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Via Agency Website & Courier

February 7, 2011

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

Re: Swap Data Recordkeeping and Reporting Requirements (RIN 3038-AD19)

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

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[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

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[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]

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[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]

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[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***

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[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.

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[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

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[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.

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[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.

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[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.

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[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.

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[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.

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[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.

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[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.

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[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]

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[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

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[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

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[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

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