

January 7, 2012

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

Re: Chicago Mercantile Exchange Inc. Amended Request to Adopt New Chapter 10 and New Rule 1001 (IF 12-014)

The International Swaps and Derivatives Association, Inc. (“**ISDA**”) is writing in response to the request of the Commodity Futures Trading Commission (the “**Commission**”) for comment on the submission by the Chicago Mercantile Exchange Inc. (“**CME**”) of its amended petition for approval of the aforementioned proposed rule (the “**Proposed Rule**”).

ISDA’s mission is to foster safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products. ISDA has more than 800 members from 58 countries on six continents. These members include a broad range of OTC derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers.

ISDA is aware of other comments that raise questions about the Proposed Rule’s effects on competition and procedural issues relating to the appropriate comment period. ISDA agrees that the Proposed Rule should not be approved because it is fundamentally anticompetitive and will lead to reporting inefficiencies. ISDA’s further purpose in submitting this letter is to urge the Commission to be sensitive to the interdependence between the Proposed Rule and other aspects of its reporting regime and to address these in a unified and concurrent manner.

I. Reporting Parties Should Have the Choice of Reporting Models and SDRs

ISDA believes that market participants should have the choice of whether to use a DCO-affiliated SDR or maintain data pertaining to their swaps in one or more SDRs of their choosing. Although the Commission notes in its release accompanying its Part 45 rules¹ that there might be cost efficiencies in combining the submission of swaps for clearing with SDR reporting, we think those efficiencies would be limited at best and would seem to run exclusively to the benefit of the DCO tying its clearing and SDR services. Many reporting parties see greater value in being able to maintain entire swap portfolios, including cleared and uncleared swaps, in a single SDR utility. This will permit reporting parties and the Commission to have an unfragmented view of aggregate risk exposures. Furthermore, market participants have made considerable

¹ 77 Federal Register 2136, 2186.

investments in building and testing connectivity to their chosen SDRs not just to comply with reporting obligations but also to enhance their ability to manage other processes, including internal risk management and responding to ad hoc queries from multiple regulators in a timely and efficient manner.

Although data can be compiled from multiple SDRs to achieve these ends (and some market participants might well choose to employ multiple SDRs), ISDA believes that reporting parties should have the ability to make that choice in view of their own particular risk management processes and their own assessments of costs and benefits. If the Proposed Rule is approved, market participants would be precluded from adopting a single-SDR model and could only approximate its objectives through a sub-optimal dual reporting model, with the attendant disadvantages and compliance uncertainties described below.

ISDA notes that market participants may have regulatory responsibilities in multiple jurisdictions. Meeting these responsibilities in an efficient manner is dependent on foreign regulators having access to data in accordance with the Commission's recent interpretative statement on Section 21(d) of the Commodity Exchange Act.² Depriving market participants of the flexibility to select the SDR(s) in which their data is lodged could create significant challenges for market participants with regulatory responsibilities in multiple jurisdictions and could impinge on foreign regulator access to data. Even though individual DCO-affiliated SDRs may choose to register in non-U.S. jurisdictions, as a practical matter these challenges will remain unless every DCO-affiliated SDR registers in every jurisdiction where a reporting party may have regulatory obligations.

II. Disadvantages and Uncertainties Resulting from CME's Dual-reporting Model

By including in the Proposed Rule an option for clearing members to select a second SDR to which CME would also report, CME appears to be addressing arguments that the Proposed Rule constrains the choices of market participants. However, this dual-reporting alternative is insufficient to eliminate the disadvantages that would result from approval of the Proposed Rule.

A. Cost and Compliance Uncertainties

The Proposed Rule is silent on who would bear the costs of dual reporting and the maintenance of DCO-affiliated SDRs. Imposing this cost (directly or indirectly) on clearing members would alter previously made cost-benefit decisions and distort choices that would otherwise have been made on the basis of the clearing member's individualized circumstances. Allowing the CME to report creation data to its SDR would impose on SD/MSP reporting parties (whether or not they elect CME's dual-reporting option) an obligation to report valuation data to CME's SDR pursuant to Rule 45.4(b)(2)(ii), necessitating a new build out of connectivity for this

² Section 21(d) of the Commodity Exchange Act requires SDRs to receive a confidentiality and indemnification agreement from foreign regulators requesting access to data in the SDR. The CFTC has issued an interpretive statement to the effect that a registered SDR is not subject to the confidentiality and indemnification agreement provisions of Section 21(d) if (i) such registered SDR is also registered, recognized or otherwise authorized in a foreign jurisdiction's regulatory regime; and (ii) the data sought to be accessed by a foreign regulatory authority has been reported to such registered SDR pursuant to the foreign jurisdiction's regulatory regime. 77 Fed. Reg. 65177.

purpose. If the CME model were adopted by other DCOs, the result would be a requirement to build a web of redundant and unnecessary connectivity from each SD/MSP reporting party to each DCO.³

Commission staff have recognized the problems stemming from required valuation reporting if the DCO chooses an SDR and have temporarily addressed them in CFTC No-Action Letter No. 12-55, which provides time-limited relief to SDs and MSPs from the obligation to report valuation data for cleared swaps as required by Rule 45.4(b)(2)(ii). However, even if the Commission were to make such relief permanent and adopt it in rulemaking or exemptive action, other compliance difficulties and uncertainties for reporting parties would be created by approving the Proposed Rule and would need to be addressed by the Commission.

A market participant that wishes to approximate the benefits of the single-SDR approach despite the DCO's reporting to its affiliated SDR may choose either to report all data to its chosen SDR itself or to request that the clearing house report the data on its behalf, or perhaps a combination of these approaches. In either case, the Commission must address the application of Rule 45.10 (Reporting to a Single SDR) and Rule 45.12 (Voluntary Supplemental Reporting). In particular, the Commission would need to make clear that the reporting party would not be considered to violate Rule 45.10 by virtue of reporting data to its chosen SDR. In addition, the Commission should stipulate that the report made by the DCO to its affiliated SDR would be considered the 'voluntary' report for purposes of Rule 45.12.

Further, to support dual-reporting the Commission would be obliged to address uncertainties regarding reporting parties' duties to maintain current and accurate information. Rule 45.4(a) states that "reporting counterparties and [DCOs] required to report swap continuation data must do so in a manner sufficient to ensure that all data in the [SDR] remains current and accurate...." Rule 45.14(a) states that each registered entity and swap counterparty that is required to report swap data "shall report any errors or omissions in the data so reported." Rule 45.14(b) requires each non-reporting party that "discovers any error or omission" with respect to reported swap data to "promptly notify the reporting party of each such error or omission." The Commission would need to make clear that fulfilling a reporting party's obligations under the cited rules does not require the reporting party to interact with or monitor reports in the DCO-affiliated SDR and therefore the reporting party not selecting the DCO-affiliated SDR as its chosen SDR would have no responsibility or liability for the actions or omissions of such SDR with respect to any swap data it retains.

Market participants obliged to cope with sub-optimal dual (in fact, multiple) SDR reporting will have limited ability to assist the Commission in its monitoring of systemic risk by gathering aggregate information back from SDRs not chosen by them reflecting the SDRs' own information. Any such aggregate information reporting responsibility must belong to the SDRs, not to the market participants burdened with an unwieldy SDR reporting structure.

³ Without commenting on the merits of CME's argument that Part 45 imposes unnecessary and redundant costs on it, ISDA notes that the costs of building connectivity among a relatively small number of DCOs and SDRs will be far less than the costs of an entire network of new connectivity linking SDs and MSPs with each DCO-affiliated SDR. Further, ISDA notes that CME could contract with its SD clearing members to have the SDs report to an SDR on behalf of CME pursuant to Rule 45.9.

Putting aside the foregoing specific comments, the issues emerging from discussion of the CME Proposed Rule illustrate the difficulties inevitably encountered by a regulatory reporting system other than a single SDR utility model. We must re-emphasize that a single global SDR, containing all trades within an asset class, is the only tool that will give regulators the access to positions and activity of all market participants, the access contemplated and requested by policymakers globally. With SDR fragmentation, it becomes necessary to aggregate across SDRs to see such a view. Without the adoption of the single SDR per asset class model, aggregation of information across multiple asset classes must be rationalized, possibly by the use of yet another information gathering agent, an aggregator, acting as a kind of SDR of SDRs. At best, this will require another layer of complexity, and significant cost with no benefit. At worst, without an internationally coordinated mandatory requirement for SDRs to submit to a global aggregating SDR, the entire underlying premise of the SDR is largely destroyed. The industry has invested significant resources in developing its reporting infrastructure; such investment will be largely undermined in a world of multiple SDRs.

B. Text of the Proposed Rule

The second sentence of the Proposed Rule states:

“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.”

ISDA suggests that the text is seriously deficient in the absence of a statement that the request may be made in connection with the submission of the swap for clearing, or on a relationship basis for all swaps submitted by the counterparty. In addition, any such rule would need to state that CME will provide data to the designated SDR in conformity with the data standards of the recipient SDR, as required by Rule 45.13 and will timely provide unique swap identifiers for cleared swaps to the reporting party.

III. Conclusion

ISDA believes that the Proposed Rule is anticompetitive and would impose added costs and connectivity requirements on market participants, thus distorting choices, frustrating assumptions and wasting investment already committed in the earlier construction of reporting systems. CME's proposal does not adequately consider the Proposed Rule's interaction with other Commission reporting rules and would create compliance uncertainties that the Commission would need to address. Furthermore, the reporting model contemplated by the Proposed Rule will lead to a more fragmented reporting structure, resulting in aggregation and reconciliation challenges for both market participants and the Commission. For the foregoing reasons, ISDA does not support approval of the Proposed Rule.

Thank you for your consideration of these comments. Please contact me or ISDA staff if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Robert C. Petel". The signature is written in a cursive style with a large, prominent 'R' and 'P'.

Chief Executive Officer
ISDA