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November 15, 2013

Ms. Elizabeth M. Murphy, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Comments in Response to Chicago Mercantile Exchange, Inc.'s Proposal to Add Rule 1001 (Regulatory Reporting of Swap Data) (File Number SR-CME-2013-19)

Dear Ms. Murphy:

The Depository Trust & Clearing Corporation (“DTCC”),<sup>1</sup> in conjunction with its provisionally registered swap data repository (“SDR”), DTCC Data Repository (U.S.) LLC (“DDR”), submits this letter to the Securities and Exchange Commission (“SEC” or “Commission”) in opposition to the Chicago Mercantile Exchange Inc.’s (“CME”) submission to add CME Rule 1001 to its clearing rules to be effective upon filing pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 (“Exchange Act”) and Commission regulation 19b-4(f)(4)(ii) (“CME Rule 1001”).<sup>2</sup>

In its request for public comment regarding CME Rule 1001, the Commission notes that CME Rule 1001 “specifies that CME will discharge any swap data reporting obligations it has with respect to the swaps it clears under applicable Commodity Futures Trading Commission (“CFTC”) [regulations] by making reports to the CME SDR.”<sup>3</sup> The Commission also states that “CME Rule 1001 was reviewed and affirmatively approved by the CFTC,” and “[t]he scope of CME Rule 1001 is limited to CME’s business as a derivatives clearing organization clearing products under the exclusive jurisdiction of the [CFTC].”<sup>4</sup>

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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.

<sup>2</sup> CME’s submission to add Rule 1001 is *available at* [http://www.cmegroup.com/market-regulation/files/sec\\_19b-4\\_13-19.pdf](http://www.cmegroup.com/market-regulation/files/sec_19b-4_13-19.pdf).

<sup>3</sup> *See* CME’s submission, also available on the SEC’s website at <http://www.sec.gov/rules/sro/cme/2013/34-70725.pdf> (“CME Rule 1001 Submission”), at 1.

<sup>4</sup> *Id.* at 2.

The Commission concluded that as “CME Rule 1001 does not materially impact CME’s security-based swap clearing business in any way,” the “changes will be effective upon filing.”<sup>5</sup>

DTCC recognizes the Commission’s acknowledgment of the CFTC’s regulatory authority with respect to swaps, swap data reporting, and SDRs and notes, in particular, the Commission’s recent discussion of the respective regulatory authorities of the Commission and CFTC in the final rule related to rule filing requirements for dually-registered clearing agencies.<sup>6</sup> In that promulgating release, the Commission asserted that the CFTC generally regulates the clearing of swaps as a result of its regulatory authority over derivatives clearing organizations (“DCOs”).<sup>7</sup> In part to “eliminate unnecessary delays that could arise due to the differences between the Commission’s rule filing process and the CFTC’s self-certification process,” the Commission expanded the list of categories of proposed rule changes that qualify for effectiveness immediately upon filing, including rules related to swaps that are not mixed swaps or security-based swaps.<sup>8</sup>

While DTCC appreciates the differences in jurisdictional scope between the Commission and the CFTC, as the Commission has previously acknowledged, “[t]he Exchange Act imposes upon the Commission an independent statutory responsibility to oversee the operations of Registered Clearing Agencies as a whole, and not solely in regard to specific products.”<sup>9</sup> Further, the

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DTCC maintains all of its objections to CME Rule 1001 and the approval order contained in the Statement of the CFTC in response to CME’s request for approval of new Chapter 10 and the CME Rule 1001 submission, including that the CFTC’s actions violated the Administrative Procedure Act. *See* Letter from Larry Thompson, General Counsel, DTCC, to the Honorable Gary Gensler, Chairman, CFTC, CFTC Industry Filing 12-014 (Nov. 20, 2012), *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58974&SearchText;>

*see also* Letter from Larry Thompson, General Counsel, DTCC, to the Honorable Gary Gensler, Chairman, CFTC, CFTC Industry Filing 12-014 (Dec. 5, 2012), *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58975&SearchText;>

Letter from Larry Thompson, General Counsel, DTCC, to the Honorable Gary Gensler, Chairman, CFTC, CFTC Industry Filing 12-014 (Dec. 7, 2012), *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58976&SearchText;>

Letter from Larry Thompson, General Counsel, DTCC, to the Honorable Gary Gensler, Chairman, CFTC, CFTC Industry Filing 12-014 (Dec. 20, 2012), *available at* [http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59009&SearchText=;](http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59009&SearchText=)

Letter from Larry Thompson, General Counsel, DTCC, to the Honorable Gary Gensler, Chairman, CFTC, CFTC Industry Filing 12-014 (Jan. 3, 2012), *available at* [http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59025&SearchText=.](http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59025&SearchText=)

<sup>5</sup> *See* CME Rule 1001 Submission, at 2.

<sup>6</sup> Amendment to Rule Filing Requirements for Dually-Registered Clearing Agencies, 78 Fed. Reg. 21,046 (Apr. 9, 2013).

<sup>7</sup> *Id.* at 21,048.

<sup>8</sup> *See id.* at 21,049.

<sup>9</sup> *Id.* at 21,053.

Commission’s “continued review of rule filings that primarily affect a Dually-Registered Clearing Agency’s operations involving . . . swaps that are not securities swaps or mixed swaps . . . is a necessary and appropriate part of the Commission’s statutory mandate.”<sup>10</sup>

*The Commission Should Further Examine the Anticompetitive Effects of CME Rule 1001*

Pursuant to such independent statutory authority, DTCC respectfully requests that the Commission temporarily suspend CME Rule 1001.<sup>11</sup> Following such suspension, the Commission should institute proceedings to further examine the potential anticompetitive effects of CME Rule 1001 in contravention of the Exchange Act.<sup>12</sup> According to CME, “demand for [CME] products increased in several major categories, [including] most notably [CME’s] over-the-counter interest rate swap clearing.”<sup>13</sup> CME also notes that it has “experienced an increase in dealer-to-client market share from 5 percent in the first quarter of this year to 31 percent in the third quarter, in addition to approaching 50 percent of open interest.”<sup>14</sup> DTCC believes an analysis of the potential anticompetitive effects of CME Rule 1001 is particularly warranted in light of the upward trend of CME’s cleared over-the-counter interest rate swaps volume and the effect that CME’s dramatic growth is having on the swap data reporting market.<sup>15</sup> While CME states that it “does not believe that the proposed rule change will have any impact, or impose any burden, on competition,”<sup>16</sup> a mere assertion that CME Rule 1001 “does not act as a restraint”<sup>17</sup> is insufficient for determining whether CME Rule 1001 comports with the purposes of the Exchange Act.

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<sup>10</sup> *Id.*

<sup>11</sup> *See* Exchange Act § 19(b)(3)(C).

<sup>12</sup> *See id.*

<sup>13</sup> *CME Group Inc. Reports Strong Third-Quarter 2013 Financial Results*, YAHOO FINANCE, Nov. 4, 2013, <http://finance.yahoo.com/news/cme-group-inc-reports-strong-120000253.html>.

<sup>14</sup> *Id.*

<sup>15</sup> *See* CME Reported Market Data, *available at* <http://www.cmegroup.com/trading/interest-rates/cleared-otc/#data>.

<sup>16</sup> CME Rule 1001 Submission, at 4.

<sup>17</sup> *Id.*

*CME Rule 1001 Conflicts with Proposed Regulation SBSR*

Separately, DTCC notes that CME Rule 1001 conflicts with the reporting framework contemplated in the Commission's recent re-proposal of Regulation SBSR.<sup>18</sup> In the Commission's re-proposal of Regulation SBSR, the Commission revises the initially proposed term "reporting party" to "reporting side." Under this revision, a "side" would mean "a direct counterparty and any indirect counterparty," whereas a "reporting side" would mean "the side of a security-based swap having the duty to report information." If a side has the duty to report a security-based ("SB") swap transaction, any counterparty on that side—direct or indirect—would have responsibility for carrying out the reporting obligation.

DTCC appreciates the Commission's efforts to further clarify market participants' obligations under its reporting framework. Notably, the Commission's designation of reporting obligations under re-proposed Rule 901(a) does not contemplate that a clearing agency would be a reporting side.<sup>19</sup> This exclusion of clearing agencies as a potential reporting side is consistent with DTCC's understanding of the Commission's initial Regulation SBSR proposing release.<sup>20</sup> The Commission explained in the preamble of the initial proposing release that the Exchange Act "does not explicitly specify which counterparty should be the reporting party for those [SB swaps] that are cleared by a clearing agency or derivative[s] clearing organization."<sup>21</sup> The Commission stated, however, that "for the sake of uniformity and ease of applicability, the duty to report a [SB swap] should attach to the same counterparty regardless of whether the [SB swap] is cleared or uncleared."<sup>22</sup> Though Rule 901(a) "would not prevent a reporting party to a [SB swap] from entering into an agreement with a third party to report the transaction on behalf of the reporting party," the Commission stated that "a [SB swap] counterparty that is a reporting party would retain the obligation to ensure that information is provided to a registered SDR."<sup>23</sup>

DTCC supports the Commission's reporting framework under the re-proposal of Regulation SBSR in this regard, including its focus on and recognition of

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<sup>18</sup> Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, 78 Fed. Reg. 30,968 (May 23, 2013).

<sup>19</sup> DTCC observes that Proposed Rule 242.901(d) classifies the name of the clearing agency as "secondary trade information" required to be reported by the reporting side. The inclusion of the identification of the clearing agency as secondary data to be reported to the SDR further evidences that the Commission does not contemplate the clearing agency as a potential reporting side.

<sup>20</sup> See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. 75,208, 75,211 (Dec. 2, 2010).

<sup>21</sup> See *id.*

<sup>22</sup> See *id.*

<sup>23</sup> See *id.* at 75,211-12.

counterparty choice, and agrees with the Commission that reporting obligations should attach to the same reporting side regardless of whether a SB swap is cleared or uncleared. In other words, under the Commission's contemplated reporting framework, a clearing agency, such as CME, would not be a potential counterparty and, therefore, may not summarily confer upon itself reporting obligations that are reserved for reporting sides.

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

Sincerely yours,

A handwritten signature in cursive script that reads "Larry E. Thompson".

Larry E. Thompson  
General Counsel