House Committee on Financial Services

Testimony of

Don Donahue
Chairman and Chief Executive Officer

The Depository Trust & Clearing Corporation

February 15, 2011

Chairman Bachus, Ranking Member Frank and Members of the Committee, my name is Don Donahue. I am the Chairman and CEO of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is a non-commercial industry "utility" that, through its subsidiaries and affiliates, provides clearing, settlement and information services for virtually all U.S. transactions in equities, corporate and municipal bonds, U.S. government securities and mortgage-backed securities and money market instruments, as well as a significant portion of the global over-the-counter ("OTC") derivatives market. In 2010, The Depository Trust Company ("DTC"), a wholly-owned subsidiary registered as a clearing agency under the Securities Exchange Act of 1934 ("Exchange Act"), settled more than $1.66 quadrillion in securities transactions.

Since 2006, DTCC has operated the Trade Information Warehouse, ("TIW" or "Warehouse") a centralized, comprehensive global electronic containing detailed trade information for the global credit default swaps ("CDSs") markets. This was implemented in stages and reached full fruition in 2009. The TIW database currently represents about 98 percent of all credit derivative transactions in the global marketplace; constituting approximately 2.3 million contracts with a gross notional value of $29 trillion.

I very much appreciate the opportunity to share DTCC's thoughts on the implementation of Title VII of the Dodd-Frank Act. In particular, I will focus on issues raised in connection with the Dodd-Frank Act's creation of a swap data repository ("SDR") system for providing regulators and the public with the necessary transparency into the global OTC derivatives markets as a means to mitigate systemic risk. DTCC shares Congress' goal of ensuring more transparent markets for global regulatory oversight and systemic risk mitigation, protecting the public and ensuring liquid and efficient capital markets. Finally, it is our strong belief that while many of the regulatory aspects of Dodd-Frank Act remain in development, transparency is a policy option that is most ripe for implementation.

Summary of Critical Points

DTCC would like to bring two basic points to the attention of the Committee:

1. *Transparency is Key to any Attempt to Mitigate Systemic Risk in the Swap Markets*

DTCC is supportive of the principle in the Dodd-Frank Act that all swaps, whether cleared or uncleared, must be reported to SDRs. While there remains on-going debate about the causes of the financial crisis of 2008, there is broad consensus that, to the extent OTC derivatives contributed to the crisis, it was due to (a) the very large one-way positions that American International Group, Inc. ("AIG") took in mortgage-related credit default swaps, which threatened the continued viability of a systemically important firm and went unreported until it was too late; and (b) the general lack of understanding with respect to the extent of the exposures across all of the swap markets, contributed to a lack of confidence in the creditworthiness of financial institutions at just the wrong time.

The infrastructure needed to protect against these types of situations has since been put in place for the global CDS market. This safety net was developed as a cooperative effort between the market participants and regulators worldwide under the auspices of the OTC Derivatives Regulators' Forum ("ODRF"), which is comprised of over 40 regulators and other authorities worldwide, including all of the major regulators and central banks in the U.S. and Europe. Although this effort began prior to the 2008 crisis, it wasn't until 2009 that a fully comprehensive global CDS data set was obtained through the cooperative efforts of the ODRF, over 1,700 participants in the CDS market from over 50 countries and DTCC, including the non-standardized mortgage-related swaps held by AIG. With the availability of a comprehensive data set, DTCC was able to publish comprehensive market-wide information free of charge to the general public. DTCC was also able to provide comprehensive standard position risk reports to appropriate authorities worldwide (as well as responding to over 100 *ad hoc* requests from such authorities).

More recently, DTCC launched an "on-line" regulator portal through which regulators and other authorities can directly access and query through secure interfaces detailed position risk data from a global data set relating to their regulatory requirements. At present, 19 different regulators worldwide have linked to this portal.

These position risk reports and the "on-line" portal, applied over that complete global data set (most of the systemically risky trades by AIG were executed in London) would have provided regulators with sufficient early warning of the build-up of risky AIG positions to have enabled them to take corrective measures before the positions became so large that they threatened the fabric of the global financial system.

With respect to public market transparency, the comprehensive global market information that DTCC is now able to publish includes, among other things, net market-wide exposures to each CDS index and index tranche, as well market-wide exposures to each of the top 1,000 individual corporate and governmental entities on which CDS are written (ranked by size of exposure). With respect to more aggregated data, (e.g., overall exposure to sovereign debt, corporate debt and other broad categories) the published data also indicate which broad category of market participants holds what positions (these disclosures are made at this less granular level to protect the identity of position holders). Had this information been available and published in the run-up to the 2008 crisis much of the exposure uncertainty that contributed to market instability at the time, at least in the CDS market, could have been mitigated.

2. *Providing Transparency is a Cooperative Effort.*

My focus on the collective achievement -- and it was truly a collective achievement -- surrounding transparency in the CDS market is not with the intention of boasting about DTCC's contributing role, but rather to bring to the Committee's attention why this effort has been successful.

First, this achievement would not have been possible without the substantial and unusual degree of global regulatory cooperation achieved through the ODRF and the OTC Derivatives Regulators Supervisors Group ("ODSG"). Additionally, for this process to work, it was important that DTCC was not a traditional commercial entity and, as such, had no motivation for holding the data other than to help both the regulators and market participants by providing a central place for data to be reported and for regulators to access it *for both market surveillance and risk surveillance purposes*. DTCC believes it was critical to the success of this process to remove commercial concerns from what is and should remain primarily a regulatory and supervisory support function.

Finally, as a true industry-governed utility, with both buy-side and sell-side firms, not to mention self-regulatory organizations, as stakeholders, DTCC has so far been able to secure the cooperation of virtually all market participants and all clearers and trading platforms with any significant volume. If regulatory cooperation or the cooperation of market participants and their respective clearers and trading platforms is fails, both the published and regulator accessible data would be fragmented, inevitably leading to misleading reporting of exposures and a very expensive "fix" for the regulators and the marketplace generally. Fragmentation of data will leave the task to regulators of rebuilding in multiple instances the complex data aggregation and reporting mechanisms (including extra-territorial trades on locally relevant underlyings) that had already been created. That task was one of the primary reasons that the industry and regulators themselves created a single place for the data within DTCC.

The challenge going forward is to bring similar regulatory and public transparency to other parts of the swap markets.[1] DTCC would like to commend the work of both the SEC and the CFTC in the thorough and thoughtful approach they have so far taken with respect to the very complex subject of swap data reporting, including their suggested improvements to the current structure for reporting credit default swaps and their proposals regarding which features of the current reporting structures would meet regulatory needs in other swap asset classes.

However, given the need to move expeditiously and to assure the continuation of the necessary cooperative attitude among regulators, market participants, clearinghouses and trading platforms worldwide, the focus should be on expanding upon the current cooperative achievements of providing both regulatory and public transparency to the swap markets. Such cooperative efforts take some minimal amount of time to implement safely and soundly (our experience suggests a minimum of 24-36 weeks if participants cooperate). If there is a lack of cooperation, it will take significantly longer.

---

[1] There are two other global swap repositories in existence today, one for OTC equity derivatives operated by DTCC in London and one for OTC interest rate derivatives operated by TriOptima in Sweden. These repositories, however, were designed solely as a means to facilitate certain high-level position reporting by the major global dealers and do not hold sufficient data to meet the regulatory needs specified by either the Dodd-Frank Act or the ODRF (including both market surveillance and risk surveillance), which have superseded the initial requirements set forth for these entities.

It is our sense, as a user governed and regulated utility servicing most of the major regulators worldwide, that the market participants and regulators globally are poised to undertake the significant cooperative effort necessary to provide complete transparency to these markets as contemplated by the Dodd-Frank Act. DTCC implores this Committee, in exercising its oversight function, to focus on removing obstacles to this process and to urge the continued use of proven infrastructure in a manner that distinguishes the SDR function from purely commercial considerations and jurisdictional quarrels, which could hinder the cooperative attitude that has made progress possible thus far.

Overview of DTCC

As stated above, DTCC, a user owned market utility, through its subsidiaries, provides clearing, settlement and information services for virtually all U.S. transactions in equities, corporate and municipal bonds, U.S. government securities and mortgage-backed securities transactions and money market instruments and for many OTC derivatives transactions. DTCC is also a leading processor of mutual funds and annuity transactions, linking funds and insurance carriers with their distribution networks. DTCC does not currently operate a clearing house for derivatives. However, DTCC owns a 50% equity interest in New York Portfolio Clearing, LLC ("NYPC"), which has been granted registration as a derivatives clearing organization ("DCO") by the CFTC.

DTCC has three wholly-owned subsidiaries which are registered clearing agencies under the Exchange Act, subject to regulation by the SEC. These three clearing agency subsidiaries are DTC, National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC"). DTCC is owned by its users and operates as a not-for-profit utility with a fee structure based on cost recovery.

DTC currently provides custody and asset servicing for 3.6 million securities issues from the United States and 121 other countries and territories, valued at almost $36 trillion. In 2010, DTC settled more than $1.66 quadrillion in securities transactions, which amounts to the equivalent to the full value of the annual U.S. Gross Domestic Product every three days. NSCC provides clearing, risk management, central counterparty services and a guarantee of completion for certain transactions. FICC provides clearing, risk management and/or central counterparty services (through its Government Securities Division) in the fixed income, mortgage backed and government securities markets. Thus, DTCC, through its subsidiaries, processes huge volumes of transactions – more than 30 billion a year – on an at-cost basis.

Overview of the Trade Information Warehouse

DTCC began automating the derivatives market in 2003, in response to the Federal Reserve's desire for an industry solution to mitigate risk. At that time, just 15% of CDS trades were being matched. DTCC's Deriv/SERV system now matches and captures critical data for over 98% of these trades. In November 2006, at the initiative of swap market participants, DTCC expanded further to launch the TIW to operate and maintain the centralized global electronic database for virtually all position data on CDS contracts outstanding in the marketplace. Since the life cycle

for CDS contracts can extend over five years, in 2007, DTCC "back-loaded" records in the Warehouse with information on over 2.2 million outstanding CDS contracts effected prior to the November 2006 implementation date. As stated above, the Warehouse database currently represents about 98 percent of all credit derivative transactions in the global marketplace; constituting approximately 2.3 million contracts with a notional value of $29 trillion ($25.3 trillion electronically confirmed "gold" records and $3.7 trillion paper-confirmed "copper" records).

In addition to repository services, which include the acceptance and dissemination of data reported by reporting counterparties, the Warehouse provides legal recordkeeping and central life cycle event processing for all swaps registered therein. By agreement with its 17,000+ users worldwide, the Warehouse maintains the most current CDS contract details on the official legal or "gold" record for both cleared and bilaterally-executed CDS transactions. The repository also stores key information on market participants' more customized CDS swap contracts, in the form of single-sided, non-legally binding or "copper" records for these transactions, to help regulators and market participants gain a more clear and complete snapshot of the market's overall risk exposure to OTC credit derivatives instruments.

DTCC's Warehouse is also the first and only centralized global provider of life cycle event processing for OTC credit derivatives contract positions throughout their multi-year terms. Various routine events, such as calculating payments due under contracts, bilaterally netting and settling those payments and less-common events, such as credit events, early terminations and company name changes and reorganizations, may occur, all requiring action on behalf of the parties to such CDS contracts. DTCC's Warehouse is equipped to automate the processing associated with those events and related actions. The performance of these functions by the Warehouse distinguishes it from any swap data repository that merely accepts and stores swap data information.

The Indemnification Provision and Its Impact

Consistent with our discussion about the need for global regulatory cooperation in ensuring access to the data necessary to protect against systemic risk, DTCC is deeply concerned about the indemnification provisions in Sections 728 and 763 of the Dodd-Frank Act. The Dodd-Frank Act requires that repositories obtain indemnifications from foreign regulators before sharing information with them. There was no legislative history behind this provision, which was incorporated late in the legislative process, without having been considered in the hearing process. As a result, it was not subject to extensive discussion and consideration prior to the enactment of the Dodd-Frank Act, and its negative consequences must not have been clear to legislators or the relevant regulatory bodies. DTCC believes that the indemnification provision will significantly impede global regulatory cooperation.

Regulators are not likely to grant DCOs or SDRs indemnification in exchange for access to information. Accordingly, regulators may be less willing to access the aggregated market data, resulting in a reduction of information consumption, domestically and internationally, which jeopardizes market stability.

This provision gives foreign jurisdictions an incentive to create their own local repositories in order to avoid indemnification. Proliferation of local "national" repositories around the world will make it very difficult to obtain a full picture of a particular asset classes, impair market and regulatory oversight, create inconsistencies in data, frustrate data analysis and increase systemic risk.

Further, the provision could have an immediate negative impact on the ability of U.S. regulators to obtain information from repositories located in foreign countries should reciprocal indemnification provisions be enacted in foreign laws. U.S. regulators, like foreign regulators, might be legally or practically precluded from signing such agreements.

In light of the existing indemnification requirement, this Committee should encourage regulators to waive indemnification in situations where foreign regulators are carrying out their regulatory responsibilities *in a manner consistent with international agreements* which includes maintaining the confidentiality of data.

Alternatively, removing this provision of the Dodd-Frank Act in technical corrections bill may be appropriate in order to avoid undermining the ability of U.S. regulators to obtain information in derivatives markets on a global basis.

Regulatory Status of Trade Repositories – Global Cooperation

Derivatives markets are inherently cross-border, as participants in a transaction are often located in more than one jurisdiction. From the outset, DTCC has understood that the TIW serves a global function, and the information held by the Warehouse is relevant to regulators in many locations. DTCC believes it is important to support regulators around the world and has effectively done so since the end of 2008.

The SDR regime established under the Dodd-Frank Act must recognize the global characteristics of OTC derivatives markets and, for that reason, regulators and SDRs should ensure international harmonization. DTCC has worked closely with the ODRF and, with DTCC's support, the group agreed to criteria for the sharing of data, recognizing the need to have critical data on CDS accessible across geographic boundaries and regulatory jurisdictions. DTCC has implemented regulatory disclosure processes using those criteria and urges the same approach for other asset classes going forward.

DTCC hopes that global regulators will eventually recognize the overwhelming advantage of understanding risks globally from a central vantage point, thereby avoiding the data fragmentation, which critically detracts from the management of systemic risk. Preventing the exchange of information between regulators will frustrate efforts to mitigate international financial risk and fragment regulatory oversight on a jurisdiction-by-jurisdiction basis.

As the system for the use of repositories is developed internationally, it is very important for the U.S. to facilitate a result that will place U.S. regulators and foreign regulators on an equal footing in their ability to obtain information from repositories quickly and without barriers. In implementing the Dodd-Frank Act, U.S. standards should be developed to be compatible with those standards still under development in other countries, meeting the needs of both U.S. and foreign regulators. Given the risks to U.S. financial system can be impacted by transactions occurring virtually anywhere in the world, it is essential that the SEC and CFTC's final regulations create SDRs that meet the immediate needs of U.S. regulators and the long-term need of harmonization with the requirements of regulators in Europe and other major financial markets.

One major philosophical and pragmatic question that arises with respect to global cooperation is whether market data should be collected and held by the private sector and made available to regulators on an as-requested basis or, alternatively, whether governments themselves should collect the data and disseminate as a result of treaty and information-sharing agreements.

DTCC urges Congress to consider whether the goal of addressing systemic risk can be reasonably met through the U.S. relying on other governments throughout the world to share information with U.S. regulators. DTCC is skeptical of such an approach, which has been explored by U.S. regulators in the rule-making process. Instead, DTCC recommends that Congress urge U.S. regulators to rely on regulated private sector entities to collect information and disseminate it as appropriate, under a common system that is acceptable to the U.S. and other countries. The experience in the market today supports this approach, as it currently works well at the Warehouse.

Repositories' Role in Promoting Transparency and Reducing Systemic Risk

By aggregating information, repositories collect and compile all relevant data in order to assure appropriate market transparency and effective monitoring of systemic risk. Global repositories have been or are being established for each OTC derivatives asset class, which can provide regulators in the US and around the world real-time access to the data necessary to monitor and safeguard financial markets.

The Dodd-Frank Act has identified SDRs as central to helping U.S. regulators maintain the safety and soundness of derivatives markets. DTCC has urged regulators, and urges this Committee, to focus on three objectives in moving forward with regulations covering SDRs:

1) Enhancing market transparency for regulators and market participants;
2) Reducing systemic risk by ensuring regulators can determine a firm's underlying position and exposure in an integrated fashion; and
3) Promoting coordination and efficiency in the supervision of global capital markets.

DTCC urges Congress, as well as regulators, to think carefully about the implications of fragmenting information about outstanding contracts into different repositories, in different countries, on different continents.

If French regulators have to examine a dozen different trade repositories to determine what kind of credit default swap contracts may be outstanding on French companies, the likelihood is that they will never find all of the contracts, at least not quickly. Contract records could be scattered across repositories in the U.S., in Europe, in Japan, in Dubai, in Hong Kong and elsewhere. Nor is it likely to be apparent to the regulators what they are looking for, since the offsets to contracts residing in one database might be residing elsewhere. A contract could easily have been written between a Swiss financial institution and an Australian financial institution on an underlying French entity, only to be sold or assigned to another party located in Brazil. Even if all of the data is eventually located, a system to verify and analyze it would still be required.

All of the information detailed above is currently collected in the DTCC CDS Warehouse globally, and data is published weekly on all of the contracts held, including a breakdown by currency. DTCC has consistently stated that all interested regulators should have access to the data they need and, for approximately the past year, DTCC has made such data available as appropriate to the regulators involved in accordance with the global criteria adopted by the ODRF. All of this functional transparency will be undermined if regulators move ahead with an approach that does not provide for globally consolidated data.

Global regulators need consolidated reporting across international markets. International regulatory guidance for derivatives regulation has recognized that aggregated data is vital to provide a comprehensive view of derivatives markets. For example, last October, the Financial Stability Board suggested that a beneficial solution to the needs of regulators throughout the world would be the establishment of "a single global data source to aggregate the information from [SDRs]."

The Rule-Making Process

The regulatory implementation of Title VII has been extremely demanding, both on regulators and on market participants. DTCC has filed comments on a number of proposed new rules governing SDRs. Copies of DTCC's comments filed to date are appended to this testimony, and I request that they be entered in full into the hearing record, as they address many technical issues in detail that goes well beyond what is appropriate to cover in this statement.[2] I will cover the highlights of our comments on the major issues that DTCC believes are most likely to be of interest to this Committee, beginning with proposed standards for repositories.

---

[2]They include comments on the CFTC's Interim Final Rule for Reporting Pre-Enactment Swap Transactions; the CFTC/SEC request for general comments on SDRs and mitigation of conflicts of interest; the CFTC Proposed Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest; the SEC's Proposed Rule on Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies; Security-Based Swap Execution Facilities, and National Securities Exchanges with Respect to Security-Based Swaps under Regulation MC; the SEC's Interim Final Rule on the Reporting of Security-Based Swap Transaction Data; the SEC Proposed Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information; the FSOC Advance Notice of Proposed Rulemaking Regarding Authority to Designate Financial Market Utilities as Systematically Important; the SEC's Proposed Regulation on Security-Based Swap Repository Regulation, Duties and Core Principles; the OFR Statement on Legal Entity Identification for Financial Contracts, the CFTC Proposed Regulation on Real-time Public Reporting of Swap Transaction Data, and the CFTC Proposed Regulation of Swap Data Recordkeeping and Reporting Requirements.

Proposed Standards for Swap Data Repositories

DTCC has recommended that the regulations implementing Title VII set high standards for SDRs so that they meet the needs of regulators and the markets, serving as an industry utility for both. DTCC also recommends that the rules be refined to only cover entities that are actually acting as repositories, rather than entities merely providing ancillary functions. Some of the major principles include:

Neutrality. DTCC urges regulators to adopt standards for SDRs that foster neutrality and "open access" to all market participants. Regulators must ensure that the public utility function of SDRs is separated from potential commercial uses of the data. SDRs should operate objectively and impartially, with an arms-length and non-discriminatory relationship to any and all clearing, confirmation and execution facilities, affiliated or otherwise.

Round-the Clock Operations. Markets never sleep and neither should repositories. Regulators should require every SDR to operate on a 24/6 basis, process transactions in real-time and maintain redundancy.

Real-Time Processing. Market participants and regulators need repositories to perform their functions without delay in order to facilitate accuracy and the completeness of market information.

At-Cost Fee Structures. Because SDRs operate as utilities, they should be required to maintain non-profit fee structures, with at-cost operating budgets, rather than providing sources of revenue for commercial enterprises.

Redundancy. It is a material weakness for any SDR to fail to maintain adequate redundancy sufficient to protect data bases in light of catastrophic events. Significant and extensive requirements for redundancy for every SDR, consistent with long-established U.S. and global standards for business continuity and resilience, are essential for proper function and mitigation of systemic risk.

No Reductions in Registration Requirements or Performance Requirements. SDRs should be required to meet proposed standards fully, even during the temporary registration phase. The proposed regulations allow for temporary registration for SDRs while regulators assess an SDR's capabilities. To protect safety and soundness, DTCC recommends that appropriate due diligence be conducted during the temporary registration process to ensure that new entrants have adequate operational capabilities, including 24/6 operation, real-time processing, multiple redundancy and robust information security controls.

Phase In for Existing Repositories. Existing repositories, such as the TIW, already provide important transparency to regulators and markets. Final regulations need to ensure that the existing operations of any entity that intends to register as an SDR are not interrupted through the registration process. This can be achieved with phase-in transition arrangements for existing repositories whose services need to be amended to conform to final rules and the effective date of the Dodd-Frank Act.

Regulatory Harmonization. While comprehensive and thoughtful, proposed CFTC and SEC regulations governing repositories are not identical and, in some areas, differ materially. To avoid creating conflicting standards and imposing unnecessary costs, Congress should urge regulators to harmonize the regulations overseeing SDRs.

Implementation Issues

The proposed regulations issued under the Dodd-Frank Act place substantial demands on existing repositories, and those substantial demands apply to anyone who seeks to become a repository.

DTCC recommends that appropriate transitional arrangements be made to avoid market disruption in the implementation process of the proposed regulations. This can be done through a phase-in period for existing service providers like the Warehouse and by allowing a longer period for registration of new service providers who wish to become repositories, enabling them to put in place adequate systems and appropriate controls to meet the Dodd-Frank Act standards.

The implementation of the Dodd-Frank Act also places a significant burden on regulatory agencies. DTCC is merely one participant among a great number of entities consulting regularly with the CFTC and the SEC as these regulators seek to carry out their statutory mission. In meeting with these regulators, it is clear that they feel heavily burdened and are doing their best to meet the demands placed on them by the implementation of this monumental legislation.

Conclusion

Generally, the Dodd-Frank Act established an appropriate framework for the further development and use of repositories in the United States and internationally. DTCC does, however, recommend that Congress review the Act’s indemnification requirement. As contemplated, could create substantial problems for the U.S. regulators by giving foreign jurisdictions the incentive to establish separate repositories that operate on a local or national basis, rather than an international standard.

International coordination is critical to achieving the level of transparency necessary to mitigate systemic risk in swaps markets. DTCC also urges that legislators and regulators focus on the use of consolidated repositories, or single repositories by asset class, to counter the risk of fragmentation. Finally, it is critical that in implementing the Dodd-Frank Act, regulators build on existing systems and processes to address the policy goals of the Act. Building on existing systems will result in the most cost-efficient, effective and immediate solutions.

As I stated at the beginning of my testimony, risk mitigation is central to DTCC’s mission. As regulators and legislators across the globe write the rules under which the OTC derivatives markets will operate, DTCC is actively engaged in the dialogue. DTCC has a unique perspective to share and appreciates the opportunity to testify before you today.

I look forward to answering any questions the Committee may have.

Larry E. Thompson
General Counsel

Tel: 212-855-3240
Fax:212-855-3279
lthompson@dtcc.com

The Depository Trust & Clearing Corporation
55 Water Street
New York, NY 10041-0099

Via Agency Website & Courier

November 15, 2010

David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

RE: RIN 3038–AD24, Interim Final Rule for Reporting Pre-Enactment Swap Transactions

Dear Mr. Stawick:

The Depository Trust & Clearing Corporation ("DTCC") appreciates the opportunity to provide comments to the Commodity Futures Trading Commission ("Commission") on its interim final rule for reporting pre-enactment unexpired swap transactions (the "Interim Final Rule").[1] DTCC is supportive of a swap reporting regime that brings increased transparency and oversight to over-the-counter ("OTC") derivatives markets.

Summary of Response

DTCC supports the Commission's efforts to ensure that data from pre-enactment unexpired swap transactions are preserved and retrievable in the future. DTCC respectfully suggests that the reporting of a binding, legal electronic record agreed to by the two counterparties to a pre-enactment unexpired swap should be treated by the Commission as satisfying the Interim Final Rule's reporting requirement and the information and document retention policy suggested by the interpretive note to Rule 44.02(a), as well as certain obligations of swap dealers and major swap participants.[2] Additionally, DTCC provides comments to the scope of information that should be preserved under the Commission's information and documents retention policy, based upon our experience operating the Trade Information Warehouse (the "Warehouse") and the centralized global repository for credit default swaps ("CDS"). Finally, DTCC offers its comments on how the single counterparty reporting obligation set forth in Rule 44.02(b) could result in the fragmentation of swap market data and decrease the utility of

[1] Interim Final Rule for Reporting Pre-Enactment Swap Transactions, 75 Fed. Reg. 63,080 (Oct. 14, 2010).

[2] *Id.* at 63,085.

the information collected by a swap data repository and on the designation of a consolidated data repository. These comments are preceded by an overview of DTCC and the Warehouse.

Overview of DTCC

DTCC, through its subsidiaries, provides clearing, settlement and information services for equities, corporate and municipal bonds, government and mortgage-backed securities, money market instruments and over-the-counter derivatives. In addition, DTCC is a leading processor of mutual funds and insurance transactions, linking funds and carriers with their distribution networks. DTCC's depository provides custody and asset servicing for 3.6 million securities issues from the United States and 121 other countries and territories, valued at almost $34 trillion. In 2009, DTCC settled more than $1.48 quadrillion in securities transactions.

Overview of the Trade Information Warehouse

Industry Established Trade Information Warehouse to Increase Transparency, Bring Stability

In November 2006, at the initiative of swap market participants, DTCC launched the Warehouse to operate and maintain the centralized global electronic database for virtually all CDS contracts outstanding in the marketplace. The Warehouse has received information with respect to trades executed prior to its inception. During 2007, DTCC back-loaded physical records in the Warehouse with information on over 2.2 million outstanding CDS contracts. Today, data for over 95 percent of all OTC credit derivatives are captured in this automated environment.[3] The Warehouse database currently represents about 98 percent of all credit derivative transactions in the global marketplace, constituting approximately 2.4 million contacts with a notional value of $29.6 trillion ($24.9 trillion electronically "gold" records and $4.7 trillion paper confirmed).

The Warehouse maintains the most current CDS contract details on the official legal, or "gold," record for both cleared and bilaterally-executed CDS transactions. The repository also stores key information on market participants single-sided, non-legally binding or "copper," records for CDS transactions to help regulators and market participants gain a clearer and more complete snapshot of the market's overall risk exposure to OTC credit derivatives instruments.

Warehouse "Gold" Records Are Binding, Legal Electronic Record between Counterparties

Once an executed contract has been matched and confirmed, the trade record is sent to the Warehouse's repository. A "gold" record represents the current legal state of the contract. In fact, each user of the Warehouse's services has signed a binding agreement

[3] For more information about the Warehouse, please see http://www.dtcc.com/products/derivserv/suite/ps_index.php.

that states that, notwithstanding any provisions in any other applicable documentation relating to such transaction, the contracts maintained by the Warehouse represent the definitive record of each transaction and supersede any other documentation or understanding, whether written, oral, or electronic, between the parties. The Warehouse documents are relied upon to resolve any dispute between counterparties and to determine any payments or settlements by the Warehouse.

For "gold" records, DTCC assigns a unique reference identifier to each contract and performs automated recordkeeping to maintain the "current state" contract terms, taking into account post-trade events. The Warehouse also maintains a complete audit trail of the initial trade and every modification or assignment agreed to by the counterparties. These records are updated in real-time and, because the Warehouse is the official legal record of electronically confirmed contracts and centrally processes payments and credit events, counterparties ensure that these files are kept up to date and accurate.

Global regulators are provided information on "gold" and "copper" CDS contracts, as appropriate and upon request. Because contract details are located in a single central location, the Warehouse provides regulators across the globe with the ability to view market exposure on these contracts and assess risk from a central vantage point, which is critical, particularly in times of crisis. The availability of this data is necessary for regulators to identify and address risks to financial markets in a timely fashion.[4] Beginning next year, all credit derivative trade data held in the Warehouse will also be simultaneously held in DTCC Derivatives Repository, Ltd., an FSA regulated subsidiary based in London, in order to help assure regulator access to data across multiple jurisdictions.

Discussion of Interim Final Rule

<u>The Submission and Maintenance of Binding, Legal Electronic Record Should Satisfy the Reporting Requirements for Pre-enactment Unexpired Swaps and also Certain Requirements for Swap Dealers and Major Swap Participants.</u>

Rule 44.01 requires a counterparty to a pre-enactment unexpired swap transaction to report to a registered swap data repository or the Commission by the compliance date established in the reporting rules required under Section 2(h)(5) of the Commodity Exchange Act, or within 60 days after a swap data repository becomes registered with the Commission and commences operations to receive and maintain data related to such swap, whichever occurs first.[5] The purpose of the swap data repository is to "assist the CFTC and SEC in their oversight and market regulation responsibilities."[6]

---

[4] As an example, while the Warehouse reported counterparty specific positions to regulators at the time of the AIG insolvency, virtually none of the AIG trades creating the exposure that lead to the company's downfall were registered in the Warehouse. A mandate for all trade activity to be reported into a central swap data repository maintaining all positions would have assisted in identifying risk posed by AIG's market activity and provided an opportunity to reduce the risk promptly.

[5] *See* Interim Final Rule for Reporting Pre-Enactment Swap Transactions, 75 Fed. Reg. at 63,084.

[6] Statement of Sen. Blanche Lincoln. 156 Cong. Rec. S5920 (2010).

Although the Warehouse is not yet a registered swap data repository, DTCC intends to register the Warehouse as a swap data repository upon promulgation of the relevant regulations by the Commission. In the interim, in consultation with the OTC Derivatives Regulators' Forum, the Warehouse makes available its records for regulators and provides aggregated trade data to nearly 30 global regulators and central banks, including the Commission, the Securities and Exchange Commission, the Federal Reserve Bank of New York, the European Central Bank, Banque De France, and the Financial Services Authority.

DTCC respectfully suggests that, in addition to satisfying the filing requirements for pre-enactment unexpired swaps, the submission and maintenance of a binding, legal electronic record on a regular basis should be used to satisfy some of the ongoing obligations of swap dealers and major swap participants. In particular, the entity charged with keeping swap data up to date, as the possessor of this information, could easily report on behalf of a swap dealer or major swap participant regarding its transactions, positions and financial condition,[7] maintain its books and records,[8] and maintain daily trading records of the swaps of the registered swap dealer or major swap participant and all related records (including related cash or forward transactions), as may be required by the Commission and for each swap counterparty.[9]

The designation of the submission and maintenance of a binding, legal electronic record for pre-enactment unexpired swaps within the Interim Final Rule would reduce the burden on counterparties that do not transact frequently in OTC markets and lack the infrastructure for duplicative reporting obligations.[10] Similarly, the value of having one agreed-upon electronic record governing an agreement between counterparties is also recognized by more frequent market participants.[11]

Further, it is inefficient and jeopardizes systemic risk to establish a reporting regime that results in regulators relying on counterparty-reported information that could differ from the binding, legal electronic record maintained at a central location by a neutral third party that the counterparties consider the official record. For asset classes where current

---

[7] Commodity Exchange Act ("CEA") Section 4r(f)(1)(A).

[8] CEA Section 4r(f)(1)(B)-(D).

[9] CEA Section 4r(g)

[10] *See, e.g.*, Comments from Joseph R. Glace, Chief Risk Officer, Exelon, representing Coalition for Derivatives End-Users, (''The important part for us again is [to] have users who are satisfying the reporting obligations . . so again, you know, to me to have that [reporting] process go on, which is a useful business process, and then to duplicate it again in some other fashion is just an additional cost.") Joint Public Roundtable to Discuss Data for Swaps and Security-Based Swaps, Swap Data Repositories, Security-Based Swap Data Repositories, and Real-Time Public Reporting, September 14, 2010 ("Roundtable Transcript") at 194-195. Available at http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/derivative18sub091410.pdf.

[11] *See, e.g.*, Comments from John Gidman, Executive Vice President, Loomis, Sayles & Company, representing the Association of Institutional Investors, (''We think the public overall, are much better served by having gold records that we can rely on, particularly at the aggregate level of the market and the markets.") Roundtable Transcript at 227.

market practice dictates reporting and confirmation of trade information to a central repository, establishing a parallel track for regulatory oversight would only duplicate reporting obligations and establish an opportunity for conflicting swap data. Because market participants recognize the value in and currently report and maintain binding, legal electronic records, DTCC suggests that this practice satisfy any additional reporting requirement for pre-enactment unexpired swap transactions.

For these same reasons, DTCC believes the information retention requirements set forth in Rule 44.02(a) for future reporting should be satisfied when trade information has been reported and recognized by the counterparties as the binding, legal electronic record.

Fragmentation of Swap Market Data Caused by Single Party Reporting and Lack of Consolidation of Repository Data Poses Risks

Rule 44.02(b) requires only one party to report pre-enactment unexpired swap transaction data, and depending on the classification of the counterparties as major swap participants[12] or swap dealers,[13] it is possible that the counterparties may select the responsible party.[14] This reporting arrangement differs from current market practice and is inconsistent with the existing repository reporting infrastructure. Currently, the receipt of information from both parties to a swap data repository guarantees reconciliation of the information and confirmation that the information entering into the Warehouse is accurate. Reducing the reporting obligation to only one side leaves open the possibility of incorrect data and jeopardizes the value placed on binding, legal electronic records such as our "gold" records for CDS. Further, a single-reporting regime will confront international legal obstacles, such as domestic privacy laws, which will restrict the reporting party's ability to disclose counterparty information. Bilateral reporting obligations alleviate some of these burdens and produce more valuable, trustworthy information which can be relied upon by counterparties and regulators.

The issue of incorrect or fragmented data presents a second risk that concerns many market participants.[15] DTCC recognizes the value of aggregated reporting to repositories and regulators and strongly urges the Commission to consider consolidation of repository data, either by asset class or across all products.

The Dodd-Frank Act provides authority for the Commission to mitigate the risk posed by fragmented market data caused by multiple swap data repositories. Under section 21 of

---

[12] CEA Section 1a(33).

[13] CEA Section 1a(49).

[14] *See* Interim Final Rule for Reporting Pre-Enactment Swap Transactions, 75 Fed. Reg. at 63085.

[15] *See, e.g.*, Comments from Athanassos Diplas, Managing Director, Deutsche Bank, ("what regulators have is to have a single report per asset class so that all that information can be contained in one place and we don't have actually information falling through the gaps. Part of the problem in the past has been that information was fragmented and that caused the actual problems.") Roundtable Transcript at 23. *See also* Comments from Bruce Tupper, Director, Market Development ICE eConfirm, ("I think the big question is aggregating the data amongst energy clearing houses and also the OTC data. Is that a responsibility that the Commission wants to have, or is that something of the repository?") Roundtable Transcript at 71.

the CEA, as amended by the Dodd-Frank Act, swap data repositories shall "provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity)."[16] Under this authority, the Commission could designate one swap data repository as the recipient of other swap data repositories' information in order to have consolidation and direct electronic access for the Commission.

Conclusion

We appreciate the opportunity to comment on the Commission's Interim Final Rule and provide the information set forth above. Should you wish to discuss these comments further, please contact me at 212-855-3240 or lthompson@dtcc.com.

Regards,

Larry E. Thompson
General Counsel

[16] CEA Section 21.

The Depository Trust & Clearing Corporation
55 Water Street
New York, NY 10041-0099

Larry E. Thompson
General Counsel

Tel: 212-855-3240
Fax:212-855-3279
lthompson @dtcc.com

Via Agency Website & Courier

November 17, 2010

David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

RE: RIN 3038–AD01 Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest

Dear Mr. Stawick:

The Depository Trust & Clearing Corporation ("DTCC") appreciates the opportunity to provide comments to the Commodity Futures Trading Commission ("Commission") on its proposed rules on requirements for derivatives clearing organizations ("DCOs"), designated contract markets ("DCMs") and swap execution facilities ("SEFs") regarding the mitigation of conflicts of interest (the "Proposed Rules").[1] The Proposed Rules contain (i) certain composition and governance requirements on the boards and specified committees of DCOs, DCMs and SEFs (the "Structural Governance Requirements") and (ii) certain limits on the ownership and voting power of members of DCOs, DCMs and SEFs and on enumerated entities[2] (the "Ownership and Voting Limitations").

I. SUMMARY OF RESPONSE

DTCC supports regulations designed to reduce risk, increase transparency and promote market integrity within the financial system. DTCC does not currently operate a DCO, DCM or SEF (each, a "Registered Entity"). However, DTCC owns a 50% equity interest in New York Portfolio Clearing, LLC ("NYPC"), which has applied to the Commission

[1] Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 Fed. Reg. 63,732 (Oct. 18, 2010).

[2] "Enumerated entities" is generally defined in the Proposed Rules to mean (i) a bank holding company (as defined in Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)) with total consolidated assets of $50 billion or more, (ii) a nonbank financial company supervised by the Board of Governors of the Federal Reserve System, (iii) an Affiliate of such bank holding company or nonbank financial company, (iv) a swap dealer, (v) a major swap participant and (vi) an associated person of a swap dealer or major swap participant. *See* proposed regulation 17 C.F.R. § 39.25(b)(1), 75 Fed. Reg. at 63750.

for an order granting registration as a DCO.[3] DTCC is therefore concerned with the potential effect of the Proposed Rules on NYPC (specifically the Structural Governance Requirements) and the potential effect of the Proposed Rules on DTCC and its own shareholders (specifically the Ownership and Voting Limitations). DTCC also offers its comments on the Proposed Rules from its perspective at the center of the financial market as a user-owned and governed, at-cost financial market utility that seeks to reduce systemic risk and ensure financial stability.

- It is DTCC's view that reliance on the proposed Structural Governance Requirements (subject to our further comments below) offers the best solution to meet the stated goals of the Proposed Rules while avoiding the potential negative impact on capital, liquidity and increased systemic risk that could result from the Ownership and Voting Limitations.

- DTCC strongly advocates that the Ownership and Voting Limitations be eliminated in their entirety because the Structural Governance Requirements alone are sufficient to deal with the conflicts of interest identified by the Commission in its notice of proposed rulemaking. DTCC supports the mitigation of conflicts of interest through the imposition of governance requirements designed to ensure an independent perspective on the Boards of Directors and committees of Registered Entities. This approach is supported by various experts, from both the public[4] and private sector,[5] as an appropriate method to mitigate conflicts of interests.

- Should the Commission conclude that ownership restrictions are advisable to mitigate conflicts of interest, DTCC urges the Commission to adopt a definition of "parent" and correlative definition of "subsidiary" which provide that, for purposes of the "Parent Companies" provision of the Ownership and Voting Limitations, a person will only be deemed to be the parent of a subsidiary if such person owns all or a majority of the equity interest in the subsidiary and controls the day-to-day operations of the subsidiary. That is, we suggest that the Commission adopt a definition of parent and correlative definition of subsidiary

---

[3] NYSE Euronext owns the other 50% equity interest. Neither DTCC nor NYSE owns a majority of the equity interests in NYPC. NYPC will have its own management team which will control the day to day operations of the company.

[4] *See, e.g.*, Comments from Hal Scott, Harvard Law School, ("[Ownership restrictions are] counterproductive in getting needed capital liquidity into the clearinghouses which, I think, should be our central focus in terms of systemic risk. In my view the potential conflicts should be generally handled by board governance rules and not by ownership restrictions.") Joint Public Roundtable on Governance and Conflicts of Interest in the Clearing and Listing of Swaps, August 20, 2010 ("Roundtable Transcript") at 109-110. Available at http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/derivative9sub082010.pdf.

[5] *See* Comments from Ms. Lynn Martin, NYSE Euronext, Inc., ("Specifically on the topic of ownership limitations and voting caps, NYSE Euronext opposes specific ownership limitations. We think that a more effective manner in controlling conflicts of interest is around good governance structure at a board level.") Roundtable Transcript at 120-121.

that align with the way the Structural Governance Requirements are proposed to be applied to persons which are parents of Registered Entities.

- If the Commission were to reject this approach to defining the parent/subsidiary relationship, DTCC would, in the alternative, request that the Commission include in the Proposed Rules a general exception from the Parent Companies provision of the Ownership and Voting Limitations for any entity that, like DTCC, is a financial market utility. As a complex user-owned and governed financial market utility with multiple subsidiaries, DTCC is regulated and supervised by banking and securities regulators. Its ownership and corporate governance structures (further described below) are representative of the regulated financial institutions that comprise its user shareholders. Certain of these shareholders may fall directly within the scope of the Proposed Rules and be covered accordingly so that dual coverage should not be necessary; those that are not otherwise subject to the Proposed Rules should not be indirectly regulated merely by virtue of their interests in DTCC. The Ownership and Voting Limitations under the Proposed Rules could adversely destabilize DTCC's structure and governance and conflict with its obligations under other regulatory regimes.

II. Overview of DTCC and Its Wholly-Owned Subsidiaries

DTCC, through its subsidiaries, provides clearing, settlement, and information services for equities, corporate and municipal bonds, government and mortgage-backed securities, money market instruments and over-the-counter derivatives. DTCC is also a leading processor of mutual funds and insurance transactions, linking funds and carriers with their distribution networks.

DTCC has three wholly-owned subsidiaries which are registered clearing agencies under the Securities Exchange Act of 1934, as amended (the "1934 Act"), subject to regulation by the Securities and Exchange Commission (the "SEC"). These three clearing agency subsidiaries are The Depository Trust Company ("DTC"), National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC"). DTC is also a limited purpose trust company organized under the New York State Banking Law, subject to regulation by the New York State Banking Department (the "NYSBD"), and a State Member Bank of the Federal Reserve System, subject to regulation by the Federal Reserve Bank of New York ("FRBNY"). As the parent of DTC and another New York limited purpose trust company, DTC is a bank holding company under New York law (but not Federal law), subject to supervision by the NYSBD. Accordingly, DTCC and its clearing agency subsidiaries are collectively subject to the supervision and regulation of both banking and securities regulators.

DTC currently provides custody and asset servicing for 3.6 million securities issues from the United States and 121 other countries and territories, valued at almost $34 trillion. In 2009, DTC settled more than $1.48 quadrillion in securities transactions. NSCC provides clearing, risk management, central counterparty services and a guarantee of completion for certain transactions. FICC provides clearing, risk management and central counterparty services (through its Government Securities Division) in the fixed-

income, mortgage backed and government securities markets. These clearance and settlement services reduce risks for investors and the entire financial system by guaranteeing the completion of stock and bond transactions in the event of a participant default. Thus, DTCC, through its subsidiaries, processes huge volumes of transactions – more than 30 billion a year on an at-cost basis.

DTCC believes that its own governance structure may provide a useful model for the Commission as the Commission considers and further develops the Structural Governance Requirements for Registered Entities.

To satisfy the "fair representation" requirements of Section 17A of the 1934 Act applicable to registered clearing agencies, the participants of DTC, NSCC and FICC are required (or, in some cases, permitted but not required) to purchase and own shares in DTCC and are thereby entitled to vote for its directors. The participant community includes domestic and international broker/dealers, custodian, correspondent and clearing banks, mutual fund companies and investment banks. As a financial market utility, DTCC and its clearing agency subsidiaries operate on an "at-cost basis," charging transaction fees for services at levels sufficient to cover the utility's costs and appropriate provisions for necessary reserves. DTCC also has a number of wholly-owned subsidiaries which are not in regulated businesses and, in addition to NYPC, has a 50% equity interest in two other joint venture companies.

The 2010 DTCC Board of Directors is composed of nineteen directors. Thirteen directors are representatives of clearing agency participants, including international broker/dealers, custodian and clearing banks and investment institutions. Three directors are not representatives of participants (also referred to as "independent directors" below). Two directors are designated by DTCC's preferred shareholders, NYSE Euronext and FINRA. The remaining three directors are the Chairman and Chief Executive Officer, President, and Chief Operating Officer of DTCC. The individuals who serve as directors of DTCC also serve as directors of the three clearing agency subsidiaries.

Individuals are nominated for election as directors based on their ability to represent DTCC's diverse base of participants, and DTCC's governance is specifically structured to help achieve this objective. The non-participant board members are individuals with specialized knowledge of financial services, who bring an independent perspective since they are not affiliated with firms that use DTCC services. Board members serve on a variety of board committees with responsibility to oversee aspects of DTCC's operation. In addition, to ensure broad industry representation and expertise on key industry subjects, industry representatives who are non-board members also serve on a number of advisory committees to the board.

As DTCC serves virtually the entire financial industry, from broker/dealers to banks to insurance carriers to mutual funds, its governance structure represents the entirety of the marketplace. DTCC has approximately 330 shareholders and no single shareholder holds more than a 6% interest in the company. Shares are allocated based on usage of the clearing agency subsidiaries. Roughly every three years the shares are reallocated to align ownership with usage. DTCC shares are not traded, so no one firm or group of

firms may gain control of the Board of Directors by purchasing shares outside the periodic reallocation.

III. DISCUSSION OF PROPOSED RULES

In describing the conflicts of interest that may confront a DCO, the Commission notes concerns expressed by some market participants, investor advocates, and academics that enumerated entities may have economic incentives to minimize the number of swap contracts subject to mandatory clearing and trading.[6] As stated in the preamble to the Proposed Rules, "[t]hey contend that control of a DCO by the enumerated entities, whether through ownership or otherwise, constitutes the primary means for keeping swap contracts out of the mandatory clearing requirement, and therefore also out of the trading requirement."[7]

As described in greater detail below, DTCC believes that the Ownership and Voting Limitations are an imprecise tool with which to achieve the policy goals of the Commission regarding conflicts of interest. DTCC is concerned that the proposed ownership limitations are more restrictive than necessary to meet the stated goals of the Commission and, at the same time, create the risk of unintended adverse consequences. DTCC takes the view that the policy goals can be best met by the Structural Governance Requirements, by strengthening DCO board governance through the presence of independent board members and the establishment of certain board committees.

A. Structural Governance Requirements

Section II above of this comment letter describes the ownership and governance structure of DTCC. As a user-owned and governed financial market utility that operates on an at-cost basis, DTCC complies with certain statutory requirements of "fair representation," which require that its Board of Directors represent its participant shareholders. In addition, DTCC's governance rules require it to have three independent directors (and, as a practical matter, there are four, including FINRA). DTCC's operations are extremely sophisticated and require its Board and committee members (participant and non-participant alike) to have considerable expertise in financial markets.

Based on our experience with such governance, DTCC sees this approach as a positive model for mitigating conflicts of interest among competing constituencies within the organization. Also, for these reasons and those set forth below, DTCC would respectfully suggest that the Commission recognize the unique circumstances faced by DTCC and other financial market utilities and structure the independence and board requirements in a way that does not jeopardize their ability to identify and mitigate systemic risk while nevertheless addressing the stated concerns for conflicts of interest.

---

[6] *See* Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 Fed. Reg. at 63,734.

[7] *Id.* at 63,734.

i. Independence

The Commission indicates that the Structural Governance Requirements set forth in the Proposed Rules will mitigate conflicts of interest by "introducing a perspective independent of competitive, commercial, or industry considerations to the deliberations of governing bodies (*i.e.* the Board of directors and committees.)"[8] The Commission also notes that conflicts of interest may also be mitigated by providing for fair representation of all constituencies in the governance of a Registered Entity, as fair representation would prevent any one particular interest from dominating the governance of the entity.[9]

As described above, DTCC shareholding and Board representation are determined by the principle of fair representation under the 1934 Act. DTCC's long experience with this composition demonstrates the effectiveness of this approach in affording the industry a forum for the resolution of differing, sometimes competing, interests of the constituent users. At the same time, DTCC greatly values the perspective and contribution of independent board members. Currently, DTCC's Board of Directors includes three non-participant directors who are not affiliated with firms that use DTCC's services as well as a representative of FINRA (as a preferred shareholder). These directors include individuals with specialized knowledge of financial services, including systemic risk, and who bring an independent perspective because they are not customers of DTCC's services.

ii. Board Requirements

1. Composition

The Proposed Rules require the Boards of Directors of Registered Entities be composed of at least 35%, but no less than two, public directors.[10] Further, to prevent dilution of the composition requirements through corporate structuring, the Proposed Rules extend such composition requirements to any committee of the Board of Directors that may exercise delegated authority with respect to the management of the entity.[11] Additionally, the Proposed Rules prohibit Registered Entities from allowing themselves to be "operated" by another entity, unless that entity agrees to adhere to the composition requirements.[12]

---

[8] *Id.* at 63,737.

[9] *See id.* at 63,738.

[10] *See id.* at 63,738.

[11] *See id.* at 63,738.

[12] *See id.* at 63,738. "The proposed rule defines 'operate' as 'the direct exercise of control (including through the exercise of veto power) over the day-to-day business operations of' a DCO, DCM, or SEF 'by the sole or majority shareholder of such registered entity, either through the ownership of voting equity, by contract, or otherwise. The term 'operate' shall not prohibit an entity, acting as the sole or majority shareholder of such registered entity, from exercising its rights as a shareholder under any contract, agreement, or other legal obligation." *Id.* at 63,738, fn. 54.

DTCC supports the Commission's objective of reducing conflicts of interest through the imposition of Board of Director and committee composition requirements. However, such requirements should ensure that an entity's governing body represents a broad base of market participants in the relevant markets.

DTCC would urge the Commission to remove the percentage requirement, which may be onerous for a small Board of Directors or start-up initiative. DTCC believes that mandating a 35% independent composition requirement imposes too high a threshold and creates a substantial risk of the dilution of market expertise, especially for entities that have smaller Boards of Directors.

Independent perspectives can provide substantial value to a Board of Directors, but those who do not directly participate in markets may not have sufficient, timely, and comprehensive expertise on those issues critical to the extraordinarily complex financial operations of Registered Entities. These entities require expertise at the Board of Directors level in such diverse areas as strategic planning, risk management, technology, operations, management, finance, audit, government relations, regulatory affairs, compensation and human resources, as well as legal, regulatory, and compliance expertise. Therefore, it is critical for the safety and soundness of Registered Entities that the composition of their Boards of Directors sufficiently incorporates the range of necessary expertise as well as independent judgment. DTCC believes that mandating two public directors is sufficient to introduce an independent perspective and that a percentage requirement is neither necessary nor productive. (Please also refer to our comments below at page 9 regarding the definition of "public director.")

2. Substantive Requirements

In addition to the composition requirements discussed above, the Proposed Rules would impose certain substantive requirements on the Boards of Directors of Registered Entities to enhance the accountability of such Boards of Directors to the Commission. These additional substantive requirements include a clear articulation of the roles and responsibilities of the Board of Directors, annual performance reviews, implementation of member removal procedures, expertise mandates, and certain compensation structure prohibitions.[13]

As a complex financial market utility, DTCC recognizes and supports a regulatory requirement that Board members possess essential characteristics, including integrity, objectivity, sound judgment and leadership. DTCC also recognizes, based on its own experience, that ensuring the safe, sound and efficient oversight of operations requires that Board members also have the requisite expertise and experience.[14]

---

[13] *See id.* at 63,739.

[14] *See* Comments from Ms. Heather Slavkin, AFL-CIO, ("I think having real experts on the boards of directors is a very important issue. We all saw situations in the last several years where there were boards that were two-thirds independent and made really stupid decisions about risk management. So, we need to make sure that there are people on those boards of directors that really understand the risks that exist within a clearinghouse and are prepared to perceive potential risks that may arise in the system down the road and address them. So they also need to have the personalities to stand up to a board of directors that

iii. Committees

The Proposed Rules set forth requirements for Registered Entities to establish certain committees, including a requirement that these entities establish a Nominating Committee. According to the preamble to the Proposed Rules, "[t]he role of the Nominating Committee would be to: (i) [i]dentify individuals qualified to serve on the Board of Directors, consistent with the criteria that the Board of Directors require and any composition requirement that the Commission promulgates; and (ii) administer a process for the nomination of individuals to the Board of Directors."[15] Under the Proposed Rules, public directors must comprise at least 51% of the Nominating Committee, and a public director must serve as chair of the Committee.[16]

Additionally, the Proposed Rules require that DCOs establish a Risk Management Committee to provide the expertise necessary to manage the risks associated with derivatives instruments, while ensuring the composition of the Committee mitigates potential conflicts of interest.[17] The Proposed Rules require (i) 35% of the Risk Management Committee be composed of public directors, with sufficient expertise in clearing services and (ii) 10% of the Risk Management Committee be composed of customers of clearing members who routinely execute swap contracts and have experience using pricing models for such contracts.[18] Such Risk Management Committees may delegate certain responsibilities to a Risk Management Subcommittee, while maintaining oversight authority over the Subcommittee's decisions.[19] Decisions of the Risk Management Committee and Subcommittee may not be subject to the approval of, or otherwise limited by, any body other than the Board of Directors of a DCO.[20]

Consistent with its position on public directors, DTCC is opposed to the percentage requirements and to the leadership requirements for key committees. DTCC refers to the arguments above regarding the experience and interests of public directors, which are equally applicable to the percentage requirements. While public directors may provide an important counterpoise to interested directors, they may not otherwise have the necessary investment in the success of the enterprise and/or experience to be responsible for such key functions as are proposed.

---

may be entrenched and have their own interests that may differ from those that are in the best interests of the systemic stability.") Roundtable Transcript at 77.

[15] Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 Fed. Reg. at 63,740.

[16] *See id.* at 63,740.

[17] *See id.* at 63,740.

[18] *See id.* at 63,740.

[19] *See id.* at 63,741.

[20] *See id.* at 63,741.

However, DTCC supports the policy of requiring the establishment of committees (by whatever name) charged with the responsibility of increasing the quality of representation on Boards of Directors and to manage risk.

iv. Definition of Public Director

The Proposed Rules include a definition of "public director." The Commission requests comments on the proposed definition, asking whether (1) there are other ways the term should be defined, (2) there are other circumstances that should be included in the bright-line materiality test, and (3) there are circumstances that should be removed from such tests.[21]

DTCC agrees that independent directors are a valuable institutional resource and serve to balance the interests of directors who may represent particular constituents on the Board of Directors. The goal of requiring independent directors is to identify individuals of stature, experience and good conscience who will exercise independent judgment in the best interests of the Registered Entity. To this end, DTCC recommends a qualitative definition that stresses positive features of industry knowledge and experience, personal probity and prior service, while specifying a limited and objective set of disqualifications.

DTCC finds the proposed definition of "public director" difficult to construe and, hence, open to misinterpretation. Further, it has the potential to be damaging to critical financial market infrastructures. The definition does not actually state a "bright-line materiality test" because the measures of materiality are illustrative and non-exclusive. DTCC recommends prescriptive guidelines, rather than overbroad and ambiguous regulations which are difficult to apply.

At the core of the definition in the Proposed Rules is the term "material relationship" which is a relationship "that reasonably could affect the independent judgment or decision-making of the director."[22] While DTCC agrees with this general guideline, the manner in which it is measured may be problematic. A definition of "material relationship" which provides a limited objective list of excluded relationships and or safe-harbors would be instructive for market participants. For instance, a provision that limits compensation to a reasonable amount is an example of an objective threshold. The criteria in clause (i) of the definition of material relationship[23] could represent an objective standard, if the terms parent, subsidiary and affiliate were defined as suggested below (please see page 12). Clause (ii) of the definition,[24] excluding members of the Registered Entity and their directors, officers or employees, is also objective, but

---

[21] *See id.* at 63,734.

[22] *Id.* at 63,747.

[23] "[A]n officer or an employee of the registered entity, or an officer or an employee of its affiliate. In this context, "affiliate" includes parents or subsidiaries of the registered entity or entities that share a common parent with the registered entity…."

[24] *Id.* at 63,747.

extending this to subsidiaries, parents, affiliates and family (as defined) broadens it so far as to be nearly boundless and a challenge to implement.

In complex financial institutions, the interpretation of these exclusions may be difficult enough to determine, and even more so to imagine additional unspecified "material relationships." This over-specificity could have a chilling effect on encouraging independent representation and limit the pool of candidates in a manner adverse to the best interests of the organization.

B. Ownership and Voting Limits

i. Reject Ownership and Voting Limits

The Commission's proposed Ownership and Voting Limitations require that a DCO choose between one of two alternative limitations on ownership of voting equity and the exercise of voting rights.[25] The first alternative limits to 20% the amount of voting equity that any single member (and related persons) may own or vote, directly or indirectly and limits to 40% the amount of voting equity that the enumerated entities (and their related persons) may own in the aggregate or vote, directly or indirectly.[26] The second alternative limits to 5% the voting equity that any DCO member or enumerated entity (whether or not such entity is a DCO member), and the related persons thereof in each case, may own.[27]

The Commission's proposed Ownership and Voting Limitations also would prohibit a member of a DCM or SEF, together with its related persons, from directly or indirectly owning or voting more that 20% of any class of equity interest of the DCM or SEF, as applicable, entitled to vote.

The conflicts of interest provisions in the Proposed Rules are designed to address "a conflict of interest that a DCO may confront when determining (i) whether a swap contract is capable of being cleared, (ii) the minimum criteria that an entity must meet in order to become a swap clearing member, and (iii) whether a particular entity satisfies such criteria."[28]

a. *<u>Hard Ownership Caps Rejected by Congress; European Commission</u>*

DTCC urges that relying upon restrictions on aggregate numerical DCO, DCM and SEF ownership or governance caps on a particular class of market participants is too blunt an approach for these specific market circumstances. DTCC believes that fair representation and governance requirements (other than percentage requirements) are better suited to the achievement of the stated policy goals.

---

[25] Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 Fed. Reg. at 63,743.

[26] *See id.* at 63,743.

[27] *See id.* at 63,744.

[28] *See id.* at 63,733.

Further, it is important to recognize that the Commission is proposing hard ownership restrictions which are not specifically required by Section 726 the Dodd-Frank Act.[29] Additionally, as noted by Commissioner O'Malia[30] and Commissioner Sommers,[31] an aggregate ownership cap approach was recently rejected by the European Commission (the "EC"). The language used by the EC in rejecting ownership restrictions is clear, and its logic is compelling. The EC found that there are a number of governance solutions that provide better protections against conflicts of interest than ownership restrictions, and also found that such ownership restrictions risk adverse unintended consequences. As the EC stated in its current proposed rule:

> "[A] CCP must have in place robust governance arrangements. These will respond to any potential conflicts of interest between owners, management, clearing members and indirect participants. The role of independent board members is particularly relevant. The roles and responsibilities of the risk committee are also clearly defined in the Regulation: its risk management function should report directly to the board and not be influenced by other business lines. The Regulation also requires governance arrangements to be publicly disclosed. In addition, a CCP should have adequate internal systems, operational and administrative procedures, and should be subject to independent audits. All of these measures are considered more effective in addressing any potential conflicts of interest that may limit the capacity of CCPs to clear, than any other form of regulation which may have undesirable consequence on market structures (e.g. limitation of ownership, which would need to extend also to so-called vertical structures in which exchanges own a CCP)."[32]

b. *Unintended Consequences of Aggregate Ownership Restrictions*

As a user-owned and governed financial market utility with a cooperative-style ownership structure, DTCC has significant concerns that any proposal which relies upon aggregate ownership restrictions may undermine the safety and soundness of financial markets. An effective prohibition of industry ownership of a market-created initiative

---

[29] Dodd-Frank Act Section 726 ("The Commodity Futures Trading Commission shall adopt rules which **may include** numerical limits on the control of, or the voting rights with respect to, any derivatives clearing organization." [Emphasis added.])

[30] Concurring statement of Commissioner Scott O'Malia ("With that said, the European Commission released (September 15, 2010) a proposal on financial reform which does not place individual or aggregate ownership limits on DCOs under European Union jurisdiction.")

[31] Dissenting statement of Commissioner Jill Sommers ("I also note that the European Commission explicitly rejected ownership limitations in its proposal for regulating OTC derivatives announced September 15th because such limitations may have negative consequences for market structures. I agree.")

[32] Proposal for a Regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories {SEC(2010) 1058} {SEC(2010) 1059}. Available at http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/20100915_proposal_en.pdf.

would have a profound negative impact on the existing clearance and settlement system in the United States, which has served as a source of stability, resiliency and efficiency over the past 35 years and is responsible for mitigating systemic risk, driving down post-trade costs and helping attract global capital to our markets.

DTCC shares Commissioner Sommers' concern that "the proposed limitations on voting equity, especially those proposed for enumerated entities in the aggregate with respect to DCOs, may stifle competition by preventing new DCMs, DCOs, and SEFs that trade or clear swaps from being formed."[33]

ii. Clarify the Application of the Parent Companies Provision

The Ownership and Voting Limitations of the Proposed Rules also contain a provision titled "Parent Companies," which provides that (1) if a Registered Entity is a subsidiary, the Ownership and Voting Limitations shall apply to its parent, whether direct or indirect, in the same manner than they apply to such Registered Entity and (2) if any parent is publicly-listed on a domestic exchange, then such parent must follow the voting requirements promulgated by the SEC or the entity on which such parent is listed.

If the Ownership and Voting Limitations of the Proposed Rules are not eliminated in their entirety as suggested in section II(B)(i) above, then clarity is needed regarding the application of the Parent Companies provision of the Ownership and Voting Limitations.

The term "subsidiary" is not defined in the Proposed Rules. Therefore, it is unclear (1) what types of entities fall within the definition of "subsidiary" and (2) in turn, what types of entities will be deemed to be "parents" subject to the Ownership and Voting Limitations of the Proposed Rules. DTCC suggests that the definition of "subsidiary" in the Parent Companies provision of the Ownership and Voting Limitations be aligned with the application of the Parent Companies provision of the Structural Governance Requirements.

The Structural Governance Requirements of the Proposed Rules also contain a provision titled "Parent Companies." While this provision does not use or define the term "subsidiary," it provides that the Board and committee composition requirements applicable to DCOs, DCMs and SEFs will be applied to any entity that "operates" a Registered Entity. The term "operate" is defined in the Proposed Rules to mean the direct exercise of control (including through the exercise of veto power) over the day-to-day business operations of the Registered Entity by the sole or majority shareholder of such entity, whether through the ownership of voting equity, by contract, or otherwise.

Accordingly, DTCC suggests that the term "subsidiary" for purposes of the Parent Companies provision of the Ownership and Voting Limitations of the Proposed Rules should be defined to mean a wholly-owned or majority-owned entity whose sole or majority shareholder directly exercises control (including through the exercise of veto power) over the day-to-day business operations of such entity, whether through the

---

[33] Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 Fed. Reg. at 63,753.

ownership of voting equity, by contract or otherwise. Stated differently, a person should be deemed to be the "parent" of a subsidiary only if such person is the sole or majority shareholder of such entity and such person directly exercises control (including through the exercise of veto power) over the day-to-day business operations of such entity, whether through the ownership of voting equity, by contract or otherwise.

iii. Waiver

In the event that the Commission retains the Ownership and Voting Limitations and rejects the approach to parent and subsidiary definitions suggested in Section II(B)(ii)of this comment letter, DTCC would request that the Commission incorporate a general exception in the Parent Companies provision of the Ownership and Voting Limitations of the Proposed Rules for DTCC and other financial market utilities.

The Proposed Rules recognize that "circumstances may exist where neither [DCO ownership restriction] alternative may be appropriate."[34] In such instances, the Commission may grant a DCO a waiver from the limitations if, upon review, the Commission finds that the restrictions are unnecessary or inappropriate to improve the governance of the DCO, mitigate systemic risk, promote competition, mitigate conflicts of interest in connection with a swap dealer's or major swap participant's conduct of business with the DCO with respect to fair and open access and participation and product eligibility, or otherwise accomplish the purposes of the Commodity Exchange Act.

DTCC suggests that, in addition to considering case by case waivers from the Ownership and Voting Limitations of the Proposed Rules, the Commission include in the Proposed Rules a general exception from the Parent Companies provision for financial market utilities which are entirely owned by its members, satisfy the above-referenced governance provisions and meet the factors set forth in the Proposed Rules.[35]

iv. Alternative Approach

In response to the request for comment solicited in the Proposed Rules, DTCC suggests that the Commission consider one alternative approach that addresses the identified conflicts of interest. DTCC's proposal addresses the issue of maximizing the use of DCOs to clear swaps where regulators determine that activity could be accomplished in a safe and sound manner under Section 2(h)(2) of the Commodity Exchange Act.

The Commission could mandate that DCO governance rules require a Board of Directors to include representatives across the broad base of participants in the relevant markets

---

[34] Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 Fed. Reg. at 63,743.

[35] *See id.* at 63,751. ("(1) Improve the governance of the derivatives clearing organization; (2) Mitigate systemic risk; (3) Promote competition; (4) Mitigate conflicts of interest in connection with a swap dealer or major swap participant's conduct of business with the derivatives clearing organization, including with respect to Section 2(h)(1)(B) and Section 5b(c)(2)(c) of the Act; and (5) Otherwise accomplish the purposes of the Act.")

(i.e., not from only one class of market participants and not representative of any shareholder or management of the DCO), as well as independent directors (i.e., directors who are not associated with market participants). There should also be a means of assuring, through shareholders agreements or through actual shareholding and governance documents, that directors associated with any particular class of market participants are generally acceptable to that class. This type of approach to governance has been used in the past to address the risk of non-alignment of interests among various market participants, for instance in the formation of the Government Securities Clearing Corporation in the late 1980s as an industry owned utility to clear US Government Securities.

DTCC would urge that those involved in the decision making process at DCOs regarding new instruments for clearing (other than the independent directors) be required to bear some financial risk in the event the DCO mismanages the risks associated with clearing these instruments. Otherwise parties with no financial risk could, with impunity, force others to take on risk with no motive to consider the implementation of appropriate risk mitigation.

IV. CONCLUSION

We appreciate the opportunity to comment on the Commission's Proposed Rules and provide the information set forth above. Should you wish to discuss these comments further, please contact me at 212-855-3240 or lthompson@dtcc.com.

Regards,

Larry E. Thompson
General Counsel

The Depository Trust &
Clearing Corporation
55 Water Street
New York, NY 10041-0099

Larry E. Thompson
General Counsel

Tel: 212-855-3240
Fax:212-855-3279
lthompson@dtcc.com

Via Agency Website & Courier

November 26, 2010

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

RE: RIN 3235–AK74, Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges With Respect to Security-Based Swaps Under Regulation MC

Dear Ms. Murphy:

The Depository Trust & Clearing Corporation ("DTCC") appreciates the opportunity to provide comments to the Securities and Exchange Commission ("Commission") on its proposed Regulation MC for security-based swap clearing agencies ("SBSCAs"), security-based swap execution facilities ("SB SEFs") and national securities exchanges that post or make available for trading security-based swaps ("SBS exchanges" and, together with SB SEFs and SBSCAs, collectively, "Registered Entities" and, individually, each a "Registered Entity") regarding the mitigation of conflicts of interest ("Regulation MC").[1] Regulation MC contains (i) certain composition and governance requirements on the Boards and specified committees of Registered Entities (the "Structural Governance Requirements") and (ii) certain limits on the ownership and voting power of members of Registered Entities (the "Ownership and Voting Limitations").

I. Summary of Response

DTCC supports regulations designed to mitigate systemic risk, promote competition and mitigate conflicts of interest with respect to Registered Entities. DTCC does not currently operate a Registered Entity. DTCC is, however, concerned with the potential effect that Regulation MC (specifically, the Ownership and Voting Limitations) would have on DTCC and its shareholders if DTCC were to acquire an interest in a Registered

[1] Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges With Respect to Security-Based Swaps Under Regulation MC, 75 Fed. Reg. 65,882 (Oct. 26, 2010).

Subsidiaries:
The Depository Trust Company
National Securities Clearing Corporation
Fixed Income Clearing Corporation
DTCC Deriv/SERV LLC
DTCC Solutions LLC

Entity. DTCC also offers its comments on Regulation MC from its perspective at the center of the financial market as a user-owned and governed, at-cost financial market utility that seeks to reduce systemic risk and ensure financial stability.

- It is DTCC's view that reliance on the proposed Structural Governance Requirements (subject to our further comments below) offers the best solution to meet the stated goals of Regulation MC while avoiding the potential negative impact on capital, liquidity and increased systemic risk that could result from the Ownership and Voting Limitations.

- DTCC strongly advocates that the Ownership and Voting Limitations be eliminated in their entirety because the Structural Governance Requirements alone are sufficient to deal with the conflicts of interest identified by the Commission in its notice of proposed rulemaking. DTCC supports the mitigation of conflicts of interest through the imposition of governance requirements designed to ensure an independent perspective on the Boards of Directors and committees of Registered Entities. This approach is supported by various experts, from both the public[2] and private sector,[3] as an appropriate method to mitigate conflicts of interests.

- Should the Commission conclude that the Ownership and Voting Limitations are advisable measures to mitigate conflicts of interest, DTCC urges the Commission to clarify the "direct or indirect" language in the Ownership and Voting Limitations by expressly providing that the Ownership and Voting Limitations will not be applied to ownership or voting interests in a non-Registered Entity which has an ownership or voting interest in a Registered Entity *unless* such non-Registered Entity owns a majority of the equity interest in such Registered Entity and controls (including through the exercise of veto power) the day-to-day operations of such Registered Entity by virtue of such ownership interest, by contract or otherwise.

- Should the Commission conclude that the Ownership and Voting Limitations are advisable and reject DTCC's proposed clarification of the "direct or indirect" language in such Ownership and Voting Limitations, DTCC would, in the alternative, request that the Commission include in Regulation MC a general

---

[2] *See, e.g.*, Comments from Hal Scott, Harvard Law School, (''[Ownership restrictions are] counterproductive in getting needed capital liquidity into the clearinghouses which, I think, should be our central focus in terms of systemic risk. In my view the potential conflicts should be generally handled by board governance rules and not by ownership restrictions.") Joint Public Roundtable on Governance and Conflicts of Interest in the Clearing and Listing of Swaps, August 20, 2010 ("Roundtable Transcript") at 109-110. Available at http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/derivative9sub082010.pdf.

[3] *See* Comments from Ms. Lynn Martin, NYSE Euronext, Inc., ("Specifically on the topic of ownership limitations and voting caps, NYSE Euronext opposes specific ownership limitations. We think that a more effective manner in controlling conflicts of interest is around good governance structure at a board level."). Roundtable Transcript at 120-121.

exception from the Ownership and Voting Limitations, providing that the Ownership and Voting Limitations will not be applied to ownership or voting interests in a non-Registered Entity which has an ownership or voting interest in a Registered Entity if the non-Registered Entity is a financial market utility (such as DTCC). As a complex user-owned and governed financial market utility with multiple subsidiaries, DTCC is regulated and supervised by banking and securities regulators. Its ownership and corporate governance structures (further described below) are designed, under applicable regulations, to be representative of its user shareholders which are also regulated financial institutions. Certain of these shareholders may fall directly within the scope of Regulation MC and be covered accordingly so that dual coverage should not be necessary; those that are not otherwise subject to Regulation MC should not be indirectly regulated merely by virtue of their interests in DTCC. The Ownership and Voting Limitations under Regulation MC could adversely destabilize DTCC's ownership and corporate governance structure and conflict with its obligations under other regulatory regimes.

II. Overview of DTCC and Its Wholly Owned Subsidiaries

DTCC, through its subsidiaries, provides clearing, settlement, and information services for equities, corporate and municipal bonds, government and mortgage-backed securities, money market instruments and over-the-counter derivatives. DTCC is also a leading processor of mutual funds and insurance transactions, linking funds and carriers with their distribution networks.

DTCC has three wholly-owned subsidiaries which are registered clearing agencies under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), subject to regulation by the Commission.[4] These three clearing agency subsidiaries are The Depository Trust Company ("DTC"), National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC"). DTC is also a limited purpose trust company organized under the New York State Banking Law, subject to regulation by the New York State Banking Department (the "NYSBD"), and a State Member Bank of the Federal Reserve System, subject to regulation by the Federal Reserve Bank of New York ("FRBNY"). DTCC is also a bank holding company under New York law (but not Federal law), subject to supervision by the NYSBD. Accordingly, DTCC and its clearing agency subsidiaries are collectively subject to the supervision and regulation of both banking and securities regulators.

DTC currently provides custody and asset servicing for 3.6 million securities issues from the United States and 121 other countries and territories, valued at almost $34 trillion. In 2009, DTC settled more than $1.48 quadrillion in securities transactions. NSCC provides clearing, risk management, central counterparty services and a guarantee of

---

[4] DTCC also has a number of wholly-owned subsidiaries which are not in regulated businesses and has a 50% equity interest in three joint venture companies.

completion for certain transactions. FICC provides clearing, risk management and central counterparty services (through its Government Securities Division) in the fixed income, mortgage-backed and government securities markets. These clearance and settlement services reduce risks for investors and the entire financial system by guaranteeing the completion of stock and bond transactions in the event of a participant default. Thus, DTCC, through its subsidiaries, processes huge volumes of transactions – more than 30 billion a year on an at-cost basis.

DTCC believes that its own governance structure may provide a useful model for the Commission as the Commission considers and further develops the Structural Governance Requirements for Registered Entities.

To satisfy the "fair representation" requirements of Section 17A of the Exchange Act applicable to registered clearing agencies, the participants of DTC, NSCC and FICC are required (or, in some cases, permitted but not required) to purchase and own shares in DTCC and are thereby entitled to vote for its directors. The participant community includes domestic and international broker/dealers, custodian, correspondent and clearing banks, mutual fund companies and investment banks. As a financial market utility, DTCC and its clearing agency subsidiaries operate on an "at-cost basis," charging transaction fees for services at levels sufficient to cover the utility's costs and appropriate provisions for necessary reserves.

The 2010 DTCC Board of Directors is composed of nineteen directors. Thirteen directors are representatives of clearing agency participants, including international broker/dealers, custodian and clearing banks and investment institutions. Three directors are not representatives of participants (also referred to as "non-participant directors" or as "independent directors" below). Two directors are designated by DTCC's preferred shareholders, NYSE Euronext and FINRA. The remaining three directors are the Chairman and Chief Executive Officer, President, and Chief Operating Officer of DTCC. The individuals who serve as directors of DTCC also serve as directors of the three clearing agency subsidiaries. Individuals are nominated for election as directors based on their ability to represent DTCC's diverse base of participants, and DTCC's governance is specifically structured to help achieve this objective. The non-participant directors are individuals with specialized knowledge of financial services, who bring an independent perspective because they are not affiliated with firms that use DTCC services. Board members serve on a variety of Board committees with responsibility to oversee various aspects of DTCC's operation. In addition, to ensure broad industry representation and expertise on key industry subjects, industry representatives who are non-Board members also serve on a number of advisory committees to the Board.

As DTCC serves virtually the entire financial industry, from broker/dealers to banks to insurance carriers to mutual funds, its governance structure represents the entirety of the marketplace. DTCC has approximately 330 shareholders and no single shareholder holds more than a 6% interest in DTCC. DTCC shares are allocated based on usage of

the regulated clearing agency subsidiaries. Roughly every three years DTCC shares are reallocated to align ownership with usage. DTCC shares are not traded, so no one firm or group of firms may gain control of the Board of Directors by purchasing shares outside the periodic reallocation.

III. Discussion of Regulation MC

In describing the conflicts of interest that may confront an SBSCA, the Commission identifies three key areas where a conflict of interest may present itself: (i) limiting access to an SBSCA, (ii) limiting the scope of products eligible for clearing at the SBSCA and (iii) participants influencing the risk management controls of an SBSCA to reduce the amount of collateral required as margin or a guaranty fund. The Commission also notes that these potential conflicts of interest could undermine the mandatory clearing provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), "thereby affecting transparency, investor protection, risk management, efficiency, and competition in the security-based swaps market."[5]

As described in greater detail below, DTCC believes that the Ownership and Voting Limitations are an imprecise tool with which to achieve the policy goals of the Commission regarding conflicts of interest. DTCC is concerned that the Ownership and Voting Limitations are more restrictive than necessary to meet the stated goals of the Commission and, at the same time, create the risk of unintended adverse consequences. DTCC takes the view that the policy goals can be best met by the Structural Governance Requirements, by strengthening SBSCA Board governance through the presence of independent board members and the establishment of certain Board committees.

A. Structural Governance Requirements

Section II of this comment letter describes the ownership and corporate governance structure of DTCC. As a user-owned and governed financial market utility that operates on an at-cost basis, DTCC complies with certain statutory requirements of "fair representation," which require that its Board of Directors represent its user shareholders. In addition, DTCC's governance rules require it to have three independent directors (and, as a practical matter, there are four, including FINRA). DTCC's extremely sophisticated operations also require its Board and committee members (participant and non-participant alike) to have considerable expertise in financial markets.

Based on DTCC's experience with this governance structure, DTCC believes that such a structure provides a positive model for mitigating conflicts of interest among competing constituencies within the organization. Also, for these reasons and those set forth below,

---

[5] *See* Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges With Respect to Security-Based Swaps Under Regulation MC, 75 Fed. Reg. at 65,885.

DTCC would respectfully suggest that the Commission recognize the unique circumstances faced by DTCC and other financial market utilities. Accordingly, DTCC would urge the Commission to structure the composition requirements in a way that does not jeopardize the ability of DTCC and other financial market utilities to identify and mitigate systemic risk, while nevertheless addressing the stated concerns for conflicts of interest.

i. Independence

The Commission indicates that the Structural Governance Requirements set forth in Regulation MC will mitigate conflicts of interest because "[t]he presence of a significant number of independent directors on the Board of a security-based swap clearing agency should provide the addition of strong and independent oversight within the security-based swap clearing agency to serve as a potential check against conflicts of interest that could pose a detriment to the security-based swap clearing agency, other firms, or the security-based swaps market generally."[6]

As described above, DTCC's shareholding and Board representation are determined by the principle of fair representation under the Exchange Act. DTCC's long experience with this composition demonstrates the effectiveness of this approach in affording the industry a forum for the resolution of differing, sometimes competing, interests of the constituent users. At the same time, DTCC greatly values the perspective and contribution of independent directors. Currently, DTCC's Board of Directors includes three non-participant directors who are not affiliated with firms that use DTCC's services as well as a representative of FINRA (as a preferred shareholder). These non-participant directors include individuals with specialized knowledge of financial services and key regulatory and market concerns, including systemic risk, who bring an independent perspective because they are not customers of DTCC's services.

ii. Board Requirements

Regulation MC requires that an SBSCA choose between one of two alternative Board composition requirements. The first alternative requires the Board of Directors of an SBSCA to be composed of at least 35% independent directors.[7] The second alternative requires the Board of Directors of an SBSCA to be composed of a majority of independent directors.[8] Regulation MC also requires the Board of Directors of an SB SEF or SBS exchange to be composed of a majority of independent directors.[9] Further,

---

[6] *Id.* at 65,896.

[7] *See id.* at 65,930.

[8] *See id.* at 65,931.

[9] *See id*.

Regulation MC extends such composition requirements to any committee of the Board of Directors that has the authority to act on behalf of the Board of Directors.[10]

DTCC supports the Commission's objective of reducing conflicts of interest through the imposition of Board of Director and committee composition requirements. However, such requirements should ensure that an entity's governing body (i) represents a broad base of market participants in the relevant markets and (ii) has the necessary expertise in the relevant markets.

DTCC would urge the Commission to eliminate the specified percentage and majority independent composition requirements. DTCC believes that mandating a 35% or majority independent composition requirement (i) imposes too high a threshold, which may be onerous for start-up initiatives or entities that have smaller Boards of Directors and (ii) creates a substantial risk of dilution of market expertise, especially for entities that have smaller Boards of Directors. DTCC further believes that any regulatory specification of any numerical or percentage requirement is inadvisable because it might discourage start-up initiatives and limit competition.

Independent perspectives can provide substantial value to a Board of Directors, but those who do not directly participate in markets may not have the targeted expertise to exercise timely judgment on issues critical to the complex financial operations of Registered Entities. Registered Entities require expertise at the Board of Directors level in such diverse areas as strategic planning, risk management, technology, operations, management, finance, audit, government relations, regulatory affairs, compensation and human resources, as well as legal, regulatory, and compliance expertise. Therefore, it is essential to the safety and soundness of Registered Entities that the composition of their Boards of Directors sufficiently incorporates the range of necessary expertise as well as independent judgment.

iii. Committee Requirements

Regulation MC sets forth requirements for Registered Entities to establish certain committees, including a requirement for such entities to establish a Nominating Committee for the purpose of identifying individuals qualified to become Board members.[11]

Regulation MC requires that an SBSCA choose between one of two alternative Nominating Committee composition requirements. The first alternative, which correlates with the 35% independent Board composition alternative, requires the SBSCA to establish a Nominating Committee composed of a majority of independent directors.[12]

---

[10] *See id.* at 65,930-32.

[11] *See id.* at 65,930-31.

[12] *See id.* at 65,930.

The second alternative, which correlates with the majority independent Board alternative, requires an SBSCA to establish a Nominating Committee composed solely of independent directors.[13] Regulation MC also requires the Nominating Committee of an SB SEF and SBS exchange to be composed solely of independent directors.[14]

Consistent with DTCC's position on Board composition requirements, DTCC is opposed to the independent composition requirements for key committees of the Board. DTCC refers to the arguments above regarding the experience and interests of independent directors, which are equally applicable to representation on Board committees.

With respect to governance as it relates to the risk committee of the Board, or its equivalent, DTCC does not support the approach suggested in the discussion in the notice of proposed rulemaking, to provide separate composition requirements applicable only to the risk committee that reflect the highly specialized risk management expertise required of directors serving on that committee. Consistent with DTCC's views expressed above in this comment letter, DTCC believes that the balance of expertise and independent judgment for the Board and its key committees should be the guiding principle. For the reasons set forth above, DTCC would oppose requiring that the risk committee be composed of at least 35% independent directors or any specified percentage, including a majority, (where such committee is delegated authority to act on the Board's behalf). In order to achieve objective balance, guidance might be offered to include other interested persons that are not participants, such as customers of participants, as representatives on the risk committee.

iv. Definition of Independent Director

DTCC agrees that independent directors are a valuable institutional resource and serve to balance the interests of directors who may represent particular constituents on the Board of Directors. The goal of requiring independent directors is to identify individuals of stature, experience and good conscience who will exercise independent judgment in the best interests of the Registered Entity. To this end, DTCC recommends a qualitative definition that stresses positive features of industry knowledge and experience, personal probity and prior service, while specifying a limited and objective set of disqualifications.

DTCC finds the proposed definition of "independent director" to be both over and under-specified. Further, it has the potential to be damaging to critical financial market infrastructures. DTCC recommends prescriptive guidelines which are more clear-cut and, as guidance only, may be applied with greater flexibility to the governance needs of each Registered Entity.

---

[13] *See id.* at 65,931.

[14] *See id.* at 65,932.

One key element of the definition of "independent director" in Regulation MC is that director shall have no "material relationship" with a list of specified parties.[15] The list of specified parties is very broad and would severely limit the pool of candidates with any industry expertise that might best serve the interest of the Registered Entity, its Board and committees. Moreover, the term "material relationship" is so vaguely defined that the evaluation of any qualified candidate would become an exercise in assessing whether that individual has any relationship, compensatory or otherwise, that reasonably could affect the candidate's independent judgment or decision-making as a director.[16] This makes the process of selecting an independent director potentially onerous for both the Registered Entity and the candidates.

Another key element of the definition of "independent director" is the express exclusion of specified circumstances[17] which are similarly broad-reaching and, hence, overly restrictive. It is also not clear from the drafting whether these "circumstances" should be equated with prohibited "material relationships."

In complex financial institutions, the appropriate implementation of these exclusions may be difficult enough to determine, and even more so to imagine additional unspecified "material relationships." This overly restrictive definition of "independent director" could have a chilling effect on encouraging independent representation and limit the pool of candidates in a manner adverse to the best interests of the Registered Entity. DTCC might instead recommend an approach which relies less on detailed exclusions of the type proposed and more on guiding principles. For instance, a provision that limits compensation to a reasonable amount is an example of an objective determinant. More narrowly drawn exclusions based on direct and material relationships together with "safe harbor" provisions might also ease the compliance burden.

DTCC would also urge the Commission not to adopt a specific (3 year) look-back period within which to determine whether a "material relationship" exists, because of the difficulty of assessing the already vague criteria retrospectively and because this would further narrow the willing pool of candidates.

B. Ownership and Voting Limitations

i. Reject Ownership and Voting Limitations

The Commission's proposed Ownership and Voting Limitations require that an SBSCA choose between one of two alternative limitations on ownership of voting equity and the

---

[15] *See id.* at 65,928.

[16] *See id.*

[17] *See id.* at 65,896.

exercise of voting rights.[18] The first alternative, which correlates with the 35% independent Board and majority independent Nominating Committee requirement, limits to 20% the amount of voting equity that any SBSCA participant, either alone or together with its related persons, may, directly or indirectly own or vote, and limits to 40% the amount of voting equity of such SBSCA that SBSCA participants and their related persons may, in the aggregate, directly or indirectly own or vote.[19] The second alternative, which correlates with the majority independent Board and 100% independent Nominating Committee requirement, limits to 5% the amount of voting equity of such SBSCA that any SBSCA participant, either alone or together with its related persons, may, directly or indirectly, own or vote, and does not have an aggregate ownership restriction on all SBSCA participants.[20]

The Commission's proposed Ownership and Voting Limitations also would prohibit a member of an SBS exchange or SB SEF, either alone or together with its related persons, from directly or indirectly owning or voting more than 20% of any class of ownership interest of the SBS exchange or SB SEF, as applicable, entitled to vote.[21]

The conflicts of interest provisions of Regulation MC are designed to meet policy objectives which include "improving governance, mitigating systemic risk, promoting competition, and mitigating conflicts of interest with respect to security-based swap clearing agencies, SB SEFs and SBS exchanges."[22]

a. Hard Ownership Caps Rejected by Congress; European Commission

DTCC urges that relying upon proposed numerical ownership or voting caps for Registered Entities is too blunt an approach for these specific market circumstances. DTCC believes that fair representation and governance requirements (other than percentage composition requirements) are better suited to the achievement of the stated policy goals.

Further, it is important to recognize that hard ownership limitations are not specifically required by Section 765 of the Dodd-Frank Act.[23] Additionally, an aggregate ownership cap approach was recently rejected by the European Commission (the "EC"). The

[18] *See id.* at 65,930.

[19] *See id.* at 65,930.

[20] *See id.* at 65,930.

[21] *See id.* at 65,931.

[22] *Id.* at 65,883

[23] Dodd-Frank Act Section 765 ("The Securities and Exchange Commission shall adopt rules which **may include** numerical limits on the control of, or the voting rights with respect to, any clearing agency that clears security-based swaps, or the control of any security-based swap execution facility or national securities exchange." [Emphasis added.])

language used by the EC in rejecting ownership limitations is clear, and its logic is compelling. The EC found that there are a number of governance solutions that provide better protections against conflicts of interest than ownership limitations, and also found that such ownership limitations create a new risk of adverse unintended consequences. As the EC stated in its current proposed rule:

> "[A] CCP must have in place robust governance arrangements. These will respond to any potential conflicts of interest between owners, management, clearing members and indirect participants. The role of independent board members is particularly relevant. The roles and responsibilities of the risk committee are also clearly defined in the Regulation: its risk management function should report directly to the board and not be influenced by other business lines. The Regulation also requires governance arrangements to be publicly disclosed. In addition, a CCP should have adequate internal systems, operational and administrative procedures, and should be subject to independent audits. All of these measures are considered more effective in addressing any potential conflicts of interest that may limit the capacity of CCPs to clear, than any other form of regulation which may have undesirable consequence on market structures (e.g. limitation of ownership, which would need to extend also to so-called vertical structures in which exchanges own a CCP)."[24]

b. *Unintended Consequences of Aggregate Ownership Limitations*

As a user-owned and governed financial market utility with a cooperative-style ownership structure, DTCC has significant concerns that any proposal which relies upon aggregate ownership restrictions may undermine the safety and soundness of financial markets. An effective prohibition of industry ownership of a market-created initiative would have (i) a profound negative impact on the existing clearance and settlement system in the United States, which has served as a source of stability, resiliency and efficiency over the past 35 years and is responsible for mitigating systemic risk, driving down post-trade costs and helping attract global capital to our markets and (ii) a chilling effect on new initiatives.

[24] Proposal for a Regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories {SEC(2010) 1058} {SEC(2010) 1059}. Available at http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/20100915_proposal_en.pdf.

ii. Clarify the "Direct or Indirect" Language in the Ownership and Voting Limitations

Regulation MC provides that the Ownership and Voting Limitations apply to indirect as well as direct ownership and voting interests in Registered Entities. In the discussion in the notice of proposed rulemaking regarding the application of the Ownership and Voting Limitations to indirect interests in SB SEFs and SBS exchanges (but not in the actual text of Regulation MC), the Commission notes that such Ownership and Voting Limitations would apply to ownership of voting interests in a parent company of an SB SEF or SBS exchange (and provides as an example that if an SB SEF were wholly-owned by a holding company, an SB SEF participant would be prohibited from owning or voting more than the specified limit of voting interest in the parent company).

If the Ownership and Voting Limitations are not eliminated in their entirety as suggested in Section III(B)(i) of this comment letter, then the "direct or indirect" language in such Ownership and Voting Limitations should be made more specific, to make it clear exactly when such Ownership and Voting Limitations will be applied to the ownership or voting interests in a non-Registered Entity which has an ownership or voting interest in a Registered Entity.

DTCC suggests that the "direct or indirect" language in the Ownership and Voting Limitations be clarified to expressly provide that such Ownership and Voting Limitations will not be applied to ownership or voting interests in a non-Registered Entity which has an ownership or voting interest in a Registered Entity *unless* such non-Registered Entity owns all or a majority of the equity interest in such Registered Entity and controls (including through the exercise of veto power) the day-to-day operations of such Registered Entity by virtue of such ownership interest, by contract or otherwise.

iii. Exemptive Authority

Regulation MC recognizes that the Commission "may grant an exemption from any rule or any provision of any rule under Regulation MC."[25] The Commission may generally grant such exemption when "necessary or appropriate in the public interest and consistent with the protection of investors" or when the petitioning entity has "established alternative means to effectively mitigate conflicts."[26]

If the Ownership and Voting Limitations are not eliminated in their entirety as suggested in Section III(B)(i) of this comment letter, and if the clarifying language suggested in

---

[25] *See* Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges With Respect to Security-Based Swaps Under Regulation MC, 75 Fed. Reg. at 65,912.

[26] *See id.* at 65,913.

Section III(B)(ii) above is not accepted, DTCC would request that the Commission incorporate a general exception from the Ownership and Voting Limitations of Regulation MC providing that such Ownership and Voting Limitations will not be applied to ownership or voting interests in a non-Registered Entity which has an ownership or voting interest in a Registered Entity if the non-Registered Entity is a financial market utility (i.e., an organization which is member-owned) and satisfies the above-referenced governance provisions.

iv. Alternative Approach

In response to the request for comment solicited in Regulation MC, DTCC suggests that the Commission consider one alternative approach that addresses the identified conflicts of interest. DTCC's proposal addresses the issue of maximizing the use of SBSCAs to clear swaps where regulators determine that activity could be accomplished in a safe and sound manner.

The Commission could mandate that SBSCA governance rules require the Board of Directors of an SBSCA to include representatives across the broad base of participants in the relevant markets (i.e., not from only one class of market participants and not representative of any shareholder or management of the SBSCA), as well as independent directors (as discussed above). There should also be a means of assuring, through shareholder agreements or otherwise through actual shareholding and governance documents, that such directors appointed to represent any particular class of market participants be generally acceptable to shareholders of that class. This approach to governance has been used in the past to address the risk of non-alignment of interests among various market participants, for instance in the formation of the Government Securities Clearing Corporation in the late 1980s as an industry owned utility to clear US Government Securities.

DTCC would urge that those involved in the SBSCA decision-making process to introduce new instruments for clearing (other than the independent directors) be required to bear some financial risk in the event the SBSCA mismanages the risks associated with clearing these instruments. Otherwise, parties with no financial risk could, with impunity, force others to take on risk with no incentive for appropriate risk mitigation in the introduction of such new products.

IV. CONCLUSION

We appreciate the opportunity to comment on the Commission's Regulation MC and provide the information set forth above. Should you wish to discuss these comments further, please contact me at 212-855-3240 or lthompson@dtcc.com.

Regards,

Larry E. Thompson
General Counsel

The Depository Trust & Clearing Corporation
55 Water Street
New York, NY 10041-0099

Larry E. Thompson
General Counsel

Tel: 212-855-3240
Fax:212-855-3279
lthompson@dtcc.com

November 15, 2010

The Honorable Mary Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

The Honorable Gary Gensler
Chairman
U.S. Commodity Futures Trading Commission
1155 21 Street, N.W.
Washington, D.C. 20581

Dear Chairmen Schapiro and Gensler,

The Depository Trust & Clearing Corporation ("DTCC") appreciates the opportunity to submit to the U.S. Securities and Exchange Commission ("SEC") and to the U.S. Commodity Futures Trading Commission (the "CFTC" and, collectively with the SEC, the "Commissions") comments for your consideration as you begin to finalize the drafts of proposed rules relating to swap data repositories and security-based swap data repositories (collectively, "SDRs"). We appreciate the efforts of both Commissions to implement regulations under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), and we are supportive of steps taken to ensure that regulators have the necessary tools to provide oversight of over-the-counter ("OTC") derivatives markets.

As you and your fellow Commissioners begin to discuss staff proposals for rules governing SDRs, DTCC offers the following comments for your consideration:

- **Swap Data Repository as Single Source for Regulators' Market Data.** DTCC supports a regulatory framework that allows an SDR to provide regulators with a centralized vantage point in this global market to view accurate and complete information for each swap or security-based swap asset class in a timely manner. A registered SDR should be able to provide (i) enforcement agents with necessary information on trading activity; (ii) regulatory agencies with counterparty-specific information about systemic risk based on trading activity; (iii) aggregate trade information for publication on market-wide activity; and (iv) a framework for real-time reporting from swap execution facilities and derivatives clearinghouses.

- **Dodd-Frank Act Provides a Process for the Aggregation of Swap Data to Counter the Risks of Data Fragmentation - Including the Designation of a Particular Swap Data Repository to Serve in Such a Capacity.** The SDR sections in the Dodd-Frank Act include parallel provisions for swap data repositories and security-based swap data repositories that an SDR shall "provide direct electronic access to the Commission (or any designee of the Commission, including another

registered entity)."[1] DTCC believes that this language permits both Commissions to designate one SDR as the recipient of the information of other SDRs to ensure the efficient consolidation of data. In order for this arrangement to exist under the forthcoming regulations, the rules should permit each Commission to recognize a single SDR (or one SDR per asset class) (the "Recognized SDR") to receive and aggregate market information and provide regulators with one unified source for real-time electronic data. A Recognized SDR will provide complete and streamlined information to the regulators, reducing the strain on these agencies' limited resources. The Recognized SDR must meet certain threshold requirements that ensure it has the necessary technological and substantive capabilities to perform its responsibilities as a Recognized SDR, as well as the organization and governance structure that is consistent with being a financial market utility serving a vital function to the entire marketplace.

- **Binding, Legal Electronic Records and Asset Servicing Vital for Market Oversight.** In order to maximize the value of an SDR and the vast data stored within it, it must maintain a legally binding electronic record which has been confirmed for accuracy by both counterparties. After each recorded transaction is consummated, the SDR can maintain the validity of the data for that transaction by offering an asset servicing function. This structure would allows the SDR to assist in systemic risk monitoring by providing regulators with regular reports analyzing the data (such as position limit violations or certain identified manipulative trading practices).

- **Conflicts of Interest Can Be Best Addressed through Governance Requirements.** DTCC strongly advocates that ownership and voting limitations for derivatives clearing organizations, security-based swap clearing agencies, designated contract markets, national securities exchanges, swap execution facilities and security-based swap execution facilities be eliminated in their entirety because proposed structural governance requirements sufficiently address the conflicts of interest identified by the Commissions. DTCC further urges the adoption of definitions of "parent" and "subsidiary" that align with proposed structural governance requirements and are consistent between both Commissions. If the Commissions were to reject this approach to defining the parent and subsidiary relationships, DTCC would request the approval of a waiver and general exemption by both Commissions, as contemplated by the CFTC's proposed rule, from the ownership or voting limitations for itself and other user-owned and governed financial market utilities.

- **Indemnification Provisions Threaten Regulators' Ability to Identify and Mitigate Systemic Risk.** Certain provisions of the Dodd-Frank Act require SDRs to make data available to federal and international regulatory agencies on a confidential basis. However, before the SDR is permitted to share the information with such regulators (the "Requesting Entity"), the SDR must receive a written agreement from the Requesting Entity, including any with which the SDR currently shares

[1] Commodity Exchange Act Section 21(c)(4)(A), as created by Dodd-Frank Act Sections 728, and Securities Exchange Act of 1934 Section 13(n)(5)(D)(i), as created by Dodd-Frank Act Section 763(i).

information, that: (i) the Requesting Entity will abide by confidentiality requirements regarding the provided information; and (ii) the Requesting Entity agrees to indemnify the SDR and regulating Commission for any expenses arising from litigation relating to the information. DTCC remains concerned that regulators are not likely to grant SDRs indemnification in exchange for access to the information and, accordingly, regulators may actually receive less aggregated market data. Such an outcome would result in a reduction of information accessible to regulators on a timely basis both domestically and internationally, which contravenes the purpose of SDRs and jeopardizes market stability. Without an alternative, upon implementation of these provisions, SDRs will be restricted from providing necessary market information to regulators. Until government agencies reach indemnification and confidentiality agreements with SDRs, a regulator's ability to carry out oversight functions will be greatly diminished.

We would like to thank both of you, your fellow Commissioners and the staffs at both agencies for being so willing to consider our opinions and for conducting an open and transparent rulemaking process.

We appreciate the opportunity to share these comments with you and are available to discuss with you and your staffs at any time. Should you wish to discuss these comments further, please contact me at 212-855-3240 or lthompson@dtcc.com.

Sincerely,

Larry E. Thompson
General Counsel

cc: Luis Aguilar, Commissioner, SEC
Kathleen Casey, Commissioner, SEC
Troy Paredes, Commissioner, SEC
Elisse Walter, Commissioner, SEC

Bart Chilton, Commissioner, CFTC
Michael Dunn, Commissioner, CFTC
Scott O'Malia, Commissioner, CFTC
Jill Sommers, Commissioner, CFTC

Larry E. Thompson
General Counsel

Tel: 212-855-3240
Fax:212-855-3279
lthompson @dtcc.com

The Depository Trust & Clearing Corporation
55 Water Street
New York, NY 10041-0099

Via Agency Website & Courier

December 20, 2010

Elizabeth Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

RE: RIN 3235 – AK73 Reporting of Security-Based Swap Transaction Data

Dear Ms. Murphy:

The Depository Trust & Clearing Corporation ("DTCC") appreciates the opportunity to provide comments to the Securities and Exchange Commission ("Commission") on its interim final temporary rule for reporting of security-based swap transaction data (the "Interim Final Temporary Rule").[1] DTCC is supportive of a security-based swap reporting regime that brings increased transparency and oversight to over-the-counter ("OTC") derivatives markets.

Summary of Response

DTCC supports the Commission's efforts to ensure that data from pre-enactment security-based swap transactions are preserved and retrievable in the future. DTCC respectfully suggests that the reporting of a binding, legal electronic record agreed to by the two counterparties to a pre-enactment security-based swap should be treated by the Commission as satisfying the Interim Final Temporary Rule's reporting requirement and the information and document retention policy suggested by the interpretive note to Rule 13Aa-2T, as well as certain obligations of security-based swap dealers and major security-based swap participants.[2] Additionally, DTCC provides comments to the scope of information that should be preserved under the Commission's information and documents retention policy, based upon our experience operating the Trade Information Warehouse (the "Warehouse") and the centralized global repository for credit default swaps ("CDS"). Finally, DTCC offers its comments on how the single counterparty reporting obligation set forth in Rule 13Aa-2T(c) could result in the fragmentation of

[1] *See* Interim Final Temporary Rule for Reporting of Security-Based Swap Transaction Data, 75 Fed. Reg. 64,643 (Oct. 20, 2010).

[2] *See id.* at 64,653-54.

Subsidiaries:
The Depository Trust Company
National Securities Clearing Corporation
Fixed Income Clearing Corporation
DTCC Deriv/SERV LLC
DTCC Solutions LLC

swap market data and decrease the utility of the information collected by a security-based swap data repository and on the designation of a consolidated data repository. These comments are preceded by an overview of DTCC and the Warehouse.

Overview of DTCC

DTCC, through its subsidiaries, provides clearing, settlement and information services for equities, corporate and municipal bonds, government and mortgage-backed securities, money market instruments and over-the-counter derivatives. DTCC is also a leading processor of mutual funds and insurance transactions, linking funds and carriers with their distribution networks.

DTCC has three wholly-owned subsidiaries which are registered clearing agencies under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), subject to regulation by the Commission. These three clearing agency subsidiaries are The Depository Trust Company ("DTC"), National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC"). DTC is also a limited purpose trust company organized under the New York State Banking Law, subject to regulation by the New York State Banking Department (the "NYSBD"), and a State Member Bank of the Federal Reserve System, subject to regulation by the Federal Reserve Bank of New York. DTCC is also a bank holding company under New York law (but not Federal law), subject to supervision by the NYSBD. Accordingly, DTCC and its clearing agency subsidiaries are collectively subject to the supervision and regulation of both banking and securities regulators.

DTC currently provides custody and asset servicing for 3.6 million securities issues from the United States and 121 other countries and territories, valued at almost $34 trillion. In 2009, DTC settled more than $1.48 quadrillion in securities transactions. NSCC provides clearing, risk management, central counterparty services and a guarantee of completion for certain transactions. FICC provides clearing, risk management and central counterparty services (through its Government Securities Division) in the fixed income, mortgage-backed and government securities markets. These clearance and settlement services reduce risks for investors and the entire financial system by guaranteeing the completion of stock and bond transactions in the event of a participant default. Thus, DTCC, through its subsidiaries, processes huge volumes of transactions – more than 30 billion a year on an at-cost basis.

Overview of the Trade Information Warehouse

<u>Industry Established Trade Information Warehouse to Increase Transparency, Bring Stability</u>

In November 2006, at the initiative of swap market participants, DTCC launched the Warehouse to operate and maintain a centralized global electronic database for virtually

all CDS contracts outstanding in the marketplace. The Warehouse has received information with respect to trades executed prior to its inception. During 2007, DTCC back-loaded physical records in the Warehouse with information on over 2.2 million outstanding CDS contracts. Today, data for over 95 percent of all OTC credit derivatives are captured in this automated environment.[3] The Warehouse database currently represents about 98 percent of all credit derivative transactions in the global marketplace, constituting approximately 2.4 million contacts with a notional value of $29.6 trillion ($24.9 trillion electronically "gold" records and $4.7 trillion paper confirmed).

The Warehouse maintains the most current CDS contract details on the official legal, or "gold," record for both cleared and bilaterally-executed CDS transactions. The repository also stores key information on market participants' single-sided, non-legally binding or "copper," records for CDS transactions to help regulators and market participants gain a clearer and more complete snapshot of the market's overall risk exposure to OTC credit derivatives instruments.

Warehouse "Gold" Records Are Binding, Legal Electronic Record between Counterparties

Once an executed contract has been matched and confirmed, the trade record is sent to the Warehouse's repository. A "gold" record represents the current legal state of the contract. In fact, each user of the Warehouse's services has signed a binding agreement that states that, notwithstanding any provisions in any other applicable documentation relating to such transaction, the contracts maintained by the Warehouse represent the definitive record of each transaction and supersede any other documentation or understanding, whether written, oral, or electronic, between the parties. The Warehouse documents are relied upon to resolve any dispute between counterparties and to determine any payments or settlements by the Warehouse.

For "gold" records, the Warehouse assigns a unique reference identifier to each contract and performs automated recordkeeping to maintain the "current state" contract terms, taking into account post-trade events. The Warehouse also maintains a complete audit trail of the initial trade and every modification or assignment agreed to by the counterparties. These records are updated in real-time and, because the Warehouse is the official legal record of electronically confirmed contracts and centrally processes payments and credit events, counterparties ensure that these files are kept up to date and accurate.

Global regulators are provided information on "gold" and "copper" CDS contracts, as appropriate and upon request. Because contract details are located in a single central location, the Warehouse provides regulators across the globe with the ability to view

[3] For more information about the Warehouse, please see http://www.dtcc.com/products/derivserv/suite/ps_index.php.

market exposure on these contracts and assess risk from a central vantage point, which is critical, particularly in times of crisis. The availability of this data is necessary for regulators to identify and address risks to financial markets in a timely fashion.[4] Beginning next year, all credit derivative trade data held in the Warehouse will also be simultaneously held in DTCC Derivatives Repository, Ltd., an FSA regulated subsidiary based in London, in order to help assure regulator access to data across multiple jurisdictions.

Discussion of Interim Final Temporary Rule

The Submission and Maintenance of a Binding, Legal Electronic Record Should Satisfy the Reporting Requirements for Pre-enactment Security-Based Swaps and also Certain Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants

Rule 13Aa-2T requires a counterparty to a pre-enactment security-based swap transaction to report to a registered security-based swap data repository or the Commission by the compliance date established in the reporting rules required under Sections 3C(e) and 13A(a)(1) of the Exchange Act, or within 60 days after a security-based swap data repository becomes registered with the Commission and commences operations to receive and maintain data related to such swap, whichever occurs first.[5] The purpose of the swap data repository is to "assist the CFTC and SEC in their oversight and market regulation responsibilities."[6]

Although the Warehouse is not yet a registered security-based swap data repository, DTCC intends to register the Warehouse as a security-based swap data repository upon promulgation of the relevant regulations by the Commission. In the interim, in consultation with the OTC Derivatives Regulators' Forum, the Warehouse makes available its records for regulators and provides aggregated trade data to nearly 30 global regulators and central banks, including the Commission, the Commodity Futures Trading Commission ("CFTC"), the Federal Reserve Bank of New York, the European Central Bank, Banque De France and the Financial Services Authority.

DTCC respectfully suggests that, in addition to satisfying the filing requirements for pre-enactment security-based swaps, the submission to a security-based swap data repository

---

[4] As an example, while the Warehouse reported counterparty specific positions to regulators at the time of the AIG insolvency, virtually none of the AIG trades creating the exposure that lead to the company's downfall were registered in the Warehouse. A mandate for all trade activity to be reported into a central swap data repository maintaining all positions would have assisted in identifying risk posed by AIG's market activity and provided an opportunity to reduce the risk promptly.

[5] *See* Interim Final Temporary Rule for Reporting of Security-Based Swap Transaction Data, 75 Fed. Reg. at 64,653.

[6] Statement of Sen. Blanche Lincoln. 156 Cong. Rec. S5920 (2010).

and maintenance of a binding, legal electronic record on a regular basis should be used to satisfy some of the ongoing obligations of security-based swap dealers and major security-based swap participants. In particular, the entity charged with keeping swap data up to date, as the possessor of this information, could easily report on behalf of a security-based swap dealer or major security-based swap participant regarding its transactions, positions and financial condition,[7] maintain its books and records,[8] and maintain daily trading records of the swaps of the registered security-based swap dealer or major security-based swap participant and all related records (including related cash or forward transactions), as may be required by the Commission and for each swap counterparty.[9]

The designation of the submission to a security-based swap data repository and maintenance of a binding, legal electronic record for pre-enactment security-based swaps within the Interim Final Temporary Rule would reduce the burden on counterparties that do not transact frequently in OTC markets and lack the infrastructure for duplicative reporting obligations.[10] Similarly, the value of having one agreed-upon electronic record governing an agreement between counterparties is also recognized by more frequent market participants.[11]

Further, it is inefficient and jeopardizes systemic risk to establish a reporting regime that results in regulators relying on counterparty-reported information that could differ from the binding, legal electronic record maintained at a central location by a neutral third party that the counterparties consider the official record. For asset classes where current market practice dictates reporting and confirmation of trade information to a central repository, establishing a parallel track for regulatory oversight would only duplicate reporting obligations and establish an opportunity for conflicting swap data. Because market participants recognize the value in and currently report and maintain binding,

---

[7] *See* Exchange Act Section 15F(f)(1)(A).

[8] *See* Exchange Act Section 15F(f)(1)(B)-(D).

[9] *See* Exchange Act Section 15F(g).

[10] *See, e.g.*, Comments from Joseph R. Glace, Chief Risk Officer, Exelon, representing Coalition for Derivatives End-Users, (''The important part for us again is [to] have users who are satisfying the reporting obligations . . so again, you know, to me to have that [reporting] process go on, which is a useful business process, and then to duplicate it again in some other fashion is just an additional cost.") Joint Public Roundtable to Discuss Data for Swaps and Security-Based Swaps, Swap Data Repositories, Security-Based Swap Data Repositories, and Real-Time Public Reporting, September 14, 2010 ("Roundtable Transcript") at 194-195. Available at http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/derivative18sub091410.pdf.

[11] *See, e.g.*, Comments from John Gidman, Executive Vice President, Loomis, Sayles & Company, representing the Association of Institutional Investors, (''We think the public overall, are much better served by having gold records that we can rely on, particularly at the aggregate level of the market and the markets.") Roundtable Transcript at 227.

legal electronic records, DTCC suggests that this practice satisfy any additional reporting requirement for pre-enactment security-based swap transactions.

For these same reasons, DTCC believes the information retention requirements set forth in Rule 13Aa-2T(b) for future reporting should be satisfied when trade information has been reported and recognized by the counterparties as the binding, legal electronic record.

Fragmentation of Security-Based Swap Market Data Caused by Single Party Reporting and Lack of Consolidation of Repository Data Poses Risks

Rule 13Aa-2T(c) requires only one party to report pre-enactment security-based swap transaction data, and depending on the classification of the counterparties as major security-based swap participants[12] or security-based swap dealers,[13] it is possible that the counterparties may select the responsible party.[14] This reporting arrangement differs from current market practice and is inconsistent with the existing repository reporting infrastructure. Currently, the receipt of information from both parties to a security-based swap data repository guarantees reconciliation of the information and confirmation that the information entering into the Warehouse is accurate. Reducing the reporting obligation to only one side leaves open the possibility of incorrect data and jeopardizes the value placed on binding, legal electronic records such as our "gold" records for CDS. Further, a single-reporting regime will confront international legal obstacles, such as domestic privacy laws, which will restrict the reporting party's ability to disclose counterparty information. Bilateral reporting obligations alleviate some of these burdens and produce more valuable, trustworthy information which can be relied upon by counterparties and regulators.

The issue of incorrect or fragmented data presents a second risk that concerns many market participants.[15] DTCC recognizes the value of aggregated reporting to repositories and regulators and strongly urges the Commission to consider consolidation of repository data, either by asset class or across all products.

---

[12] *See* Exchange Act Section 3(a)(67)(A).

[13] *See* Exchange Act Section 3(a)(71)(A).

[14] *See* Interim Final Temporary Rule for Reporting of Security-Based Swap Transaction Data, 75 Fed. Reg. at 64,653-54.

[15] *See, e.g.*, Comments from Athanassos Diplas, Managing Director, Deutsche Bank, ("what regulators have is to have a single report per asset class so that all that information can be contained in one place and we don't have actually information falling through the gaps. Part of the problem in the past has been that information was fragmented and that caused the actual problems.") Roundtable Transcript at 23. *See also* Comments from Bruce Tupper, Director, Market Development ICE eConfirm, ("I think the big question is aggregating the data amongst energy clearing houses and also the OTC data. Is that a responsibility that the Commission wants to have, or is that something of the repository?") Roundtable Transcript at 71.

The Dodd-Frank Act provides authority for the Commission to mitigate the risk posed by fragmented market data caused by multiple security-based swap data repositories. Under Section 13 of the Exchange Act, as amended by the Dodd-Frank Act, security-based swap data repositories shall "provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity)."[16] Under this authority, the Commission could designate one security-based swap data repository as the recipient of information from other security-based swap data repositories in order to have consolidation and direct electronic access for the Commission.

Conclusion

We appreciate the opportunity to comment on the Commission's Interim Final Temporary Rule and provide the information set forth above. Should you wish to discuss these comments further, please contact me at 212-855-3240 or lthompson@dtcc.com.

Regards,

Larry E. Thompson
General Counsel

[16] *See* Exchange Act Section 13.

The Depository Trust & Clearing Corporation
55 Water Street
New York, NY 10041-0099

Larry E. Thompson
General Counsel

Tel: 212-855-3240
Fax:212-855-3279
lthompson @dtcc.com

Via Agency Website & Courier

January 18, 2011

Elizabeth Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549–1090

Re: Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information (File Number S7–34–10)

Dear Ms. Murphy:

The Depository Trust & Clearing Corporation ("DTCC") appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or "Commission") on proposed Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information ("Proposed Regulation" or "Regulation SBSR") under the Securities Exchange Act of 1934 ("Exchange Act").[1] DTCC's comments are provided with the goal of assisting the Commission in assessing how best to bring increased transparency and oversight to over-the-counter ("OTC") derivatives markets.

SUMMARY OF RESPONSE

DTCC supports the Commission's efforts to establish a comprehensive new framework for the regulation of swaps, including the reporting of all security based swaps ("SBS") to a security-based swap data repository ("SDR").

DTCC urges the Commission and the Commodity Futures Trading Commission ("CFTC") to harmonize their respective regulatory regimes establishing reporting processes for credit and equity derivatives, thereby eliminating the risk and costs associated with developing and maintaining two separate regulatory reporting processes when only a single, comprehensive process is needed. The agencies' current regulatory proposals exhibit significant similarities, but differ in their details, thereby creating potential inconsistencies that could unnecessarily increase risks of inaccurate reporting, as well as operational costs for market participants and SDRs. DTCC urges the SEC and CFTC, when possible, to formulate consistent requirements with respect to data

[1] *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. 75,208 (December 2, 2010).

elements, submission of life cycle events, confirmation data and valuation data, the origination of identifiers, reporting party requirements and verification requirements.

DTCC suggests that the Commission reduce the burden of implementation and ongoing performance for reporting parties and enhance the data quality received by SDRs (and available to the Commission) by permitting existing market practices, such as the trade confirmation process, to be used to meet the regulatory reporting requirements, wherever possible. Extracting data for regulatory reporting (as opposed to real-time dissemination) from the confirmation process would be a highly efficient method of information transmission for market participants and provide more effective controls on data quality, with no material impact on the timeliness of regulatory reporting. In certain cases the trade confirmation process is the market participant's trade capture process – in these instances, such processes may also support real-time reporting. As discussed in greater detail below, the regulatory reporting and confirmation of a transaction can be consolidated into one process. A rule authorizing this approach would reduce the burden on reporting entities and strengthen the integrity of the reported data.

DTCC recommends a "phase in" approach for the implementation of the full range of reporting requirements under Regulation SBSR to allow time for the extensive testing and preparation needed to avoid systemic risk and the collection and dissemination of inaccurate information. DTCC's pre-existing operations comply with many of the requirements set forth in the Proposed Regulation. However, the process of developing, implementing, user testing and training industry participants that must follow publication of the final Regulation SBSR will require significant time and effort. Once the final regulations are in place, each SDR will need to revise its operations for compliance, and then educate market participants on the changes, as market participants will only be able to initiate development to meet the reporting requirements once providers have finalized their specifications. For these reasons, described more fully below, DTCC suggests that the Commission consider a "phase in" approach to implementation.

DTCC addresses how regulators and the general public would be best served by the consolidation of data and the enhancement of the availability of aggregate data. Proposed Regulation SBSR outlines a measured approach for achieving standardization of reported data to help facilitate regulatory oversight of trading in and exposures created by SBS markets, as well as meaningful public reporting of data. However, DTCC stresses that good and timely data aggregation is also required. The two most commonly cited manners in which OTC derivatives, particularly credit default swaps, were alleged to have contributed to the financial crisis of 2008 were the general lack of reliable public information about exactly how much exposure to various entities actually existed and the inability of regulators to understand and timely respond to the large one-way trades in credit derivatives on mortgages by companies such as the American International Group, Inc. ("AIG"). As discussed more fully below, neither situation can be appropriately resolved without a competent and fully automated data aggregation process. Standardization alone will not be corrective.

Finally, DTCC also urges the Commission to permit reporting parties to utilize third parties to assist in complying with reporting obligations, facilitating efficient methods of reporting and the provision of higher quality reported data.

DTCC's detailed comments are preceded by a brief overview of DTCC and the Trade Information Warehouse ("TIW" or "Warehouse"), a centralized global repository for trade reporting and post-trade processing of OTC credit derivatives contracts, which is operated by DTCC's wholly-owned subsidiary, The Warehouse Trust Company LLC.

OVERVIEW OF DTCC

DTCC, through its subsidiaries, provides clearing, settlement and information services for virtually all U.S. transactions in equities, corporate and municipal bonds, U.S. government securities and mortgage-backed securities transactions, money market instruments and OTC derivatives. DTCC is also a leading processor of mutual funds and annuity transactions, linking funds and insurance carriers with their distribution networks. DTCC does not currently operate a clearing agency for derivatives. However, DTCC owns a 50% equity interest in New York Portfolio Clearing, LLC ("NYPC")[2], which has applied to the CFTC for an order granting registration as a Derivatives Clearing Organization ("DCO").

DTCC has three wholly-owned subsidiaries which are registered clearing agencies under the Exchange Act, subject to regulation by the Commission. These three clearing agency subsidiaries are The Depository Trust Company ("DTC"), National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC"). DTCC is owned by its users and operates as a not-for-profit utility with a fee structure based on cost recovery.

DTC currently provides custody and asset servicing for 3.6 million securities issues from the United States and 121 other countries and territories, valued at almost $34 trillion. In 2009, DTC settled more than $1.48 quadrillion in securities transactions. NSCC provides clearing, risk management, (for some securities) central counterparty services and a guarantee of completion for certain transactions. FICC provides clearing, risk management and central counterparty services (through its Government Securities Division) in the fixed income, mortgage backed and government securities markets. Thus, DTCC, through its subsidiaries, processes huge volumes of transactions – more than 30 billion a year – on an at-cost basis.

---

[2] NYSE Euronext owns the other 50% equity interest. Neither DTCC nor NYSE owns a majority of the equity interests in NYPC. NYPC will have its own management team which will control the day to day operations of the company.

OVERVIEW OF THE TRADE INFORMATION WAREHOUSE

In November 2006, at the initiative of swap market participants, DTCC launched the Warehouse to operate and maintain the centralized global electronic database for virtually all position data on credit default swap ("CDS") contracts outstanding in the marketplace. Since the life cycle for CDS contracts can extend over five years, in 2007, DTCC "back-loaded" records in the Warehouse with information on over 2.2 million outstanding CDS contracts effected prior to the November 2006 implementation date. Today, data for over 95 percent of all OTC credit derivatives are captured in this automated environment. The Warehouse database currently represents about 98 percent of all credit derivative transactions in the global marketplace; constituting approximately 2.3 million contracts with a notional value of $29 trillion ($25.3 trillion electronically confirmed "gold" records and $3.7 trillion paper-confirmed "copper" records).[3]

In addition to repository services (as contemplated by the Commission's proposed rules relating to SDRs, the acceptance and public and regulatory dissemination of data reported by reporting counterparties), the Warehouse provides both legal recordkeeping and central life cycle event processing for all swaps registered therein. By agreement with its 17,000+ users worldwide, the Warehouse maintains the most current CDS contract details on the official legal or "gold" record for both cleared and bilaterally-executed CDS transactions. The repository also stores key information on market participants' single-sided, non-legally binding or "copper" records for CDS transactions to help regulators and market participants gain a clearer and more complete snapshot of the market's overall risk exposure to OTC credit derivatives instruments.

DTCC's Warehouse is also the first and only centralized global provider of life cycle event processing for OTC credit derivatives contract positions throughout their multi-year terms. Various events can occur, such as calculating payments and bilateral netting, settling payments, credit events, early termination and company renames and reorganizations, which require action to be taken by the parties to such CDS contracts. DTCC's Warehouse is equipped to automate the processing associated with those events and related actions. The performance of these functions by the Warehouse distinguishes it from any swap data repository that merely accepts and stores swap data information.

DISCUSSION OF PROPOSED REGULATIONS

Proposed Regulation SBSR, under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), identifies the SBS transaction information required to be reported, establishes reporting obligations and specifies the timeframes for reporting and disseminating information. In general, the Proposed Regulation will provide for the reporting of three broad categories of SBS information: (1) information

---

[3] Data provided as of December 31, 2010. For more information about the Trade Information Warehouse, please see http://www.dtcc.com/products/derivserv/suite/ps_index.php.

that will be required to be reported to a registered SDR in real-time and publicly disseminated; (2) information required to be reported to a registered SDR or, if there is no registered SDR that will receive such information, to the Commission, but will not be publicly disseminated; and (3) information about "life cycle events" required to be reported as a result of a change to information previously reported for a SBS.

I. WHO MUST REPORT

Using the Confirmation Process for Reporting under Proposed Rules 901(d) and (e)

The trade confirmation process for credit and equity derivatives globally already includes much of the data elements required under Regulation SBSR's Proposed Rules 901(d) and (e). In its existing form, the trade confirmation process is designed to verify all terms of economic value between the parties, including all of the trade terms data required to value the trade. Existing trade confirmation processes also provide a strong audit trail. Given that trade confirmation processes are key to supporting balance sheet verification for market participants, such processes have been developed with a high degree of completeness and accuracy, giving legal certainty to trading positions held by firms. Confirmation processes are designed to identify when economic terms to trades have changed, distinguishing between expected events under an existing confirmation and amendment of economic terms due to the modification of terms. Further, the logic behind these processes supports the identification of price-forming events, as required to be reported in Proposed Rule 901(c). The trade confirmation is a bilateral process in which both parties agree to the confirmation, thereby ensuring any errors in the original data are corrected.

A major distinction between confirmation processes and Proposed Rule 901(d) is timeliness. Proposed Rule 901(d) requires 15 minute, 30 minute or 24 hour submission. In practice, most dealer submissions to the electronic confirmation process for new trades in credit and equity derivatives are made on an intra-day basis on trade date. Actual submission times vary in accordance with the internal practices of each dealer (*e.g.*, real-time versus multi-batch) but are designed to achieve full confirmation as close to the point of trade as possible. Exceptions occur primarily where buy-side firms have not provided allocations for block executions.

More importantly, the electronic confirmation generation process is not significantly different from the trade reporting envisaged by Proposed Rule 901(d), with respect to both trade data content and trade audit trail functionality. Therefore, it may be difficult for reporting parties to provide SDRs with 901(d) data materially faster than the submission process for trade confirmation. (Meaning, generally, any regulatory reporting prior to when firms are able to submit confirm data would likely result in inaccurate submissions.) In that regard, DTCC also notes that, through ongoing commitments made to the global OTC Derivatives Supervisors Group ("ODSG"), the industry has greatly improved timeliness and accuracy of confirm submissions. This has

significantly mitigated the operational risk associated with OTC derivatives generally and credit derivatives in particular. It appears, therefore, that linking required regulatory reporting to the electronic confirmation process (where one exists) would provide regulators with a means of further reducing operational risk and improving the timeliness and accuracy of confirmation submissions and regulatory reporting. Specific recommendations in this regard are set forth below under III.A. Reporting Timeframes for Regulatory Information. The alternative approach requires maintenance of separate regulatory submission and electronic confirmation processes that would then necessitate a separate reconciliation process to compare confirmation records against data reported for regulatory purposes.

DTCC believes that regulatory and market confirmation requirements should be aligned to provide for a system that is cost-effective and efficient, integrating the timeliness of Proposed Rules 901(d) and (e) with the confirmation process timeline. This would require the phasing in of the reporting timeliness goals for Proposed Rules 901(d) and (e). While it is difficult to determine how much closer trade confirmation can take place to the point of execution, certain elements of market practice will enable it to occur faster than it does today. For example, certain firms complete a number of data checks internally before issuing confirmations, including, for example, checks to interdealer broker trade confirmations, which can be further automated or will be superseded by electronic execution, enabling more timely submission. As further automation occurs, it is possible that security-based swap execution facility ("SEF") executed trades could be reported within 15 minutes, assuming the existence of automated feeds from the SEF to reporting parties or directly to SDRs acting as agent for the reporting party. Similarly, further streamlining of enterable fields and standardization of required enrichments would help improve submission timeliness and accuracy by the reporting party, bringing confirmation even closer to the point of trade.

For highly structured trades (which would not be electronically confirmable), the current processes for booking the trade and preparing confirmation post-trade execution may not allow for reporting within 24 hours in all instances. Currently, the detailed booking required for full valuation can take a number of days, and a number of points in the confirmation may require clarification and legal drafting prior to confirmation. Still, some reporting of the trade would be possible within 24 hours. Again, DTCC highlights the process of benchmarking improvements over time, as employed by the ODSG, as a model for addressing this issue.

As further background, for credit derivatives, most market participants have the ability to confirm trades electronically, and most credit derivatives trades are stored as electronic, legally binding or "gold" records in the Warehouse. DTCC estimates that over 98% of credit derivatives trades globally are included in the TIW in this form. The initial records are submitted via an electronic confirmation service provider by both parties. In addition, the major dealers and buy-side participants who have made commitments to the ODSG have provided DTCC summary records of trades which are not electronically

confirmable to meet their commitment for universal recording. For equity derivatives, the level of electronification of the market is lower, with only 40% of such trades confirmed electronically and no equivalent to the TIW existing.[4]

The trade confirmation process supports all trades. In some cases, where a trade is not electronically confirmed, it is simply rendered as a text-based document and issued by facsimile or emailed PDF, rather than as a structured electronic message. Market participants are working toward increasing the levels of full electronification and, over time, these will increase, enhancing the audit trail, error and correction processes and event controls of the confirmation process.

In its process, TIW receives (through confirmation providers) submission from both parties to the trade – in many cases one party is submitting by affirmation to a trade record submitted by the other party. Certain parties use custodians or outsource providers to perform these activities on their behalf. In addition to the parties to a trade, clearing agents and portfolio compression vendors (when authorized by the trade party) submit updates to trade records directly to TIW.

In certain cases, the trade confirmation process will also be used to facilitate the requirements of Proposed Rule 901(c), where trade capture and confirmation are integrated, such as with MarkitWire. Typically, the seller or payer-party (or an interdealer broker ("IDB")) is responsible for input to this system immediately following execution – an input that involves a minimal number of trade terms. The buyer or receiver reviews these terms and affirms that trade in the system; this then populates the buyer's trade capture system (in the case of IDB input, both parties would review and affirm). Proposed Rule 901(c) reporting would be available from the first input to MarkitWire and, therefore, in certain situations, processes which are part of the trade confirmation process can be used to meet Proposed Rule 901(c) reporting requirements.

Role of Third Parties

DTCC strongly supports the use of third parties to report SBS data on behalf of reporting parties. However, such reporting by third parties should be required to be clearly authorized by the reporting party. The reporting party needs to control the data flow to SDRs to ensure completeness and accuracy of the data. Different firms will wish to have different workflows to support third party reporting, just as they do in the procedures used to undertake confirmation services. For confirmation services, certain firms allow IDBs to book trades into a confirmation service on their behalf, whereas others do not. Similarly, certain firms, where the confirmation service acts by affirmation (one party agreeing to another party's record), accept the other firm's record of the trade following manual review – this books the trade into the internal trade capture system. Other firms

---

[4] *See* Industry letter to Federal Reserve Bank of New York (June 2, 2009), available at http://www.newyorkfed.org/newsevents/news/markets/2009/060209letter.pdf

book every trade and have built internal matching capabilities to validate records sent to them for affirmation. Finally, certain firms prefer external matching platforms to provide confirmation in order to support independent input, but avoid the full cost of building and maintaining an internal matching engine. DTCC believes it is important that reporting firms with the reporting obligation maintain control over reported positions throughout the life of the contract, with third parties acting for the reporting party in making updates. Otherwise, it is difficult for any party to take responsibility for the accuracy of the resultant position at the SDR.

DTCC believes that the use of third parties will also strengthen the ability of the SDR to fulfill its statutory obligation to confirm the data with both parties.[5] In many cases, the third party will report trade information on behalf of both parties, and, in the absence of an obligation for parties to confirm the data with the SDR, reduce the regulatory burden of the counterparties and ensuring prompt compliance with reporting obligations. DTCC believes that, in many instances, firms will wish to submit every trade to the SDR or have a third party to manage submission to the SDR. Given the complexities related to establishing a new regulatory framework in a global market (particularly with jurisdictions expected to adopt new reporting rules related to SDRs as part of their G20 commitments), there is considerable complexity to devise rules that determine a reporting party's status within a hierarchy based on a counterparty's status or reporting requirements based on the product type.

The Proposed Regulation would require that a U.S. person report transaction data when its counterparty is not a U.S. person. This approach may not be preferred where a U.S. customer is dealing with non-U.S. dealer, and the foreign dealer may wish to offer this as a service to make the actions consistent with those of the customer transaction with U.S. dealers. This type of service by dealers who are not U.S. persons will best promote prompt and accurate reporting, because dealers who are not U.S. persons are better positioned technologically than all but the most advanced of their customers to provide the necessary reporting. Therefore, DTCC urges the Commission to facilitate such arrangements.

II. INFORMATION TO BE REPORTED IN REAL-TIME

Proposed Rule 901 divides the SBS information required to be reported into three broad categories: (1) information that will be required to be reported in real-time; (2) additional information that will be required to be reported but not publicly disseminated; and (3) life cycle event information. Each category has its own respective time deadline for reporting.[6]

---

[5] "A security-based swap data repository shall . . . confirm with both counterparties to the security-based swap the accuracy of the data that was submitted." *See* Section 13(n)(5)(B) of the Exchange Act, 15. U.S.C. 78m(n)(5)(B).

[6] *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. at 75,212.

To date, DTCC has looked to regulators and market participants in determining the information which TIW disseminates publicly. The liquidity studies published by DTCC show that credit derivative trading is extremely thin on the majority of roughly 3,000 single name underlyers, and even this data is in aggregate across all maturities for a single reference entity. DTCC's discussions with market participants and regulators prior to publishing data have revealed high levels of sensitivity to disclosing small data samples, particularly from narrow time periods, given that such disclosure may not preserve the anonymity of the trading parties. The Dodd-Frank Act recognized the importance of protecting party anonymity, particularly for trades not subject to mandatory clearing.[7] In addition, the execution model, when combined with public dissemination, may lead to potential unintentional disclosure. For example, a request for quote ("RFQ") process with 5 counterparties will likely enable those parties to link RFQs to executions given there is less than one trade per hour per underlying for the majority of credit derivative underlyings.[8]

The real-time reporting fields set forth in Proposed Regulation SBSR accurately represent the key economic terms. Full terms should not be reported for timely submission, as only the most technically sophisticated recipients would be able to interpret the additional published data. However, publicly disseminated data for trades with a non-standard feature flag activated will be of limited usefulness and could be misleading. As a general mater, it is difficult to compare price data across transactions that are non-standard and have different terms. As a result, publication of only price (or other limited) transaction data for non-standard transactions is unlikely to benefit market participants and may, in fact, be confusing or misleading. DTCC believes that any dissemination of information with respect to highly structured trades should be phased in, if required at all, and that no dissemination for these products should occur until an analysis is conducted as to the impact and potential for misleading the investing public.

The Proposed Regulation defines "real-time" to mean (with respect to the reporting of SBS transaction information), "as soon as technologically practicable, but in no event later than 15 minutes after the time of execution of the SBS transaction."[9] DTCC believes that reporting within 15 minutes may be possible, but its experience with new industry-wide processes indicates there will likely be a "shakeout" period during which any number of problems with reported data will be discovered. The Commission should take this into account and provide a means of assuring that publicly disseminated

---

[7] "With respect to the rule providing for the public availability of transaction and pricing data for security-based swaps . . . , the rule promulgated by the Commission shall contain provisions . . . to ensure such information does not identify the participants." *See* Section 15(m)(1)(E) of the Exchange Act, 15. U.S.C. 78m(m)(1)(E).

[8] *See* Core Principles and Other Requirements for Swap Execution Facilities; Proposed Rules ("Proposed Rule" or "Proposed Regulation") 76 Fed. Reg. 1214 (Jan. 7, 2011).

[9] *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. at 75,284.

information is of high quality before dissemination is permitted. In this regard, DTCC understands that TRACE was initially introduced with a reporting deadline of more than an hour, which was tightened over a period of 18 months. DTCC would advocate a similar approach in this case, starting with a similar deadline and tightening over a similar period to TRACE.

III. ADDITIONAL REPORTING OF REGULATORY INFORMATION

Proposed Regulation SBSR requires reporting, within specified timeframes, of certain SBS transaction information that will not be publicly disseminated. The information required under Proposed Rule 901(d) is in addition to the publicly disseminated information required under the real-time reporting requirements set forth in Proposed Rule 901(c).[10]

For detailed market supervision, including understanding of pricing, regulators will need all economic attributes of a trade and execution time of the trade. Proposed Rule 901(d) appropriately captures the data elements necessary to determine the market value of the transaction and the execution time. Prudential regulators may need detailed information, which allows them to understand the detailed business activity of firms they oversee, but also more aggregate data on positions held by firms. Similarly, central banks will have an interest in more aggregate data. In these cases, aggregate trade valuations, including counterparty exposures and information as to collateral positions, are important for measuring risk exposures. Proposed Regulation SBSR is not clear as to the approach for obtaining this data. DTCC understands that firms expend considerable resources in valuing trades. It would be costly and difficult, if not impossible, for an SDR to replicate this activity across the multiplicity of products and contracts. Therefore, DTCC urges the Commission to adopt an approach whereby reporting firms submit their mark-to-market valuations.

For collateral information, while certain required collateral is assessed at trade level (for example, an independent amount or a reduced collateral requirement based on a trading strategy), collateral agreements typically operate with respect to a master agreement as a whole, and margin calls are made and collected on a net basis. Therefore, collateral is held against a portfolio and not attributable at trade level and any reporting needs to occur at that level.

Given that Proposed Rule 901(d)(v) requires the data elements necessary for a person to determine the market value of the transaction, Proposed Rule 901(d)(iii) appears duplicative and, further, Proposed Rule 901(d)(iii) is unclear as to the proposed form of the "description of the terms and contingencies of the payment streams" required. DTCC expects only the full terms as laid out in the trade confirmation should be reportable, as under Proposed Rule 901(d)(v).

---

[10] *See id.* at 75,217.

DTCC is concerned that the requirements to include master agreement dates and credit support agreement dates at trade level is onerous, as these operate at portfolio level, in hierarchical structures and generally are not directly incorporated into current trade level messages. Rather, they are typically incorporated by reference to one applicable agreement. Therefore the level of change required to incorporate these into individual trade messages is excessive and may be better supported by a portfolio level approach to such issues, if required at all. The trade level reference should follow the current process, which references the lowest level governing document, which document itself will in turn permit identification of all other relevant documents.

Further, DTCC does not advocate requiring the reporting of trader or desk IDs, as the effort to maintain such information in an SDR may exceed its usefulness given that desk structures are changed relatively frequently and personnel rotate often and often transfer from firm to firm. Moreover, such information should be available directly from firms' own audit trails for the occasions when needed.

DTCC understands that SWIFT's Bank Identification Code ("BIC") is an ISO standard for counterparty identifiers and that SWIFT is interested in supporting the provision of unique identification codes ("UICs"). DTCC is supportive of SWIFT acting in this capacity, but expects the SDR will be largely agnostic as to the form of identifier and believes any form of identifier could be adopted and function appropriately. DTCC believes that, minimally, the UIC should be used in communication between the SDR and regulators and will be readily convertible from other formats by the SDR – rather than requiring immediate adoption by all parties in the reporting process. DTCC expects that each market participant will acquire its UIC directly from the internationally recognized standards-setting body ("IRSB") and that the IRSB will make a level of data publicly available, without charge, to allow market participants to correctly identify the UIC, including the legal entity name and the registration location of that legal name.

The TIW currently uses proprietary codes to identify parties to trades, at a legal entity level, not at a subunit level. DTCC does not believe it complex or difficult to develop a mapping table to a UIC for reporting to regulators.

A. Reporting Timeframes for Regulatory Information

Pursuant to Proposed Regulation SBSR, the Commission believes SBS transaction information should be reported within a reasonable time following the time of execution (*i.e.*, the point at which the counterparties to a SBS become irrevocably bound under applicable law), rather than waiting until the time a transaction is confirmed. For purposes of Proposed Regulation SBSR, the time a transaction is confirmed means the production of a confirmation that is agreed to by the parties to be definitive and complete and that has been manually, electronically, or by some other legally equivalent means,

signed.[11] The Proposed Regulation requires a reporting party to submit the regulatory information required under Rule 901(d) "promptly" and, in no event, later than:

- 15 minutes after the time of execution for a SBS that is executed and confirmed electronically;
- 30 minutes after the time of execution for a SBS that is confirmed electronically but not executed electronically; or
- 24 hours after execution for a SBS that is not executed or confirmed electronically.[12]

As noted above, DTCC believes that there are direct similarities between the reporting requirement of Proposed Rules 901(d) and (e) and the confirmation process. The current confirmation process is not as timely as Proposed Rule 901(d). DTCC's experience suggests that electronically executed trades could be confirmed within 15 minutes, but it would require straight through processes for all reporting parties, which may be cost prohibitive for some low volume users. In addition, DTCC's experience suggests that orally executed, but electronically confirmable, trades can be submitted in a relatively short timeframe, but likewise require a level of automation and investment in electronic trade processing. Placing the reporting burden on swap dealers and major swap participants would facilitate achieving implementation of this proposed requirement; as such entities are more likely to get net benefits from the investment in automation. DTCC recommends that the electronically executed trade deadline be set at 30 minutes and the deadline for an electronically confirmable trade be set at 2 hours. To provide for a transition period to enable reporting parties to develop appropriate capabilities, these deadlines should be subject to phase in, initially starting closer to current market capability for electronically confirmable at 24 hours.

Manually confirmed trades are not currently subject to the same processes for all types of trades. Some trades are confirmed relatively quickly, with more standard contract confirmation generated by automated processes (*e.g.,* by delivery by facsimile or a PDF in email). Other trade confirmations are only issued after extensive legal drafting (required to describe economic terms) and validation against termsheets and internal trade bookings. Some trade confirmations may run to over 50 pages of terms. Trade booking into risk systems for certain complex trades, with appropriate controls over accuracy of input, can take a number of days. In addition, the submission for these trades may be heavily text-based. In light of these practices, it will be difficult for these trades to consistently be reported within 24 hours. Therefore, Proposed Regulation SDSR should be modified to permit a record without full terms to be sent within 24 hours, followed by the full terms, when available, but no later than 5 days.

---

[11] *See id.* at 75,219.
[12] *See id.* at 75,219.

B. Reporting of Life Cycle Events

Proposed Regulation SBSR requires the reporting of certain "life cycle event" information. A "life cycle event" is defined as any event resulting in a change in the information required to be reported to an SDR under Proposed Rule 901. This definition includes a counterparty change resulting from an assignment or novation; a partial or full termination of the SBS; a change in the cash flows originally reported; for a SBS that is not cleared, any change to the collateral agreement; or a corporate action affecting a security or securities on which the SBS is based (*e.g.*, a merger, dividend, stock split or bankruptcy).[13]

Many life cycle events are price-forming or significantly change the exposures under a trade; for example, novation, early termination, exercise, knock-out or knock-in. The current definition supports reporting of these events, which is necessary for detailed markets regulation and, where independent valuation is considered an important capability from SDR data, for prudential and central bank regulation. Life cycle events are best reported in standard market forms (*e.g.,* for novation and early termination by trade confirmation; for exercise by exercise notice).

TIW has determined solutions to a number of complex issues for credit derivatives and can support life cycle event reporting processes. Based on this experience, DTCC believes that solutions can be developed for the life cycle event reporting required under Proposed Rule 901(e). In a number of cases, the life cycle event reporting timeliness will likely follow the initial reporting timeliness, particularly in the case of price-forming events subject to confirmation. However, requiring that this reporting occur "promptly" is appropriate since it also serves to recognize that certain life cycle events will result from other processes (*e.g.,* corporate actions or credit events), where many trades will be impacted simultaneously and processing may be manual or automated, requiring a varied amount of time. DTCC believes that it would be helpful for the Commission to provide greater clarity around its understanding of the term "promptly," as the term, without further explanation, may be interpreted by reporting parties differently for similar events and processes, particularly in a market where certain processes have historically taken a number of days to effect.

C. Additional Requirements Applicable to Registered SDRs or Participants

Proposed Regulation SBSR contains a set of rules that mandate the use of standardized reporting formats and identifiers for SBS information reported to a registered SB SDR. DTCC recognizes that standardization of reporting generally and counterparty information specifically, as well as identification of parents and affiliates, is critical to providing regulators with a comprehensive view of the swaps markets and assuring that

[13] *See id.* at 75,220.

publicly reported data is accurate and meaningful. However, such standardization alone is not sufficient to permit prompt and accurate regulatory assessments of either risky and unsafe position taking or manipulative and abusive trading practices. Nor will standardization assure meaningful public reporting of relevant market information.

DTCC has several years experience in operating the only global repository for an entire swap asset class (the TIW for credit derivatives) that has regularly and publicly reported key global market information, including net open interest and turnover information for the top 1,000 names traded worldwide, and regularly reported to relevant regulators worldwide key position risk and trade detail information. It is demonstrable that were the data publicly reported in aggregate by the TIW fragmented and reported by separate entities (*i.e.*, multiple repositories) the net open interest and net turnover information publicly reported would have been inaccurate and misleading in that it would have been almost always overstated, in many instances significantly.

In a presentation provided to regulators in July 2010, DTCC reviewed the net notional associated with the most liquid, on-the-run index (CDX.NA.IG.14) current at that time. The net open interest, as of July 9, 2010 was $33,035,116,000 at the clearinghouse and the bilateral, non-cleared net open interest was $69,231,897,351. This could have lead to an erroneous determination that the aggregate net open interest totaled $102,267,013,351. However, the cleared positions for a given counterparty often offset the bilateral net position. When the bilateral and cleared positions of each counterparty were netted together and then totaled, the net open interest for the marketplace was $46,906,650,518. This example illustrates that even for the most liquid contracts, fragmented reporting can indicate overall exposures of more than double what they actually are. This exemplifies the problems inherent in the dissaggregation of any positions, whether cleared vs. non-cleared or cleared at different clearinghouses.

In general this is unacceptable, but it is particularly so during times of crisis when overstated public reporting of net open interest/net exposures could contribute to unnecessary, severe market reactions. During the Lehman Brothers (“Lehman”) crisis, when the TIW was able to assure markets that the net amount of credit default swaps written on Lehman was no greater than $6 billion (actual net settlements on credit default swaps written on Lehman were approximately $5.2 billion), as opposed to the hundreds of billions of dollars speculated, this principle for providing information for market surety was demonstrated. Had the credit default swaps on Lehman been reported to multiple repositories at the time, the net exposure to Lehman could have been reported to have been as high as $72 billion, an amount that would have been off by a factor of greater than ten.

It has been alleged that the lack of accurate public information about firms’ exposures in the credit default swap market was a significant contributor to the financial crisis of 2008. Unless regulators maintain the public reporting of net open interest based on the entire market rather than various portions of it, that situation will continue and this

particular contributing cause to the 2008 financial crisis will not have been adequately addressed.

The other circumstance in which the credit default swap market was viewed as contributing to the financial crisis of 2008 revolved around the large one-way trades put on by AIG in mortgage related credit derivatives. Those trades were not reported to the TIW at the time (they have since been backloaded to the TIW). Importantly, if AIG had chosen to try to hide these trades by reporting to multiple repositories, these systemically risky positions would not have been discovered absent a "super repository" that aggregated the trade level data of the various reporting repositories in a manner as to detect the large one-way aggregate positions.

Unless data fragmentation can be avoided, the primary lessons of the 2008 financial crisis, as related to OTC derivatives trading, will not have been realistically or adequately taken into account. Nevertheless, standardization is also necessary and a precondition to avoid fragmentation. Specific comments on standardization and related issues are set forth below.

Transaction ID and Unique Identification Code

A transaction ID would likely be essential to identify the trade to which Proposed Rules 901(d) and (e) data and any corrections relate. This can be achieved by consistent use of a common ID assigned by any party and mapping to other proprietary standards where appropriate. In the current TIW model, DTCC assigns a unique transaction ID, which is sent back by electronic message to submitting firms. This unique transaction ID or the firm's proprietary reference is used in subsequent submissions relating to that trade to TIW and is used by submitting firms in periodic full population reconciliation against TIW.

Transaction IDs would also likely be useful to counterparties, providing a shared identifier for both parties to the trades, which would serve to improve efficiency of any processes where mutual recognition is needed and where, otherwise, some level of bilateral reconciliation would be required before processing. This is particularly important in situations where the reporting party may change during the life of a contract. For example, upon trade assignment the reporting party may change, and the remaining party to the trade is in the best place to communicate with both the transferor and transferee in the trade. In addition, transaction IDs also may be of use to agents who act for one party in communicating with the other party.

SDRs can assign unique transaction IDs, as can other service providers. The SDR could provide the reference back to the reporting party as part of a message confirming first receipt of the submission. This is the current model with the TIW and DTCC recommends that this responsibility be retained, as opposed to transferring it to other providers (for example, SEFs). SDRs are better placed to establish consistent protocols

to deal with these transformations without loss of relevant information for regulatory use. Keeping this responsibility with SDRs may also eliminate any unintentional disclosure issues which stem from linking a trade to a specific SEF, potentially increasing the instances of unintended identification of the trade parties. TIW currently assigns a DTCC TRI (transaction reference identifier), which is unique to each trade, and messages this back to both parties electronically.

UICs for both counterparties will be necessary for regulators to accurately track exposures between counterparties to SBSs – a primary driver for the creation of SDRs. Proposed Rule 906(a) would achieve the population of necessary UICs and would assist the SDR in fulfilling its obligation to confirm the submission with both parties. Ideally, this process would be supported electronically (*e.g.,* by electronic messaging to the parties, or by retrieving it from the SDR's website). In addition, use of third party services – for example, bilateral confirmation services – should meet this requirement.

A primary issue with UICs will be the initial issuance and adoption of UIC information, given that these may not be available from a standards body at the onset of reporting.

Financial Products Markup Language ("FpML") ™ is broadly used as a standard in the OTC derivatives markets and should be the basis for reporting to an SDR. At times, SDRs will need to develop their own FpML tags, as often product development is ahead of formal market FpML development, and SDRs should have the discretion to do so. However, SDR-unique FpML tags should be converted to the market standard FpML in a reasonable time period. FpML has good coverage of trade terms, but will need to be extended to cover some of the data elements required in Proposed Rule 901.

DTCC believes market standard forms of data should be used, rather than a newly created set of reference data codes. New codes will need ongoing maintenance and require that specific processes be developed for reporting purposes, likely resulting in poorer quality data submissions. Currently, Markit Reference Entity Database ("RED")™ codes are widely used in trade confirmations for credit derivatives, and Reuters Instrument Codes ("RIC") are used in electronic messages for equity derivatives. These are subject to licensed use. DTCC supports the ongoing usage of licensed codes (with the provision that these codes be made available to small volume players at appropriately reduced costs).

The alternative generally results in difficulties for the SDR. For example, DTCC must recognize a number of variations in the name of a reference entity in its public reporting, because without RED codes the description of the reference entity in submitted data can vary, even in relatively minor ways (*e.g.*, punctuation used in abbreviations). Such issues are difficult for an SDR to systemically resolve, as it requires correctly identifying cases of difference while correctly aggregating the cases of similarity. Finally, as with counterparties, it would be possible for the SDR to use market data vendors to map data into different formats without the need for imposition all data submissions.

Parent and Affiliate Information

Parent and affiliate information helps to illustrate the full group level exposures of firms and the impact of the failure of any participant. The SDR should have the power to obtain this information from firms. DTCC envisions that the SDR will likely look to a data vendor to provide this information, allowing market participants to review and approve such data. DTCC understands that data vendors specialize in this type of data service. Such vendors have suggested that often another market participant drives timely updates to the data, rather than the direct party impacted due to the many parties using the data. Therefore, use of such a vendor may improve the accuracy of data in the SDR.

Time Stamp

With respect to the additional requirements of SDRs, the SDR could readily time stamp information upon receipt. DTCC's TIW can support recording both message arrival time and processing times.

D. Reporting of Data for Historical SBSs

The Commission proposes to limit the reporting of SBSs entered into prior to the date of enactment ("pre-enactment SBSs"). The rule permits further flexibility by requiring a reporting party to report this historical SBSs data only to the extent that such information is available.[14]

Historical SBS records should be included in the SDR to allow accurate exposure monitoring. For this purpose, only open contracts should be reported and only their current state should need to be reported, without additional information like execution time. (If information, such as execution time, is needed for a particular transaction, the relevant regulator could request such information from the relevant counterparties.) For trades that are in the TIW, for which the TIW record is the official legal record, this record could populate the SDR with all of the information required for the initial population.

IV. Public Dissemination of Security-Based Swap Transaction Information

The Proposed Regulations relating to the post-trade transparency of block trades take into account the possibility that public disclosure required under the Dodd-Frank Act could materially reduce market liquidity for SBSs of large notional size. The Proposed Regulations are designed to balance the benefits of post-trade transparency against the potential harm that could be done to market participants, with particular focus on fiduciary investment managers, who could face higher costs in transferring or hedging a

[14] *See id.* at 75,244.

large risk position after other market participants learn of the execution of a block trade.[15]

DTCC views the SDR role as supporting the reporting required by the Commission and would be happy to provide data under its existing framework for reporting to regulators to assist in studying issues of liquidity. DTCC has already published quarterly reports on liquidity and publishes weekly aggregate activity in the top 1,000 reference entities (top 1,000 by open interest).

A. REGISTERED SDRS AS ENTITIES WITH DUTY TO DISSEMINATE

The Dodd-Frank Act identifies four types of SBSs and requires real-time public reporting for such SBS transactions. In implementing the requirements of the Dodd-Frank Act, the Commission believes that the best approach is to require registered SDRs to disseminate SBS transaction information and to require other market participants to report such information to a registered SDR in real-time, so that the registered SDR can in turn provide transaction reports to the public in real-time. Under this approach, market participants and regulators will not have to obtain SBS market data from other potential sources of SBS transaction information – such as SEFs, clearing agencies, brokers or the counterparties themselves – to obtain a comprehensive view of the SBS market.[16]

SDRs should be able to disseminate data effectively and should be the sole source of data dissemination. Allowing other entities to disseminate data may add to the processes by which counterparties are required to submit data and further complicate the rules for market participants. If multiple disseminators are involved, it may be unclear to subscribers where data is duplicated in dissemination. In addition, the block trade rules require a full data set to determine the appropriate levels, requiring a means to obtain such data**.** Direct dissemination by SEFs will potentially achieve timely dissemination but may be localized and conflict with a SEFs own commercial interest in the data. Also, for SDRs to effectively consolidate the data, the rules must ensure that the SDR receives each instance of the record, from real-time reporting through confirmation, to ensure accuracy and validity of the data.

For real-time reporting, there must be consistent block trade definitions and thresholds across the entire market globally. These should be representative of the entire market and reflective of market depth and liquidity – rather than localized subsets, based on narrow reporting populations, such as those defined by components of market infrastructure, counterparty location or fragmentation of reported information by reporting of trade executions to multiple SDRs. A localized block trade definition will provide participants with a potential means to avoid or delay public dissemination. Therefore, the

---

[15] *See id.* at 75,224.
[16] *See id.* at 75,227.

Commission needs to determine how to establish consistent block trade rules and thresholds across the market.

B. SBS INFORMATION THAT WILL NOT BE DISSEMINATED

Under the Commission's Proposed Regulations, a registered SDR will be prohibited from disseminating the identity of either counterparty to a SBS. A registered SDR is also prohibited from disseminating any information disclosing the business transactions and market positions of any person with respect to a SBS that is not cleared, but has been reported to that registered SDR. Finally, a registered SDR is prohibited from publicly disseminating any SBS information reported under the pre-enactment and transitional SBS rules.[17]

Currently, DTCC does not report credit default swap information beyond the top 1,000 names, because regulators and market participants have expressed concerns with respect to unintentional disclosure of parties as a result of low trading activity levels. Consistent with the Dodd-Frank Act, Proposed Rule 901(c) should not require SDRs to make disclosures that could cause the unintentional disclosure of counterparty information.[18] DTCC urges the Commission to consider this issue fully in determining the phase-in and scope of public dissemination.

C. OPERATING HOURS OF REGISTERED SDRS

The Proposed Rule will require a registered SDR to design its systems to allow for continuous receipt and dissemination of SBS data, except that a registered SDR will be permitted to establish "normal closing hours." Such normal closing hours may occur only when, in the estimation of the registered SDR, the U.S. markets and other major markets are inactive. In addition, a registered SDR will be permitted to declare, on an ad hoc basis, special closing hours to perform routine system maintenance, subject to certain requirements.[19]

DTCC believes that SDRs should operate 24/6, allowing for continuous access to data by regulators, including during period where individual exchanges or other trading platforms are closed. Requiring such operating hours recognizes the global nature of trading in derivatives markets and the round-the-clock participation in these markets by U.S. persons. One of the primary issues reporting to a repository is designed to address

---

[17] *See id.* at 75,234.

[18] "With respect to the rule providing for the public availability of transaction and pricing data for security-based swaps . . . , the rule promulgated by the Commission shall contain provisions . . . to ensure such information does not identify the participants." *See* Section 15(m)(1)(E) of the Exchange Act, 15. U.S.C. 78m(m)(1)(E).

[19] *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. at 75,235.

is the analysis of the consequential impact of the failure of an institution, an event not limited to U.S.-based standard hours.

V. POLICIES AND PROCEDURES OF REGISTERED SDRS

A registered SDR will be required to establish and maintain certain policies and procedures, which must: (1) enumerate the specific data elements of SBS or life cycle event that a reporting party must report; (2) specify one or more acceptable data formats, connectivity requirements, and other protocols for submitting information; (3) promptly correct information in its records discovered to be erroneous; (4) determine whether and how life cycle events and other SBSs that may not accurately reflect the market should be disseminated; (5) assign or obtain certain unique identifiers; (6) receive information concerning a participant's ultimate parent and affiliated entities; and (7) handle block trades. A registered SDR also will be required to make its policies and procedures required by proposed Regulation SBSR publicly available on its website.[20]

A registered SDR should have flexibility to specify acceptable data formats, connectivity requirements and other protocols for submitting information. Market practice, including structure of confirmation messages and detail of economic fields, evolve over time, and the SDR should have the capability to adopt and set new formats. In addition, the SDR will need to support an appropriate set of connectivity methods; the Commission should not, however, require SDRs to support all connectivity methods, as the costs to do so would be prohibitive.

The data formats of the SDR should be publicly available, and the SDR should publish Application Program Interfaces ("APIs") to permit direct submission by reporting parties and their agents (with appropriate validations by the SDR). The SDR is well positioned to establish standards for certain reporting attributes where these are not defined elsewhere.

With respect to policies concerning dissemination, all price forming events should be disseminated. For portfolio compression activities, which in most cases are risk neutral, an exact pricing at individual trade level between parties is not meaningful and, therefore, these transactions should not be disseminated. Normal terminations should be fully price-forming and reported. Further, the SDR should not have discretion to determine public dissemination of real-time price activity, as it is unlikely that the SDR will have sufficient information from Proposed Rule 901(c) to make such a determination.

---

[20] *See id.* at 75,236.

VI. JURISDICTIONAL MATTERS

This rule is designed to clarify the application of proposed Regulation SBSR to cross-border SBS transactions and to non-U.S. persons.

A. WHEN IS A SBS SUBJECT TO REGULATION SBSR?

The Proposed Regulation requires a SBS to be reported if the SBS: (1) has at least one counterparty that is a U.S. person; (2) was executed in the United States or through any means of interstate commerce; or (3) was cleared through a registered clearing agency having its principal place of business in the United States. In addition, any SBS that is required to be reported to a registered SDR will also be required to be publicly disseminated by the registered SDR.[21] A SBS will have to be reported pursuant to proposed Regulation SBSR – even if both counterparties are not U.S. persons – if the SBS was transacted in the U.S. or cleared through a clearing agency having its principal place of business in the United States.

It is DTCC's understanding that U.S. Persons may be restricted from complying with Proposed Rule SBSR where they act outside the U.S. For example, DTCC understands that the London branch of a U.S Person will require their counterparty's consent to identify that party under U.K. law. This consent could be obtained through terms of business between the parties, but in many cases may have already been obtained by service offerings that may connect to an SDR, such as the trade confirmation process. The value of these service offerings can be further illustrated by considering a parallel example executed by a Paris branch, where DTCC understands that, under French law, consent is required each time a report is made identifying the counterparty and, therefore, cannot be resolved by changes to the firm's terms of business. Again, confirmation service providers have resolved this issue through bilateral submission of confirmations. (These issues relate to the location of trading and, therefore, apply equally to any non-U.S dealer wanting to report on behalf of its U.S. customers.) DTCC's experience indicates that there is public interest in net open position and level of trading activity in underlyings. In addition, the OTC Derivatives Regulators' Forum ("ODRF") has provided guidance indicating that regulators should receive information according to regulatory responsibilities. This information is expected to vary by regulator type. For example, central banks may receive information, including aggregate market information and more detailed information on large financial institutions in their jurisdiction, whereas markets regulators may receive information on trades conducted by parties in their jurisdiction and trades written on underlyings for which they have a regulatory responsibility.

---

[21] *See id.* at 75,239.

B. When Is a Counterparty to a SBS Subject to Regulation SBSR?

The Proposed Regulation provides that, notwithstanding any other provision of Regulation SBSR, no counterparty to a SBS will incur any obligation under Regulation SBSR unless it is: (1) a U.S. person; (2) a counterparty to a SBS executed in the United States or through any means of interstate commerce; or (3) a counterparty to a SBS cleared through a clearing agency having its principal place of business in the United States. The Commission preliminarily believes that, if a U.S. person executes a SBS anywhere in the world, that U.S. person should become subject to Regulation SBSR.

Aggregate Data

Proposed Rule 908 is a positive recognition of the international complexities of SDRs. DTCC believes there is strong desire amongst regulators for relatively few SDRs providing largely global data. Without this, the value of the introduction of trade repositories is considerably reduced, becoming more like the existing regulatory regime. At present, regulators can access the data of their regulatees, but otherwise have to form colleges or access data under MoUs. Additionally, regulators must perform their own aggregation of the resultant data, being careful to avoid double counting of trades where the data does not relate to a regulatee. This aggregation is not simple to perform accurately, as different jurisdictions will define reportable trade populations differently and require different timing for reporting. As a result, in the absence of global or aggregate solutions, the burden of accurate aggregation will fall on each interested regulator.

Each of the key events in the financial crisis which led to the call for OTC derivatives trade repositories suggests the need for global aggregate data: (i) the assessment of the impact of a financial institution’s failure on other institutions requires immediate availability of full global exposures; (ii) the identification of a participant with large exposures in a particular market requires accurate aggregation of all exposures in that market; and (iii) the evaluation of the impact of derivatives market activity to the pricing of government debt requires cross jurisdictional data aggregates.

DTCC believes that, of the data that it publishes each week, the two key data sets are the reporting of net open interest for a reference entity and the trading activity for a reference entity. This data, particularly the net open interest, is very difficult to replicate from fragmented data sets, making the issue of fragmentation, both domestically and internationally, of significant concern.

Proposed Rule 908 recognizes the scope of application and goes some way to address sensitivity to unequal access rights to data in SDRs between regulators. This concern was reflected in the guidance ODRF agreed upon amongst its 43 members and gave to TIW. This guidance included the guiding principle that “the scope of data access should be comparable for similarly situated authorities…..The primary regulator would not

generally access participant specific data for trades where both counterparties are outside of its supervisory jurisdiction." The provision could be strengthened by limiting direct access by the Commission to trades within Proposed Rules 908(a)(1)-(3) and removal of indemnification requirements for those trades within the direct ambit of the requesting regulator.

Not addressing this issue will lead to further fragmentation of data and the loss of key information, such as net open interest, to the market. DTCC notes that in addressing these issues and in considering deferral of the implementation timeline described below, there will be a reduction in time lag between implementation in various jurisdictions given that reporting OTC derivatives to a repository is a G20 commitment. This will also reduce the possibility for regulatory arbitrage.

VII. Fair and Non-Discriminatory Access to SBS Market Data

Currently, TIW provides public data at no charge. DTCC envisions this continuing for both the weekly and periodic reporting available at www.dtcc.com and any real-time price reporting required by the Proposed Regulations. TIW considers the data reported to it through agreement with supervisors (and pursuant to regulation, after implementation of Regulation SBRS) to be that of the market participants, not TIW's own, and provides additional services only as approved by its user board of directors, or where contractually required, to the individual customers themselves. It is good public policy that the aggregating entity not itself use the data for commercial purposes, particularly where data is required to be reported to an aggregator serving a regulatory purpose, and make such data available to value added providers on a non-discriminatory basis, consistent with restrictions placed on the data by the data contributors themselves. DTCC operates the TIW on an at-cost basis and believes this is an appropriate model for the operation of an SDR given the central role SDRs play in supporting regulator surveillance generally.

VIII. Implementation Timeframes

The Commission is proposing a phased-in compliance schedule, with respect to an SDR that registers with the Commission, as follows:[22]

- **Reporting of pre-enactment SBSs, no later than January 12, 2012:** The Proposed Rule will require reporting parties to report to an SDR any pre-enactment SBSs subject to the reporting rules no later than January 12, 2012 (180 days after the effective date of the Dodd-Frank Act). The Proposed Rule defines pre-enactment SBS to mean any SBS executed before July 21, 2010 (the date of enactment of the Dodd-Frank Act), the terms of which had not expired as of that date.

[22] *See id.* at 75,242.

- **Phase 1, six months after the registration date (i.e., the effective reporting date):** Reporting parties will begin reporting all SBS transactions executed on or after the effective reporting date; reporting parties also will report to the registered SDR any transitional SBSs

- **Phase 2, nine months after the registration date:** Wave 1 of public dissemination; registered SDRs must comply with Proposed Rules 902 and 905 (with respect to dissemination of corrected transaction reports) for 50 SBS instruments.

- **Phase 3, twelve months after the registration date:** Wave 2 of public dissemination; registered SDRs must comply with Proposed Rules 902 and 905 (with respect to dissemination of corrected transaction reports) for an additional 200 SBS instruments.

- **Phase 4, eighteen months after the registration date:** Wave 3 of public dissemination; all SBSs reported to registered SDRs will be subject to real-time public dissemination.

Deferral

DTCC believes the current schedule is aggressive, primarily because of the time necessary to promulgate final rules. Since final rules will not likely be available until Q2 2011, SDRs that apply for registration in July 2011 will do so largely having developed functionality based on the Proposed Rule, with a view to broad compliance as the priority over efficient usage and, therefore, with a potentially sub-optimal burden on reporting parties. Based on the final rules, SDRs and third party service providers will further enhance their offering. However, due to the complexity of and the precision demanded from the processes involved, a relatively long lead time should be expected – for example, a minimum of six-months. A six month period seems appropriate, since systems typically require extensive periods for the creation of functional specifications (usually 4 weeks or more), technical specifications (also typically 4 weeks or more), actual development (8-10 weeks or more), regression testing (4-6 weeks), and user acceptance testing (generally 6-8 weeks or more) – that is, cumulatively, 26-32 weeks.

Further, given this implementation would have to be market-wide, market-wide testing periods and design periods are likely to be even longer than these estimates, as market-wide initiatives need wide co-ordination. In that regard, DTCC notes that when it developed the TIW, in conjunction with market participants and the ODSG, systemic risk considerations dictated that it be implemented in phases:

- Year 1, design and build basic trade loading and storage capacity, with particular focus on data quality and inventory control. At the end of Year 1 all electronically confirmed new trades were automatically maintained in the Warehouse. To

coordinate this effort across the industry globally, one of the "big 4" accounting firms was engaged and expended considerable resources.

- Year 2, back load all legacy inter-dealer transactions and implementation of automated payment calculation and central settlement through CLS bank. The back loading effort itself was a separately managed effort lead by the "big 4" accounting firm, which remained as program coordinator for the overall effort. Design of life-cycle event processing agreed.

- Year 3, back load dealer-to-customer trades, begin reporting of non-electronically confirmed trades and central processing of life-cycle events.

While much of this infrastructure can form the core of the processes required by the Proposed Regulation, it is inevitable that substantial new industry-wide processes will have to be implemented, particularly (though not exclusively) around real-time reporting. These new processes will take substantial coordination, testing and development, as noted above, and this will ultimately depend on the adoption of the final rule.

Reporting parties' development would have to follow the publication of final specifications by the SDR and ideally that of third party vendors. These dependencies make it unlikely that the first reporting could be implemented much before an April 1, 2012 implementation date; April 1 would still be an early target, but DTCC believes it could be a realistic date for the first reporting, with July 1, 2012 more suitable for mandatory market-wide adoption. Imposing an earlier deadline may lead reporting parties to have to develop solutions ahead of this, which may later be replaced by enhanced functionality at the SDR or third party vendors. In addition, credit products are more reporting-ready than equities products, because credit products' current operational processes show higher levels of automation.

The phasing proposals for public dissemination limits the initial information in the public domain to the most traded contracts, which may enable a better understanding of the impact of public dissemination of less liquid contracts. However, this does not serve as a mitigant for delivery risk for the reporting processes, as all processes have to be fully functional for the first reporting period. From a market integrity perspective, the waves of public dissemination may be too expeditious to fully assess impact of dissemination on the market.

IX. GENERAL REQUEST FOR COMMENT

The CFTC is adopting rules related to the reporting of swaps and the public dissemination of swap transaction, pricing, and volume data, as required under Sections 723, 727, and 729 of the Dodd-Frank Act. Understanding that the Commission and the CFTC regulate different products and markets and, as such, appropriately may be proposing alternative regulatory requirements, the Commission requests comment on the

impact of any differences between the Commission and CFTC approaches to the regulation of the reporting of swaps and SBSs and the public dissemination of swap and SBS transaction, pricing, and volume information. Further, the Commission requests comment generally on the impact of any differences between the Commission's proposed approach to the reporting and public dissemination of SBSs and that of any relevant foreign jurisdictions.[23]

Harmonization

Currently, the reporting requirements between the CFTC and the Commission differ with respect to some key process steps. Specifically, the CFTC proposes to require some verification of trade data prior to submission of additional data, whereas the Commission does not. While the CFTC proposes to require the SEF and clearing agency to perform certain reporting tasks, the Commission's proposal retains a single reporting party for a trade. Additionally, the CFTC's proposal calls for valuation data, confirmation data and contract intrinsic data for credit and equities products.

To illustrate the narrow distinction between swaps and SBS, consider the possibility of certain equity basket trades moving between narrow and broad based index intra-day, with stock price movements changing the constituent weightings under the current definition of broad and narrow (*e.g.,* when the determinant of narrow is that five securities comprise more than 60% of the weighting). It would be beneficial to treat all credit and equity trades in a single process, utilizing the same reporting party and SDR, with all data available to the appropriate regulator, without building routines in reporting to test for market pricing, which may be required to determine index weightings, particularly when there are continuous price changes to the components.

DTCC believes these differences are meaningful enough to add complexity into the reporting processes and lead to omission or erroneous reporting, although there is a common goal in both processes with minimal differences. Where DTCC has made process recommendations that, in its view, will most likely achieve the shared policy goals, DTCC advocates that both the SEC and CFTC adopt these recommendations. With respect to differences between the SEC and CFTC's proposed rules regarding reporting and dissemination responsibilities, DTCC would expect certain third parties to report to the SDR, as they do to the TIW today, and foresees reporting by SEFs, clearing agents and portfolio compression services directly to the SDR. However, DTCC supports leaving ultimate responsibility for these arrangements with the reporting counterparty, who remains fully accountable for the representation of the trade in the SDR.

---

[23] *See id.* at 75,246.

X. COST-BENEFIT CONSIDERATIONS

TIW has approximately 1,700 customers, operating 17,000+ accounts for the global CDS market. Well over half of these are located in the U.S. and regularly transact business through dealers who are not U.S. persons. Unless the Commission encourages arrangements through which dealers who are non-U.S. persons can act as submitting parties for their U.S. customers, the costs of implementation are likely to impose significant burdens and costs on U.S. money managers, which are, in turn, likely to be passed through to U.S. consumers, such as individual investors, pension funds and state and local governments.

DTCC believes the current TIW model is efficient because it reuses data from the confirmation process, it ensures the quality of that data by performing asset servicing on the data and its users have agreed that the record in TIW has legally binding status. The asset servicing and legal status ensures that customers actively reconcile their internal data to TIW's data on an ongoing basis. This process occurs in place of multiple bilateral portfolio and trade level reconciliations and creates a more efficient model. In addition, for market events and updates, TIW has the benefit of multiple participants reviewing the calculations performed by DTCC processes, and the users appoint third party data servicers to act on their behalf while they retain the responsibility to maintain the most up-to-date record of the trade in TIW. This approach strengthens the quality of data in the TIW, but would not be available to a stand-alone, reporting-only solution.

CONCLUSION

We appreciate the opportunity to comment on the Commission's Proposed Rule and provide the information set forth above. Should you wish to discuss these comments further, please contact me at 212-855-3240 or lthompson@dtcc.com.

Regards,

Larry E. Thompson
General Counsel

Larry E. Thompson
General Counsel

Tel: 212-855-3240
***Fax:**212-855-3279*
lthompson@dtcc.com

The Depository Trust & Clearing Corporation
55 Water Street
New York, NY 10041-0099

Via Agency Website & Courier

January 20, 2011

Mr. Alastair Fitzpayne
Deputy Chief of Staff and Executive Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Financial Stability Oversight Council Advance Notice of Proposed Rulemaking Authority to Designate Financial Market Utilities as Systemically Important

Dear Mr. Fitzpayne:

The Depository Trust & Clearing Corporation ("DTCC") appreciates the opportunity to provide comments to the Financial Stability Oversight Council (the "Council") on the Advance Notice of Proposed Rulemaking ("ANPR") issued by the Council regarding its authority to designate a Financial Market Utility (an "FMU") as systemically important.[1]

DTCC, through its subsidiaries, provides clearing, settlement, and information services for equities, corporate and municipal bonds, government and mortgage-backed securities, money market instruments and over-the-counter derivatives. In particular, DTCC owns and operates three U.S. registered clearing agencies, The Depository Trust Company ("DTC"), National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC"), and also The Warehouse Trust Company LLC, a centralized global electronic database for position data on credit default swap contracts outstanding in the marketplace.

Based upon this unique market perspective, DTCC supports the enhancements to regulation and supervision of all systemically important FMUs contemplated by Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), recognizes that identification of systemically important FMUs is a vital first step in that process,[2] and is

---

[1] *See* Financial Stability Oversight Council Authority to Designate Financial Market Utilities as Systemically Important, 75 Fed. Reg. 79, 982 (December 21, 2010).

[2] Section 803(6) of the Dodd-Frank Act defines "financial market utility" to mean "any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person."

supportive of the Council's careful deliberations regarding the designation of systemically important FMUs.

When making these important designations, the Council should consider not only the quantitative and qualitative information about particular FMUs in its deliberations, but also ensure that the designation of certain entities as systemically important operates to establish consistency in oversight and regulation of FMUs so that the legislative intent of Title VIII is fulfilled by the Council's designations.

OVERVIEW OF DTCC

For more than four decades, DTCC and its subsidiaries have helped automate, centralize, standardize and streamline the processes that are critical to the safety and soundness of the capital markets. DTCC has long been in the business of managing risk on behalf of the industry – and views it as a core competency. That role has never been more important and more central to DTCC's mission or the industry than it is today.

DTCC was established in 1999 as a market-neutral, user-owned and governed holding company for DTC and NSCC. DTCC later brought in and consolidated two additional registered clearing agencies for fixed income securities, Government Securities Clearing Corporation and MBS Clearing Corporation which now operate as divisions of FICC.

DTC provides custody and asset servicing for 3.6 million securities issues from the United States and 121 other countries and territories, valued at almost $34 trillion. NSCC provides clearing, risk management, central counter-party services and a guarantee of completion for certain transactions. FICC provides clearing, risk management and central counter-party services for U.S. Treasury and Agency securities in the mortgage backed and government securities markets. Through these subsidiaries, DTCC cleared and settled more than $1.48 quadrillion in securities transactions in 2009. DTCC is user-owned and governed and operates on an at-cost basis, with a fee structure based on cost recovery.

PRINCIPLES TO CONSIDER IN MAKING SYSTEMICALLY IMPORTANT DESIGNATION

Section 802 of the Dodd-Frank Act sets forth the purpose of Title VIII, which is "to mitigate systemic risk in the financial system and promote financial stability" by providing the Board of Governors of the Federal Reserve (the "Board") with additional powers. Specifically, Section 802 authorizes the Board to promote uniform standards for risk management and conduct and provides the Board with an enhanced supervisory role for systemically important utilities. Those FMUs that are designated as systemically significant will be subject to additional supervision and requirements to comply with newly adopted risk management and conduct standards. For example, Section 805 authorizes the Commodity Futures Trading Commission and the Securities Exchange Commission to prescribe regulations containing risk management standards governing the operations of designated clearing entities.

Section 803(9) of the Dodd-Frank Act defines the term "systemically important" as a "situation where the failure of or disruption of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States." To identify systemic importance, the statute sets forth certain enumerated factors that the Council must consider. These factors include the monetary value of transactions processed; exposure to counterparties; the relationship, interdependencies, or other interactions of the FMUs or payment clearing or settlement activity with other FMUs; and the effect that the failure of or disruption to the FMU would have on critical markets, financial institutions, or the broader financial system.[3]

DTCC recognizes that identifying how large or how interconnected an FMU must be to be systemically important is a difficult task in which judgment must be brought to bear, based on prior experience and market insight. Because it may be difficult in advance to discern bright line criteria, and there is not always a necessary correlation between size and risk, DTCC suggests that the Council focus instead on the function of the FMU in its market and the particular market or markets the FMU serves. The Council should be sensitive in its designations of FMUs so as not to create competitive advantages or disadvantages.

As noted above, Title VIII provides that all designated FMUs will be subject to uniform standards for risk management and enhanced supervision by the Board. DTCC strongly supports efforts to create uniform and effective standards for the management of risks for systemically important FMUs and recognizes that the imposition of these standards on FMUs will be significant to the business models adopted by designated FMUs.

It is critical that all FMUs serving the same participants, markets or instruments (i.e., all FMUs within the same class) should be subject to the same rules, without exception. Consistency in standards is one of the stated purposes of Title VIII and the Council's determinations should serve that purpose. Failure to achieve consistency could result in a "race to the bottom" if some competing FMUs of the same class are allowed to serve the same function without being subject to the rigorous oversight contemplated by Title VIII. As the Council considers which FMUs to designate as systemically important, it should be guided by the principle that, by such designation of an FMU, it does not afford a competitive advantage to other FMUs that serve the same function or market and are not so designated.

[3] *See* Section 804 (a) (2) of the Dodd-Frank Act.

CONCLUSION

We appreciate the opportunity to comment on the Council's ANPR and provide the information set forth above. Should you wish to discuss these comments further, please contact me at 212-855-3240 or lthompson@dtcc.com.

Regards,

Larry E. Thompson
General Counsel

cc: Timothy F. Geithner, Secretary of the Treasury and Chairperson of the Financial Stability Oversight Council
Sheila Bair, Chairperson, Federal Deposit Insurance Corporation
Ben Bernanke, Chairman, Board of Governors of the Federal Reserve System
Edward DeMarco, Acting Director, Federal Housing Finance Agency
Gary Gensler, Chairman, Commodity Futures Trading Commission
Debbie Matz, Chairman, National Credit Union Administration
Mary Schapiro, Chairman, Securities and Exchange Commission
John Walsh, Acting Comptroller of the Currency
William Haraf, Commissioner, California Department of Financial Institutions
John Huff, Director, Missouri Department of Insurance, Financial Institutions, and Professional Registration
David Massey, Deputy Securities Administrator, North Carolina Department of the Secretary of State, Securities Division

The Depository Trust & Clearing Corporation
55 Water Street
New York, NY 10041-0099

Larry E. Thompson
General Counsel

Tel: 212-855-3240
Fax:212-855-3279
lthompson @dtcc.com

Via Agency Website & Courier

January 24, 2011

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

RE: Security-Based Swap Data Repository Registration, Duties, and Core Principles RIN 3235–AK79, File No. S7-53-10

Dear Ms. Murphy:

The Depository Trust & Clearing Corporation ("DTCC") appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or the "Commission") on its proposed new rules under the Securities Exchange Act of 1934 ("Exchange Act") governing the security-based swap data repository ("SDR") registration process, duties, and core principles (the "Proposed Rule" or "Proposed Regulation").[1] Imposing requirements on security-based swap data repositories would promote safety and soundness for all U.S. markets by bringing increased transparency and oversight to over-the-counter ("OTC") security-based swap ("SBS") markets, an important component of the reforms sought by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[2]

Summary of Response

DTCC supports the Commission's efforts to establish a comprehensive new framework for the regulation of SBSs, including the implementation of registration, duties, and core principles for SDRs. Key points from DTCC's response are highlighted below.

All SBSs, whether cleared or uncleared, must, by statute, be reported to swap data repositories.[3] The primary purposes of this mandate are to provide regulators with complete transparency into the previously unregulated SBS markets and to assure public dissemination of SBS information as required by statute or as determined by regulators

---

[1] *See* Security-Based Swap Data Repository Registration, Duties, and Core Principles, 75 Fed. Reg. 77,306 (December 10, 2010).

[2] Public Law 111–203, 124 Stat. 1376 (2010).

[3] *See* Exchange Act Section 13(m)(1)(G) ("Each security-based swap (whether cleared or uncleared) shall be reported to a registered security-based swap data repository.").

to be otherwise necessary for efficient and fair functioning of markets (subject to confidentiality considerations set forth in the Dodd-Frank Act and applicable regulations). These requirements make SDRs unique among the various parts of the market infrastructure for SBSs contemplated by the Dodd-Frank Act, in that all counterparties to all SBS transactions will have the details of each of their transactions reported to an SDR.

The mandatory reporting regime creates an opportunity for the SDR to improperly commercialize the information it receives. It is important that regulators ensure that the public utility function of SDRs, which operate as aggregators and collectors of swap and SBS data to support regulatory oversight and supervisory functions, as well as regulator-mandated public reporting, is separated from potential commercial uses of the data. The principle of user control over the data for non-regulatory purposes must also be scrupulously maintained, and care should be taken to assure that SDRs maintain an arms-length and non-discriminatory relationship with other parts of the market infrastructure (i.e., clearing, confirmation, and execution facilities) and that these other parts of the infrastructure maintain similar relationships with SDRs. It is important, however, that SDRs themselves be allowed to enter into partnerships or coordinated programs in order to better provide aggregate views of data to regulators, to better assure that global regulatory requirements are met, or to promote other public purposes.

Related specific points deserving of more detailed consideration include:

- In order to assure that non-regulatory uses of mandatorily reported data remain in the hands of the counterparties, SDRs should be, broadly speaking, "user-governed." This should include a board of directors that is broadly representative of market participants and that incorporates voting safeguards designed to prevent non-regulatory uses of data of a particular class of market participants that are objectionable to that class. In addition, no communication of data (other than to, or as required by, applicable regulators) that could have the result of disclosing the actual positions or specific business or trading activity of a counterparty should be permitted without the consent of that counterparty.

- SDRs should not engage in the commercialization of data reported to them and should demonstrate strict impartiality in making data available to, or receiving data from, other providers, including affiliates of SDRs. This is best achieved by following objective, public standards and by assuring that dealings with affiliates (other than cooperating regulated repositories) and competitors of affiliates be subject to oversight by members of the SDR's board of directors who are not engaged in the governance or oversight of either the affiliates or their competitors. These same objective standards should be used for other providers, such as clearing, confirmation, and execution providers, in their dealings with SDRs.

- SDR fee structures should reflect an at-cost operating budget. Further, since even smaller, non-reporting counterparties will legitimately want to interact with SDRs, if only to verify what has been reported, SDRs should have the flexibility to facilitate such access by not charging, or charging only nominal amounts, for such interaction.

Additional points discussed by DTCC include the following:

- DTCC relies upon the direction provided by the OTC Derivatives Regulators' Forum ("ODRF"), whose membership includes the SEC and the Commodity Futures Trading Commission ("CFTC"). DTCC's Trade Information Warehouse (the "Warehouse" or "TIW") has followed the ODRF's guidance, recognizing that broad agreement among global regulators is difficult to achieve. DTCC is committed to complying with the policies adopted by the regulators and working with the Commission in this regard. DTCC urges the SEC, in its regulation of SDRs, to aim for regulatory comity both as it has already been agreed to by the ODRF and as it may be further agreed to by such other international bodies as the Committee on Payment and Settlement Systems ("CPSS") and the International Organization of Securities Commission ("IOSCO").

- DTCC supports the Commission in requiring robust operational capabilities of an SDR, and specifically recommends that SDR infrastructure should operate on a 24/6 basis, given the global nature of where these products are traded. SDRs should also process transactions in real-time and maintain multiple levels of operational redundancy. Given the importance of SDRs to the regulatory and systemic risk oversight of the financial markets and the important role they will play in providing market transparency, a lack of robust resiliency and redundancy in operations should disqualify an entity from registering as an SDR. Also paramount to service provision is a strong ability to maintain information security. Assessment of these core capabilities should form part of any registration process, including a temporary registration process.

- DTCC recommends that appropriate transitional arrangements be made to avoid market disruption by the implementation of the Proposed Rule. The TIW is a centralized global repository for trade reporting and post-trade processing of OTC credit derivatives contracts, operated by DTCC's wholly-owned subsidiary, The Warehouse Trust Company LLC. The TIW is an integral part of the credit default swap ("CDS") market. Restrictions to its operation could introduce significant operational risks to market participants. DTCC recommends that the final rules be subject to a phase-in period to allow an adequate period for existing service providers like the TIW to make necessary changes to their service offerings. In the alternative, DTCC requests the Commission provide specific transitional arrangements for existing infrastructures.

- To avoid creating conflicts between standards, as well as unnecessary costs, the Commission and the CFTC should harmonize the regimes that oversee SDRs. DTCC believes that harmonization is a more important priority than the exact nature of the consistent standard, as SDRs can adjust to meet a single standard but not multiple, inconsistent standards. The CFTC, in its proposed rule related to swap data recordkeeping and reporting requirements,[4] has specifically taken the position that life cycle event processing and legal recordkeeping services are "ancillary" services and not part of core SDR functions.[5] DTCC agrees with the CFTC that these services, which are valuable to market participants and provide a vital function, do not necessarily need to be considered as part of the core role to be performed by an SDR.

DTCC also makes a number of detailed observations addressing specific points and the questions posed in the Proposed Rule. These comments are preceded by a brief overview of DTCC and the Warehouse.

Overview of DTCC

DTCC, through its subsidiaries, provides clearing, settlement and information services for virtually all U.S. transactions in equities, corporate and municipal bonds, U.S. government securities and mortgage-backed securities transactions, money market instruments and OTC derivatives. DTCC is also a leading processor of mutual funds and annuity transactions, linking funds and insurance carriers with their distribution networks. DTCC does not currently operate a clearing agency for derivatives. However, DTCC owns a 50% equity interest in New York Portfolio Clearing, LLC ("NYPC")[6], which has applied to the CFTC for an order granting registration as a Derivatives Clearing Organization ("DCO").

DTCC has three wholly-owned subsidiaries which are registered clearing agencies under the Exchange Act, subject to regulation by the Commission. These three clearing agency subsidiaries are The Depository Trust Company ("DTC"), National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC"). DTCC is owned by its users and operates as a not-for-profit utility with a fee structure based on cost recovery.

---

[4] *See* Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. 76,574 (December 8, 2010).

[5] *See id.* at 76, 592 fn. 67. ("The Commission does not believe that Dodd-Frank precludes an SDR from accepting and maintaining swap data from both counterparties to a swap. For example, an SDR or its affiliate performing the ancillary service of maintaining the single binding legal record of a swap, such as the ''gold'' record maintained by the Depository Trust & Clearing Corporation (''DTCC'') for credit swaps, would not be barred from receiving dual reporting in that connection.").

[6] NYSE Euronext owns the other 50% equity interest. Neither DTCC nor NYSE owns a majority of the equity interests in NYPC. NYPC will have its own management team which will control the day to day operations of the company.

DTC currently provides custody and asset servicing for 3.6 million securities issues from the United States and 121 other countries and territories, valued at almost $34 trillion. Through its subsidiaries, DTCC processes huge volumes of transactions – more than 30 billion a year – on an at-cost basis. For example, in 2009, DTC settled more than $1.48 quadrillion in securities transactions. NSCC provides clearing, risk management, (for some securities) central counterparty services and a guarantee of completion for certain transactions. FICC provides clearing, risk management and central counterparty services (through its Government Securities Division) in the fixed income, mortgage backed and government securities markets.

Overview of the Trade Information Warehouse

In November 2006, at the initiative of swap market participants, DTCC launched the Warehouse to operate and maintain the centralized global electronic database for virtually all position data on CDS contracts outstanding in the marketplace. As the life cycle for CDS contracts may extend five years or more, in 2007, DTCC "back-loaded" records in the Warehouse to incorporate information on over 2.2 million outstanding CDS contracts effected prior to the November 2006 implementation date. Today, data for over 95 percent of all OTC credit derivatives are captured in this automated environment. The Warehouse database currently represents about 98 percent of all credit derivative transactions in the global marketplace; constituting approximately 2.3 million contracts with a notional value of $29 trillion ($25.3 trillion electronically confirmed "gold" records and $3.7 trillion paper-confirmed "copper" records).[7]

In addition to repository services, such as those activities contemplated by the Proposed Rule (*e.g.*, the acceptance and public and regulatory dissemination of data reported by reporting counterparties), the Warehouse provides both legal recordkeeping and central life cycle event processing for all swaps registered therein. By agreement with its 17,000+ users worldwide, the Warehouse maintains the most current CDS contract details for both cleared and bilaterally-executed CDS transactions in its "gold" records, which are the official and legal records of those transactions. The repository also stores key information on other CDS transactions, those involving market participants' single-sided, non-legally binding or "copper" records, helping regulators and market participants gain a clearer and more complete snapshot of the market's overall risk exposure to OTC credit derivatives instruments.

DTCC's Warehouse was the first and remains the only centralized global provider of life cycle event processing for OTC credit derivatives contract positions throughout their multi-year terms. As various events occur regarding CDS contracts, such as calculating payments and bilateral netting, settling payments, credit events, early termination and company renames and reorganizations, DTCC's Warehouse is equipped to automate the processing associated with those events and related actions. The performance of these

---

[7] Data provided as of December 31, 2010. For more information about the Trade Information Warehouse, please see http://www.dtcc.com/products/derivserv/suite/ps_index.php.

functions by the Warehouse distinguishes it from any SDR that merely accepts and stores swap data information.

General Discussion of the Proposed Rule

Proposed Rules 13n–1 to 13n–11 under the Exchange Act govern the SDR registration process, duties, and core principles, including duties related to data maintenance and access by relevant authorities and those seeking to use the SDR's repository services. The Proposed Rule would require SBS transaction information to be: (1) provided to SDRs in accordance with uniform data standards; (2) verified and maintained by SDRs, which serve as secure, centralized recordkeeping facilities that are accessible by relevant authorities; and (3) publicly disseminated in a timely fashion by SDRs.[8]

DTCC requests that the Commission provide clear guidance as to the scope of the entities covered within the definition of SDR in the Dodd-Frank Act. The statutory duties required of an SDR are extensive and can form a business in their own right. The requirements of an SDR should not be imposed upon service providers looking to provide targeted solutions to specific processes, as opposed to providers looking more broadly to fulfill the role of an SDR. All third party service providers have to perform a level of recordkeeping and often retain data previously submitted by customers to offer services efficiently. This should not transform them into an SDR unless there is a corresponding policy reason for doing so. In fact, there is a strong policy reason to exclude them, the goal of countering the risk of fragmentation in data collection and dissemination on a global basis.

The CFTC, in its proposed rule related to swap data recordkeeping and reporting requirements,[9] has specifically taken the position that life cycle event processing and legal recordkeeping services are "ancillary" services and not part of core SDR functions.[10] DTCC agrees with the CFTC that these services, which are valuable to market participants and provide a vital function, should not necessarily be considered part of the core role to be performed by an SDR.

The Commission's proposed required practices are generally consistent with those of the Warehouse. The Warehouse currently receives event-based records and, based upon those records, maintains positions and publishes CDS market data. It also currently makes data available to regulators upon request. To date, the Warehouse has received SBS data on a service-based basis, rather than due to a regulatory mandate, offering its

---

[8] *See* Security-Based Swap Data Repository Registration, Duties, and Core Principles, 75 Fed. Reg. at 77,307.

[9] *See* Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. at 76,574.

[10] *See id*. at 76, 592 fn. 67. ("The Commission does not believe that Dodd-Frank precludes an SDR from accepting and maintaining swap data from both counterparties to a swap. For example, an SDR or its affiliate performing the ancillary service of maintaining the single binding legal record of a swap, such as the ''gold'' record maintained by the Depository Trust & Clearing Corporation (''DTCC'') for credit swaps, would not be barred from receiving dual reporting in that connection.").

customers legal record-keeping, position updates, and life cycle event services (such as messaging and updating for successor and credit events, payment amount determination, and net settlement calculations and processing). The Warehouse continues to benefit customers by providing a single operational process and single platform for reconciliation for customers, rather than providing merely separate series of bilateral event, settlement, trade, and portfolio processes and reconciliations. The Warehouse does not currently perform real-time price dissemination activities, nor does it obtain certain trade attributes requested by the Commission in Proposed Rule SBSR.[11] These processes would need to be adjusted to support these functions. The existing TIW regulatory reporting process provides direct access for relevant regulators to information in the furtherance of their regulatory responsibilities, including a number of standard reports recommended by the ODRF. These processes, which have been extensively relied upon by regulators, would also need to be modified in light of the Proposed Rule.

The Warehouse keeps records of SBS transactions in electronic format. These records are updated to reflect life cycle events and preserve a complete audit trail. Certain repositories, including DTCC's OTC equity derivatives repository, take only a periodic upload of open position data in electronic form, and would be required to undergo extensive changes to comply with the Proposed Rule.

The Proposed Rule should require the retention of electronic records of transactions, including life cycle events. These should be maintained for the life of the contract in order to provide an audit trail to positions and for a reasonable retention period thereafter. An SDR's records should be in an electronically readable format (where available) that allows for application and analysis. SBS transaction data retained as electronic images of paper documents is cumbersome and will frustrate regulatory oversight efforts.

The SDR's documents should be relied upon by regulators to complement the records retained by SBS counterparties and should not be seen as a replacement for SBS counterparty record retention requirements. Further, certain aggregate data should be maintained beyond the maturity of contracts to provide public availability of time series data. With respect to an industry standard format for SBS information and records, definitions and standards published by the International Swaps and Derivative Association ("ISDA") are widely accepted by the industry and relied upon by market participants.

Further, the Proposed Rule may have the consequence of unintentionally disclosing participant identity, by overly detailed public dissemination, due to the low volume of activity in certain instruments. The possibility of inadvertent disclosure should be considered in conjunction with the execution model, for example information transferred in a request-for-quote process could be linked to actual executions published by the SDR.

---

[11] *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. 75,208 (December 2, 2010).

There appear to be relatively narrow differences between the Commission and the CFTC's approaches to the regulation of SDRs. However, because SDRs will operate in both the swaps and SBS markets, particularly in equities and credit asset classes, SDRs are likely to register with both the Commission and the CFTC. For that reason, it is vitally important that there not be any conflict in regulatory regimes between the two agencies. DTCC believes that harmonization is a more important priority than the exact nature of the consistent standard, as SDRs can adjust to meet a single standard but not multiple, inconsistent standards.

In determining whether an entity decides to operate an SDR, it must consider its corporate strategy and positioning. Generally, entities best positioned to operate an SDR are financial market utilities that can provide a broad utility service to the market, data companies who seek to enhance commercial data services, or commercial market infrastructure providers seeking to capture flow and increase barriers to entry for their competitors.

Likely investors in or providers of capital for new SDRs must be aware of the uncertainty of market share or volume of SBS transaction processing for a new SDR in contrast with the certain significant investment necessary to establish the robust and detailed technological systems required for the operation of a successful SDR.

Finally, DTCC believes that there is a significant advantage to the market if SDRs are required to provide basic services on an at-cost or utility model basis, as it avoids the potential abuse or conflict of interest related to a relatively small number of service providers in the SDR industry.

Registration of SDRs

Proposed New Form SDR

The Commission is proposing Rule 13n–1, which establishes the procedures by which an SDR may apply to the Commission for registration.[12] The Proposed Rule requires that the application for registration be filed electronically in a tagged data format on proposed new Form SDR.[13] The information provided on Form SDR would enable the Commission to determine whether to grant or deny an application for registration. Form SDR would require an SDR to indicate the purpose for which it is submitting the form (*i.e.,* application for registration, amendment to an application, or amendment to an effective registration) and provide information in seven categories: (1) general information, (2) business organization, (3) financial information, (4) operational capability, (5) access to services and data, (6) other policies and procedures, and (7) legal opinion.[14]

---

[12] *See* Security-Based Swap Data Repository Registration, Duties, and Core Principles, 75 Fed. Reg. at 77,366.

[13] *See id*.

[14] *See id.* at 77,310.

If the applicant is a non-resident SDR, then the signer of Form SDR would also be required to certify that the SDR can, as a matter of law, provide the Commission with prompt access to the SDR's books and records and that the SDR can, as a matter of law, submit to onsite inspection and examination by the Commission.[15]

With respect to operational capabilities, it is essential that proposed Form SDR request information related to the SDR's operating schedule, real-time processing, existence of multiple redundant infrastructures for continuity, strong information security controls, and robust reporting operations (including direct electronic access by the Commission). Because an SDR provides important utility services to regulators and market participants, such resiliency and redundancy should be evaluated in light of the significant policies and procedures for establishing such redundancy, including several backup locations in different geographic regions that DTCC and other market utilities have already developed, implemented, and tested. DTCC has developed and enhanced such efforts for its entire operations in the aftermath of the September 11, 2001 attacks to ensure continuous operations during times of crisis.

DTCC would not support reduced registration requirements for non-resident SDRs at this time. The current European repositories offer periodic position-based data and do not currently meet the requirements of the Proposed Rule related to the reporting and dissemination of SBS information. The regulatory regimes outside the U.S. with respect to OTC derivatives trade repositories are in an early phase of development and not yet supported by international standards, with only draft considerations issued by CPSS-IOSCO to date.

The proposed Regulation SBSR contemplates that an SDR would be required to register with the Commission as a securities information processor ("SIP") and submit an application for registration as an SIP on Form SIP. As the Commission notes, the reporting and recordkeeping burden of Form SDR and Form SIP are not insignificant.[16] Because of the duplicative nature of the information required by Form SDR and Form SIP, DTCC requests that the Commission combine Form SDR and Form SIP such that an SDR would register as an SDR and an SIP using only one form. In the alternative, DTCC suggests that one form (either Form SDR or Form SIP) be permitted for an application for registration as both an SDR and an SIP.

---

[15] *See id.* at 77,366.

[16] See *id.* at 77,348 ("[T]he Commission estimates that it would take an SDR approximately 400 hours to complete the initial Form SDR with the information required and in compliance with these proposals.") See also *id.* at 77,348 fn. 208 ("The Commission calculated in 2008 that Form SIP takes 400 hours to complete. 73 FR 34060 (June 16, 2008) (outlining the most recent Commission calculations regarding the PRA burdens for Form SIP).").

Temporary Registration

Proposed Rule 13n–1(d) would provide a method for SDRs to register temporarily with the Commission, to enable both the SDR and the Commission to comply with the Dodd-Frank Act upon its effective date (*i.e.,* the later of 360 days after the date of its enactment or 60 days after publication of the final rule implementing Exchange Act Section 13(n)) despite any unexpected issues with the use of Form SDR.[17] The temporary registration would expire on the earlier of: (1) the date that the Commission grants or denies registration of the SDR; or (2) the date that the Commission rescinds the temporary registration of the SDR.[18] The Commissions emphasize that SDRs registered on a temporary registration basis must demonstrate that they have the capacity and resources to comply with their regulatory obligations on an ongoing basis as their business evolves.[19]

DTCC is concerned that the SEC's proposed implementation schedule for reporting to SDRs is heavily compressed and, when coupled with the temporary registration regime, may lead to compromised solutions, including operational and security compromises. Potential SDRs are incented to enter the market early to capture market share, as initial trade reporting obligates further reporting on that trade, and the long tenors of the trades will make switching SDRs onerous for reporting parties. However, potential SDRs are unlikely to be able to offer fully robust or efficient solutions for early registration, given that the final rules will be available relatively shortly before the effective date.

DTCC recommends that appropriate due diligence is conducted with respect to the temporary registration process and that those diligence findings are either used to support transition of existing infrastructure or used for new entrants who can demonstrate that their infrastructure supports key operational capabilities, including 24/6 operation, real-time processing, multiple redundancy, and robust information security controls.

DTCC respectfully urges the Commission to ensure that the registration process does not interrupt current operation of existing trade repositories who intend to register as SDRs. This can be achieved as a phase-in for existing SDRs where services will need to be amended to conform with the final rules given the compressed time period between the publication of the final rules and the effective date of the Dodd-Frank Act. It is important that the Commission ensure both the continuation of counterparty reporting and the ability of the trade repository to receive and maintain current trade information on an ongoing basis. The continuation of these activities is imperative for effective oversight of systemic risk and the availability of relevant trade information to the Commission, as well as the continuance of the operational services to market participants. Transitional arrangements, including temporary registration, may be required to ensure these activities continue without interruption.

---

[17] *See id.* at 77,314.

[18] *See id.* at 77,366.

[19] *See id.* at 77,314.

Duties and Core Principles of SDRs

Section 763(i) of the Dodd-Frank Act requires an SDR to comply with the requirements and core principles described in Exchange Act Section 13(n), as well as any requirement that the Commission prescribes by rule or regulation, in order to be registered and maintain registration as an SDR with the Commission.[20]

The Warehouse, as a centralized global repository, serves as an important source of regulatory information for the Commission and other appropriate regulators. However, DTCC believes that the value of the information provided by an SDR will be limited if data reporting becomes too fragmented. If the Commission receives pieces of information from many sources, and not one full picture from any source, the Commission's ability to monitor systemic risk in the marketplace in a timely and global manner will be severely limited.

DTCC expects that normal market forces will result in the provision of aggregate data to the Commission. However, to the extent that such aggregation does not occur as SDRs develop, the Commission should consider designating one SDR as the consolidator of market information (for example, by asset class) responsible for providing the Commission with direct electronic access.[21] The role of an aggregating SDR is significant in that it ensures regulators efficient, streamlined access to consolidated data, reducing the strain on limited agency resources. International financial regulators have identified this approach as a valuable one, noting that:

> "Authorities should ensure that [SDRs] are established that provide aggregate global coverage of the global derivatives market and that the <u>data collected can be aggregated so as to provide a comprehensive view of the market</u>. The establishment of uniform data standards and functional requirements for data exchange will be a necessary condition for authorities to have a timely and consistent global view for assessing and analysing the OTC derivatives markets. <u>One beneficial solution would be to establish a single global data source to aggregate the information from [SDRs]</u> [emphasis added]."[22]

With regard to regulatory access, DTCC's understanding of the Commission's access provisions are not in accordance with the guidance issued by the ODRF. DTCC believes that regulators want direct electronic access to data in SDRs where that data is needed to fulfill regulatory responsibilities. DTCC supports regulators' access to regular reports from SDRs that are scheduled temporally or triggered by certain events, including certain

---

[20] *See id.* at 77,317.

[21] *See* Exchange Act Section 13(n)(5) ("An SDR shall…provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity).").

[22] Financial Stability Board, *Implementing OTC Derivatives Market Reforms*. October 25, 2010. *Available at*: http://www.financialstabilityboard.org/publications/r_101025.pdf.

concentration levels, rather than by request, with notice to another regulatory authority or requiring indemnification. Finally, the regulatory model should be location agnostic, without preferential access for the prudential regulator, except to perform its prudential duties.

The indemnification provisions should not apply in situations where regulators are carrying out regulatory responsibilities, acting in a manner consistent with international agreements and maintaining the confidentiality of data. However, recognizing that the indemnity provision is mandated by the Dodd-Frank Act, DTCC believes that the Commission should provide model indemnity language to be used by all SDRs in arrangements with regulators. Ensuring consistent application of this legislative mandate will minimize any disruption to the global repository framework. Further, DTCC believes that any indemnity should be limited in scope to minimize the potential reduction in value of registered SDRs to the regulatory community.

An important issue that U.S. and global regulators will need to address, particularly as the implementation of the Dodd-Frank Act results in the growth of SDRs globally, is how to best handle data collected by an SDR where the trade would not be reportable under the statute to U.S. regulators by virtue of where it took place or the counterparties involved. In this regard, DTCC points to the guidance in a letter from the ODRF membership[23] related to global regulator access to TIW data.[24] The ODRF letter contemplates that the SEC receives data from the TIW that goes beyond the scope of information proposed by the Dodd-Frank Act or the Proposed Rule, such as data related to overseas transactions entered into by non-U.S. persons on U.S. underlyings. Today, the TIW routinely provides this transaction data to U.S. regulators (and conversely, routinely provides data related to transactions in the U.S. by U.S. persons on European underlyings to European regulators), as contemplated by the ODRF letter. As the Commission knows, it is important to preserve this spirit of cooperation and coordination between regulators around the world. Without such cooperation, the SEC's ability to routinely receive details of purely European transactions written on U.S. underlyings would be frustrated.

DTCC is concerned that the current asymmetry in the Proposed Rule, when compared to existing international standards, will lead to fragmentation along regional lines and prohibit global services and global data provision, which will weaken the introduction of trade repositories as a financial markets reform measure. Further, because of the onerous standards imposed on SDRs compared to the regulatory framework of other competitive jurisdictions, the U.S. will be less attractive than other locations for the purpose of storing full global data where SDRs are actively looking to service the global regulatory community.

---

[23] Authorities Currently Involved in the OTC Derivatives Regulators' Forum. *Available at*: http://www.otcdrf.org/about/members.htm.

[24] *See* letter from OTC Derivatives Regulators' Forum to the Warehouse Trust Company, dated June 18, 2010. *Available at*: http://www.dtcc.com/downloads/legal/imp_notices/2010/derivserv/tiw044.zip.

DTCC strongly supports the use of third party service providers to report SBS data on behalf of reporting parties (*e.g.,* counterparties, security-based swap execution facilities). However, such reporting should be required to be clearly authorized by the reporting parties. The reporting parties need to control the data flow to SDRs to ensure completeness and accuracy of the data. Different firms will wish to have different workflows to support third party service providers' reporting, just as they do in the procedures used to undertake confirmation services. It is important that firms with the reporting obligation maintain control over reported positions throughout the life of the contract, even when third party service providers act on behalf of the reporting party. Otherwise, it is difficult for any party to take responsibility for the accuracy of the resultant position at the SDR.

The use of third party service providers will also strengthen the ability of the SDR to fulfill its statutory obligation to confirm the data with both parties.[25] In many cases, the third party service provider will report trade information on behalf of both counterparties to a trade. Allowing such an arrangement will reduce the regulatory burden of the counterparties, and ensure prompt compliance with reporting obligations. DTCC believes that, in many instances, firms will wish to submit every trade to the SDR or have a third party service provider manage their submissions to the SDR. Given the complexities related to establishing a new regulatory framework in a global market (particularly with jurisdictions expected to adopt new reporting rules related to SDRs as part of their G-20 commitments), there is considerable complexity to replicate in a firm's technology systems the rules that will determine the reporting party or the reporting requirements based on the product type.

In addition to the recognized value inherent in relying upon third party service providers to carry out certain functions on behalf of reporting parties, DTCC urges the Commission to ensure that third party service providers do not "bundle" services to include the SDR function. To ensure accurate, timely information for regulatory oversight and to mitigate potential conflicts of interest, an SDR must be free from conflict with the operation and pricing of other market services (*e.g.*, clearing and trade execution). Allowing bundling of obligations undertaken by third party service providers with an SDR will detract from the SDR's utility function and jeopardize the value of SDRs to regulators and the market.

With respect to whether the Commission should require SDRs to establish automated systems for monitoring, screening, and analyzing SBS data or provide the data for the Commission to perform these functions, DTCC believes monitoring, screening, and analysis should be performed centrally by an SDR, as it would promote efficiency in the system. The data maintained by the SDR should then be made available to potentially impacted regulators. Concentration data would be especially disposed to this approach as it requires aggregate market wide data.

---

[25] *See* Exchange Act Section 13(n)(5)(B) ("A security-based swap data repository shall . . . confirm with both counterparties to the security-based swap the accuracy of the data that was submitted.").

Implementation of Core Principles

Each SDR is required, under Exchange Act Section 13(n)(7), to comply with core principles relating to: (1) market access to services and data, (2) governance arrangements, and (3) conflicts of interest.[26]

First Core Principle: Market Access to Services and Data

The first core principle is intended to protect investors and to maintain a fair, orderly, and efficient SBS market. Proposed Rule 13n–4(c)(1) is designed to ensure that any dues or fees are, on a case-by-case basis, fair, reasonable, do not unreasonably discriminate and are applied consistently across all similarly situated users of the SDR's services. The Proposed Rule would also require each SDR to permit market participants to access specific services offered by the SDR separately, such as ancillary matching and confirmation services. Further, each SDR must permit fair, open, and not unreasonably discriminatory access to its services offered and the data it maintains.

DTCC's perspective is that access to data is a key issue relating to SDRs. DTCC supports open access to data by other service providers, based on the consent of the parties for that provider to receive the data. DTCC believes this is an important principle for allowing development of automation and efficient operational processing in the market, while preserving the parties' control over confidential information. The Warehouse currently provides access to many vendors, including trade confirmation and trade messaging providers, central counterparties, portfolio reconciliation service providers, portfolio compression services, custodians and outsource providers. A corollary of this sort of independence is that third party service providers should be barred from bundling their services with those of any SDR. Open access and neutral dealing with other providers should be a two-way street.

With respect to fees, the TIW's current model operates on an at-cost basis, charges the dealers for services, and operates at no cost to the buy-side and end-users. This model has been successful in an industry-led voluntary regime as market participants have been able to benefit from cost savings from operational efficiencies, while also encouraging broad-based usage. It is also important to ensure that all counterparties to trades reported to an SDR should, as a matter of principle, have access to all data relating to trades to which they are a counterparty. This access should be made available to smaller, lower volume market participants, as necessary, through the reduction or waiver of certain fees.

In addition, the fees for certain services should reflect the specific costs of the related service. For example, if a reporting party uses a third party service provider for trade submission, which fulfils the SDR's requirement to confirm the trade with both parties, this report would potentially be charged at a lower cost than a direct report to the SDR, requiring the SDR itself to confirm with the other party.

---

[26] *See* Security-Based Swap Data Repository Registration, Duties, and Core Principles, 75 Fed. Reg. at 77,320.

The TIW offers certain services at no extra cost, currently charging a position-based fee. In some cases, third party costs incurred by TIW are charged directly to the consuming customer rather than spread evenly across all users, where these costs only apply to certain types of trade. In many cases, the marginal cost of operating the additional services are very low. DTCC supports this approach because it incentivizes the adoption of automation and electronic processing, such as the central settlement service and triggering for restructuring credit events, bringing reduced risk to the market. Customer reception to these services is very positive. However, it is important to recognize that current usage of TIW is on a voluntary basis. Therefore, an appropriate option would be to permit customers with two (or more) services options: one that fulfils the minimum regulatory reporting process, and a suite of other services to compliment the mandatory reporting function.

Second Core Principle: Governance Arrangements

Proposed Rule 13n-4(c)(2) would require each SDR to establish governance arrangements that are well defined and include a clear organizational structure with effective internal controls, including fair representation of market participants. The Proposed Rule would further require each SDR to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the SDR's senior management and each member of the board or committee that has the authority to act on behalf of the board possess requisite skills and expertise to fulfill their responsibilities in the management and governance of the SDR, to have a clear understanding of their responsibilities, and to exercise sound judgment about the SDR's affairs. Finally, the Commission could, but has not proposed, minimum requirements pertaining to board composition or impose ownership restrictions.

DTCC believes that the use of ownership and voting limitations would be an imprecise tool with which to achieve the policy goals of the Commission regarding conflicts of interest. These policy goals can best be met by structural governance requirements. In the specific case of an SDR, governance by market participants is appropriate, given that most potential conflicts of interest are dealt with directly in the Proposed Rule and will be overseen directly by the regulator.

The SDR is not defining the reporting party, timeliness or content for public dissemination, and similarly the SDR is not defining the reporting party, content or process for regulatory access. Therefore, the SDR does not have significant influence over the inclusion or omission of information in the reporting process, nor does it control the output of the process. This position is significantly different from other market infrastructures, where these infrastructures may have the ability to influence participation in a service (*e.g.* execution, clearing membership, portfolio compression), or completeness of product offering (where it is proposed that all trades in an asset class are accepted).

DTCC suggests that the Commission focus on ensuring the SDR open access provisions described above are in place. To support these requirements, the SDR needs governance that has independence from its affiliates and which is representative of users who are the beneficiaries of choice in service providers. The TIW has a separate board, consisting of fee-paying users, which acts independently from the DTCC parent company board, though the Warehouse must ensure its actions do not damage the financial strength or reputation of its parent. DTCC, as the parent company, does not direct the strategy of the TIW nor promote its interests within the TIW.

Furthermore, in order to assure that non-regulatory uses of mandatorily reported data remain in the hands of the counterparties, SDRs should be broadly speaking "user-governed". This should include a board of directors that is broadly representative of market participants and that incorporates voting safeguards designed to prevent non-regulatory uses of data of a particular class of market participants that are objectionable to that class. In addition, no communication of data (other than to or as required by applicable regulators) that could have the result of disclosing the actual positions or specific business or trading activity of a counterparty should be permitted without the consent of that counterparty.

Independent perspectives can provide value to a board of directors, but those who do not directly participate in markets may not have sufficient, timely, and comprehensive expertise on those issues critical to the extraordinarily complex financial operations of SDRs. These entities require industry expertise at the board level and it is critical for the safety and soundness of SDRs that the composition of their boards sufficiently incorporates the range of necessary expertise as well as independent judgment.

Third Core Principle: Rules and Procedures for Minimizing and Resolving Conflicts of Interest

Each SDR is statutorily required to establish and enforce written policies and procedures reasonably designed to minimize and resolve conflicts of interest in the SDR's decision-making process.[27] Based on information provided by industry representatives regarding how SDRs will likely operate, the Commission preliminarily believes that a small number of dealers could control SDRs, which may require SDR owners to balance competing interests.[28] Owners of an SDR could derive greater revenues from their non-repository activities in the SBS market than they would from sharing in the profits of the SDR in which they hold a financial interest.[29] In addition, there may be a tension between an SDR's statutory obligations and its own commercial interests or those of its owners.[30]

[27] *See id.* at 77,369.

[28] *See id.* at 77,324.

[29] *See id.*

[30] *See id.*

The Commission notes that a few entities that presently provide or anticipate providing repository services have identified conflicts of interest that could arise at an SDR.[31] First, owners of an SDR could have commercial incentives to exert undue influence to control the level of access to the services offered and data maintained by the SDR and to implement policies and procedures that would further their self-interests to the detriment of others by impeding competition.[32] Second, an SDR could favor certain market participants over others with respect to the SDR's services and pricing for such services.[33] Third, an SDR could require that services be purchased on a "bundled" basis.[34] Finally, an SDR could misuse or misappropriate data reported to the SDR for financial gain.[35]

The TIW recognizes that market access by service providers to an SDR could be a potential source for conflicts of interest, but strongly supports the principle of open access, having established many vendor connections. The Warehouse operates at-cost, rebates any excess revenues, and charges only dealers for its services. The reporting rules for SDRs are highly prescriptive, and the primary consumers of this data are regulators, leaving limited room for conflicts involving regulatory or public data access. Access for other service providers is a key requirement for efficiency and strongly supported by a user-governed organization.

Data Collection and Maintenance

The Commission is proposing Rule 13n–5 under the Exchange Act to specify the data collection and maintenance requirements applicable to SDRs.

DTCC believes that there should be a common definition for the products within each asset class that is used by all SDRs to ensure that reporting counterparties know where to report trade information. The requirement for an SDR to support all trades in an asset class is also important to reduce the complexity for reporting parties. Given the need for reporting parties to report life cycle events and potentially report valuation data to the SDR that originally received the trade, these processes can be burdensome. In addition, the requirement to support all trades in an asset class discourages an SDR from only servicing high volume products within an asset class to maximize profit, and leaving more complex (and less frequently traded) transactions to be reported by reporting parties directly to the Commission.

---

[31] *See id.*

[32] *See id.*

[33] *See id.* at 77,325.

[34] *See id.*

[35] *See id.*

Definitions

DTCC does not feel that the definition of "asset class" needs further definition for SBS. DTCC does think the distinction between loan-based and credit asset classes is unnecessary, and notes products like CDS on loans, while loan-based, are currently reported alongside other CDS products to the TIW.

Requirements

Transaction Data

The Proposed Rule would require every SDR to establish, maintain, and enforce written policies and procedures reasonably designed for the reporting of transaction data to the SDR, and would require the SDR to accept all transaction data that is reported to the SDR in accordance with such policies and procedures under proposed Rule 13n–5(b)(1)(i).[36] Further, proposed Rule 13n–5(b)(1)(ii) would require an SDR, if it accepts any SBS in a given asset class, to accept all SBSs in that asset class that are reported to it in accordance with its policies and procedures required by paragraph (b)(1) of the Proposed Rule.[37] Finally, proposed Rule 13n–5(b)(1)(iii) would require every SDR to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the transaction data that has been submitted to the SDR is accurate.[38] This is in accordance with Exchange Act Section 13(n)(5)(B), which requires an SDR to "confirm with both counterparties to the security-based swap the accuracy of the data that was submitted."[39]

As noted above, DTCC believes that the Commission should require an SDR to accept all SBSs of a given asset class. In general, equity and credit derivatives will be easy to classify, although it is possible that certain transactions could be mixed and more difficult to classify. DTCC considers classification difficulties are more likely to occur between a swap and an SBS, rather than between SBS asset classes. For example, trades may be constructed based on the correlation between commodities and equities. The Commission can further mitigate this potential problem by combining the loan-based asset class with credit derivatives, and allowing an SBS to be reported to either the equity or credit SDR if there is any uncertainty of a product's asset class. In practice, SDRs will need to evolve to accept new products and variations in product structures, so this requirement should not impose a significant burden on an SDR in receiving such an SBS.

---

[36] *See id.* at 77,369.

[37] *See id.*

[38] *See id.*

[39] *See id.* at 77,327.

SDRs should not have additional duties with respect to verifying the accuracy of submission, as there is limited data available to the SDR. The SDR may carry out certain routine functions to identify trades which may indicate erroneous data (*e.g.* based on size), but in general, the primary responsibility for accuracy of reported information should remain with the reporting party.

From a systemic risk oversight perspective, it is imperative that all SBSs are recorded by registered SDRs and that the trade information is accurately and promptly made available for regulators.

Position Data

The Commission's proposed Rule 13n–5(b)(2) would require every SDR to establish, maintain, and enforce written policies and procedures reasonably designed to calculate positions for all persons with open SBSs for which the SDR maintains records.[40] Position data is required to be provided by an SDR to certain entities pursuant to Exchange Act Section 13(n)(5)(G).[41] In order for the positions to be calculated accurately, the SDR will need to promptly incorporate recently reported transaction data and collected unreported data.[42]

DTCC believes that position data is most valuable when aggregated among all SDRs to accurately reflect a counterparty's true position in a timely manner. Allowing each SDR to calculate positions will result in inaccurate, fragmented reporting to regulators. To this end, DTCC would suggest that one SDR should be given the responsibility to aggregate and maintain the consolidated position data for regulatory purposes.

The Warehouse currently maintains policies and procedures, including technical specifications where automated routines are used, to support position calculation processes. It is DTCC's opinion that where market values are required, they should be provided by firms. Firms invest considerable resources in valuing trades, including personnel, data feeds and capital to assess valuation levels. It would be difficult for an SDR to replicate these activities for all trades, including model selection, trade parameterization to the model, market data sourcing and transformation to model input, and valuation testing. An SDR could contract with a market valuation service to provide some values and this would provide some independent valuation, but this will not readily extend to illiquid or structured products.

Mark-to-market values would be of some use to regulators without collateral information, as regulators may be able to better understand some of the market risk exposures and marking disputes with access to this information. Mark-to-market values would also readily fulfill portfolio reconciliation functions. However, the values would not be useful in assessing counterparty risk exposures without collateral information.

---

[40] *See id.* at 77,369.

[41] *See id.* at 77,326.

[42] *See id.* at 77,329.

Many collateral agreements are structured at the portfolio level, so the reporting regime should reflect this, rather than attempt to arbitrarily attribute collateral holdings to individual trades.

Maintain Accurate Data

Proposed Rule 13n–5(b)(3) would require every SDR to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the transaction data and positions that it maintains are accurate. Maintaining accurate records is a core function of an SDR.[43] The Commission believes it is important that an SDR has policies and procedures to ensure reasonably the accuracy of the transaction data and positions that it maintains.[44] These policies and procedures could include portfolio reconciliation.[45]

In the current TIW model, the onus is on the customers to ensure the accuracy of the data, and this ensures their records are synchronized with the life cycle event processing and asset servicing offered by the TIW. This model formed the basis of the value proposition of the TIW, namely that the multiple bilateral reconciliations performed between the parties to a trade throughout the life of a trade (and often on an ad hoc basis or only following a dispute), could be replaced by one single reconciliation framework with a shared central record, increasing both operating efficiency as well as reducing operational risks. The Commission's suggestion for portfolio reconciliation seems well aligned with this, and this would give the direct benefit of improved bilateral portfolio reconciliation processes between the parties.

Controls to Prevent Invalidation

Proposed Rule 13n–5(b)(5) would require every SDR to establish, maintain, and enforce written policies and procedures reasonably designed to prevent any provision in a valid SBS from being invalidated or modified through the procedures or operations of the SDR.[46]

DTCC supports the approach that records are not invalidated by the actions of the SDR. Changes to records must be agreed upon between the bilateral parties via the confirmation service platform or via a centralized life cycle event processer. The SDR should be able to offer life cycle event processing and asset servicing activities and these may lead to an update or modification to the records in the SDR. This role is currently supported by the customer contracts of the TIW and is akin to a legal agreement as a third party service provider to the reporting party. DTCC believes that an SDR should be able to act as a provider of additional services to reporting parties and thus, should be able to update a record with the consent of both parties.

---

[43] *See id.* at 77,369.

[44] *See id.* at 77,329.

[45] *See id.* at 77,330.

[46] *See id.* at 77,369.

Dispute Resolution Procedures

Proposed Rule 13n–5(b)(6) would require every SDR to establish procedures and provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions maintained by the SDR.[47] The Commission believes this is necessary because the data maintained by the SDR will be used by regulators to make assessments about counterparties, such as whether the counterparty is a major SBS participant.[48] Further, the counterparties also will use this data, and in some cases the data maintained by the SDR may be considered by the counterparties to be the legal record of the SBS.[49]

DTCC recognizes the importance of accurate data at the SDR and believes that an SDR should be in a position to identify disputes or unconfirmed data as part of its process to confirm the data with both parties. However, only the parties to a transaction can resolve any dispute as to the terms of the trade. In many situations, trade reporting will take place through a third party service provider, which act directly as an affirmation, confirmation or verification platform and already utilizes dispute resolution workflows.

For that reason, resolution by the third party service provider will result in updated records being reported to the SDR. DTCC does not support a Proposed Rule that would require that the SDR building processes to replicate these services. It is not the primary role of an SDR to be a matching service, as other service providers act in this capacity, which services should not be bundled with SDR services. Instead, an SDR can make the quality of the data or disputed trades visible to a firm's prudential regulator and this would act as an incentive to timely resolution.

Automated Systems

<u>Requirements for SDRs' Automated System</u>

The Proposed Rule provides standards for SDRs with regard to their automated systems' capacity, resiliency, and security, based upon the Commission's current Automation Review Policy ("ARP") program. Proposed Rule 13n–6 would require an SDR to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its systems provide adequate levels of capacity, resiliency, and security; and submit to the Commission annual reviews of its automated systems, systems outage notices, and prior notices of planned system changes.

DTCC believes that the operating hours of an SDR should be 24/6, that processing should be real-time, and that business continuity provisions should include multiple redundant systems. Due to its key position in the financial services industry, DTCC has always placed a high priority on maintaining business resiliency. DTCC has in place

[47] *See id.*

[48] *See id.* at 77,329.

[49] *See id.*

multiple fully staffed data and operations centers in diverse regions of the country, each capable of handling DTCC's entire business. This infrastructure, when combined with a highly resilient network, allows DTCC to recover from a regional incident and be back in operation within two hours. DTCC performs both data center and operational failover tests every year. Datacenter recovery tests are performed at least six times a year in various configurations, and there are more than two dozen operational failover tests each year, ranging from a single department failover, to an operational recovery involving more than 400 staff. These capabilities are fundamental to any registration as an SDR.

Reports to be Provided to the Commission

The Commission is proposing Rule 13n–8 under the Exchange Act to specify certain reports that the SDR would have to provide to the Commission.[50] Proposed Rule 13n–8 would require an SDR to "promptly report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under the [Exchange] Act."[51]

DTCC currently makes information available directly to regulators, having created a web portal for access to scheduled reports, and providing extracts from the TIW's database based on parameters set by regulators. These reports are available in electronic formats. Through this system, DTCC expects to be able to offer acceptable access to the Commission.

Privacy of SBS Transaction Information

In order to fulfill the requirements of the Dodd-Frank Act, the Commission is proposing to require each SDR to establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy of any and all SBS transaction information that the SDR receives from an SBS dealer, counterparty, or any registered entity.[52] Each SDR must establish and maintain safeguards, policies, and procedures reasonably designed to prevent the misappropriation or misuse, directly or indirectly, of: (1) any confidential information received by the SDR, including, but not limited to, trade data, position data, and any nonpublic personal information about a market participant or any of its customers; (2) material, nonpublic information; and/or (3) intellectual property, such as trading strategies or portfolio positions, by the SDR or any person associated with the SDR for their personal benefit or the benefit of others. Such safeguards, policies, and procedures shall address, without limitation, (a) limiting access to such confidential information, material, nonpublic information, and intellectual property, (b) standards pertaining to the trading by persons associated with the SDR for their personal benefit or the benefit of others, and (c) adequate oversight to ensure compliance of this

---

[50] *See id.* at 77,338.

[51] *See id.*

[52] *See id.* at 77,339.

provision.[53] Under the Warehouse's Operating Procedures, users are responsible for adhering to the security procedures promulgated by the Warehouse.

DTCC fully supports the Commission's efforts to protect the privacy of any and all SBS transaction information received by an SDR. Currently, the Warehouse has published Operating Procedures requiring it to treat as confidential (both during and after the termination of a User's access to the System) all confidential information, including transaction data, specified in records received by the Warehouse, any data, reports, summaries or payment amounts which may be produced as a result of processing such transaction data, and the identity of any entity a User uses to settle obligations. DTCC may not transfer or disclose this information to any non-affiliated third party or use information except as expressly contemplated under the Warehouse's Operating Procedures, or as reasonably deemed necessary to provide the services or system, or in response to, for example, subpoenas or regulatory requests.[54]

Disclosure to Market Participants

Proposed Rule 13n–10 would provide that before accepting any SBS data from a market participant or upon a market participant's request, each SDR shall furnish to the market participant a disclosure document that contains the following written information: (1) the SDR's criteria for providing others with access to services offered and data maintained by the SDR; (2) the SDR's criteria for those seeking to connect to or link with the SDR; (3) a description of the SDR's policies and procedures regarding its safeguarding of data and operational reliability to protect the confidentiality and security of such data; (4) a description of the SDR's policies and procedures reasonably designed to protect the privacy of any and all SBS transaction information that the SDR receives from an SBS dealer, counterparty, or any registered entity; (5) a description of the SDR's policies and procedures regarding its noncommercial and/or commercial use of the SBS transaction information that it receives from a market participant, any registered entity, or any other person; (6) a description of the SDR's dispute resolution procedures involving market participants; (7) a description of all the SDR's services, including any ancillary services; (8) the SDR's updated schedule of any dues, unbundled prices, rates, or other fees for all of its services (including any ancillary services); any discounts or rebates offered, and the criteria to benefit from such discounts or rebates; and (9) a description of the SDR's governance arrangements.[55]

DTCC recognizes the importance of providing market participants with disclosure documents outlining the SDR's policies regarding member participant criteria and the safeguarding and privacy of data submitted to the SDR. The Warehouse ensures that its

---

[53] *See id.*

[54] *See* Warehouse Trust Company Operating Procedures, *available at:* http://www.dtcc.com/customer/membership/derivserv/derivserv.php.

[55] *See* Security-Based Swap Data Repository Registration, Duties, and Core Principles, 75 Fed. Reg. at 77,340.

users are provided these relevant documents, and makes available copies of its policies to its users on its website.

Chief Compliance Officer of Each SDR

The Commission is proposing Rule 13n–11, which would incorporate the duties of an SDR's chief compliance officer ("CCO") that are enumerated in Exchange Act Section 13(n)(6) and impose additional requirements.[56]

Enumerated Duties of Chief Compliance Officer

Each SDR must identify on Form SDR a person who has been designated by the board to serve as the CCO of the SDR.[57] The CCO would be responsible for, among other things, keeping the board or the SDR's chief executive officer apprised of significant compliance issues and advising the board or chief executive officer of needed changes in the SDR's policies and procedures.[58] The Commission specifies that he or she must be competent and knowledgeable regarding the federal securities laws and must be empowered with full responsibility and authority to develop and enforce appropriate policies and procedures for the SDR.[59] To meet his or her statutory obligations, a CCO should also have a position of sufficient seniority and authority within the SDR to compel others to adhere to the SDR's policies and procedures.[60]

DTCC agrees with the Commission that a robust internal compliance function plays an important role in facilitating an SDR's monitoring of, and compliance with, the requirements of the Exchange Act (and rules thereunder) applicable to SDRs. Requiring a CCO is an appropriate way to further this goal.

DTCC currently has an established compliance infrastructure for its businesses, including the Warehouse, which includes processes for establishing and implementing required compliance policies and procedures and overseeing adherence to those procedures and a mechanism for reporting, tracking, remediating and closing compliance issues whether self-identified or identified through internal or external examinations. DTCC expects to build on this existing operation in establishing the compliance function for an SDR. In light of this experience, DTCC would like to make certain suggestions as to the proposed rules in this area and the implementation of the chief compliance officer requirement. While DTCC fully supports the principles underlying the proposed role and functions of a chief compliance officer, it believes that some of the enumerated responsibilities of that role require clarification in order to avoid an overly broad reading of those duties.

---

[56] *See id.* at 77,341.

[57] *See id.*

[58] *See id.*

[59] *See id.*

[60] *See id.*

As provided in the Proposed Rule, each CCO shall: (1) report directly to the board or to the chief executive officer of the SDR; (2) review the compliance of the SDR with respect to the requirements and core principles described in Exchange Act Section 13(n); (3) in consultation with the board or the SDR's chief executive officer, resolve any conflicts of interest that may arise; (4) be responsible for administering each policy and procedure that is required to be established pursuant to Exchange Act Section 13; (5) ensure compliance with the rules and regulations under the Exchange Act relating to SBSs, including each rule prescribed by the Commission under Exchange Act Section 13; (6) establish procedures for the remediation of noncompliance issues identified by the CCO through any (a) compliance office review, (b) look-back, (c) internal or external audit finding, (d) self-reported error, or (e) validated complaint; and (7) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.[61]

As noted above, DTCC believes that some of the descriptions of the CCO's responsibilities may be too broad and could be read to encompass responsibilities beyond those traditionally understood to be part of a compliance function (*i.e.*, those issues that can as a matter of competence, and typically would be, handled by a compliance department). In DTCC's view, the CCO should be responsible for establishing relevant compliance procedures, and monitoring compliance with those procedures and other applicable legal requirements. The CCO should also participate in other aspects of the SDR's activities that implicate compliance or regulatory issues. However, the CCO cannot be, and should not be, required to be responsible for the overall operation of the SDR's business. Accordingly, DTCC believes that such requirements as "administering each policy and procedure that is required to be established under" Exchange Act Section 13(n) should be understood in this light.

Similarly, the Commission should recognize that oversight of certain aspects of SDR activities are principally (and, as a practical matter, need to be) within the purview of risk management and operations personnel. Although there may be a regulatory component to whether an SDR is meeting its operational readiness, service level or data security responsibilities for example, oversight of those aspects of the SDR business should remain with the relevant business areas, subject of course to oversight by senior management and ultimately the board of directors. While a CCO may have an important role to play in overall oversight and remediation of any problems, the Commission's rules should not be interpreted to impose on CCOs responsibility outside of their traditional core competencies.

With respect to the requirement to resolve conflicts of interest, DTCC believes that the Commission should clarify what types of conflict of interest should be within the CCO's purview. Some issues, such as permissibility of dealings with related parties or entities, are properly within the CCO's functions. Other issues, such as restrictions on ownership and access, may be fundamental for the board of directors and senior management to address. Furthermore, to the extent that the Proposed Rule requires consultation with the

---

[61] *See id.*

board or senior management, some materiality threshold would be appropriate, as not every potential conflict of interest that might be addressed by a CCO (or his or her subordinates) would need such consultation. The determination of materiality is something currently within the CCO's purview to determine based on factors such as nature and scope of the issue and potential exposure.

In addition, in DTCC's view, the Commission should also clarify that the CCO's specific responsibilities related to conflicts are limited to compliance with the provisions of Exchange Act Section 13(n) and the final rules thereunder as they relate to the SBS operations of an SDR. The Commission should not mandate compliance responsibilities with respect to other regulatory requirements to which an SDR may be subject; those responsibilities should be specified by the regulator imposing the other requirements.

Points Raised in the Proposed Rule

In response to the Commission's specific questions in the release, DTCC believes, as a general matter, that the Commission does not need to be overly prescriptive as to the specific compliance responsibilities of the CCO and that SDRs should have some flexibility to implement the required compliance procedures in ways consistent with their structure and business. The SBS markets are continuing to evolve, and will likely change significantly as a result of the introduction of SDRs and other requirements under the Dodd-Frank Act. In light of this ongoing development, DTCC believes SDRs are best suited to determine the most effective way to implement the general requirements of Exchange Act Section 13(n) and Rule 13n-11.

With respect to the question about potential incremental costs, DTCC believes that it is difficult to assess at this time. As noted above, DTCC has an established compliance infrastructure, but it is likely that the new requirements of Rule 13n-11 will entail additional costs, potentially including additional personnel and systems. DTCC also believes that compliance responsibilities in an SDR will evolve (and likely increase) as the scope of transactions reported to that SDR increase, which may also result in additional incremental costs.

In terms of the proposed requirement in Rule 13n-11 for the CCO of an SDR to prepare an annual report as to compliance, DTCC would suggest several clarifications and modifications. First, DTCC believes that any such report should be limited to compliance with the requirements of the Exchange Act and the policies and procedures of the SDR that relate to its activities as such with respect to SBSs (as opposed to policies and procedures that may address other regulatory requirements).

In addition, DTCC does not believe it is appropriate to require the report to include a discussion of recommendations for material changes to the policies and procedures of the SDR as a result of the annual review (as well as the rationale for such recommendations and whether the policies or procedures will be modified as a result of such recommendations). DTCC believes that the inclusion of a description of any material changes to the SDR's policies and procedures, and any material compliance matters

identified both since the date of the preceding compliance report, provide comprehensive information. In DTCC's view, requiring the CCO to detail every recommendation (whether or not accepted) may chill open communication between the CCO and other SDR management (including the board of directors) regarding improvements to the compliance policies and procedures. Such an approach could have the undesirable effect of making it less likely for CCOs to propose improvements to compliance policies and procedures.

As noted above, DTCC also believes that it is not appropriate to place the principal responsibility on a CCO to review such business matters as service levels, cost, pricing and operational reliability for purposes of preventing anticompetitive behavior. DTCC believes that other personnel teams, particularly in the risk management, operational or business areas, are best positioned to perform these functions. Of course, a CCO should be involved in remedying any noncompliance issues discovered during such review.

DTCC firmly believes the annual report should be kept confidential by the Commission. Given the level of disclosure expected to be required, DTCC believes that the report will likely contain confidential and proprietary business information. Such information should not be made available to the public or market participants generally.

DTCC fully supports Commission efforts to require the highest standards of regulatory compliance at SDRs, and believes requiring each SDR to have a CCO is an effective way to ensure compliance.

Conclusion

We appreciate the opportunity to comment on the Commission's Proposed Rule and provide the information set forth above. Should you wish to discuss these comments further, please contact me at 212-855-3240 or lthompson@dtcc.com.

Regards,

Larry E. Thompson
General Counsel

William Hodash
Managing Director

Tel: 212-855-2727
Fax:212-855- 5138
whodash @dtcc.com

The Depository Trust & Clearing Corporation
55 Water Street
New York, NY 10041-0099

Via Federal eRulemaking Portal & Courier

January 31, 2011

Mr. Lewis Alexander
Counselor to the Secretary
U.S. Treasury Department
Office of Financial Research
Washington, D.C. 20581

RE: Statement of Policy on Legal Entity Identification for Financial Contracts

Dear Mr. Alexander:

The Depository Trust & Clearing Corporation ("DTCC") is pleased to submit comments to the Office of Financial Research ("OFR") in connection with its Statement on Legal Entity Identification for Financial Contracts and Request for Comment ("Statement").[1] DTCC supports the OFR's efforts to develop a universal standard for identifying parties to financial contracts by creating a unique Legal Entity Identifier (an "LEI") for each institution, and to adopt a standard that is established and implemented by private industry and other relevant stakeholders through an "LEI Utility" created for this purpose. DTCC, as a centrally positioned financial market utility that is user-owned and operated on an at-cost basis, looks forward to participating significantly in these initiatives as they evolve.

Overview of DTCC

DTCC, through its subsidiaries, provides clearing, settlement and information services for virtually all U.S. domestic equities, corporate and municipal bond, U.S. government securities and mortgage-backed securities transactions, money market instruments and over-the-counter (OTC) derivatives. DTCC, through its subsidiaries, is also a leading processor of mutual fund and annuity transactions, linking funds and insurance carriers with their distribution networks. DTCC has three wholly-owned subsidiaries which are registered clearing agencies under the Securities Exchange Act of 1934, as amended: The Depository Trust Company ("DTC"), National Securities Clearing Corporation ("NSCC"), and the Fixed Income Clearing Corporation ("FICC"), all of which are subject to regulation by the Securities and Exchange Commission (the "SEC"). DTC, as

[1] *See* Statement of Policy with Request for Comment, 75 Fed. Reg. 74,146 (November 30, 2010).

a New York limited purpose trust company and State member bank of the Federal Reserve System, is also subject to regulation by the New York State Banking Department and the Federal Reserve System.

DTC currently provides custody and asset servicing for 3.6 million securities issues from the United States and 121 other countries and territories, valued at almost $34 trillion. In 2010, DTC settled nearly $1.66 quadrillion in securities transactions. NSCC provides clearing, risk management, central counterparty services and a guarantee of completion for certain transactions. FICC provides clearing, risk management and central counterparty services (through its Government Securities Division) in the fixed income, mortgage backed and government securities markets. Thus, DTCC, through its subsidiaries, processes more than 30 billion transactions a year on an at-cost basis. Among DTCC's core competencies are ensuring that markets operate securely, efficiently, and with confidence. DTCC's Networked Community links virtually all trading parties through one network for data exchange; a network that is highly resilient, self-healing and can be managed from multiple locations. DTCC's Business Continuity Program provides full redundancy of operating and data centers thousands a mile apart, with data capture asynchronously down under 30 seconds.

Outside the U.S. DTCC operates The European Central Counterparty Limited (EuroCCP), a U.K.-based CCP that is a recognized clearing house regulated by the Financial Services Authority (FSA). EuroCCP currently provides pan-European clearing services for equity transactions in 19 markets and in 9 currencies.

DTCC also operates a global trade repository for over-the-counter credit default swaps (CDS), through its wholly owned subsidiary Warehouse Trust Company LLC. Warehouse Trust holds data on more than 98% of CDS trades worldwide. In addition, DTCC operates the global reporting repository for the OTC equity derivatives market through its European-based DTCC Derivatives Repository Ltd. subsidiary, a UK-FSA regulated service company.

DTCC's subsidiaries have maintained their own identification and numbering systems for legal entities since their inception several decades ago. But more recently (and particularly relevant to the OFR Statement), in July 2010, DTCC purchased a UK-based company called Avox Limited ("Avox") that specializes in this area. Avox is a provider of entity identification services to the global financial community, counting among its customers many of the largest, global financial institutions, and having an entity database of over 800,000 records.

DTCC's multifaceted role in the global financial markets provides it with a unique perspective and position to support the initiatives proposed in the Statement.

Universal Standardization of a Legal Entity Identifier is Imperative

DTCC agrees with the Statement that "precise and accurate identification of legal entities engaged in financial transactions is important to private markets and government regulation."[2]

For each financial institution, "precise and accurate identification" of the entities with whom it interacts (as transaction counterparties or otherwise) involves a variety of tasks – determining the identity of a particular entity, verifying detailed information about it, understanding its relationship to other related entities (e.g., that may be part of the same corporate group), periodically re-verifying all of this information, and, at the simplest level, establishing a means – some type of identification code – of denoting that entity both within the financial institution's own systems and with other systems (trading markets, payment, clearing or settlement systems) in which the financial institution may transact with this other entity. This many-faceted process of "precise and accurate identification" is inordinately expensive – a recent study conducted by the Aite Group found that financial services firms spend over $250 million annually on this entire process of cleansing and maintaining entity information.[3]

Further complicating this process is the reality that virtually all financial institutions today perform these processes on their own, and each market infrastructure maintains its own LEI identification system. This results in the use of individualized, proprietary alpha-numeric coding systems to identify financial market participants and counterparties by virtually all financial institutions – there is no standardized, common system among these institutions.

While there would be many benefits from the creation of a standardized, common system to identify legal entities, the lack of such a uniform LEI system across geographies and markets certainly means that determining the aggregate exposure of any single entity would be, at minimum, extremely difficult, requiring linking together data using multiple proprietary identification codes, a time-consuming and complex process that, at best, would be severely error-prone. In truth, DTCC believes that this likely would be virtually impossible.

DTCC strongly agrees that there would be regulatory reporting benefits in the use of a single global industry LEI as the Statement proposes. In the view of DTCC, the universal standardized LEI is the most effective way – it may be the only practical way – to ensure data consistency across the industry and reduce the cost of systemic risk monitoring for regulators. LEI standardization will allow regulators to conduct analyses across markets, products, and regions, identifying trends and emerging risks.

---

[2] *See id.* at 74,147.

[3] Aite Group, LLC. Shortcuts to Customer and Counterparty Data Management: Vendors and Capabilities for Legal Entity Data, December, 2006. *Available at* http://www.aitegroup.com/Reports/ReportDetail.aspx?recordItemID=304.

DTCC believes that the criteria set forth in the Statement are not only appropriate, but achievable in the near-term. Over the last six months, DTCC has been actively engaged with other financial industry participants and regulators in the U.S. and abroad to develop a series of proposals that we have enhanced in response to the feedback from these discussions. DTCC has also reached out to several potential collaborators that could play an important role in developing a global solution, and DTCC's Board has approved the commitment of resources toward the development of such a proposed solution.

DTCC has a Unique Blend of Capabilities that can be Leveraged Toward Creating an LEI Utility Solution

1. <u>DTCC has Core Competencies to Create and Maintain a Database of Legal Entity Identifiers on Behalf of Financial Firms</u>

Although DTCC's other subsidiaries have decades of experience in this area, DTCC's Avox subsidiary has nearly ten years of experience in collecting and validating legal entity information from over 200 jurisdictions, and currently maintains a database of 800,000 legal entity records. The complexities of establishing and maintaining a database of this size are considerable, and the vast amount of knowledge and experience that DTCC can leverage to support the LEI Utility is unique in the industry. Some examples of the expertise that DTCC can bring to bear include:

a. Supporting various methodologies to populate the database:

    i. Allowing systemically important financial institutions and other entities with transaction and position reporting requirements to submit a bulk list of entities (e.g., all of their counterparties) for validation and LEI assignment (the more common case, used by financial market professionals); or

    ii. Accepting and validating a submission directly from an entity that is seeking an LEI for itself. (This latter method is important for collection of information that is either not in the public domain or not available from a reliable electronic source.)

b. Tapping into a comprehensive database of rules, policies, procedures and definitions for validating legal entity reference data. This business intelligence represents a significant investment over many years and enables analysts who are validating legal entity records to consistently apply -- on a jurisdiction-by-jurisdiction basis -- the authoritative sources, the non-authoritative sources, address standards, legal form variations, exception management processes and other resources to ensure the highest level of accuracy and thoroughness possible.

c. Leveraging the public database of hundreds of thousands of legal entity data records that Avox already makes publicly available at no charge over the Internet.

d. Incorporating the "challenge functions" currently used by Avox that help keep legal entity records accurate and up to date. These include accepting information from the entity itself as a "self certification," and allowing other firms or users of the public database to challenge specific field values within a record that Avox will then research and, if necessary, correct. Through information and news provided by a global community of financial institutions, Avox is able to obtain information about changes to legal entities that may have been reported to authoritative sources but may not have yet been reflected in their public databases or not yet reported. Avox staff brings this to the attention of those sources and confirms the change before updating the Avox record. Very often, it is the case that if one firm's view of a legal entity data record conflicts with the consensus view, that firm's information is the most recent and therefore most up to date/correct view. The only way to capture these types of exceptions is by proactively soliciting the feedback of all users of the data. Every exception is thoroughly researched before any change is applied to the database.

e. Incorporating corporate action feeds to identify when a corporate action (e.g., a merger) changes information about an entity. DTCC itself is one of several principal sources of corporate action information to the markets (e.g., issuing approximately 8.6 million announcements of such information globally in 2010); and

f. Extensive experience with the annual re-verification needed to ensure that this information remains up to date.

2. <u>DTCC has the Appropriate Governance Structure and Operating Infrastructure</u>

As a participant-owned utility, operated on an at-cost basis, DTCC's mandate is to standardize and reduce the costs and risks associated with its products and services for the benefit of its user-owners. These include the systemically important financial institutions which will be directly affected by the proposal. DTCC's participation in developing and maintaining a global LEI Utility is consistent with this mandate.

For the heightened protection of data required to support the LEI Utility, DTCC can establish a governance structure that can provide the opportunity for those bearing much or all of the ultimate cost of the LEI Utility (the systemically important firms) to have input into how it is operated. Senior executives with broad experience and domain experts in enterprise data management and reference data would be included in governance. DTCC's own governance offers an example of how this can be done, with DTCC's Board comprised of both industry experts and non-industry members representing the interests of the public and the broader markets.

In addition, DTCC can leverage the security and redundancy of its operating systems and infrastructure that settled nearly $1.66 quadrillion worth of transactions in 2010 to ensure that the LEI Utility meets service levels, security requirements, redundancy and disaster recovery requirements.

3. DTCC can Provide a Complete Solution that is Global in Nature

While DTCC would leverage its core competencies to collect, validate and make available the legal entity record in the Utility, DTCC is not itself a Registration Authority of an international standard identifier. Over the past several months, DTCC has had many conversations with Registration Authorities, and those conversations have progressed furthest with the Society for Worldwide Interbank Financial Telecommunication ("SWIFT"). SWIFT, a trusted European-based utility, is a member-owned cooperative used by more than 9,000 banking organizations, securities institutions, and corporate customers, and regulators in 209 countries. As a global Registration Authority, SWIFT has assigned Business Identification Codes ("BICs")[4], an International Organization for Standardization (ISO) standard, to companies for more than 30 years while developing and refining a robust registration and maintenance process that is a cornerstone of SWIFT's operations. During the industry consultation conducted over the past several months, SWIFT has modified the proposed BIC LEI Solution (separate and apart from the current BIC used for addressing messages on the SWIFT network and identifying counterparties within those messages) to meet industry and OFR requirements. The combination of DTCC and SWIFT would create a truly global solution responsive to the needs of global firms and regulators alike.

DTCC's Solution Meets OFR Criteria in the Statement

The capabilities of DTCC, combined with the capabilities of a Registration Authority like SWIFT, directly responds to the requirements articulated by the OFR. DTCC notes the following with respect to the criteria for the LEI Utility as set forth in the Statement:

(1) *Be based on a standard developed and maintained via an international "voluntary consensus standards body," . . . such as the International Organization for Standardization.*

DTCC agrees that the LEI itself should be selected by the industry and must be recognized globally, especially by the government or regulatory agencies charged with the responsibility of monitoring systemic risk, as well as those financial institutions deemed to be systemically important and those which will have significant transaction and position reporting obligations.

---

[4] BIC is an established International Standard (ISO 9362) used by financial entities around the world as a network address and as an LEI.

While DTCC's capabilities to gather and validate legal entity records can be used with any numbering solution selected – DTCC itself has one of the industry's several commercial legal entity identifiers (the "AVID") – DTCC strongly endorses the need for a global ISO standard identifier to achieve the highest degree of global consensus. While we are open to working with any Registration Authority and numbering methodology selected by the industry and regulatory community, we are encouraged that SWIFT will modify its BIC to create an LEI for use in the LEI Utility. The BIC is an ISO standard (ISO 9362) that is widely used in more than 200 countries as a network address and entity identifier. Using an ISO standard will reduce costs, eliminate inefficiencies, and increase automation.

(2) *Be unique for each legally distinct entity, where each legal entity is assigned only one LEI which cannot be reassigned.*

The current database maintained by Avox assigns and maintains the Avox identifier, or AVID, as noted in this requirement. Should the BIC LEI be selected as the LEI Utility standard, each BIC LEI would be unique, used in perpetuity and never reassigned to another entity. In the event that an entity ceases to operate, a field in the database will reflect this status but the BIC LEI assigned to that entity will never be reassigned to another entity.

(3) *Persist over the life of an entity regardless of corporate actions or other business or structural changes.*

The current database maintained by Avox assigns and maintains the AVID as the Statement requires. Should the BIC LEI be selected as the LEI Utility standard, the BIC LEI would have no built-in intelligence linking the composition of the BIC number itself to some feature of the entity (e.g., its country/state of incorporation). Therefore corporate actions and other events that do not change the identity of the entity will not change the BIC LEI.

(4) *Include minimal information about the entity in the identifier itself.*

We agree that the LEI Utility Record must be composed of two elements – minimum identifying information about the entity and the actual identifier (in our proposal, the BIC LEI). We agree that the actual BIC LEI should not contain information about the legal entity itself. Further, we propose that the LEI Utility database core record should initially contain only minimal information necessary to identify an entity uniquely, and that the information should be able to be validated using publicly available sources. We believe these fields include Registered Name, Operational Address and Jurisdiction of Registration (plus, of course, the identification code under the scheme that is selected); however, DTCC has the ability to support whatever the information regulators and the industry ultimately decide to be the core fields. Other fields such as Record Creation Date, Last Update or Review Date, Expiry Date, and Status are control fields that should be included and are currently made available by Avox. Over time, and with the agreement of the industry and regulators, additional information can be added to the

public record. In addition, the LEI Utility could collect additional information as required, such as Immediate Parent and Ultimate Parent, and provide that information to regulators and others the regulators specify, but not make it available in the public LEI database.

(5) *Accommodate growth in the number of legal entities that need to be identified in the full range of reporting systems and to potential industry and regulatory innovations.*

DTCC estimates that the LEI Utility would need to create and maintain approximately 2.5 million LEIs over the next two to three years. Because Avox already has 800,000 legal entity data records which it manages for over 30 global financial institutions today, the expansion of the database to 2.5 million records and beyond within this timeframe can be achieved readily. (Most numbering solutions, including the BIC, can readily scale to have tens of millions of unique numbers.)

(6) *Be available for all eligible markets participants, including but not limited to all financial intermediaries, all companies that issue stock or debt listed on exchange, all companies that trade stock or debt, infrastructure providers, all entities subject to financial regulation, and firms affiliated with such entities.*

The Avox database currently contains information on over 200,000 issuers. Issuers, guarantors, fund managers, counterparties, obligors and others can be (as they are already) added to the database either through the bulk submissions by large firms or by self-registration as described above. Those agencies that currently assign numbers to issues and issuers in large quantities, such as CUSIP and other National Numbering Agencies, can submit their entity information into the LEI Utility in bulk for number assignment and inclusion into the public database, just as large banks and broker/dealers can submit their lists of entities of interest.

(7) *Not be contractually restricted in use.*

Currently, the core legal entity information contained in the Avox database is publicly available free of charge and has limited usage restrictions placed on it. The LEI Utility would have neither any usage restrictions placed on the use or distribution of the content nor would there be any user/license/distribution fees. We propose to allow the LEI Utility database to have search and download capabilities. We anticipate the utility will be operated on a not-for-profit basis and that the costs would need to be recovered via a cost recovery model developed in consultation with the OFR, regulators and the industry. No fees would be placed on the consumers of the public database including vendors who may redistribute the content with or without their own value-added services.

(8) *Where possible, be compatible with existing systems, work across various platforms, and not conflict with other numbering or identification schemes.*

DTCC's creation and maintenance of the LEI Utility database would be based on current Avox capabilities which utilize standard technologies. The ability for the LEI Utility to

accept a bulk submission of counterparties from a single client indexed by its own internal identifiers enables it to append the selected LEI to each of the client's records, creating the mapping the client needs to report to regulators with minimal (if any) internal development or ad hoc mapping required. Any systems development by the client would be limited to translation in reporting interfaces rather than in a significant number of internal applications. This procedure greatly lowers the costs and increases the speed of compliance by the industry.

(9) *Be readily accessible using secure and open standards.*

DTCC and SWIFT are industry-owned cooperatives whose interest, through strong corporate governance, is to operate for the good of the financial markets at large and not to maximize profit. DTCC has proven capabilities to communicate with financial institutions, and to process transactions and payments using a secure, redundant infrastructure. DTCC will leverage its infrastructure for the LEI Utility, and work with the financial community and other interested parties to develop input and output specifications (which could be based on the current Avox specifications). At the same time, DTCC will make publicly available the LEI Utility database through a standard website with standard search and downloading functions.

(10) *Be reliable and secure against corruption and misuse.*

DTCC urges that information security should be a paramount feature of the LEI Utility and the supporting system. DTCC itself has considerable experience in this respect. For example, DTCC treats all of its data processing sites, networks, control centers and business sites as a unified complex that is always accessible and, where feasible, actively operates across multiple sites and environments. In support of DTCC's businesses, DTCC has multiple data center locations, including in-region and out-of-region sites with state-of-the-art data replication technologies. All of DTCC's US-regulated subsidiaries (DTC, NSCC and FICC) meet the standards set forth in the "Interagency Paper on Sound Practices to Strengthen the Resiliency of the U.S. Financial System" (the "Interagency Paper") that was published by the Federal Reserve, the Office of the Comptroller of the Currency and the SEC in 2003. DTCC departments involve staff, including Internal Audit, to verify the transaction data integrity and recovery of DTCC's broad suite of data applications. DTCC participates in industry-wide business continuity tests, which involve the major financial institutions, as well as its own business continuity and recovery exercises, conducted six times each year. DTCC has an outstanding reputation for having strong governance standards, the highest levels of integrity, a superior reliability record, and proven techniques that are time-tested to guard against corruption and misuse of its services and facilities. DTCC would leverage these capabilities as part of its solution.

(11) *Be capable of becoming the single international standard for unique identification of legal entities in the financial sector.*

DTCC agrees that the LEI standard should be global, used by systemically important financial institutions in every jurisdiction in the world to report transactions and positions. In addition, as many of the systemically important financial institutions are global firms operating in all leading market centers and across all asset classes, having different solutions geographically or by asset class could place an undue burden on them and would, at the least, significantly impair and delay systemic risk monitoring across borders.

The governance structure of the selected organization(s) must provide the opportunity for the financial institutions bearing much or all of the ultimate cost of the LEI Utility (the systemically important firms) to have input into how it is operated.

DTCC and SWIFT are headquartered in the U.S. and Europe, respectively, and have close working relationships with the financial institutions, many of whom participate directly in the governance of the two utilities, and the regulators in both regions. The support of these governing financial institutions and regulators will aid greatly in achieving global consensus on the single international standard.

Avox originated in the United Kingdom and still has its core operations center there. Avox has major clients in countries including Japan, Singapore, South Africa, Australia, Germany, Canada, the United Kingdom and the United States. These clients will assist with the proliferation of the LEI.

Conclusion

The need for a universal LEI is clear. The inability of regulators to be able to quickly, confidently and consistently identify parties to transactions across all the markets hinders their ability to evaluate systemic risk and take appropriate corrective steps. Going forward, regulators will be charged with gathering data originating from markets and processing systems that are geographically dispersed, and assessing the risks to specific firms and to the financial markets more generally.

DTCC has the capabilities, the governance, the operating scale and the desire to become an integral part of creating and maintaining a global LEI Utility. For the past six months, DTCC has been meeting with regulators, industry groups, subject matter experts, and financial firms to help shape its approach for a global solution that will be acceptable to regulators and financial firms. Behind the highlights outlined in this response are more in-depth plans on how the LEI Utility could be established, operated, funded, and governed. We have begun to share many of these in-depth ideas with industry participants and are committed to a process of further development based on industry feedback. We look forward to participating in all future discussions about this initiative.

We appreciate the opportunity to comment on the Statement and provide the information set forth above. Should you wish to discuss these comments further, please contact me at (212) 855-2727 or whodash@dtcc.com.

Regards,

William Hodash
Managing Director

The Depository Trust & Clearing Corporation
55 Water Street
New York, NY 10041-0099

Larry E. Thompson
General Counsel

Tel: *212-855-3240*
Fax: *212-855-3279*
lthompson @dtcc.com

<u>Via Agency Website & Courier</u>

February 7, 2011

David A. Stawick, Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Re: <u>Swap Data Recordkeeping and Reporting Requirements (RIN 3038-AD19)</u>

Dear Mr. Stawick:

The Depository Trust & Clearing Corporation ("DTCC") appreciates the opportunity to provide comments to the Commodity Futures Trading Commission ("CFTC" or "Commission") on its proposed regulation regarding swap data recordkeeping and reporting ("Proposed Regulation" or "Proposed Rule") under the Commodity Exchange Act ("CEA").[1] DTCC's comments are provided with the goal of assisting the Commission in assessing how best to bring increased transparency and oversight to over-the-counter ("OTC") derivatives markets.

SUMMARY OF RESPONSE

DTCC supports the Commission's efforts to establish a comprehensive framework for the regulation of swaps, including the reporting of all swaps to a swap data repository ("SDR"). DTCC also commends the Commission's staff for addressing a very technical and complicated subject in a thorough and thoughtful manner and appreciates the invitation to comment.

One of the primary purposes of SDRs and the statutory requirement that all swaps be reported to SDRs is to assure that the Commission has complete and timely transparency into the U.S. swap markets, as well as the global swap trading activity of U.S. persons. As evidenced by past performance, DTCC fully supports this goal and is committed to assuring that the Commission achieves this transparency through SDRs that maintain complete and accurate data on all swaps throughout their respective transaction lives. DTCC currently offers such transparency to the Commission for credit default swaps.

---

[1] *See* Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. 76,574 (December 8, 2010).

As the global repository for credit default swaps (containing over 95% of all such swaps worldwide, capturing over 98% of all current global trading activity and centrally processing life cycle events for the bulk of these transactions), DTCC has worked closely with U.S. and non-U.S. authorities, at their request, to provide credit default swap information. DTCC has (i) responded to over 100 requests globally from 23 different regulators and other authorities, and (ii) established an on-line regulator portal, currently "live" with 19 regulators and other authorities globally, permitting queries of data to which the regulator is entitled pursuant to the guidelines developed by the global OTC Derivatives Regulators Forum ("ODRF") on which the Commission sits. (DTCC is also developing additional electronic interfaces with other U.S. and non-U.S. authorities.) The DTCC credit default swap repository data includes both detailed transaction level data for all swaps in the repository and the resulting position data. Regulators and other authorities using the data have viewed it as complete and accurate for purposes of market surveillance and risk oversight functions. DTCC offers the Commission a standing invitation to take advantage of current services and to further discuss additional electronic interfaces.

There is a significant concern that the Proposed Regulations have the potential to inadvertently frustrate the public purpose of regulatory reporting under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[2] Specifically, DTCC is concerned that in going beyond specifying ***what*** data needs to be reported by ***when*** and setting forth ***standards*** for data maintenance – but also specifying ***how*** such data should be reported and by ***whom*** – the Commission risks a number of unintended, adverse results, including:

- receiving an incomplete set of data on swaps over their transaction lives, such incompleteness could adversely affect the Commission's market surveillance function, among others;
- receiving lesser quality (*i.e.*, less reliable) data when higher quality (*i.e.*, more reliable) data is readily available; and
- imposing unnecessary costs and burdens on reporting entities, as well as their non-reporting counterparties, such as fiduciary money managers and end users, with whom SDRs are obligated to confirm the accuracy of reported data.[3]

This potential for unintended, adverse results is exhibited in several aspects of the Proposed Regulations, discussed in further detail below. As a general matter, however, it is important to note that, as an industry governed utility with both buy- and sell-side firms represented on its governing bodies, DTCC is aware that market participants, who are statutorily responsible for all swap data reporting to SDRs,[4] have only just begun to

---

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[3] *See* CEA Section 21(c)(2).

[4] *See* CEA Section 2(a)(13)(F).

analyze the safest, most efficient and most accurate means to report the required data.[5] It is prudent to avoid prescribing reporting methods based upon current practice that may or may not be relevant after implementation of all of the provisions of the Dodd-Frank Act or upon assumptions about future market infrastructure under the Dodd-Frank Act that may or may not turn out be accurate.

In order to fulfill its regulatory obligations, the Commission is best served by SDRs that maintain complete and accurate up-to-date (if not up to the minute) swap data that includes (with some very minor exceptions noted herein) all of the information set forth in the appendices to the Proposed Rule, and the regulatory steps taken must assure this occurs. Attempting at this early stage in the implementation process to set forth the precise manner in which this should be accomplished (and who should report) when the matter has not yet been fully considered by those with the statutory responsibility to report, risks a flawed solution. Alternatively, the Commission could require that any SDR demonstrate in its registration process that the reporting procedure contemplated by the SDR will result in timely reporting and proper maintenance of the data required by the CEA and the Proposed Regulations. Further, the integrity of the processes should be reviewed periodically.

It is important to note that the overly specific proposals to require certain methods of reporting data about swaps over their transaction lives (referred to in the Proposed Rule as continuation data) are in conflict with the increased automation of the swap markets. Post-trade processing is becoming increasingly automated for all swaps, and further automation is both a regulatory and supervisory goal to continue to eliminate operational and other risk in these markets.[6] Moreover, it is generally acknowledged that the most accurate and complete data with respect to any swap is the data generated by automated confirmation (including confirmable life cycle events) and centralized non-confirmable life cycle event processing, where that is also automated. This data will be readily available to SDRs without any further processes necessary on the part of the swap counterparties, other than authorization of these service providers to report the data to SDRs as their agents. It is expected that these providers will include DCOs, automated

---

[5] At the direction of the board of directors of DTCC's U.S. user governed cooperative repository, the Warehouse Trust Company (a New York based subsidiary servicing the global credit derivative market), we held a follow-up informal meeting with board members and their senior staffs on January 25, 2011 to specifically address concerns around how the industry would comply with swap data reporting requirements generally for all asset classes under both the SEC and CFTC proposed rules. These discussions are ongoing and involve senior representatives (generally, but not exclusively, heads of derivative operations) from global dealers, as well as from buy-side firms on both sides of the Atlantic appointed for such purpose by the major recognized buy-side trade associations.

[6] *See* Preamble to Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. at 76,574. *See also* Press Release, Federal Reserve Bank of New York, New York Fed Welcomes Further Industry Commitments on Over-the-Counter Derivatives (March 1, 2010) *available at:* http://www.newyorkfed.org/newsevents/news/markets/2010/ma100301.html and Letter from the ODSG to the Honorable William Dudley, President, Federal Reserve Bank of New York (Mar. 1, 2010) *available at:* http://www.newyorkfed.org/newsevents/news/markets/2010/100301_letter.pdf.

confirmation facilities, SEFs, DCMs or entities providing central legal recordkeeping or central asset servicing. According to the most recent quarterly survey published by Markit,[7] automated confirmation (including automated confirmation of life cycle events) exists today for approximately 98% of the global credit derivative market, 85% of the global OTC interest rate derivative market (where the vast majority of actually occurring life cycle events are confirmable) and 40% of the global OTC equity derivative market. While current quarterly data for the global FX and commodities markets is not available, recent benchmarking studies indicate that automated confirmation exists for 54% of the global OTC FX derivative market and 65% of the global OTC commodity derivative market.[8] These usage percentages will only grow over time.

Complete data sets for almost all of the OTC rates and credit derivatives asset classes, as well as significant portions of the other asset classes, already exist today in automated form. Further, the industry considers it best practice to reconcile to this data; this data is easily available to SDRs (as it is already produced on an automated basis in standardized form); and virtually all of the data content is in any event required to be reported to SDRs by the Dodd-Frank Act, the SEC and the CFTC.[9] Where complete electronic data sets already exist for swaps, given this data is both the highest quality and most readily available data, SDRs should leverage these to the maximum extent possible.[10] Additional reporting on these swaps that does not add any new pertinent information, and could potentially introduce less accurate data, should be discouraged.

There are specific and unintended potential adverse consequences that could result from being overly specific about prescribing certain reporting obligations to entities other than the counterparties executing the transaction. The CEA is specific that the "[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

---

[7] *See* Markit Quarterly Survey, *available at:* http://www.markit.com/en/products/research-and-reports/metrics/metrics.page.

[8] 2010 ISDA Operations Benchmarking Survey, *available at:* http://www.isda.org/c_and_a/pdf/ISDA-Operations-Survey-2010.pdf.

[9] The SEC proposed rule does not specifically require reporting of confirmation data, but this data is essentially the same data as the primary economic terms that the SEC requires to be reported in Proposed Rule 242.901(d), which includes the data elements necessary for a person to determine the market value of the transaction, and actual electronic confirmation records is the best evidence of this information. It also comprises almost all of the data that the OTC Derivatives Regulators Forum recommends to be reported to repositories as best practices (again, reporting of actual confirmations is not part of the recommendations, but reporting of essentially the same information as contained in confirmations).

[10] It may be noted that the current global repositories for both rates (operated by TriOptima) and equities (operated by DTCC in London) do not leverage this data where it exists. This is because the industry organizations sponsoring these repositories specifically did not require that trade level detail be maintained in repositories, but rather addressed the narrower need for exposure information relating to swap dealers and not full market surveillance data or exposure information relating to other entities. This position is now superseded by both the Dodd-Frank Act and the current position of the OTC Derivatives Regulators Forum.

prescribed by the Commission."[11] In DTCC's experience, the value of third party providers acting as reporting agents has been proven, but the entities with the statutory reporting responsibility should be able to determine for themselves which agents are best used for what reporting. This is an instance where the CFTC and the Securities and Exchange Commission ("SEC") proposed rules on data reporting are not consistent. DTCC would urge that this difference be resolved by adopting the SEC approach under which the reporting responsibility stays with the applicable market participants who may then engage the appropriate third parties as agents to facilitate the process. This will accommodate not only current circumstances, but also future developments that cannot be anticipated at this time.

Additional comments include:

- The establishment of a separate collateral repository to ensure that complete exposure information is available to regulators; which repositories would hold information as to the collateral held and a valuation for that collateral under each collateral agreement. This information cannot be collected or recorded against individual trades or even particular asset classes, given that most collateral agreements apply to a portfolio of trades across all asset classes, and collateral is called and held against the net exposure of the portfolio – not attributable at trade level.
- Support, on an individual trade level, for the aspect of the Proposed Rule effectively requiring that all information with respect to a particular swap be reported to the same SDR. This appears to be required by the CEA,[12] and it is sound public policy. It will already be difficult for the Commission to aggregate data from swaps reported to multiple repositories without also considering the reconstruction of data relating to a single swap from multiple repositories.
- Support for the aspect of the Proposed Rule requiring that SDRs be able to accommodate all swaps and all swap data with respect to any particular asset class for which it proposes to act as an SDR. (This promotes sound public policy for several reasons. For example, such a requirement will discourage "cherry picking" only those swaps that are easy-to-process – a practice which contributes unnecessarily to data fragmentation and could undermine any economic case for taking the hard-to-process swaps (in turn causing such hard-to-process swaps to fall on the Commission, which results in an unnecessary monetary burden on taxpayer resources).[13] Harmonization of the regulatory regimes for reporting between the

---

[11] *See* CEA Section 2(a)(13)(F).

[12] *See* CEA Section 2(a)(13)(G) ("**Each** swap (whether cleared or uncleared) shall be reported to **a** registered swap data repository.") (emphasis added).

[13] While DCOs will provide an important role as a data source, it is fairly straightforward for DCOs who do not wish to serve as repositories for all potential swaps in a particular asset class to report their information to registered SDRs that meet this requirement. Such reporting would impose no additional burden on DCO users, as DCOs already can accommodate this (in fact, it may avoid some duplicated costs between the SDR and DCO in establishing reporting for all regulator types as countenanced by the ODRF).

Commission and the SEC will tend to eliminate risk of errors and costs associated with two complementary, but conflicting reporting regimes.

- Use of existing practices, such as the trade confirmation process, to meet regulatory reporting requirements, due to the similarity of process requirements and content and the resulting high quality that this would ensure.
- 'Phase-in' of the implementation to allow for the extensive testing and preparation required to ensure that the processes lead to accurate data. The data will be relied upon for systemic risk control and price transparency purposes and must be of suitable quality and not mislead regulators or the public.
- The importance of aggregate data to fulfill the intended purpose of SDRs and avoid the inability of regulators to understand and timely respond to the buildup of concentrated exposures, such as the mortgage credit derivatives exposures of American International Group, Inc. ("AIG").
- Use of third-parties in the reporting model to allow reporting parties the appropriate flexibility to report efficiently.

DTCC's detailed comments are preceded by a brief overview of DTCC and the Trade Information Warehouse ("TIW" or "Warehouse"), a centralized global repository for trade reporting and post-trade processing of OTC credit derivatives contracts, which is operated by DTCC's wholly-owned subsidiary, The Warehouse Trust Company LLC.[14]

OVERVIEW OF DTCC

DTCC, through its subsidiaries, provides clearing, settlement and information services for virtually all U.S. transactions in equities, corporate and municipal bonds, U.S. government securities and mortgage-backed securities transactions, money market instruments and OTC derivatives. DTCC is also a leading processor of mutual funds and annuity transactions, linking funds and insurance carriers with their distribution networks. DTCC does not currently operate a clearing agency for derivatives. However, DTCC owns a 50% equity interest in New York Portfolio Clearing, LLC ("NYPC")[15], which has been granted registration as a derivatives clearing organization ("DCO") by the CFTC.

DTCC has three wholly-owned subsidiaries which are registered clearing agencies under the Securities Exchange Act of 1934 ("Exchange Act"), subject to regulation by the SEC.

It will ensure that the full trade lifecycle is recorded from point of execution, not just from point of clearing, and enable ready analysis of exceptions to clearing.

[14] DTCC filed a separate letter with the Commission on February 7, 2011 addressing Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. 76,140 (December 7, 2010). DTCC believes there is significant overlap of the issues addressed in the two letters and urges Commission staff to consider both sets of comments.

[15] NYSE Euronext owns the other 50% equity interest. Neither DTCC nor NYSE owns a majority of the equity interests in NYPC. NYPC has its own management team which controls the day to day operations of the company.

These three clearing agency subsidiaries are The Depository Trust Company ("DTC"), National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC"). DTCC is owned by its users and operates as a not-for-profit utility with a fee structure based on cost recovery.

DTC currently provides custody and asset servicing for 3.6 million securities issues from the United States and 121 other countries and territories, valued at almost $34 trillion. In 2009, DTC settled more than $1.48 quadrillion in securities transactions. NSCC provides clearing, risk management, (for some securities) central counterparty services and a guarantee of completion for certain transactions. FICC provides clearing, risk management and central counterparty services (through its Government Securities Division) in the fixed income, mortgage backed and government securities markets. Thus, DTCC, through its subsidiaries, processes huge volumes of transactions – more than 30 billion a year – on an at-cost basis.

OVERVIEW OF THE TRADE INFORMATION WAREHOUSE

In November 2006, at the initiative of swap market participants, DTCC launched the Warehouse to operate and maintain the centralized global electronic database for virtually all position data on credit default swap ("CDS") contracts outstanding in the marketplace. Since the life cycle for CDS contracts can extend over five years, in 2007, DTCC "back-loaded" records in the Warehouse with information on over 2.2 million outstanding CDS contracts effected prior to the November 2006 implementation date. Today, data for over 95 percent of all OTC credit derivatives are captured in this automated environment. The Warehouse database currently represents about 98 percent of all credit derivative transactions in the global marketplace; constituting approximately 2.3 million contracts with a notional value of $29 trillion ($25.3 trillion electronically confirmed "gold" records and $3.7 trillion paper-confirmed "copper" records).[16]

In addition to repository services (as contemplated by the proposed rules relating to SDRs, the acceptance and public and regulatory dissemination of data reported by reporting counterparties), the Warehouse provides both legal recordkeeping and central life cycle event processing for all swaps registered therein. By agreement with its 17,000+ users worldwide, the Warehouse maintains the most current CDS contract details on the official legal or "gold" record for both cleared and bilaterally-executed CDS transactions. The repository also stores key information on market participants' single-sided, non-legally binding or "copper" records for CDS transactions to help regulators and market participants gain a clearer and more complete snapshot of the market's overall risk exposure to OTC credit derivatives instruments.

---

[16] Data provided as of December 31, 2010. For more information about the Trade Information Warehouse, please see http://www.dtcc.com/products/derivserv/suite/ps_index.php.

DTCC's Warehouse is also the first and only centralized global provider of life cycle event processing for OTC credit derivatives contract positions throughout their multi-year terms. Various events can occur, such as calculating payments and bilateral netting, settling payments, credit events, early termination and company renames and reorganizations, which require action to be taken by the parties to such CDS contracts. DTCC's Warehouse is equipped to automate the processing associated with those events and related actions. The performance of these functions by the Warehouse distinguishes it from any swap data repository that merely accepts and stores swap data information.

DISCUSSION OF PROPOSED REGULATIONS

Pursuant to Title VII of the Dodd-Frank Act, the Proposed Regulations establish swap data recordkeeping and reporting requirements for registered entities and counterparties involved in swaps.

I. Recordkeeping Requirements

The Proposed Regulations establish recordkeeping requirements for all designated contract markets ("DCMs"), derivatives clearing organizations ("DCOs"), futures commission merchants ("FCMs"), introducing brokers ("IBs") and members of contract markets.[17] Each such entity is required to keep full and complete records of all activities relating to the business of the entity subject to the Commission's authority.[18] All such records must be kept for a period of five years from the date of the record and must be readily accessible during the first two years of the five-year period.[19] Copies of all records must be provided, at the expense of the entity required to keep the records, upon request by any representative of the Commission or the Department of Justice.[20]

Further, the Commission's Proposed Regulations require that all DCOs, DCMs, swap execution facilities ("SEFs"), swap dealers ("SDs") and major swap participants ("MSPs") keep full, complete and systematic records of all activities relating to the business of such entities with respect to swaps, including records of all data required to be reported in connection with any swap.[21] The Proposed Regulations require that all records required to be kept by DCOs, DCMs, SEFs, SDs, MSPs and non-SD/MSP counterparties be kept throughout the existence of the swap and for five years following final termination of the swap.[22] Records required to be kept by DCOs, DCMs, SEFs, SDs and MSPs must be readily accessible by the registered entity via real time electronic

---

[17] *See* Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. at 76,579.

[18] *See id.*

[19] *See id.*

[20] *See id*.

[21] *See id.*

[22] *See id.*

access throughout the life of the swap, for two years following the final termination of the swap and retrievable within three business days through the remainder of the required retention period.[23] Non-SD/MSP counterparties, including counterparties who qualify as end user counterparties, will be required to keep full, complete and systematic records with respect to each swap in which they are a counterparty.[24] Each record will be required to be retrievable by the counterparty within three business days during the required retention period.[25]

The Proposed Regulations require that all records required to be maintained by SDRs be kept throughout the existence of the swap and for five years following final termination or expiration of the swap, during which time the records must be readily accessible by the SDR and available to the Commission via real time electronic access.[26] Thereafter, for a period determined by the Commission, all such records must be maintained in archival storage from which they are retrievable by the SDR within three business days.[27]

The Proposed Rule should require the retention of electronic records of transactions, including life cycle events. These should be maintained for the life of the contract in order to provide an audit trail to positions and for a reasonable retention period thereafter. An SDR's records should be in an electronically readable format (where available) that allows for application and analysis. Swap transaction data retained as electronic images of paper documents is cumbersome and will frustrate regulatory oversight efforts.

II. Swap Data Reporting

The Proposed Regulations require swap data reporting to include data from two stages of a swap's existence: (1) the creation of the swap and (2) the continuation of the swap over its existence until its final termination or expiration.[28]

A. Swap Creation Data

The Proposed Regulation calls for reporting two sets of data generated in connection with the creation of a swap: (1) primary economic terms data and (2) confirmation data.[29]

---

[23] *See id.*

[24] *See id.*

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] *See id*. at 76,580.

[29] *See id.*

The primary economic terms of a swap include all of the terms of the swap verified or matched by the counterparties at or shortly after the execution of the swap.[30] Such terms can differ not only for swaps in different swap asset classes, but also for standardized versus non-standardized swaps.[31] For swaps executed on a SEF or DCM, the primary economic terms will be those specified in the contract listed on the platform in question. For non-standardized or bespoke swaps executed bilaterally, primary economic terms are typically far less standardized.[32] However, counterparties verify the primary or essential economic terms of their swap with each other in some fashion following execution in the case of every swap.[33] The Proposed Regulation requires that all of the terms of the swap verified by the counterparties be reported to an SDR.[34]

Confirmation data, the second set of data generated in connection with the creation of a swap, constitutes all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap.[35] As with primary economic terms data, the Proposed Regulations require confirmation data to be reported to an SDR.[36]

Under the Proposed Regulations, determination of who must report swap creation data is based on two criteria.[37] The first criterion is whether the swap is (1) executed on a SEF or DCM and cleared on a DCO; (2) executed on a SEF or DCM but not cleared; (3) not executed on a SEF or DCM but cleared on a DCO; or (4) not executed on a SEF or DCM and not cleared.[38] The second criterion is whether the reporting counterparty is an SD or MSP or, instead, a non-SD/MSP counterparty.[39]

The Proposed Regulations specify the timeframes for reporting swap creation data to an SDR.[40] The applicable timeframes are based on several criteria, including the reporting counterparty, whether the swap is executed on a SEF or DCM and whether the swap is cleared by a DCO.[41]

---

[30] *See id.* at 76,598.

[31] *See id*. at 76,580.

[32] *See id*.

[33] *See id*.

[34] *See id*. at 76,600.

[35] *See id*. at 76,598.

[36] *See id*. at 76,600.

[37] *See id*. at 76,581.

[38] *See id*.

[39] *See id*.

[40] *See id*. at 76,600.

[41] *See id*.

Using the Confirmation Process for Reporting under Proposed Regulation 45.3

The trade confirmation process for credit and equity derivatives globally already includes much of the data elements required under Proposed Regulation 45.3.[42] In its existing form, the trade confirmation process is designed to verify all terms of economic value between the counterparties, including all of the trade terms data required to value the trade. Existing trade confirmation processes also provide a strong audit trail.

Given that trade confirmation processes are key to supporting balance sheet verification for market participants, such processes have been developed with a high degree of completeness and accuracy, giving legal certainty to trading positions held by firms. Confirmation processes are designed to identify when economic terms to trades have changed, distinguishing between expected events under an existing confirmation and amendment of economic terms due to the modification of terms. Further, the logic behind these processes supports the identification of price-forming events, as required to be reported under Part 43. The trade confirmation is a bilateral process in which both parties agree to the confirmation, thereby ensuring any errors in the original data are corrected.

A major distinction between confirmation processes and Proposed Regulation 45.3 is timeliness. Proposed Regulation 45.3 requires 15 minute, 30 minute and 24 hour submission. In practice, most dealer submissions to the electronic confirmation process for new trades in credit and equity derivatives are made on an intra-day basis on trade date. Actual submission times vary in accordance with the internal practices of each dealer (*e.g.*, real-time versus multi-batch) but are designed to achieve full confirmation as close to the point of trade as possible. Exceptions occur primarily where buy-side firms have not provided allocations for block executions.

In addition, given that the electronic confirmation generation process is not significantly different from the trade reporting envisaged by Proposed Regulation 45.3, with respect to both trade data content and trade audit trail functionality, it may be difficult for reporting parties to provide SDRs with the data contemplated in Proposed Regulation 45.3 materially faster than provided via the submission process for trade confirmation. Firms are incented to issue and match confirms as soon as possible, as this leads directly to the identification of booking errors and enables recognition, managing previously unrecognized market and credit risk.

Through ongoing commitments made to the global OTC Derivatives Supervisors Group, the industry has greatly improved the timeliness and accuracy of confirmation submissions. This development has significantly mitigated the operational risk associated with OTC derivatives, particularly credit derivatives. It appears, therefore, that linking required regulatory reporting to the electronic confirmation process reduces operational

[42] *See id*.

risk and, at the same time, improves the timeliness and accuracy of confirmation submissions and regulatory reporting. The alternative approach would require maintenance of separate regulatory submission and electronic confirmation processes that would require a reconciliation process to compare confirmation records against data reported for regulatory purposes.

DTCC believes that the regulatory reporting and trade confirmation requirements should be consistent to best provide for a cost-effective and efficient system that integrates the timeliness of Proposed Regulation 45.3 with the confirmation process timeline. This organizational structure would require a phased-in implementation of Proposed Regulation 45.3. While it is difficult to determine how much closer trade confirmation can take place to the point of execution, certain elements of market practice will enable it to occur faster than it does today. For example, certain firms complete a number of data checks internally before issuing confirmations, including checks to interdealer broker trade confirmations, which can be further automated or will be superseded by electronic execution, enabling more timely submission. As further automated processes are used, it is possible that SEF executed trades could be reported within 15 minutes, assuming the existence of automated feeds from the SEF to reporting parties or directly to SDRs acting as agents for the reporting party. Similarly, further streamlining of enterable fields and standardization of required enrichments would help improve submission timeliness and accuracy by the reporting party, bringing confirmation even closer to the point of trade.

For credit derivatives, most market participants have the ability to confirm trades electronically, and most credit derivatives trades are stored as electronic, legally binding or "gold" records in the Warehouse. DTCC estimates that over 98% of credit derivatives trades globally are included in the TIW in this form. The initial records are submitted via an electronic confirmation service provider by both parties. For trades which would not be electronically confirmable, the current processes for booking the trade and preparing post-trade confirmation may not always allow for reporting within 24 hours. Currently, the detailed booking required for full valuation can take a number of days, and a number of points in the confirmation may require clarification and legal drafting prior to confirmation. These terms are generally not related to pricing, but reflect fallback procedures for certain future events and addressing ambiguities. Accelerating this to occur pre-execution will increase the burden on end users as they will have to incur additional legal costs to negotiate with all quoting dealers. While these details are pending, the reporting of certain fields is possible within 24 hours, and DTCC recommends the process of benchmarking improvements over time, as employed by the OTC Derivatives Supervisors Group ("ODSG"), as a model for addressing this issue.

Who Must Report

While noting the Commission's stated intent to select the reporting entity based on the ready availability of the information required to be reported, DTCC believes that market participants are still in the fledgling stages of examining how best to establish the most efficient and accurate reporting processes.[43] Therefore, DTCC suggests that the Commission consider permitting alternative reporting parties if doing so would result in more accurate reporting. For example, because SDs and MSPs are obligated to undertake certain reporting responsibilities, it may be more efficient and less technologically risky to require such entities to assume consolidated reporting responsibilities, particularly when certain information is not readily available to the prescribed reporting party (*e.g.*, SEFs). Further, providing counterparties a single point of reconciliation (*i.e.*, reconciling to an SDR) promotes efficiency and greater accuracy in reporting.

In addition, certain processes operate message data schemes that are order dependent because they are used to affect change to the full open notional at a point in time and, therefore, reports out of the correct sequence can lead to erroneous resultant positions. For example, for a trade that is partially terminated and then fully terminated, if the full termination message is received prior to the partial termination, the effective notional calculated in the position may appear as a negative. The sequencing issues are more difficult to control with multiple parties possessing the ability to update a position. DTCC developed procedures to manage these issues for credit derivatives with direct input from market participants.

At the direction of counterparties, data held by SDRs should be able to be used for purposes other than regulatory and public reporting. To ensure that these processes are properly performed, counterparties must maintain accurate data over the information they control. The Proposed Rule's assignment of reporting obligations to multiple parties precludes clear, singular responsibility for data accuracy and creates ambiguity in assigning responsibility to verify and correct reported data, particularly when subsequent events cause changes to the previously reported trade information. In such instance, a correction by one party may not lead to a consistent correction by another for the subsequent event. As such, the assignment of multiple reporting parties may not be efficient. In addition, parties to the trade may wish to use additional services offered by the SDR or third party vendors accessing this data, and additional data may need to be configured in the SDR to support this. For these reasons, trade counterparties should remain in control of the data in SDRs and agree which third party service providers act on their behalf.

As indicated previously, the CEA specifies that the "[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

[43] *See id*. at 76,581.

Commission."[44] While the value of third party providers acting as reporting agents has been proven, the entities with the statutory reporting responsibility will, in all likelihood, determine for themselves which agents are best used for what reporting. DTCC also notes that this is an instance where the CFTC and SEC proposed rules on data reporting are not consistent. In light of the above considerations, DTCC would urge that this difference be resolved by adopting the SEC approach under which the reporting responsibility stays with the applicable market participants who may then engage the appropriate third parties as agents to facilitate the process. This will best accommodate not only the current situation, but also potential future developments that cannot be anticipated at this time.

Reporting Timeframes

As noted above, DTCC believes that there are direct similarities between the reporting requirement of Proposed Regulation 45.3 and the confirmation process. The current confirmation process is not as timely as Proposed Regulation 45.3. DTCC's experience suggests that electronically executed trades could be confirmed within 15 minutes, but it would require straight through processes for all reporting parties, which may be cost prohibitive for some low volume users. In addition, DTCC's experience suggests that orally executed, but electronically confirmable, trades can be submitted in a relatively short timeframe, but likewise require a level of automation and investment in electronic trade processing. DTCC recommends that the electronically executed trade deadline be set at 30 minutes and the deadline for an electronically confirmable trade be set at 2 hours. To provide for a transition period to enable reporting parties to develop appropriate capabilities, these deadlines should be subject to phase in, initially starting closer to current market capability for electronically confirmable at 24 hours.

Manually confirmed trades are not currently subject to the same processes for all types of trades. Some trades are confirmed relatively quickly, with more standard contract confirmation generated by automated processes (*e.g.,* by delivery by facsimile or a PDF in email). Other trade confirmations are only issued after extensive legal drafting (required to describe economic terms) and validation against term sheets and internal trade bookings. Some trade confirmations may run to over 50 pages of terms. Trade booking into risk systems for certain complex trades, with appropriate controls over accuracy of input, can take a number of days. In addition, the submission for these trades may be heavily text-based. In light of these circumstances, it will be difficult for these trades to consistently be reported within 24 hours. Therefore, DTCC respectfully suggests that the Proposed Regulation be modified to permit a record without full terms to be sent within 24 hours, followed by the full terms, when available, but no later than 5 days.

---

[44] *See* CEA Section 2(a)(13)(F).

B. Swap Continuation Data

The Proposed Regulations call for reporting of four sets of data generated in connection with the continuation of a swap: (1) life cycle data for credit swaps and equity swaps; (2) contract-intrinsic data for credit swaps and equity swaps; (3) daily state data for interest rate swaps, currency swaps and other commodity swaps; and (4) valuation data for swaps in all five swap asset classes.[45] Under the Proposed Regulations, determination of who must report required swap continuation data is based on two criteria: (1) whether the swap is cleared on a DCO and (2) whether the reporting counterparty is a SD or MSP or, instead, a non-SD/MSP counterparty.[46]

For credit swaps and equity swaps, whether cleared or uncleared, the Proposed Regulations require that life cycle event data be reported on the same day in which any life cycle event occurs, while contract-intrinsic event data must be reported on the same day in which any contract-intrinsic event occurs.[47] For interest rate swaps, currency swaps, and other commodity swaps, whether cleared or uncleared, the Proposed Regulations require that all required state data for the swap be reported daily through the existence of the swap until its final termination or expiration.[48]

For each swap (regardless of asset class) cleared on a DCO, the Proposed Regulations require the DCO to report all valuation data in its possession on a daily basis.[49] Where the reporting counterparty for such a swap is an SD or MSP, the Proposed Regulations will require the SD or MSP to report all valuation data in its possession on a daily basis.[50] Where the reporting counterparty for such a swap is a non-SD/MSP counterparty, the Proposed Regulations call for the reporting counterparty to report all valuation data in its possession at times to be determined by the Commission prior to its adoption of final swap data reporting regulations.[51]

Flexibility in Data Collection Process

As noted above and repeated here, there is a significant concern that the Proposed Regulations have the potential to inadvertently frustrate the public purpose of regulatory reporting under the Dodd-Frank Act. Specifically, DTCC is concerned that in going beyond specifying ***what*** data needs to be reported by ***when*** and setting forth ***standards***

[45] *See* Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. at 76,601.

[46] *See id.*

[47] *See id.*

[48] *See id.*

[49] *See id.*

[50] *See id.*

[51] *See id.*

for data maintenance – but also specifying ***how*** such data should be reported and by ***whom*** – the Commission risks a number of unintended, adverse results, including:

- receiving an incomplete set of data on swaps over their transaction lives, such incompleteness could adversely affect the Commission's market surveillance function, among others;
- receiving lesser quality (*i.e.*, less reliable) data when higher quality (*i.e.*, more reliable) data is readily available; and
- imposing unnecessary costs and burdens on reporting entities, as well as their non-reporting counterparties, such as fiduciary money managers and end users, with whom SDRs are obligated to confirm the accuracy of reported data.[52]

This potential for unintended, adverse results is exhibited in several aspects of the Proposed Regulations, discussed in further detail below. As a general matter, however, it is important to note that, as an industry governed utility with both buy- and sell-side firms represented on its governing bodies, DTCC is aware that market participants, who are statutorily responsible for all swap data reporting to SDRs,[53] have only just begun to analyze the safest, most efficient and most accurate means to report the required data.[54] It is prudent to avoid prescribing reporting methods based upon current practice that may or may not be relevant after implementation of all of the provisions of the Dodd-Frank Act or upon assumptions about future market infrastructure under the Dodd-Frank Act that may or may not turn out be accurate.

In order to fulfill its regulatory obligations, the Commission is best served by SDRs that maintain complete and accurate up-to-date (if not up to the minute) swap data that includes (with some very minor exceptions noted herein) all of the information set forth in the appendices to the Proposed Rule, and the regulatory steps taken must assure this occurs. Attempting at this early stage in the implementation process to set forth the precise manner in which this should be accomplished (and who should report) when the matter has not yet been fully considered by those with the statutory responsibility to report, risks a flawed solution. Alternatively, the Commission could require that any SDR demonstrate in its registration process that the reporting procedure contemplated by the SDR will result in timely reporting and proper maintenance of the data required by the CEA and the Proposed Regulations. Further, the integrity of the processes should be reviewed periodically.

---

[52] *See* CEA Section 21(c)(2).

[53] *See* CEA Section 2(a)(13)(F).

[54] At the direction of the board of directors of DTCC's U.S. user governed cooperative repository, the Warehouse Trust Company (a New York based subsidiary servicing the global credit derivative market), we held a follow-up informal meeting with board members and their senior staffs on January 25, 2011 to specifically address concerns around how the industry would comply with swap data reporting requirements generally for all asset classes under both the SEC and CFTC proposed rules. These discussions are ongoing and involve senior representatives (generally, but not exclusively, heads of derivative operations) from global dealers, as well as from buy-side firms on both sides of the Atlantic appointed for such purpose by the major recognized buy-side trade associations.

As discussed in greater above, the daily snapshot approach is particularly unsuited to the credit and rates markets, where the degree of automated, electronic processing is high, and complete life cycle records are already available in most cases. However, for very complex swaps (which are generally not electronically confirmable and which exist in each asset class), it may indeed be the case that even reporting of confirm data associated with confirmable life cycle events would not catch all changes in trade economics.[55] It remains undetermined, however, whether reporting daily snapshots of all primary economic terms would be more or less burdensome on the industry. That being said, reporting only daily snapshots would lead to an inferior data set, than would a procedure under which life cycle events are reported. Mere reporting of daily snapshots leaves out the ***reason*** for any reported change. This is particularly problematic where the reasons for change have little to do with real economic trading, such as portfolio compression, allocating block trades, prime-broker give-up, etc. The Commission simply would not know whether the termination of a trade or the sudden appearance of a new trade was the result of real economic trading or of a different process such as compression. It would appear that this would hinder the market surveillance function of any market regulator.[56] It is important to note that under the daily snapshot model, errors are potentially indistinguishable from price-forming or life cycle events and, therefore, offer limited comparison.

DTCC's experience may be instructive with regard to the relative merits of the use of the daily snapshot model and one that requires reporting life cycle events (or, where this is not practical, at least reporting the changes in the previously reported primary economic terms).[57] DTCC has for years offered a payment reconciliation service for OTC derivatives under which submitters have the option of submitting all deals or just those

---

[55] It appears from a combined reading of proposed Parts 43 and 45 that all confirmable life cycle events effectively have to be reported as "confirmation data." It would be helpful for the Commission to clarify that this is the case. If so, the distinction between reporting daily snapshots and life cycle events would appear to be relevant only with respect to non-confirmable events that changed the economics of the trade or where the full description of the event would be missing if merely the related confirmation was reported.

[56] The DTCC repository has worked with the ODRF to implement processes by which confirmation data associated with events such as compressions or prime-broker give-ups are electronically tagged through various means. This data may then be reflected in publications of real economic trading activity and information provided to regulators for market surveillance purposes. This process is not peculiar to the credit derivative markets and may be generally applicable to all asset classes. With respect to non-electronically confirmed transactions, it may be argued that these types of events would not be reported under Part 43, as they are not price forming events and, thus, it could be inferred that they were not relevant for market surveillance. This, however, ignores the fact that regulatory reporting serves as a check on compliance with Part 43 reporting and would be a much less effective check if the reason for trade terminations or the appearance of new trades due to life cycle events was unknown.

[57] The Commission notes that it may be difficult to enumerate the life cycle events for certain types of swaps. Assuming that this observation is correct, it does not support the argument that reporting daily snapshots is more accurate or less burdensome than reporting changes in the terms constituting the daily snapshot itself.

where the basic economic terms (*i.e*., those necessary to determine payments) changed. DTCC found that some firms preferred one method, while some preferred another, with no appreciable difference in the data quality. Thus, it may be worth further study to determine whether one method or the other produces better data. DTCC would add that the incidence of relevant non-confirmable (and even confirmable) life cycle events in the rates, FX and commodities asset classes is relatively rare, particularly when compared with the frequency of these events in the credit and equity asset classes. It appears, therefore, more burdensome, rather than less, to require daily snapshots with respect to those asset classes given the requirements of CEA Section 21(c)(2) that SDRs confirm submitted data with both parties to the trade. Where exceptions are rare, exception processing is efficient – just report the exception; where exceptions are frequent, it is more problematic.

DTCC believes, therefore, that counterparties and SDRs should be given the flexibility to devise the most efficient, least error prone method of providing the Commission with the *complete* set of data that it needs to fulfill its regulatory obligations. The methods should not be prescribed *a priori* (when there is little experience to support the superiority of one method over another) except perhaps to state the principle that higher data quality is always to be preferred over lower data quality when it is available.

Similar concerns arise with respect to the Proposed Rule's specifications of who should report what data. This applies to both creation data and continuation data (as defined in the Proposed Rule). Although the Dodd-Frank Act clearly makes the counterparties (and agents) responsible for all reporting to registered entities (which include SDRs), the Commission in its Proposed Rules aims to "streamline and simplify" the approach by tying the reporting obligations to those entities that have easiest and/or earliest access to the data.[58] DTCC applauds the approach but is concerned that the understandings and assumptions upon which the Proposed Rule is based in this regard may turn out to be incorrect. To note just a few examples:

- Feedback DTCC has received from our users is that it is not likely that SEFs will be able to report all primary economic terms (as contemplated by the proposed rule) and that therefore the parties to the swap will have to report these terms. In that event, it is far easier for the reporting counterparty to report all such terms than just those not reported by the SEF (which may vary from SEF to SEF). If both report, then the SDR will have to incorporate its own matching and reconciliation process. In this case, the counterparty itself should be given the reporting responsibility (with the ability to use third parties as agents to report some or all of the data). Fortunately there are "middleware" solutions in the market today that take trading platform data and either enrich it using standing data provided by the counterparties themselves or permit the counterparties to correct and enrich the data. In the case of interest rates swaps, this process is well developed and takes an average of 8 minutes from the

[58] See Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. at 76,581.

point of execution. If counterparties themselves have the reporting responsibility, they can take advantage of these middleware providers to quickly validate and enrich the data originated by SEFs in order to meet these reporting requirements.

- In many cases DCOs leverage central life cycle event processors to manage asset servicing of cleared contracts. This is particularly important to market participants when there are multiple clearers and all clearers and bilateral counterparties must process life cycle events in exactly the same way.[59] In these cases, it would appear that the central life cycle event processor is in fact best situated to be the reporting entity. Again, this can be accomplished if the responsibility for reporting is left to the actual market participant counterparties who can then engage the appropriate third party as agent to fulfill the reporting obligation.
- For cleared trades, it is hard to ascertain the relevance of daily snapshot data. If the DCO maintains the official trade records (allowing for adequate performance of the requisite risk management), either by itself or through the engagement of a legal recordkeeping service, such as the TIW, a complete picture of the state of all cleared trades will be maintained by the DCO, which will also track changes on an automated basis. Reporting this data to SDRs should be sufficient. Separate reporting of daily snapshots by the market counterparties will only lead to confusion in data reporting.

The CFTC and SEC proposed rules on data reporting are not consistent. In this instance, in light of the above considerations, DTCC suggests that this difference should be resolved by adopting the SEC approach under which the reporting responsibility remains with the applicable market participants who may then engage the appropriate third parties as agents to facilitate the process. This will best accommodate not only present circumstances, but also potential future developments that cannot be anticipated at this time.

Reporting of Life Cycle Events

Many life cycle events are price-forming or significantly change the primary economic terms for a trade (examples of the latter category include novation, early termination, exercise, knock-out or knock-in). The Proposed Rule's definition supports reporting of these events, which is necessary for detailed markets regulation and for prudential and central bank regulation. Life cycle events are best reported in standard market forms (*e.g.,* for novation and early termination by trade confirmation; for exercise by exercise notice).

The TIW has developed solutions to a number of complex issues for credit derivatives and can support life cycle event reporting processes. Based on this experience, DTCC believes that solutions can be developed for the life cycle event reporting required under

---

[59] Thus, all but one of the credit default swap clearers in the United States and Europe leverage DTCC's Trade Information Warehouse to process life cycle events.

the Proposed Rule. In a number of cases, the life cycle event reporting timeliness will likely follow the initial reporting timeliness, particularly in the case of price-forming events subject to confirmation.

The requirements for contract intrinsic data for credit and equities trades appear too detailed. These are low level data elements of limited value to regulators, but onerous to capture and maintain. The rationale for requiring them in credit and equities, but not other asset classes, is unclear. The risk sensitivities to small price movements of observation sources of trades in other asset classes can be significantly greater than those in credit and equities due to the average notional sizes and tenors, notably in rates products. DTCC respectfully suggests that the requirement for contract intrinsic data in credit and equities is removed from the reporting requirements of the Proposed Rule.

Mixed Swaps and Multi-Asset Class Swaps

Mixed swaps that are subject to regulation by the Commission should be reported one time to an SDR registered with the Commission. For swaps subject to joint SEC-CFTC regulation, the trade information should be reported to an SDR operating in an applicable asset class registered with both the SEC and the Commission. Only when a dually-registered SDR does not exist for that asset class should the trade be reported to two SDRs. Duplicative reporting will diminish the value of aggregate data, and notably impacts counterparty based reporting of exposures and concentrations. Because of these potential risks, mixed swaps in repositories not registered with both the SEC and the Commission will need explicit identification by the repository.

Equity swaps and credit total return swaps, as examples, which involve a standard funding component, should be recognized as equity and credit products, respectively. These products should not be classified as mixed swaps.

Requirement for an SDR to Confirm Trades with Both Parties

The ODRF supports that the quality of data in SDRs be of the highest quality and involve confirmation or paired records. DTCC expects that third-party service providers, such as confirmation matching vendors, will be able to provide high quality data directly to the SDR, and the ability for reporting parties to appoint agents to fulfill their reporting obligations will be important for efficiency. DTCC notes that certain forms of confirmation are relatively inaccessible (*e.g.,* certain structured trades will have confirmation records only stored as electronic image files without electronically readable data elements, or electronically readable files but which are difficult to interrogate electronically without sophisticated text recognition software), and these will be poor sources of such data. In these cases, the SDR may be better served by primary economic data that is verified by the counterparty. This may also be true where confirmations have been executed by exchange rather than attestation to a single document. Where

electronically matched confirmations records are available, these are the highest quality sources, but the SDR will need not just the confirmation but the match status.

Collateral Management

Collateral information is important to understanding counterparty exposures and is therefore key to systemic risk monitoring. Any reporting of collateral information should be required at a portfolio level. Proposals that require collateral information at a trade level are less instructive, as most collateral agreements operate across a portfolio of trades, and the collateral is called on a net exposure basis. For those reasons, any attribution at trade level is meaningless. Trades held in trade SDRs can be referenced to collateral data by establishing a collateral repository (in effect making collateral a further asset class) and on trade submission to the trade SDR including an indicator to show whether they are collateralized, and linked to the appropriate credit support agreement. This can be done by static data held at the SDR and where necessary the appropriate master agreement or master confirmation agreement reference. The mark-to-market of trades would be maintained within the trade SDR, and exposures would be calculated from aggregated trade valuations and collateral valuations.

Primary Economic Terms and All Confirmation Data

DTCC is concerned that any requirement to include master agreement dates and credit support agreement dates at trade level is onerous, as these operate at portfolio level, in hierarchical structures and generally are not directly incorporated into current trade level messages. Rather, they are typically incorporated by reference to one applicable agreement. Therefore the level of change required to incorporate these into individual trade messages is excessive and may be better supported by a portfolio level approach to such issues, if required at all. The trade level reference should follow the current process, which references the lowest level governing document, which document itself will in turn permit identification of all other relevant documents.

The Commission should clarify its intent with respect to whether "all confirmation data" in Proposed Rule 45.3 includes contractual changes to a trade (*e.g.*, novation, early termination, and other amendments to the trade documented by confirmation), as the preamble to the Proposed Regulation includes discussion of confirmation data only within the context of creation data; however it does not refer to it in the discussion of continuation data. DTCC's reading of Proposed Rule 45.3 is that it supports reporting of confirmation data for continuation events, and DTCC supports such treatment (*i.e.*, absent this requirement the reported confirmation data would be of limited usefulness as would not describe the open trade).[60]

---

[60] *See* Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. at 76,578.

DTCC believes that OTC derivatives cannot be mapped readily to futures contracts in many cases. While futures market equivalents are used in risk management, the analysis as a futures contract equivalent involves a decomposition of the product and term structure and can involve choice as to futures to which to map and the use of synthetic futures contracts that do not exist on any exchange. In addition, it is a risk management approach that does not focus on product specific basis risks. This data will not necessarily be able to be meaningfully aggregated, is point in time based, and may be of limited use.

III. Unique Identifiers

The Commission proposes requiring use of unique identifiers to facilitate aggregation of transaction and position data for the purpose of conducting market and financial risk surveillance, enforcing position limits, analyzing market data, enforcing Commission regulations, monitoring systemic risk and improving market transparency.[61]

A. Unique Swap Identifiers

The Proposed Regulations require a Unique Swap Identifier ("USI") to be created and assigned to a swap at the time it is executed and used to identify that particular swap transaction throughout its existence.[62] For a swap executed on a trading platform, the USI will be created and assigned by the SEF or DCM involved.[63] For a swap executed bilaterally, the USI will be created and assigned by the SD or MSP required to report concerning the swap, or in the case of a swap between non-SD/MSP counterparties will be created by the SDR to which the swap is reported.[64]

A USI will likely be essential to identify the trade to which the Proposed Regulation's data reporting and corrections relate.[65] This can be achieved by consistent use of common identifier assigned by any third party and mapping the identifier to other proprietary standards, where appropriate. In the current TIW model, DTCC assigns a unique transaction ID, which is sent back by electronic message to submitting firms. This unique transaction ID or the firm's proprietary reference is used in subsequent submissions relating to that trade to the TIW and is used by submitting firms in periodic full population reconciliation against the TIW's records. USIs will also likely be useful to counterparties. Providing a shared identifier for both parties to the trades would improve efficiency of any processes where mutual recognition is needed and where some level of bilateral reconciliation would be required before processing.

---

[61] *See id.* at 76,587.

[62] *See id.* at 76,602.

[63] *See id.*

[64] *See id.* at 76,587.

[65] *See id.*

SDRs and other service providers can assign unique transaction IDs. The SDR could provide the reference back to the reporting party as part of a message confirming receipt of the first submission. The TIW and DTCC recommend that this responsibility be retained by the SDR, as opposed to transferring it to other market participants. SDRs are better situated to establish consistent protocols to deal with these transformations without losing relevant information for regulatory use, as explained further below. Keeping this responsibility with SDRs may also eliminate any unintentional disclosure issues which stem from linking a trade to a specific execution platform, potentially increasing the instances of unintended identification of the trade parties. Currently, the TIW assigns a DTCC transaction reference identifier ("TRI"), which is unique to each trade, and messages this information back to both parties electronically.

USIs need very careful implementation. Swaps themselves do not remain unique, as they can split into more than one contract, merge, and even transform on a many-to-many basis. DTCC believe the most value is derived from being able to understand these events and recognize how a contract transforms through its life (*e.g.,* maintain an audit trail) and having an identifier for the trade be available at all times.

For a bilateral trade with limited post-trade activity, the application is relatively straightforward, as there is a one-to-one mapping with transactions. For example, if Client 1 executes a $10 million notional 5-year CDS with Bank 1, and after 6 months, terminates that trade, the result would that there is one transaction (the original 5-year CDS), with two trading events which require reporting by the bank, and can be reported with the same USI.

The situation becomes more complex when one transaction transfers to multiple parties. For example, Client 1 executes a $10 million notional 5-year CDS with Bank 1, and after six months, partially assigns $5 million of the trade to Bank 2. Bank 1 now has two open positions of $5 million, one with Client 1 and one with Bank 2. Reporting by Bank 1 of these trades using the same USI no longer uniquely identifies the record, and if Client 1 later terminated the residual $5 million, this update would need to be applied to the correct record in the reporting process to ensure accurate data.

There are a number of similar instances in which this occurs, both price-forming events (*e.g.,* partial assignment) and non price-forming events (*e.g.*, allocation, give up to a prime broker, or clearing). There are also instances where, after a creation event, there is some form of aggregation of separate trades. This is typical in portfolio compression and will be important in clearing netting. In this case, many creation trades are replaced with a single replacement trade representing the collective positions. Aggregation can be done by full termination of all the trades and the simultaneous creation of new trades, or by full termination of many trades and partial termination or upsizing of a select number from within that portfolio. In the latter case, preservation of a single USI is very difficult as it is a many-to-many relationship. Repeated application, which will be prevalent in clearing, will result in open trades which were derived from many thousands of prior

trades, and hence arguably many thousands of USIs would be applicable to the open trade.

The importance of issues related to trade identification increases with the snapshot approach, as the snapshot approach needs to correctly reflect the number of trades, and will struggle to present any strong audit trail where multiple trades are impacted by a single event. In determining the optimal approach, the solution will likely be best informed by the purpose of the USI.

If the purpose is an audit trail, then a USI is not the real solution. Rather, the appropriate solution would require that events are stored with an audit trail in the SDR showing the trade identifiers and mapping of trade identifiers both before and after the life cycle event. The SDR could then link these events into event chains, providing a full audit trail from creation, which would be accessible to regulators. If the purpose is to support identification between parties and infrastructures (for participants and oversight), then common references are needed at the point in time when the interactions occur. A single USI through the life of the trade will not be sufficient for mapping between all venues as the trades transform through their life, and in effect the USI can become non unique. Rather, it will require common identifiers at a unique level at each usage (each point in time), but this identifier being allowed to change through the life of a trade. This is strongly linked to event processing and event based USI updates.

In either case, the USI does not look like a sufficient solution when compared with an event based solution. The event based solution can be first touch, or applied by the SDR and the arguments remain similar for each. In the first touch model, the references can be subscribed to with the transmission of the event form the vendor by all recipients. In the SDR model, the application of the identifier by the SDR serves to control reporting (a confirmation of a successful report), achieves standardization in processing identifier changes, reduces connectivity points for identifier updates, and preserves vendor anonymity in subsequent unrelated events. These characteristics are important and hence DTCC favors a model in which the SDR assigns identifiers. In such a model the SDR should not be precluded from being able to agree that execution and life cycle event processing platforms update these of its behalf for certain events. This will allow immediate establishment of unique identifiers and control by the SDR.

B. Unique Counterparty Identifiers

The Proposed Regulations mandate that each counterparty in any swap subject to the Commission's jurisdiction and executed after the effective date of the Commission's final swap data reporting regulations must be identified in all recordkeeping and reporting by means of a single Unique Counterparty Identifier ("UCI") having the characteristics specified by the Commission.[66]

---

[66] *See id.* at 76,602.

The Proposed Regulations require each swap counterparty to report all of its corporate affiliations into a confidential, non-public corporate affiliations reference database, designated by the Commission.[67] Data contained in the corporate affiliations reference database will be available only to the Commission and to other financial regulators via the same data access procedures applicable to data in SDRs for regulatory purposes.[68] The corporate affiliation information reported will be required to be sufficient to disclose parent-subsidiary and affiliate relationships, such that each legal entity within or affiliated with the corporate hierarchy or ownership group to which the counterparty belongs will be separately identified.[69] Each counterparty will also be required to report to the corporate affiliations reference database all changes to the information previously reported concerning the counterparty's corporate affiliations to ensure that the corporate affiliation information recorded in the corporate affiliations reference database remains current and accurate at all times.[70]

The Commission indicates that the corporate affiliations reference database will need to be accessible to both national and international financial regulators in order to make the identification system involving UCIs fully effective for regulatory purposes.[71] Further, the Commission believes a single corporate affiliations reference database, maintained by a single organization in a single location, will be optimal to ensure the availability of comprehensive and accurate information.[72]

Parent and affiliate information helps to illustrate the full group level exposures of firms and the impact of the failure of any participant. SDRs should possess the authority to obtain this information from firms for the purpose of use in reporting to regulators. SDRs should be able to provide netted data aggregates directly to regulators, as opposed to the underlying data and requiring each regulator to perform this aggregation itself. This is supported by ODRF Guidance to the Warehouse Trust Company LLC and the ODRF Functionality Outline, and reduces infrastructural requirements and costs for regulators.

DTCC envisions that SDRs will likely look to data vendors to provide this information, allowing market participants to review and approve such data. DTCC understands that data vendors specialize in this type of data service. Such vendors have suggested that other market participants often drive timely updates to the data, rather than the party directly impacted, due to the many parties using the data. Therefore, use of such a vendor may improve the accuracy of data in the SDR.

---

[67] *See id.*

[68] *See id.*

[69] *See id.*

[70] *See id.*

[71] *See id.* at 76,591.

[72] *See id.*

DTCC understands that SWIFT's Bank Identification Code ("BIC") is an ISO standard for counterparty identifiers and that SWIFT is interested in supporting the provision of UCIs. DTCC is supportive of SWIFT acting in this capacity, but expects the SDR will be largely agnostic as to the form of identifier and believes any form of identifier could be adopted and function appropriately. DTCC believes that, minimally, the UCI should be used in communication between the SDR and regulators and will be readily convertible from other formats by the SDR – rather than requiring immediate adoption by all parties in the reporting process. DTCC expects that each market participant will acquire its UCI directly from the internationally recognized standards-setting body ("IRSB") and that the IRSB will make a level of data publicly available, without charge, to allow market participants to correctly identify the UCI, including the legal entity name and the registration location of that legal name.

The TIW currently uses proprietary codes to identify parties to trades, at a legal entity level, not at a subunit level. DTCC does not believe it complex or difficult to develop a mapping table to a UIC for reporting to regulators.

The Commission proposes to use its rulemaking authority to require the use of UCIs in all swap data reporting subject to its jurisdiction.[73] The Commission prefers to have its swap data reporting regulations prescribe use of a universally-available UCI that is part of an identification system created on an international basis through an international "voluntary consensus standards body," and intends to promulgate final regulations to that effect if such an identification is available sufficiently prior to the implementation date included in the Commission's final swap data reporting regulations.[74] However, the Commission will prescribe its own method for creation of UCIs to be used in swap data reporting subject to the Commission's regulations if no such internationally-accepted identification system acceptable to the Commission is available prior to the implementation date of the final regulations.[75] The Commission anticipates that a system for publication of UCIs meeting the requirements of the Proposed Regulations may be developed through an international voluntary consensus body and be available as of the implementation date for the UCI requirement.[76] The Proposed Regulations set forth principles that govern the identification system used to establish UCIs for swap counterparties.[77]

UCIs for both counterparties will be necessary for regulators to accurately track exposures between counterparties to swaps – a primary driver for the creation of SDRs.

---

[73] *See* Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. at 76,591.

[74] *See id.*

[75] *See id.*

[76] *See id.*

[77] *See id.*

The Proposed Regulation promotes the development of necessary UCIs. However, a primary issue with UCIs will be the initial issuance and adoption of UCI information, as these may not be available from a standards body at the onset of reporting.

C. Unique Product Identifiers

The Unique Product Identifier ("UPI") called for by the Proposed Rules will be used for categorization of swaps with respect to the underlying products referenced in them. While the UPI will be assigned to a particular level of the taxonomy of the asset class or sub-asset class in question, the Commission indicates that its existence will enable aggregation of transactions at various taxonomy levels based on the type of product underlying the swap.[78]

DTCC does not believe there is particular utility in aggregation based on a separate product taxonomy relative to aggregation based on primary economic terms data. Defining taxonomy levels with practical utility is a substantial undertaking and will require ongoing maintenance as products evolve and emphasis as to attributes of primary interest changes. The greatest flexibility will be achieved through the retention of full electronic data records (*i.e.*, electronic confirmation) and classification performed by the SDR based on a set of defined attributes by the regulator at the time of request. This view reflects the experience of firms that have used taxonomies and found that different users prefer different taxonomies (*e.g.*, a financial accountant will classify products based on accounting policy, while a market risk controller will want a classification based on risk attributes). While these classifications change in response to usage change, they must be applied retrospectively to open contracts. In the prior examples, the accountant would be responsive to accounting policy change, and the risk controller would be responsive to exposure levels requiring discrete market risk recognition on a gross or net basis. A parallel could be drawn in this case, if one expected use is for block trade thresholds, the liquidity distinctions between products change over time, and hence fixed categorization is not a useful tool to drive analysis for block trade groupings.

The Proposed Regulation contains a set of rules that mandate the use of standardized reporting formats and identifiers for swap information reported to a registered SDR.[79] DTCC recognizes that standardization of reporting generally and counterparty information specifically, as well as identification of parents and affiliates, is critical to providing regulators with a comprehensive view of the swaps markets and assuring that publicly reported data is accurate and meaningful. However, such standardization alone is not sufficient to permit prompt and accurate regulatory assessments of either risky and unsafe position taking or manipulative and abusive trading practices. Nor will standardization assure meaningful public reporting of relevant market information.

---

[78] *See id.* at 76,592.

[79] *See id.* at 76,602.

DTCC has several years experience in operating the only global repository for an entire swap asset class (the TIW for credit derivatives) that has regularly and publicly reported key global market information, including net open interest and turnover information for the top 1,000 names traded worldwide, and regularly reported to relevant regulators worldwide key position risk and trade detail information. It is demonstrable that were the data publicly reported in aggregate by the TIW fragmented and reported by separate entities (*i.e.*, multiple repositories) the net open interest and net turnover information publicly reported would have been inaccurate and misleading in that it would have been almost always overstated, in many instances significantly.

In a presentation provided to regulators in July 2010, DTCC reviewed the net notional associated with the most liquid, on-the-run index (CDX.NA.IG.14) current at that time. The net open interest, as of July 9, 2010 was $33,035,116,000 at the clearinghouse and the bilateral, non-cleared net open interest was $69,231,897,351. This could have lead to an erroneous determination that the aggregate net open interest totaled $102,267,013,351. However, the cleared positions for a given counterparty often offset the bilateral net position. When the bilateral and cleared positions of each counterparty were netted together and then totaled, the net open interest for the marketplace was $46,906,650,518. This example illustrates that even for the most liquid contracts, fragmented reporting can indicate overall exposures of more than double what they actually are. This exemplifies the problems inherent in the disaggregation of any positions, whether cleared vs. non-cleared or cleared at different clearinghouses.

In general this is unacceptable, but it is particularly so during times of crisis when overstated public reporting of net open interest/net exposures could contribute to unnecessary, severe market reactions. During the Lehman Brothers ("Lehman") crisis, when the TIW was able to assure markets that the net amount of credit default swaps written on Lehman was no greater than $6 billion (actual net settlements on credit default swaps written on Lehman were approximately $5.2 billion), as opposed to the hundreds of billions of dollars speculated, this principle for providing information for market surety was demonstrated. Had the credit default swaps on Lehman been reported to multiple repositories at the time, the net exposure to Lehman could have been reported to have been as high as $72 billion, an amount that would have been off by a factor of greater than ten.

It has been alleged that the lack of accurate public information about firms' exposures in the credit default swap market was a significant contributor to the financial crisis of 2008. Unless regulators maintain the public reporting of net open interest based on the entire market rather than various portions of it, that situation will continue and this particular contributing cause to the 2008 financial crisis will not have been adequately addressed.

The other circumstance in which the credit default swap market was viewed as contributing to the financial crisis of 2008 revolved around the large one-way trades put

on by AIG in mortgage related credit derivatives. Those trades were not reported to the TIW at the time (they have since been backloaded to the TIW). Importantly, if AIG had chosen to try to hide these trades by reporting to multiple repositories, these systemically risky positions would not have been discovered absent a "super repository" that aggregated the trade level data of the various reporting repositories in a manner as to detect the large one-way aggregate positions.

Unless data fragmentation can be avoided, the primary lessons of the 2008 financial crisis, as related to OTC derivatives trading, will not have been realistically or adequately taken into account. Nevertheless, standardization is also necessary and a precondition to avoid fragmentation. Specific comments on standardization and related issues are set forth below.

IV. Determination of Which Counterparty Must Report

The Proposed Regulations require reporting of confirmation data for all swaps as a means of verification of the accuracy of the data submitted in connection with each swap.[80] The Proposed Regulations establish a mechanism for counterparties to follow in choosing the counterparty to report in situations where both counterparties have the same hierarchical status, in order to prevent confusion or delay concerning this choice.[81] Where both counterparties are SDs, or both are MSPs, or both are non-SD/MSP counterparties, the Proposed Regulations require the counterparties to agree as one term of their swap transaction which counterparty will fulfill reporting obligations with respect to that swap.[82] The Proposed Regulations also provide that, where only one counterparty to a swap is a U.S. person, the U.S. person should be the reporting counterparty.[83]

As stated above, DTCC supports the use of confirmation records in fulfilling the obligation of the SDR to confirm data submissions with both parties.

DTCC expects reporting parties to desire to operate under clear, consistent standards, avoiding excessive complexity in the reporting process with respect to determining the reporting party or reporting requirements. Such issues will be magnified at the international level, as many jurisdictions will look to apply the G20 commitment to report all OTC derivatives to trade repositories. Middleware and messaging providers will look to provide services to reduce this complexity.

---

[80] *See id.* at 76,581.

[81] *See id.* at 76,593.

[82] *See id.* at 76,604.

[83] *See id.*

As detailed above, DTCC believes the reporting party should be a party to the trade and should be responsible for contracting with any third party to fulfill this obligation.

As a further note, it is DTCC's understanding that U.S. persons may be restricted from complying with the Proposed Rule where they act outside the U.S. For example, DTCC understands that the London branch of a U.S person will require their counterparty's consent to identify that party under U.K. law. This consent could be obtained through terms of business between the parties, but in many cases may have already been obtained by service offerings that may connect to an SDR, such as the trade confirmation process. The value of these service offerings can be further illustrated by considering a parallel example executed by a Paris branch, where DTCC understands that, under French law, consent is required each time a report is made identifying the counterparty and, therefore, cannot be resolved by changes to the firm's terms of business. Again, confirmation service providers have resolved this issue through bilateral submission of confirmations. (These issues relate to the location of trading and, therefore, apply equally to any non-U.S dealer wanting to report on behalf of its U.S. customers.)

V. Third Party Facilitation of Swap Data Reporting

The Proposed Regulations explicitly recognize that registered entities and counterparties required to report under Part 45 may contract with third-party service providers to facilitate reporting, but, nonetheless, remain fully responsible for reporting as required by the Proposed Regulations.[84]

DTCC strongly supports the use of third parties to report swap data on behalf of reporting parties. However, such reporting by third parties should be required to be clearly authorized by the reporting party. The reporting party needs to control the data flow to SDRs to ensure completeness and accuracy of the data. Different firms will wish to have different workflows to support third party reporting, just as they do in the procedures used to undertake confirmation services. For confirmation services, certain firms allow interdealer brokers to book trades into a confirmation service on their behalf, whereas others do not. Similarly, certain firms, where the confirmation service acts by affirmation (one party agreeing to another party's record), accept the other firm's record of the trade following manual review – this books the trade into the internal trade capture system. Other firms book every trade and have built internal matching capabilities to validate records sent to them for affirmation. Finally, certain firms prefer external matching platforms to provide confirmation in order to support independent input, but avoid the full cost of building and maintaining an internal matching engine. DTCC believes it is important that reporting firms with the reporting obligation maintain control over reported positions throughout the life of the contract, with third parties acting for the reporting party in making updates. Otherwise, it is difficult for any party to take responsibility for the accuracy of the resultant position at the SDR.

---

[84] *See id.*

DTCC believes that the use of third parties will also strengthen the ability of the SDR to fulfill its statutory obligation to confirm the data with both parties.[85] In many cases, the third party will report trade information on behalf of both parties and, in the absence of an obligation for parties to confirm the data with the SDR, reduce the regulatory burden of the counterparties and ensure prompt compliance with reporting obligations. DTCC believes that, in many instances, firms will wish to submit every trade to the SDR or have a third party to manage submission to the SDR. Given the complexities related to establishing a new regulatory framework in a global market (particularly with jurisdictions expected to adopt new reporting rules related to SDRs as part of their G20 commitments), there is considerable complexity to devise rules that determine a reporting party's status within a hierarchy based on a counterparty's status or reporting requirements based on the product type.

As noted above, the CEA indicates that the "[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."[86] Although the value of third party providers acting as reporting agents has been proven, the entities with the statutory reporting responsibility should determine for themselves which agents are best used for what reporting obligations. DTCC's Warehouse currently provides access to many vendors, including trade confirmation and trade messaging providers, central counterparties, portfolio reconciliation service providers, portfolio compression services, custodians and outsource providers. These third-parties are continually refining their service offerings and looking to service their customers, and can contribute to an efficient and accurate reporting regime.

The Proposed Regulation, being applicable to U.S. persons, would require that a U.S. person report transaction data when its counterparty is not a U.S. person. This approach may not be preferred where a U.S. customer is dealing with non-U.S. dealer, and the foreign dealer may wish to offer this as a service to make the actions consistent with those of the customer transaction with U.S. dealers. This type of service by dealers who are not U.S. persons will best promote prompt and accurate reporting, because dealers who are not U.S. persons are better positioned technologically than all but the most advanced of their customers to provide the necessary reporting. Therefore, DTCC urges the Commission to facilitate such arrangements.

VI. Reporting to a Single SDR

The Proposed Regulations require that all swap data for a given swap be reported to a single SDR, which must be the SDR to which required primary economic terms data for

---

[85] *See* CEA Section 24(c)(2) ("A swap data repository shall – confirm with both counterparties to the swap the accuracy of the data that was submitted.").

[86] *See* CEA Section 2(a)(13)(F).

that swap is first reported.[87] The Proposed Regulations also provide that the SDR receiving this initial report transmit its own identity, together with the USI for the swap to each counterparty to the swap, to the SEF or DCM, if any, on which the swap was executed, and to the DCO, if any, to which the swap is submitted for clearing.[88] Thereafter, the Proposed Regulations require that all data reported for the swap by any registered entity or any counterparty to the swap, and all corrections of errors and omissions in previously reported data, be reported to that same SDR (or to its successor in the event that it ceases to operate).[89]

Where the initial report of required primary economic terms data is made by the SEF or DCM on which a swap is executed, or by an SD or MSP counterparty in the case of a swap not executed on a SEF or DCM, the Proposed Regulations provide that the choice of the SDR to receive the initial report must be made in a manner to be determined by the Commission prior to adoption of its final swap data reporting regulations.[90] Where the initial report of required primary economic terms data is made by a non-SD/MSP counterparty, the Proposed Regulations provide that the non-SD/MSP counterparty making that report must choose the SDR to which the report is made.[91]

If all swap data for a given swap is not reported to the same SDR, a significant burden will fall on the Commission to aggregate data in furtherance of its markets regulator responsibilities. In addition, as described above, the issues of swaps transforming through their life and the inability of a swap to maintain the same USI throughout its life, may render this impossible. Any subsequent report for a swap should be made to the same SDR.

With respect to choice, this should reside with the initial party to the trade responsible for reporting. The burden of responsibility for reporting should be on this party, including ongoing control or portfolio reconciliation to the SDR. The choice of an SDR for initial reporting will determine the recipient of many subsequent reports. This will also determine the ancillary services available to that trade, without replication in another SDR. The economics of that decision should remain with the initial party and be aligned with the bearing of the costs.

Replication or duplication should be avoided due to risks of misreporting and issues of public data availability, as part of the public policy objectives for the framework for SDRs.

---

[87] *See* Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. at 76,604.

[88] *See id.*

[89] *See id.*

[90] *See id.*

[91] *See id.*

These issues are further exacerbated on an international level; DTCC believes there is strong desire amongst regulators for relatively few SDRs providing largely global data. Without this, the value of the introduction of trade repositories is considerably reduced, becoming more like the existing regulatory regime. At present, regulators can access the data of their regulatees, but otherwise have to act in concert with their global counterparts or access data under memorandums of understanding ("MoUs"). Additionally, regulators must perform their own aggregation of the resultant data, being careful to avoid double counting of trades where the data does not relate to a regulatee. This aggregation is not simple to perform accurately, as different jurisdictions will define reportable trade populations differently and require different timing for reporting. As a result, in the absence of global or aggregate solutions, the burden of accurate aggregation will fall on each interested regulator.

Each of the key events in the financial crisis which led to the call for OTC derivatives trade repositories suggests regulators' need for global aggregate data: (i) the assessment of the impact of a financial institution's failure on other institutions requires immediate availability of full global exposures; (ii) the identification of a participant with large exposures in a particular market requires accurate aggregation of all exposures in that market; and (iii) the evaluation of the impact of derivatives market activity to the pricing of government debt requires cross jurisdictional data aggregates.

DTCC believes that, of the data that it publishes each week, the two key data sets are the reporting of net open interest for a reference entity and the trading activity for a reference entity. This data, particularly the net open interest, is very difficult to replicate from fragmented data sets, making the issue of fragmentation, both domestically and internationally, of significant concern.

The rule that requires ongoing reporting to the same SDR is important in responding to this, as are measures to ensure that international access to data is unencumbered.

VII. Data Reporting for Swaps in Asset Classes not Accepted by any Swap Data Repository

Situations could arise where a novel product does not fit into any existing asset class or no SDR yet accepts swap data for any swap in an existing asset class. In such situations, the CEA and the Proposed Regulations require the reporting counterparty to report to the Commission all swap data required by Part 45 to be reported to an SDR where one is available.[92] This report will be required to be made at a time and in a form and manner determined by the Commission.[93]

---

[92] *See id.*

[93] *See id.*

DTCC agrees that an SDR should be required to accept data for all swaps in an asset class, as this minimizes complexity for reporting parties and ensures that SDRs are positioned to aggregate a wide set of data for a market, which, if fragmented, may be misleading. The alternative of permitting SDRs to accept subsets of an asset class will significantly increase the difficulty for reporting parties in understanding trade admission criterion to a specific SDR, and require them to connect to many SDRs adding further to their difficulty in controlling the resulting position at any SDR.

The subsets accepted by the SDR in this case, will be based on specific business interests rather than a public policy objective and will likely leave the Commission with a tail of complex products being directly reported to it.

VIII. Required Data Standards

The Proposed Regulations require an SDR to maintain all swap data reported to it in a format acceptable to the Commission and to transmit all swap data requested by the Commission in an electronic file in a format acceptable to the Commission.[94] The Proposed Regulations require reporting entities and counterparties to use the facilities, methods or data standards provided or required by an SDR to which they report data, but also allow an SDR to permit reporting via various facilities, methods or data standards, provided that its requirements in this regard enable it to maintain swap data and transmit it to the Commission as the Commission requires.[95] The Proposed Regulations delegate to the Director of the Division of Market Oversight the ability to accommodate the needs of different communities of users and to provide the flexibility to adapt to changing circumstances and evolving data standards.[96]

Financial Products Markup Language ("FpML") ™ is broadly used as a standard in the OTC derivatives markets and should be the basis for reporting to an SDR. At times, SDRs will need to develop their own FpML tags, as often product development is ahead of formal market FpML development, and SDRs should have the discretion to do so. However, SDR-unique FpML tags should be converted to the market standard FpML in a reasonable time period. FpML has good coverage of trade terms, but will need to be extended to cover some of the data elements required in the Proposed Regulation.

Therefore, a registered SDR should have flexibility to specify acceptable data formats, connectivity requirements and other protocols for submitting information. Market practice, including structure of confirmation messages and detail of economic fields, evolve over time, and the SDR should have the capability to adopt and set new formats. In addition, the SDR will need to support an appropriate set of connectivity methods; the

---

[94] *See id.*

[95] *See id.*

[96] *See id.* at 76,605

Commission should not, however, require SDRs to support all connectivity methods, as the costs to do so would be prohibitive.

The data formats of the SDR should be publicly available, and the SDR should publish Application Program Interfaces ("APIs") to permit direct submission by reporting parties and their agents (with appropriate validations by the SDR). The SDR is well positioned to establish standards for certain reporting attributes where these are not defined elsewhere.

DTCC believes market standard forms of data should be used, rather than a newly created set of reference data codes. New codes will need ongoing maintenance and require that specific processes be developed for reporting purposes, likely resulting in poorer quality data submissions. Currently, Markit Reference Entity Database ("RED")™ codes are widely used in trade confirmations for credit derivatives, and Reuters Instrument Codes ("RIC") are used in electronic messages for equity derivatives. These are subject to licensed use. DTCC supports the ongoing usage of licensed codes (with the provision that these codes be made available to small volume players at appropriately reduced costs).

IX. Cost-Benefit Considerations

TIW has approximately 1,700 customers, operating 17,000+ accounts for the global CDS market. Well over half of these are located in the U.S. and regularly transact business through dealers who are not U.S. persons. Unless the Commission encourages arrangements through which dealers who are non-U.S. persons can act as submitting parties for their U.S. customers, the costs of implementation are likely to impose significant burdens and costs on U.S. money managers, which are, in turn, likely to be passed through to U.S. consumers, such as individual investors, pension funds and state and local governments.

DTCC believes the current TIW model is efficient because it reuses data from the confirmation process, it ensures the quality of that data by performing asset servicing on the data and its users have agreed that the record in TIW has legally binding status. The asset servicing and legal status ensures that customers actively reconcile their internal data to TIW's data on an ongoing basis. This process occurs in place of multiple bilateral portfolio and trade level reconciliations and creates a more efficient model. In addition, for market events and updates, TIW has the benefit of multiple participants reviewing the calculations performed by DTCC processes, and the users appoint third party data servicers to act on their behalf while they retain the responsibility to maintain the most up-to-date record of the trade in TIW. This approach strengthens the quality of data in the TIW, but would not be available to a stand-alone, reporting-only solution.

X. Proposed Effective Date

The Commission understands that, after the date on which the Commission promulgates its final swap data reporting regulations, the industry will need a reasonable period of time to implement the requirements of those regulations.[97] Time may be required for entities to register as SEFs, DCMs, DCOs, or SDRs (or to update current registrations as DCMs or DCOs) pursuant to new Commission regulations concerning such entities.[98] Time may also be needed for registered entities and potential swap counterparties to adapt or create automated systems capable of fulfilling the requirements of Commission regulations concerning swap data reporting.[99] Accordingly, it may be appropriate for the Commission's final swap data reporting regulations to establish an effective date for the requirements contained in those regulations that is later than the date of their promulgation.[100]

DTCC believes the Commission should allow for an implementation date that is later than the date of promulgation of the final rules. Since final rules will not likely be available until Q2 2011, SDRs that apply for registration in July 2011 will do so largely having developed functionality based on the Proposed Rule, with a view to broad compliance as the priority over efficient usage and, therefore, with a potentially sub-optimal burden on reporting parties. Based on the final rules, SDRs and third party service providers will further enhance their offering. However, due to the complexity of, and the precision demanded from, the processes involved, an appropriate lead time should be anticipated to ensure systems are developed and implemented consistent with the intent of the regulation. Based on our experience in the development of similar systems, the time frame expected for the creation of functional specifications (4-6 weeks), technical specifications (4-6 weeks), actual development (8-10 weeks), regression testing (4-6 weeks), and user acceptance testing (6-8 weeks) – can be between 26-36 weeks.

Further, given this implementation would have to be market-wide, market-wide testing periods and design periods are likely to be even longer than these estimates, as market-wide initiatives need wide co-ordination. In that regard, DTCC notes that when it developed the TIW, in conjunction with market participants and the ODSG, systemic risk considerations dictated that it be implemented in phases:

- Year 1, design and build basic trade loading and storage capacity, with particular focus on data quality and inventory control. At the end of Year 1 all electronically confirmed new trades were automatically maintained in the Warehouse. To

[97] *See id*. at 76.597.

[98] *See id*.

[99] *See id*.

[100] *See id*.

coordinate this effort across the industry globally, one of the "big 4" accounting firms was engaged and expended considerable resources.

- Year 2, back load all legacy inter-dealer transactions and implementation of automated payment calculation and central settlement through CLS bank. The back loading effort itself was a separately managed effort lead by the "big 4" accounting firm, which remained as program coordinator for the overall effort. Design of life cycle event processing agreed.

- Year 3, back load dealer-to-customer trades, begin reporting of non-electronically confirmed trades and central processing of life cycle events.

While much of this infrastructure can form the core of the processes required by the Proposed Regulation, it is inevitable that substantial new industry-wide processes will have to be implemented, particularly (though not exclusively) around real-time reporting, as required under Part 43. These new processes will take substantial coordination, testing and development, as noted above, and this will ultimately depend on the adoption of the final rule.

Reporting parties' development would have to follow the publication of final specifications by the SDR and ideally that of third party vendors. These dependencies make it unlikely that the first reporting could be implemented prior to the April 1, 2012 implementation date. April 1 would still be an early target, but DTCC believes it could be a realistic date for the first reporting, with a later date consistent with the time frame discussed above more suitable for mandatory market-wide adoption. Imposing an earlier deadline may lead reporting parties to have to develop solutions ahead of this, which may later be replaced by enhanced functionality at the SDR or third party vendors. In addition, credit products are more reporting-ready than equities products, because credit products' current operational processes show higher levels of automation.

XI. General Comments

DTCC urges the Commission to consider the importance of harmonizing its regulations with those of the SEC. Currently, the reporting requirements between the CFTC and the SEC differ with respect to some key process steps. Specifically, the Commission proposes to require some verification of trade data prior to submission of additional data, whereas the SEC does not. While the Commission proposes to require the SEF and clearing agency to perform certain reporting tasks, the SEC's proposal retains a single reporting party for a trade. Additionally, the CFTC's proposal calls for valuation data, confirmation data and contract intrinsic data for credit and equities products.

To illustrate the narrow distinction between swaps and security-based swaps, consider the possibility of certain equity basket trades moving between narrow and broad based index intra-day, with stock price movements changing the constituent weightings under

the current definition of broad and narrow (*e.g.,* when the determinant of narrow is that five securities comprise more than 60% of the weighting). It would be beneficial to treat all credit and equity trades in a single process, utilizing the same reporting party and SDR, with all data available to the appropriate regulator, without building routines in reporting to test for market pricing, which may be required to determine index weightings, particularly when there are continuous price changes to the components.

DTCC believes these differences are meaningful enough to add complexity into the reporting processes and lead to omission or erroneous reporting, although there is a common goal in both processes with minimal differences. Where DTCC has made process recommendations that, in its view, will most likely achieve the shared policy goals, DTCC advocates that both the CFTC and the SEC adopt these recommendations. With respect to differences between the CFTC and SEC's proposed rules regarding reporting responsibilities, DTCC would expect certain third parties to report to the SDR, as they do to the TIW today, and foresees reporting by SEFs, clearing agents and portfolio compression services directly to the SDR. However, DTCC supports leaving ultimate responsibility for these arrangements with the reporting counterparty, which remains fully accountable for the representation of the trade in the SDR.

CONCLUSION

We appreciate the opportunity to comment on the Commission's Proposed Rule and provide the information set forth above. Should you wish to discuss these comments further, please contact me at 212-855-3240 or lthompson@dtcc.com.

Regards,

Larry E. Thompson
General Counsel

Larry E. Thompson
General Counsel

Tel: 212-855-3240
Fax:212-855-3279
lthompson @dtcc.com

The Depository Trust & Clearing Corporation
55 Water Street
New York, NY 10041-0099

Via Agency Website & Courier

February 7, 2011

David A. Stawick, Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Real-Time Public Reporting of Swap Transaction Data (RIN 3038-AD08)

Dear Mr. Stawick:

The Depository Trust & Clearing Corporation ("DTCC") appreciates the opportunity to provide comments to the Commodity Futures Trading Commission ("CFTC" or "Commission") on its proposed regulation regarding real-time public reporting of swap transaction data ("Proposed Regulation" or "Proposed Rule") under the Commodity Exchange Act ("CEA" or "Act").[1] DTCC's comments are provided with the goal of assisting the Commission in assessing how best to bring increased transparency and oversight to over-the-counter ("OTC") derivatives markets.

SUMMARY OF RESPONSE

DTCC supports the Commission's efforts to establish a comprehensive new framework for the regulation of swaps, including regulations that provide for the public availability of swap transaction and pricing data in real-time to enhance price discovery. As an industry utility that currently plays an important role in providing transparency to the derivatives market, as well as other markets, DTCC brings a unique perspective to the dialogue concerning the implementation of real-time public reporting requirements. In general, DTCC believes that the Commission's Proposed Rule should be fashioned in a way to ensure that the improvements to transparency and operations that have been achieved in the past few years are not lost, but rather built upon as new processes and systems are developed.

[1] *See* Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. 76,140 (December 7, 2010).

Importantly, DTCC urges the Commission and the Securities and Exchange Commission ("SEC") to harmonize their respective regulatory regimes establishing reporting processes for credit and equity derivatives, thereby eliminating the risk and costs associated with developing and maintaining two separate regulatory reporting processes when only a single, comprehensive process is needed. The agencies' current regulatory proposals exhibit significant similarities, but differ in the details, creating potential inconsistencies that could increase risks of inaccurate reporting, as well as operational costs for market participants and swap data repositories ("SDRs"). DTCC urges the CFTC and SEC, when possible, to formulate consistent requirements with respect to data elements, reporting parties and reportable price-forming events.

It is important to aggregate data across the market, and the Commission should set and apply consistent thresholds for block trades in public dissemination by both SDRs and any market operators who directly disseminate information. The level of public transparency from mandatory regulatory reporting should not vary, whether based on the choice of the SDR to which a trade is reported or the market over which it is traded. DTCC believes that there should be relatively few asset classes defined, as this drives an increased aggregation of service provision, reducing the risks of duplication or omission in public dissemination, limits the possibility of erroneous consolidation by the public of available data, and reduces the burden on market participants to connect and reconcile to multiple SDRs. In this regard, DTCC strongly supports the proposals for acceptance of all swaps in an asset class. This action promotes sound public policy. For example, such a requirement will discourage potential SDRs from cherry picking only those swaps that are considered "easy" - a practice which contributes to data fragmentation and could undermine any economic case for taking the "hard" swaps. The net effect would lead to "hard" swaps falling to the Commission, resulting in an unnecessary monetary burden and wasted taxpayer resources.

While DTCC generally supports the Commission's approach that allows third party service providers to support reporting parties in fulfilling their reporting obligations, there is concern that the proposed rules will cause confusion for reporting parties. The Commission's proposal allows unregulated, non-SDRs to accept data reporting from swap markets and to serve the function as a real-time disseminator to fulfill the public reporting requirements under Part 43. DTCC questions whether an unregulated entity should be fulfilling the Commission's dissemination requirements, when SDRs are created by the statute to collect the very same data for regulatory and reporting purposes. If such third party dissemination by a non-SDR were to be allowed under the final rule, it is important to clarify that reporting trade data to such a third party real-time disseminator specifically does not fulfill the reporting requirements that counterparties to transactions must meet under Part 45. DTCC intends to comment further on these issues in its comment letter in response to Part 49 dealing with SDR registration and duties.

It is DTCC's view that the responsibility for reporting should be required of a principal to the trade, (most commonly the swap dealer), with the ability to appoint an agent to perform the reporting on the principal's behalf. In addition, DTCC encourages the use of existing standard business processes to support the reporting obligations, as the use of existing processes will enhance the accuracy of the reported data, improving error and omission controls and reducing the costs involved in the creation of entirely new reporting and compliance systems and procedures. DTCC also calls for the extension of the application of Proposed Rule 45.7, reporting to a single SDR, to include real-time reporting.[2] This will increase the integrity of reporting and appropriately align the relationship through all subsequent reporting to the SDR. This sound public policy appears to be consistent with the requirements of the CEA.[3]

After the final rules are adopted, market participants must be given adequate time to develop and implement appropriate reporting and compliance systems and procedures. Once these systems are fully tested and operational, real-time public reporting requirements should be implemented gradually to avoid market disruptions as the market reacts to the increased transparency. A phased-in public reporting protocol, beginning with reporting requirements for the most liquid centrally cleared contracts, will allow the Commission to study the impact of transparency on the market, and if necessary, make adjustments to both the timing of the dissemination and the data that should be disseminated.

DTCC's detailed comments are preceded by a brief overview of DTCC and the Trade Information Warehouse ("TIW" or "Warehouse"), a centralized global repository for trade reporting and post-trade processing of OTC credit derivatives contracts, which is operated by DTCC's wholly-owned subsidiary, The Warehouse Trust Company LLC.[4]

OVERVIEW OF DTCC

DTCC, through its subsidiaries, provides clearing, settlement and information services for virtually all U.S. transactions in equities, corporate and municipal bonds, U.S. government securities and mortgage-backed securities transactions, money market instruments and OTC derivatives. DTCC is also a leading processor of mutual funds and annuity transactions, linking funds and insurance carriers with their distribution networks. DTCC does not currently operate a clearing agency for derivatives. However,

---

[2] *See* Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. 76,574, 76,604 (December 8, 2010).

[3] *See* CEA Section 2(a)(13(G) ("**Each** swap (whether cleared or uncleared) shall be reported to **a** registered swap data repository.") (emphasis added).

[4] DTCC filed a separate letter with the Commission on February 7, 2011 addressing Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. 76,574. DTCC believes there is significant overlap of the issues addressed in the two letters and urges Commission staff to consider both sets of comments.

DTCC owns a 50% equity interest in New York Portfolio Clearing, LLC ("NYPC")[5], which has been granted registration as a derivatives clearing organization ("DCO") by the CFTC.

DTCC has three wholly-owned subsidiaries which are registered clearing agencies under the Securities Exchange Act of 1934 ("Exchange Act"), subject to regulation by the SEC. These three clearing agency subsidiaries are The Depository Trust Company ("DTC"), National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC"). DTCC is owned by its users and operates as a not-for-profit utility with a fee structure based on cost recovery.

DTC currently provides custody and asset servicing for 3.6 million securities issues from the United States and 121 other countries and territories, valued at almost $34 trillion. In 2009, DTC settled more than $1.48 quadrillion in securities transactions. NSCC provides clearing, risk management, (for some securities) central counterparty services and a guarantee of completion for certain transactions. FICC provides clearing, risk management and central counterparty services (through its Government Securities Division) in the fixed income, mortgage backed and government securities markets. Thus, DTCC, through its subsidiaries, processes huge volumes of transactions – more than 30 billion a year – on an at-cost basis.

OVERVIEW OF THE TRADE INFORMATION WAREHOUSE

In November 2006, at the initiative of swap market participants, DTCC launched the Warehouse to operate and maintain the centralized global electronic database for virtually all position data on credit default swap ("CDS") contracts outstanding in the marketplace. Since the life cycle for CDS contracts can extend over five years, in 2007, DTCC "back-loaded" records in the Warehouse with information on over 2.2 million outstanding CDS contracts effected prior to the November 2006 implementation date. Today, data for over 95 percent of all OTC credit derivatives are captured in this automated environment. The Warehouse database currently represents about 98 percent of all credit derivative transactions in the global marketplace; constituting approximately 2.3 million contracts with a notional value of $29 trillion ($25.3 trillion electronically confirmed "gold" records and $3.7 trillion paper-confirmed "copper" records).[6]

In addition to repository services (as contemplated by the proposed rules relating to SDRs, the acceptance and public and regulatory dissemination of data reported by reporting counterparties), the Warehouse provides both legal recordkeeping and central

---

[5] NYSE Euronext owns the other 50% equity interest. Neither DTCC nor NYSE owns a majority of the equity interests in NYPC. NYPC has its own management team which controls the day to day operations of the company.

[6] Data provided as of December 31, 2010. For more information about the Trade Information Warehouse, please see http://www.dtcc.com/products/derivserv/suite/ps_index.php.

life cycle event processing for all swaps registered therein. By agreement with its 17,000+ users worldwide, the Warehouse maintains the most current CDS contract details on the official legal or "gold" record for both cleared and bilaterally-executed CDS transactions. The repository also stores key information on market participants' single-sided, non-legally binding or "copper" records for CDS transactions to help regulators and market participants gain a clearer and complete snapshot of the market's overall risk exposure to OTC credit derivatives instruments.

DTCC's Warehouse is also the first and only centralized global provider of life cycle event processing for OTC credit derivatives contract positions throughout their multi-year terms. Various events can occur, such as calculating payments and bilateral netting, settling payments, credit events, early termination and company renames and reorganizations, which require action to be taken by the parties to such CDS contracts. DTCC's Warehouse is equipped to automate the processing associated with those events and related actions. The performance of these functions by the Warehouse distinguishes it from any swap data repository that merely accepts and stores swap data information.

DISCUSSION OF PROPOSED REGULATIONS

Pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), the Proposed Regulation establishes a framework for the public availability of swap transaction and pricing data in real-time.[7] Under Section 2(a)(13)(A) of the CEA, the definition of "real-time public reporting" means reporting "data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed."[8]

The Proposed Rule applies to all swaps, including: (i) swaps subject to the mandatory clearing requirement (including those swaps that may qualify for a non-financial end-user exception from the mandatory clearing requirement); (ii) swaps not subject to the mandatory clearing requirement but cleared at a registered DCO; (iii) swaps not cleared at a registered DCO and reported to a registered SDR or to the Commission; and (iv) swaps "determined to be required to be cleared" under the CEA but not cleared.[9]

The Proposed Rule sets out the framework for: (i) the entities or persons that must be responsible for reporting swap transaction and pricing data; (ii) the entities or persons that must be responsible for publicly disseminating such data; (iii) the data fields and guidance on the appropriate order and format for data to be reported to the public in real-

---

[7] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[8] *See* Real-Time Public Reporting of Swap Transaction Data 75 Fed. Reg. at 76,140.

[9] *See id*. at 76,141.

time; (iv) the appropriate minimum size and time delay for block trades and large notional swaps; and (v) the proposed effective date and implementation schedule for the Proposed Rule.[10]

The Need for Harmonized Regulation

While DTCC strongly supports the development of thoughtful regulations regarding real-time trade reporting, it is important to put the Commission's Proposed Regulation in the context of the larger changes to the infrastructure of the OTC derivatives markets. With regard to real-time trade reporting, both this Commission and the SEC have proposed lengthy rulemakings. While these proposals are similar, they diverge in several respects, requiring market participants to address such differences when building out technology systems to handle reporting requirements. DTCC does not believe that the underlying differences between swaps and securities-based swaps necessitate differing regulatory treatment from a transaction reporting perspective.

DTCC urges the Commission and the SEC to harmonize their respective regulatory regimes establishing reporting and dissemination processes. A more cohesive approach would eliminate the risk and costs associated with developing and maintaining two separate regulatory reporting regimes when only a single, comprehensive framework is necessary. Moreover, the differing details in the two proposals create potential inconsistencies that could unnecessarily increase risks of inaccurate reporting and dissemination, as well as operational costs for market participants and SDRs. DTCC urges the CFTC and SEC to formulate a unified implementation schedule for real-time reporting with consistent requirements with respect to reporting transaction and pricing data, public dissemination of such data, specific data fields, and the calculation and reporting of block trades.

The Need for Aggregate and Consolidated Data

For real-time reporting, there must be consistent block trade definitions and thresholds across the global market. These should be representative of the entire market and reflective of market depth and liquidity for a given product – rather than reflective of localized subsets, based on narrow reporting populations, such as those defined by components of market infrastructure, counterparty location or fragmentation of reported information by reporting of trade executions to multiple SDRs. A localized block trade definition will provide participants with a potential means to avoid or delay public dissemination. Therefore, the Commission needs to determine how to establish consistent block trade rules and thresholds across the market.

[10] *See id.*

DTCC believes that the dissemination function under this rule should be performed by a registered SDR. Allowing other entities to fulfill the regulatory requirements of real-time dissemination may add to the processes by which counterparties are required to submit data and further complicate the rules for market participants. Furthermore, the rules and core principles that will govern SDRs will help ensure that such dissemination is carried out in a manner consistent with the public utility function that is being provided. Also, reliance on an unregistered and unregulated third party real time disseminator to fulfill regulatory dissemination requirements fails to provide an oversight mechanism for the Commission to ensure the accuracy and completeness of the data disseminated.

As DTCC will discuss in its Part 49 comment letter, SDRs should not own or commercialize the data. However, the issue here is the regulatory requirements of dissemination, not commercialized or value added services. The contributors of the data should retain the rights and ownership of such commercialized services after the real time reporting requirements are fulfilled.

Furthermore, having the SDR provide the dissemination function will streamline reporting and avoid any confusion that reporting to a third party non-SDR disseminator is somehow fulfilling a counterparty's reporting requirements under Section 45.

DTCC believes that there should be relatively few asset classes defined, as this drives increased aggregation of service provision, reducing the risks of duplication or omission in public dissemination, or erroneous consolidation by the public of available data, and reduces the burden on market participants to connect and reconcile among multiple SDRs.

DTCC strongly supports Proposed Rule 43.3(c)(2), which requires the acceptance of all swaps in an asset class. There is limited difference between offerings within an asset class, and a partial service offering will limit the provision of a consolidated public record, increase complexity and costs in reporting (with reporting parties having to maintain additional relationship and support additional rules in their systems), weaken the error correction process (introducing additional routing logic to this), and leave some swaps without a provider or process for real-time dissemination.

Service Providers and Swap Dealer Reporting

DTCC believes that the burden of reporting should mostly fall to dealers, who generally will have more highly automated systems and connectivity capabilities than many customers. Most importantly, DTCC believes the reporting party should be a party to the trade, and they should be responsible for contracting with any third party to fulfill any reporting obligation to the SDR on their behalf. DTCC's rationale for this arises from the benefits of unambiguous accountability for data quality in an SDR and the recognition that in reporting all events to an SDR, the parties will need to operate

reconciliation and control process to reconcile individual reports and the cumulative portfolio position against the SDR.

Furthermore, given that initial reporting will determine the SDR to which all subsequent data is reported, the initial reporting decision will need to align with a determination of the full cost burden and availability of services from the chosen SDR. DTCC believes this decision should be with the party who will bear this cost (*i.e.,* a party to the contract rather than an execution venue).

TIW has approximately 1,700 customers, operating 17,000+ accounts for the global CDS market. Well over half of these are located in the U.S. and regularly transact business through dealers who are not U.S. persons. Unless the Commission encourages arrangements through which dealers who are non-U.S. persons can act as submitting parties for their U.S. customers, the costs of implementation are likely to impose significant burdens and costs on U.S. money managers, which are, in turn, are likely to be passed through to U.S. consumers, such as individual investors, pension funds and state and local governments.

Efficiency and Integrity in Reporting

Pursuant to the CEA, SDRs shall have reasonable discretion in complying with the core principles outlined in Section 21 of the Act.[11] Accordingly, in order to avoid placing unreasonable and unnecessarily costly compliance burdens on regulated entities, DTCC encourages the Commission to adopt regulations that allow SDRs flexibility in determining the best reporting methods to promote complete, timely and accurate swap data is available to the Commission.

Reporting parties do not want to face excessive complexity in the reporting process. Issues with respect to determining the reporting party or the reporting requirements increase when considering that further regulations will need to be issued by other G20 countries to comply with the reporting requirements for all OTC derivatives to trade repositories. It should, however, be noted that many of these services can be fully integrated into existing business processes by middleware providers, as trade capture and confirmation services often are today.

DTCC believes the current TIW model is efficient because it reuses data from the confirmation process. Further, the TIW model ensures the quality of that data by performing asset servicing on the data and its users have agreed that the record in TIW has legally binding status. The asset servicing and legal status encourages customers to actively reconcile their internal data to TIW's data on an ongoing basis. This process

[11] *See* CEA Section 21(a)(3)(B) ("Unless otherwise determined by the Commission by rule or regulation, a swap data repository . . . shall have reasonable discretion in establishing the manner in which the swap data repository complies with the core principles described in [Section 21 of the CEA].").

replaces multiple bilateral portfolio and trade level reconciliations and creates a more efficient model. In addition, for market events and updates, TIW has the benefit of multiple participants reviewing the calculations performed by DTCC processes, and the users appoint third party data servicers to act on their behalf while they retain the responsibility to maintain the most up-to-date record of the trade in TIW. This approach strengthens the quality of data in the TIW, but would not be available for a stand-alone, reporting-only solution.

While real-time reporting is limited to price-forming events, it will also benefit from strong linkage to existing business processes, particularly linkage to trade capture and middleware or confirmation services. In some cases, the confirmation process is driving the booking of the trade into firms trade capture and risk systems and therefore represents the earliest point for feeding to a real-time reporting process. Real-time reporting would also benefit from additional integrity to error and omission reporting processes, with strong integration with existing business processes and subsequent reporting.

Therefore DTCC recommends that the Commission extend the reporting to a single SDR in Proposed Rule 45.7 to include real-time reporting.[12] DTCC believes this is required by the CEA[13] and will result in increased integrity of reporting, which is sound public policy. Furthermore, the Commission should not try to develop a specific nomenclature for real-time reporting, as it adds further complexity and inconsistency to usage of terms in the market.

Financial Products Markup Language ("FpML") ™ is broadly used as a standard in the OTC derivatives markets and should be the basis for reporting to an SDR. At times, SDRs will need to develop their own FpML tags, as often product development is ahead of formal market FpML development, and SDRs should have the discretion to do so. However, SDR-unique FpML tags should be converted to the market standard FpML in a reasonable time period. FpML has good coverage of trade terms, but will need to be extended to cover some of the data elements required in the Proposed Regulation.

Therefore a registered SDR should have flexibility to specify acceptable data formats, connectivity requirements and other protocols for submitting information. Market practice, including the structure of confirmation messages and detail of economic fields, evolve over time, and the SDR should have the capability to adopt and set new formats. In addition, the SDR will need to support an appropriate set of connectivity methods; the Commission should not, however, require SDRs to support all connectivity methods, as the costs to do so would be prohibitive.

---

[12] *See* Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. 76,604.

[13] *See* CEA Section 2(a)(13)(G) ("**Each** swap (whether cleared or uncleared) shall be reported to **a** registered swap data repository.") (emphasis added).

The data formats of the SDR should be publicly available, and the SDR should publish Application Program Interfaces ("APIs") to permit direct submission by reporting parties and their agents (with appropriate validations by the SDR). The SDR is well positioned to establish standards for certain reporting attributes in situations where these standards are not defined elsewhere.

DTCC believes market standard forms of data should be used, including reference data codes, rather than a newly created set of reference data codes. New codes will need ongoing maintenance and require that specific processes be developed for reporting purposes, likely resulting in poorer quality data submissions. Currently, Markit Reference Entity Database ("RED")™ codes are widely used in trade confirmations for credit derivatives, and Reuters Instrument Codes ("RIC") are used in electronic messages for equity derivatives. These are subject to licensed use. DTCC supports the ongoing usage of licensed codes (with the provision that these codes be made available to small volume players at appropriately reduced costs).

Phase-in and Implementation Timeline

Since final rules will not likely be available until Q2 2011, SDRs that apply for registration in July 2011 will do so largely having already developed functionality based on the Commission's proposed regulations, with a view to broad compliance as the priority over efficient usage and, therefore, with a potentially sub-optimal burden on reporting parties. Based on the final rules, SDRs and third party service providers will further enhance their offering. However, due to the complexity of, and the precision demanded from, the processes involved, a relatively long lead time should be expected – for example, a minimum of six months. Based on the final rules, SDRs and third party service providers will further enhance their offering. However, due to the complexity of, and the precision demanded from, the processes involved, an appropriate lead time should be anticipated to ensure systems are developed and implemented consistent with the intent of the regulation. Based on our experience in the development of similar systems, the time frame expected for the creation of functional specifications (4-6 weeks), technical specifications (4-6 weeks), actual development (8-10 weeks), regression testing (4-6 weeks), and user acceptance testing (6-8 weeks) – can be between 26-36 weeks.

Further, given that this implementation would have to be market-wide, market-wide testing periods and design periods are likely to be even longer than these estimates, as market-wide initiatives need wide co-ordination. In that regard, DTCC notes that when it developed the TIW in conjunction with market participants and the OTC Derivatives Supervisors Group ("ODSG"), systemic risk considerations dictated that it be implemented in phases:

- Year 1, design and build basic trade loading and storage capacity, with particular focus on data quality and inventory control. At the end of Year 1 all electronically confirmed new trades were automatically maintained in the Warehouse. To coordinate this effort across the industry globally, one of the "big 4" accounting firms was engaged and expended considerable resources.

- Year 2, back load all legacy inter-dealer transactions and implementation of automated payment calculation and central settlement through CLS bank. The back loading effort itself was a separately managed effort lead by the "big 4" accounting firm, which remained as program coordinator for the overall effort. Additionally in year 2, the design of life-cycle event processing was agreed.

- Year 3, back load dealer-to-customer trades, begin reporting of non-electronically confirmed trades and central processing of life-cycle events.

While much of this infrastructure can form the core of the processes required by the Commission's proposed regulations, it is inevitable that substantial new industry-wide processes will have to be implemented, particularly (though not exclusively) around real-time reporting. These new processes will take substantial coordination, testing and development, as noted above, and this will ultimately depend on the adoption of the final rules.

Reporting parties' development would have to follow the publication of final specifications by the SDR and ideally that of third party vendors. These dependencies make it unlikely that the first reporting could be implemented prior to the April 1, 2012 implementation date. April 1 would still be an early target, but DTCC believes it could be a realistic date for the first reporting, with a later date consistent with the time frame discussed above more suitable for mandatory market-wide adoption. Imposing an earlier deadline may lead reporting parties to have to develop solutions ahead of this, which may later be replaced by enhanced functionality at the SDR or third party vendors. In addition, credit products are more reporting-ready than equities products, because credit products' current operational processes show higher levels of automation.

The phasing proposals for public dissemination limits the initial information in the public domain to the most traded contracts, which may enable a better understanding of the impact of public dissemination of less liquid contracts. However, this does not mitigate the delivery risk for the reporting processes, as all processes have to be fully functional before the first reporting period.

DTCC experience with new industry-wide processes indicates there will likely be a "shakeout" period during which any number of problems with reported data will be discovered. The Commission should take this into account and provide a means of assuring that publicly disseminated information is of high quality before dissemination is permitted. In this regard, DTCC understands that TRACE was initially introduced with a

reporting deadline of more than an hour, which was tightened over a period of 18 months. DTCC would advocate a similar approach in this case, starting with a similar deadline and tightening over a similar period to TRACE.

The Need to Preserve Liquidity and Protect Anonymity

To date, DTCC has looked to regulators and market participants in determining the information which TIW disseminates publicly. The liquidity studies published by DTCC show that credit derivative trading is extremely thin on the majority of roughly 3,000 single name underlyers, and even this data is in aggregate across all maturities for a single reference entity.[14] In addition, the proposed execution model, when combined with public dissemination, may lead to potential unintentional disclosure. For example, a request for quote ("RFQ") process with 5 counterparties will likely enable those parties to link RFQs to specific executions, given that there is less than one trade per hour per underlying for the majority of credit derivative underlyings.[15]

DTCC's discussions with market participants and regulators prior to publishing data have revealed high levels of sensitivity to disclosing small data samples, particularly from narrow time periods, given that such disclosure may not preserve the anonymity of the trading parties. Currently, DTCC does not report credit default swap information beyond the top 1,000 names, because regulators and market participants have expressed concerns with respect to unintentional disclosure of parties as a result of low trading activity levels. Consistent with the Dodd-Frank Act, the Proposed Regulation should not require SDRs to make disclosures that could cause the unintentional disclosure of counterparty information.[16] DTCC urges the Commission to consider this issue fully in determining the phase-in period and the scope of public dissemination.

With respect to non-standardized swaps, it is difficult to compare price data across transactions that are non-standard and have different terms, particularly when only limited information as to the non standard feature (as presented by an indicator only) is available. As a result, publication of only price (or other limited) transaction data for non-standard transactions is unlikely to benefit market participants and may, in fact, be confusing or misleading. DTCC does not think that further trade attributes should be reported, as only the most technically sophisticated recipients would be able to interpret the additional published data. DTCC believes that any dissemination of information with respect to highly structured trades should be phased in, if required at all, and that no

---

[14] TOP 1000 SINGLE NAMES: AGGREGATED TRANSACTION DATA BY REFERENCE ENTITY, http://www.dtcc.com/products/derivserv/suite/ps_index.php.

[15] *See* Core Principles and Other Requirements for Swap Execution Facilities 76 Fed. Reg. 1214 (Jan. 7, 2011).

[16] *See* CEA Section 2(a)(13)(E)(i) ("With respect to the rule providing for the public availability of transaction and pricing data for swaps . . . , the rule promulgated by the Commission shall contain provisions . . . to ensure such information does not identify the participants.").

dissemination for these products should occur until an analysis is conducted as to the impact and potential for misleading the investing public.

Hours of Operation; Recordkeeping and Fees

DTCC believes that SDRs should operate 24/6, allowing for continuous access to data by regulators, including during periods where individual exchanges or other trading platforms are closed. Requiring such operating hours recognizes the global nature of trading in derivatives markets and the round-the-clock participation in these markets by U.S. persons. One of the primary issues that reporting to a repository is designed to address is the analysis of the consequential impact of the failure of an institution, an event which is not limited to U.S.-based standard hours.

DTCC's believes that real-time data should be retained for an appropriate period from the date of the price-forming event to allow re-publication of historic price data, and support the error correction process. As a practical matter, SDRs may need to hold all data to maturity of the contract. This will allow participants to complete any error correction processes, given that detection of an error may only be triggered by a subsequent event on that trade and recognition of an erroneous previous report at that stage.

Currently, TIW provides public data at no charge. DTCC envisions this practice continuing for both the weekly and periodic reporting available at www.dtcc.com and any real-time price reporting required by the Proposed Regulation. TIW considers the data reported to it through agreement with supervisors (and pursuant to regulation, after implementation of the Commission's final rules) to be that of the market participants, not TIW's own, and provides additional services only as approved by its user board of directors, or where contractually required, to the individual customers themselves. It is good public policy that the aggregating entity not itself use the data for commercial purposes, particularly where data is required to be reported to an aggregator serving a regulatory purpose. The data may then be made available to value added providers on a non-discriminatory basis, consistent with restrictions placed on the data by the data contributors themselves. DTCC operates the TIW on an at-cost basis and believes this is an appropriate model for the operation of an SDR, given the central role SDRs play in supporting regulator surveillance generally.

CONCLUSION

We appreciate the opportunity to comment on the Commission's Proposed Rule and provide the information set forth above. Should you wish to discuss these comments further, please contact me at 212-855-3240 or lthompson@dtcc.com.

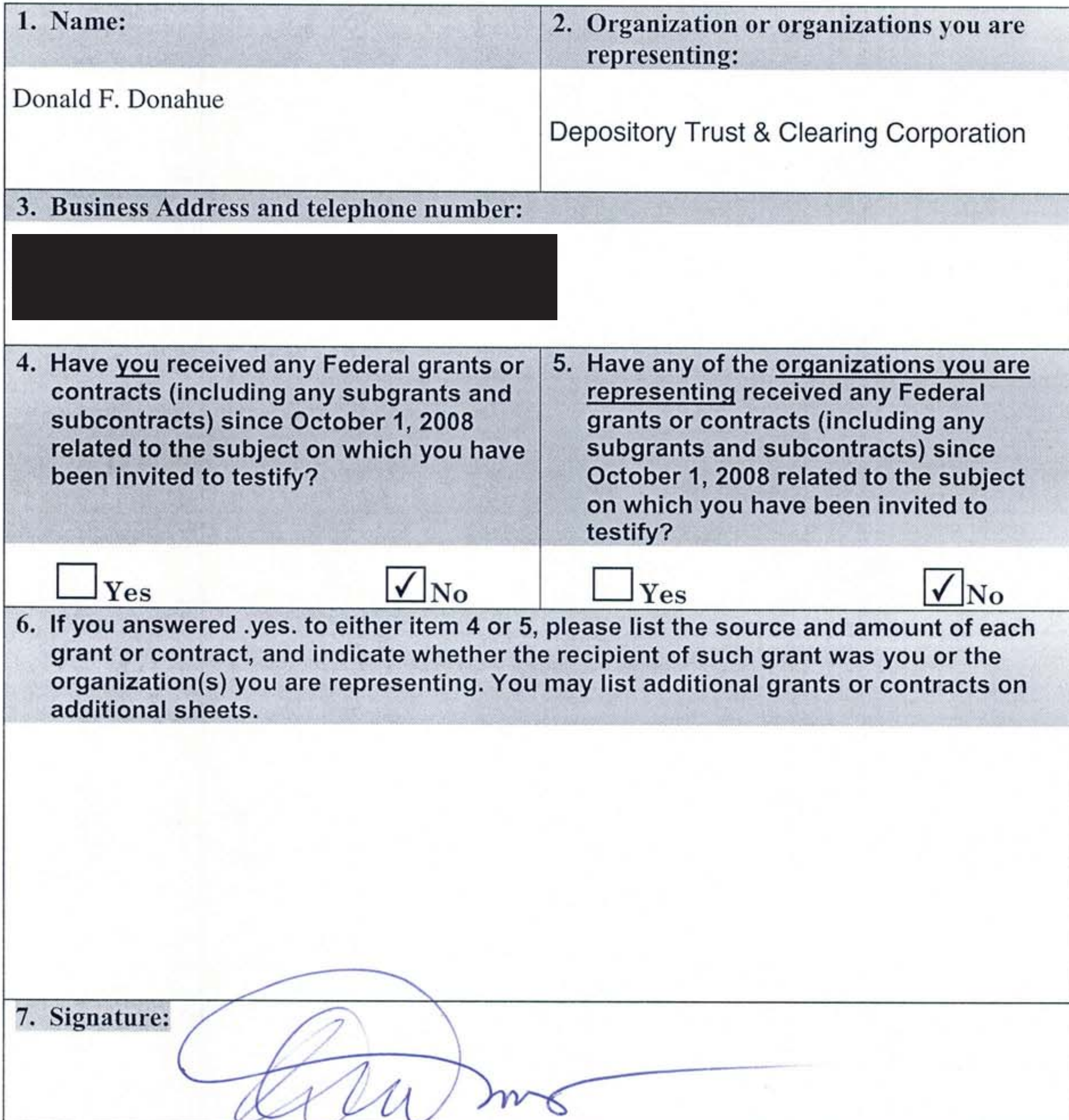
Regards,

Larry E. Thompson
General Counsel

United States House of Representatives
Committee on Financial Services

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.



1. Name:	**2. Organization or organizations you are representing:**
Donald F. Donahue	Depository Trust & Clearing Corporation

3. Business Address and telephone number:
[redacted]

4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	**5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?**
☐ Yes ☑ No	☐ Yes ☑ No

6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.

7. Signature:

Please attach a copy of this form to your written testimony.