by two resulting swaps. 17 C.F.R. § 39.12(b)(6). One resulting swap will be between CME Clearing and Party A. The other resulting swap will be between CME Clearing and Party B.

- CME Clearing would send an electronic message to the SDR that received the Part 43 swap transaction and pricing data or the Part 45 creation data report for the original swap (Steps #2 and #3 above) – whether the SDR is CME SDR or another SDR – that the original swap has been accepted for clearing and extinguished. 17 C.F.R. §§ 45.4(a) and (b)(1).

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[1] CME understands that the DCOs operated by the Intercontinental Exchange ("ICE") meet their Part 45 obligations by reporting cleared swap data to ICE Trade Vault, an affiliated SDR. Similarly, CME understands that the DCOs operated by the LCH.Clearnet Group ("LCH") satisfy Part 45 by reporting cleared swap data to an SDR operated by the Depository Trust & Clearing Corporation ("DTCC"); many swap dealers have an ownership interest in both LCH and DTCC.

[2] For ease of reference, unless noted otherwise, "swap dealer" means either swap dealer or major swap participant.

[3] The terms "original swap" and "resulting swap" do not appear in the CFTC's rules, but are contained in the Frequently Asked Questions (FAQ) on the Reporting of Cleared Swaps.

[4] *See* CEA § 2(h)(7)(E) (providing that when a swap dealer enters into a swap that is subject to the clearing mandate with a non-swap dealer, the non-swap dealer has the right to select the DCO at which the swap will be cleared and providing further that when a swap dealer enters into a swap that is not subject to the clearing mandate with a non-swap dealer, the non-swap dealer has the right to elect to require clearing of the swap and the sole right to select the DCO at which the swap will be cleared).

- The SDR that publicly reported the swap transaction and pricing data for the original swap would publicly report the termination of the swap as provided in Part 43. There would be no subsequent Part 45 or Part 43 reports for the original swap, including valuation data reports, because clearing extinguishes the original swap. 17 C.F.R. § 39.12(b)(6).

5) CME Clearing would report creation data and continuation data to CME SDR for the resulting swaps and related positions in accordance with Rule 1001 and 17 C.F.R. §§ 45.3 and 45.4.

- Consistent with its role as the central counterparty, CME Clearing is the entity with the easiest, fastest and cheapest access to data for the resulting swaps and related positions and therefore should be the only entity with reporting obligations for the resulting swaps and related positions.[5]
- The resulting swaps would not be publicly reported under Part 43 because they would not be "publicly reportable swap transactions" under 17 C.F.R. § 43.2.
- CME Clearing's Part 45 continuation data reports would, where applicable, be based on and reflect position data rather than transaction data, as contemplated by the Frequently Asked Questions (FAQ) on the Reporting of Cleared Swaps.
- The Part 45 creation and continuation data reports for the resulting swaps and related positions would be fully traceable to the original swap because CME's SDR would map the unique swap identifier for the resulting swaps and related positions back to the original swap.

6) At the request of Party A or Party B, as applicable, under Rule 1001 CME Clearing would report a copy of relevant data that it reports to CME's SDR to another SDR chosen by Party A or Party B, for the resulting swap and related position of Party A or Party B, as applicable.

Rule 1001 in the Context of Reporting a Swap Executed on a Swap Execution Facility ("SEF") or Designated Contract Market ("DCM") that is Cleared.

To avoid any confusion, we have set out below a step by step description of how Part 45 and Rule 1001 will operate for purposes of reporting of a swap that is cleared by CME Clearing and executed on a SEF or DCM.[6]

1) Party A (a swap dealer) and Party B (a commercial end user) execute an original swap on a SEF. As the swap dealer, Party A would be the reporting counterparty for the original swap, but its reporting obligations would be limited for the reasons described below.

2) The SEF would report Part 43 swap transaction and pricing data and all required Part 45 swap creation data for the original swap to an SDR as soon as technologically practicable after execution of the swap. 17 C.F.R. §§ 43.3(a)(2) (for purposes of real-time public reporting) and 45.3(a)(1) (for purposes of regulatory reporting).

3) Next, the swap would be submitted to CME Clearing for clearing.

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[5] When the CFTC adopted the Part 45 rules, it expressed the intent to assign reporting duties to registered entities or swap counterparties that "have the easiest, fastest, and cheapest" access to the set of data in question. *See e.g.*, Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136, 2155 (Jan. 13, 2012). In the context of cleared swaps, this is unquestionably the DCO. The CFTC could give further effect to this policy by applying its Part 45 rules so that neither Party A nor Party B would have any reporting obligations for resulting swaps and related positions. If the DCO reports the cleared swap data Part 45 requires to an SDR, any further reporting by Party A or Party B would be duplicative and potentially confusing. Moreover, imposing a duplicative reporting requirement would unduly increase costs for swap dealers, which could be passed on to other market participants in the form of higher fees.

[6] For ease of reference, unless noted otherwise, "SEF" means either SEF or DCM.

- Party B would elect to submit the original swap for clearing at CME Clearing. *See* CEA § 2(h)(7)(E). Once the original swap is accepted for clearing, it will be extinguished and replaced by two resulting swaps. 17 C.F.R. § 39.12(b)(6). One resulting swap will be between CME Clearing and Party A. The other resulting swap will be between CME Clearing and Party B.
- **Under Rule 1001, CME Clearing would report Part 45 creation/confirmation data for the original swap to CME's SDR.**
- CME Clearing would send an electronic message to the SDR that received the Part 43 swap transaction and pricing data or the Part 45 creation data report for the original swap (Step #2 above) – whether the SDR is CME SDR or another SDR – that the original swap has been accepted for clearing and extinguished. 17 C.F.R. §§ 45.4(a) and (b)(1).[7]
- The SDR that publicly reported the swap transaction and pricing data for the original swap would publicly report the termination of the swap as provided in Part 43. There would be no subsequent Part 45 or Part 43 reports for the original swap, including valuation data reports, because clearing extinguishes the original swap.

4) CME Clearing would report creation data and continuation data to CME SDR for the resulting swaps and related positions in accordance with Rule 1001 and 17 C.F.R. §§ 45.3 and 45.4.

- Consistent with its role as the central counterparty, CME Clearing also is the entity with the easiest, fastest and cheapest access to data for the resulting swaps and related positions and therefore should be the only entity with reporting obligations for the resulting swaps and related positions.[8]
- The resulting swaps would not be publicly reported under Part 43 because they would not be "publicly reportable swap transactions" under 17 C.F.R. § 43.2.
- CME Clearing's Part 45 continuation data reports would, where applicable, be based on and reflect position data rather than transaction data, as contemplated by the Frequently Asked Questions (FAQ) on the Reporting of Cleared Swaps.
- The Part 45 creation and continuation data reports for the resulting swaps and related positions would be fully traceable to the original swaps because CME's SDR would map the unique swap identifier for the resulting swaps and related positions back to the original swap.

5) At the request of Party A or Party B, as applicable, under Rule 1001 CME Clearing would report a copy of relevant data that it reports to CME's SDR to another SDR chosen by Party A or Party B, for the resulting swap and related position of Party A or Party B, as applicable.

Analysis of Rule 1001's Compliance with Core Principles and the CEA

The Market Regulation Department and the Legal Department collectively reviewed the DCO core principles ("Core Principles") as set forth in the CEA. During the review, we have identified that the adoption of Rule 1001 may have some bearing on the following Core Principles:

- Reporting: Rule 1001 requires that, for all swaps cleared by CME Clearing, and resulting positions, CME Clearing would report creation and continuation data to CME's SDR for purposes of complying with applicable CFTC rules governing the regulatory reporting of swaps.

- Recordkeeping: Rule 1001 is in compliance with this core principle because records of all reports will be maintained in compliance with the CEA and applicable regulations.

- Anti-trust, fair and open access, and conflict-of-interest considerations: Rule 1001 requires CME Clearing to report to CME's SDR data that CME Clearing is otherwise required to store and

[7] CME Clearing also would report the information described above to CME's SDR.

[8] *See* note 5, supra.

maintain to satisfy CFTC Rule 39.20. Reporting these same data to CME's SDR as required by Part 45 of the CFTC's regulations does not raise anti-trust concerns. For identical reasons, the rule does *not* pose potential anti-competitive effects, contravene fair and open access principles, or violate the commercialization of data prohibition under the CFTC's rules implementing SDR conflict-of-interest principles. Rule 1001 simply addresses how CME Clearing intends to comply with its obligations as a DCO.

CME certifies that the adoption of Rule 1001 complies with the CEA and CFTC regulations thereunder. In addition, none of the Commission's regulations need to be amended and no sections of the CEA or the Commission's regulations need to be interpreted in order to approve the adoption of Rule 1001. Although none of the Commission's regulations needs to be amended and no sections of the CEA or the Commission's regulations need to be interpreted in order to approve the adoption of Rule 1001, we recommend that the Commission modify its Part 45 rules, at least to streamline and reduce uncertainty over the application of the Part 45 reporting requirements for cleared swaps.

Analysis of Substantive Opposing Views

Rule 1001, initially submitted to the CFTC on November 9, 2012, confirms the manner in which CME Clearing will satisfy its swap data regulatory reporting obligations under the CFTC's Part 45 rules. To this end, Rule 1001 specifies that CME Clearing will report its cleared swap data to CME's SDR. The amended Rule language provided in this submission makes clear that *CME Clearing (as DCO)* will report the relevant data to CME's SDR for purposes of complying with applicable CFTC rules. Further, the Rule would enable a swap counterparty to have CME Clearing report a copy of relevant data to an SDR of the counterparty's choice.

In its November 20, 2012, comment letter, DTCC attacks Rule 1001 on procedural and substantive grounds. DTCC's letter demonstrates a fundamental misunderstanding of the nature and scope of Rule 1001. The following sections identify DTCC's specific objections to Rule 1001 and explain why each objection lacks any merit.

DTCC Argument 1: Failure to Comply with Procedural Requirements in CFTC Rule 40.10

DTCC argues that Rule 1001 is procedurally deficient because it does not abide by procedural requirements that CME, as a systemically important derivatives clearing organization ("SIDCO"), must follow under CFTC Rule 40.10. *See* DTCC Comment Letter at 2, 4-5.[9] However, as DTCC itself recognizes, SIDCOs are only required to follow such procedures where the rule change is "material" in the sense that "there is a reasonable possibility that the change could affect the performance of essential clearing and settlement functions or the overall nature or level of risk presented by the [SIDCO]." *See* 17 C.F.R. 40.10(b); DTCC Comment Letter at 4.

DTCC does not, and could not, argue that CFTC Rule 40.10 applies because CME's proposed Rule 1001 poses a "reasonable possibility" of affecting "the performance of essential clearing and settlement functions"; rather, DTCC asserts that CFTC Rule 40.10 applies on the grounds that "there is more than a reasonable possibility that CME's implementation of its proposed Rule 1001 will create additional risk to the system." DTCC Comment Letter at 2. Specifically, DTCC contends that, as a result of CME's proposed Rule, "large systemically important firms are required to report to multiple SDRs," thereby impairing "accurate public and regulatory reporting of market exposures" and causing injury to swap dealers "that have taken necessary steps to utilize their preferred SDR." *See* DTCC Comment Letter at 6-7.

[9] These procedural requirements include providing 60-day advance notice to the CFTC of any material change to the SIDCO's rules, procedures, or operations. *See* 17 C.F.R. 40.10(a).

DTCC's assertion is baseless. Where Part 45 requires a swap counterparty, such as a "large systemically important firm," to report creation data for an original swap, that counterparty may make that report to the SDR of its choice. Rule 1001 does not force the counterparty to choose CME's SDR for that report. All Rule 1001 requires is that CME Clearing send swap data it already maintains, in its capacity as DCO, to CME's SDR. Maintaining in CME SDR the same data CME Clearing already maintains in its capacity as a DCO has no effect on "the overall nature or level of risk presented by" CME. DTCC seems to incorrectly equate a swap that is not reported to its SDR as a swap that increases systemic risk. Because Rule 1001 does not "materially affect the nature or level of risks presented by" CME, the procedural requirements under CFTC Rule 40.10 are inapplicable.

As a bootstrap to its procedural deficiency argument, DTCC claims that "[g]iven the novelty and complexity of CME's proposed rule change . . . CME's proposed rule should be . . . rejected as procedurally deficient because it does not allow for an extended review period." *See* DTCC Comment Letter at 8. In making this argument, DTCC relies on CFTC Rule 40.10(f), which states that "[t]he [CFTC] may . . . extend the review period if the proposed change raises novel or complex issues." However, Rule 40.10(f) is only applicable if, as a threshold matter, the change proposed by the SIDCO is first shown to have a "reasonable possibility" of "affect[ing] the performance of essential clearing and settlement functions or the overall nature or level of risk presented by the [SIDCO]." CME Rule 1001 does not meet this threshold requirement for the reason stated in the prior paragraph. CFTC Rule 40.10(f), like the rest of CFTC Rule 40.10, is therefore inapplicable to Rule 1001.

DTCC Argument 2: Violation of Fair and Open Access Principles

DTCC repeatedly claims that Rule 1001 "require[s] as a condition precedent to the use of clearing services the use of the clearinghouse's SDR services." *See, e.g.*, DTCC Comment Letter at 10. According to DTCC, this purported tying or bundling of clearing and SDR services "goes directly against the CEA and the [CFTC's] regulations regarding fair and open access to clearing and swap data reporting services." *Id.* The sub-sections below address DTCC's arguments regarding fair and open access.

Fair and open access to clearing services

DTCC locates the fair and open access requirement for clearing services in Section 5b(c)(2)(C)(iii) of the CEA. That provision states, in relevant part, that "[t]he participation and membership requirements of each derivatives clearing organization shall . . . (III) permit fair and open access." According to DTCC, Rule 1001 violates this principle of fair and open access by causing "a DCO member or participant [to be] unable to use [the] clearing platform without ceding to the clearer the right to dictate how the member or participant carries on unrelated business and compliance activities." *See* DTCC Comment Letter at 2-3.

DTCC's contention rests on a fundamentally flawed reading of Rule 1001. Rule 1001 does not impose any "condition precedent" on a CME clearing member or participant for use of CME's clearing services or otherwise require the member or participant to cede any rights to secure its membership or participation. Rather, Rule 1001 is a means to confirm the manner by which CME Clearing is meeting and will meet *its* regulatory reporting obligations under the CFTC's Part 45 rules. Rule 1001's language simply states that CME Clearing will continue to report cleared swap data to CME's SDR. Hence, DTCC is mistaken when it claims that Rule 1001 imposes a bundling or tying arrangement on market participants whereby clearing services can be obtained only if they use CME's affiliated SDR.

Fair and open access to swap data reporting services

DTCC also argues that Rule 1001 violates the fair and open access principle for swap data reporting services. The CEA, however, does not contain a fair and open access principle for SDRs. Unable to rely on any *statutory* basis for its "fair and open access" argument, DTCC refers instead to CFTC Rule 49.27. CFTC Rule 49.27 states that "[c]onsistent with the principles of open access . . . a registered swap data

repository shall not tie or bundle the offering of mandated regulatory services with other ancillary services that a swap data repository may provide to market participants."

On its face, CFTC Rule 49.27 is inapplicable to CME Rule 1001. Whereas CFTC Rule 49.27 applies to *SDRs* (and specifically prohibits SDRs from tying or bundling practices), CME Rule 1001 applies to reporting by CME Clearing, a DCO. Even if CFTC Rule 49.27 applied to CME Clearing, CME Rule 1001 does not violate CFTC Rule 49.27 in any way. Again, Rule 1001 concerns how CME Clearing will continue to comply with its obligation to report its cleared swap data to an SDR under the CFTC's Part 45 rules. Rule 1001 states the CME Clearing will report cleared swap data to CME's SDR. CME's SDR, for its part, will merely receive the reports from CME Clearing. Thus, under Rule 1001, neither CME Clearing (as DCO) nor CME's SDR is offering "mandated regulatory services," let alone "other ancillary services," to any market participants.

Ultimately, DTCC appears to be dissatisfied with the approach taken in Rule 1001 because that approach does not comport with the scheme that DTCC desires—one in which swap dealers would be able to dictate to DCOs the SDRs to which the DCOs must report under Part 45. This would mean, for example, if 10 SDRs are registered by the CFTC, individual swap dealers could force DCOs to report cleared swap data to each of the 10 SDRs, rather than just a single SDR selected by the DCO itself. Thus, DTCC seeks to drive up the costs to DCOs of meeting Part 45's redundant reporting requirement for DCOs. DTCC's approach, however, is plainly inconsistent with the CFTC's Part 45 rules. Indeed, the CFTC's Preamble to those rules explicitly contemplates that registered entities—a category that includes DCOs—would be able to "report swap data to existing DCOs registered as SDRs, *or to SDRs chosen by DCOs*, if they so choose for business or cost-benefit reasons."[10] 77 Fed. Reg. at 2148 (emphasis added).

DTCC Argument 3: Violation of Anti-Competitive Provisions

DTCC repeatedly refers to Rule 1001 as "anti-competitive." *See, e.g.*, DTCC Comment Letter at 10. Specifically, DTCC indicates in its comment letter that Rule 1001 would allow CME to "use forced buying, or 'tie-in' sales, with its clearing services to gain sales in the SDR market (where it is not dominant) and to make it more difficult for rivals in those markets to obtain sales." *See id.*

DTCC's allegation, again, is without merit because Rule 1001 does not create a tying or bundling scheme (as discussed above), but instead is meant to clarify how CME Clearing will fulfill its Part 45 reporting obligations. To the extent DTCC is concerned about the prospect that its SDR—as a rival of CME's SDR—will be less able to compete in the SDR market because of CME Rule 1001, its concern seems at best overblown. DTCC's SDR currently provides SDR services to the *largest* DCO for cleared interest rate swaps, LCH.Clearnet Limited ("LCH.Clearnet"). (In fact, the CFTC recently found that LCH.Clearnet already clears, and therefore we presume reports to DTCC, 60% of the interest rate swap market. *See* Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 47170, 47173 (Aug. 7, 2012)). CME Rule 1001 does not require LCH.Clearnet, or any of its swap dealer owners, to use CME's SDR for purposes of swap data reporting, so the rule will not interfere with LCH.Clearnet's continued use of DTCC's SDR in any way.

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[10] DTCC's approach is also at odds with the following Part 45 Preamble statement that DTCC neglected to mention in its comment letter:

> [T]he [CFTC] 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 a dominant market position with respect to swap data reporting within an asset class or even with respect to all swaps.
>
> Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136, 2149 (Jan. 13, 2012).

Contrary to DTCC's suggestion, then, Rule 1001 does not impose a requirement that "all cleared swaps be reported only to DCOs registered as SDRs or to SDRs chosen by a DCO," which, according to the CFTC, would "create a non-level playing field for competition between DCO-SDRs and non-DCO SDRs." *See* DTCC Comment Letter at 12 (citing 77 Fed. Reg. at 2149).

DTCC Argument 4: Violation of Conflict-of-Interest Principles

DTCC indicates that Rule 1001 could be in tension with the conflict-of-interest core principle applicable to SDRs. As DTCC notes, the CFTC has explained that there are "inherent conflicts in connection with maintaining swap data and SDR operations (e.g., the incentive to develop ancillary services using swap data)." The CFTC has thus barred SDRs from using swap data they house for commercial or business purposes except when the party submitting the data gives express written consent for such use. *See* 17 C.F.R. 49.17(g). According to DTCC, "[s]hould CME, which regularly commercializes its clearing house data, be allowed to subvert the [CFTC's] prohibition on the commercialization of data by providing the required consent for commercialization to its own captive SDR, the very purpose of the conflicts of interest core principle will be thwarted and the careful construct of the [CFTC's] commercialization prohibition negated." DTCC Comment Letter at 13.

In expressing this far-fetched concern, DTCC once again demonstrates a misunderstanding of Rule 1001. CME's Rule does not provide for or otherwise address ancillary services whereby an SDR may use the swap data reported to it; the Rule strictly focuses on how CME Clearing will discharge its reporting obligation under the CFTC's Part 45 rules, which call for CME Clearing to report to an SDR the same data it already maintains and provides to the CFTC on request. Copying an existing file and sending it to another registered entity within CME—in this case, CME's SDR per CME Rule 1001—does not trigger the kind of dire consequences that DTCC seems to fear.

CME certifies that this submission has been concurrently posted on CME's website at http://www.cmegroup.com/market-regulation/rule-filings.html.

The new rule is set forth in Appendix A, with additions underscored and deletions overstruck. Appendix B shows how the text of Rule 1001 in this corrected rule submission differs from the text of CME's submission on December 6, 2012.

If you have any questions regarding this submission, please contact me at Tim Elliott at 312.466.7478 or via email at Tim.Elliott@cmegroup.com. Please reference CME Submission # 12-391RC in any related correspondence.

Sincerely,

/s/ Tim Elliott
Executive Director and Associate General Counsel

Attachment: Appendix A - Chapter 10 of CME Rulebook (black-lined)
Appendix B – Blackline of Chapter 10 of CME Rulebook (showing changes from CME Submission No. 12-391R submitted on December 6, 2012)

APPENDIX A

Chapter 10 Regulatory Reporting of Swap Data

1001. REGULATORY REPORTING OF SWAP DATA

For all swaps cleared by the Clearing House, and resulting positions, the Clearing House shall report creation and continuation data to CME's swap data repository for purposes of complying with applicable CFTC rules governing the regulatory reporting of swaps. Upon the request of a counterparty to a swap cleared at the Clearing House, the Clearing House shall provide the same creation and continuation data to a swap data repository selected by the counterparty as the Clearing House provided to CME's swap data repository under the preceding sentence.

APPENDIX B

Chapter 10 Regulatory Reporting of Swap Data

1001. REGULATORY REPORTING OF SWAP DATA

For all swaps cleared by the Clearing House, and resulting positions, the Clearing House shall report ~~available~~ creation and continuation data to CME's swap data repository for purposes of complying with applicable CFTC rules governing the regulatory reporting of swaps. Upon the request of a counterparty to a swap cleared at the Clearing House, the Clearing House shall provide the same creation and continuation data to a swap data repository selected by the counterparty as the Clearing House provided to CME's swap data repository under the preceding sentence.