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

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

Dear Chairman Schapiro and Chairman Gensler:

The Depository Trust & Clearing Corporation ("DTCC") appreciates the opportunity to provide additional comments related to the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or "Dodd-Frank") by the Securities and Exchange Commission ("SEC" or a "Commission") and the Commodity Futures Trading Commission ("CFTC" or a "Commission" and, together with the SEC, the "Commissions"). The following comments supplement those previously provided to the Commissions, which addressed specific substantive points related to the SEC and CFTC's proposed rules (the "Proposed Rules").[1]

DTCC would like to emphasize the importance of coordination between and among market participants and the three pillars of the Dodd-Frank infrastructure: swap execution facilities, designated contract markets, and national securities exchanges ("Trading Platforms"); clearers (clearing agencies and derivatives clearing organizations or "DCOs"); and swap data repositories ("SDRs"). The Dodd-Frank Act confers upon market participants the legal responsibility for swap data reporting, although they may use agents to report on their behalf.[2] Under the Dodd-Frank infrastructure, most trading

[1] *See, e.g.*, letter to CFTC, dated November 17, 2010; *see also* letter to SEC, dated November 26, 2010; letter to SEC, dated January 18, 2011; letter to SEC, dated January 24, 2011; letter to CFTC, dated February 7, 2011; letter to CFTC, dated February 7, 2011; letter to CFTC, dated February 22, 2011; letter to CFTC and SEC, dated June 3, 2011; letter to CFTC and SEC, dated June 10, 2011.

[2] Section 2(a)(13)(F) of the Commodity Exchange Act, as amended by Section 727 of the Dodd-Frank Act, provides that "Parties 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." (Emphasis added.) Section 13(m)(1)(F) of the Securities Exchange of 1934, as amended by Section 763 of the Dodd-Frank Act, provides that "Parties to a security-based swap (including agents of the parties to a security-based swap) ***shall be responsible for*** reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission." (Emphasis added.) Notably, the statutory language refers to non-parties who may

parties will likely use multiple and competitive Trading Platforms and DCOs, as well as engage in purely bilateral trading. Under the Proposed Rules, as envisioned by Dodd-Frank, these same Trading Platforms and DCOs will inevitably perform, on their users' behalf, a significant amount of the required reporting to SDRs. It is here that the application of the twin principles of open access and user choice, which are deeply imbedded in both the letter and the spirit of Dodd-Frank and the Proposed Rules, should be made explicit.

The Dodd-Frank Act and the Proposed Rules require that Trading Platforms, DCOs, and SDRs, maintain strict open access, not erect any artificial barriers to access, not impose anti-competitive burdens on the trading, clearing or reporting of transactions, and (at least in certain circumstances, which should be universal) allow for reporting counterparties to dictate where their transaction data is reported.[3] Given the ease with which any one provider, whether a Trading Platform, DCO or SDR, can disrupt the reporting implementation, additional clarity regarding the specific application of these general principles is essential. Without such clarity there is a serious risk of disputes, delay, and legal challenges.

Dodd-Frank clearly defines the SDR role as one that "collects and maintains information…with respect to… swaps entered into by third parties," and the SDR does this with "***the purpose of*** providing a centralized recordkeeping facility."[4] (Emphasis added.) The SDR has no interest as a principal to a trade or any interest other than to provide record keeping services for the benefit of regulators and the general public. The more detailed safeguards described below are necessary to protect this role.

DTCC urges the Commissions to promote the following principles to protect the implementation and integrity of the trade reporting process:

- *Vertical bundling of services should be explicitly prohibited*. While Trading Platforms and DCOs may also offer repository services, no provider of trading or clearing services should be permitted to simply declare itself the SDR for trades it

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report on behalf of parties as "agents" of the parties, suggesting that the parties are responsible for the failures of their agents to comply.

[3] *See, e.g.*, Core Principles and Other Requirements for Swap Execution Facilities, § 37.202(a) (1), (3), 76 Fed. Reg. 1,214, 1,242 (Jan. 7, 2011) (to be codified at 17 C.F.R. 37); Registration and Regulation of Security-Based Swap Execution Facilities, § 242.810(b)(1)–(3), 76 Fed. Reg. 10,948, 11,060 (Feb. 28, 2011) (to be codified at 17 C.F.R. 240, 242 & 249); Risk Management Requirements for Derivatives Clearing Organizations, § 39.12(a)(1), 76 Fed. Reg. 3,698, 3,719 (Jan. 20, 2011) (to be codified at 17 C.F.R. 39); Clearing Agency Standards for Operation and Governance, § 240.17Ad–22(b)(5)–(6), 76 Fed. Reg. 14,472, 14,538 (Mar. 16, 2011) (to be codified at 17 C.F.R. 240); Swap Data Repositories, §§ 49.19(b), 49.27(a)–(b), 75 Fed. Reg. 80,898, 80,932, 80,937–38 (Dec. 23, 2010) (to be codified at 17 C.F.R. 49); Security-Based Swap Data Repository Registration, Duties, and Core Principles, § 240.13n–4(c)(1), 75 Fed. Reg. 77,306, 77,368 (Dec. 10, 2010) (to be codified at 17 C.F.R. 240 & 249).

[4] Section 1(a)(48) of the Commodity Exchange Act, as amended by Section 721 of the Dodd-Frank Act; Section 3(a)(75) of the Securities Exchange Act of 1934, as amended by Section 761 of the Dodd-Frank Act.

facilitates.[5] This is particularly important, when such self-designation would be against the wishes of its customers. Market participants must have the right to contract separately for trading, clearing and repository services.[6] It is important to note here that, aside from being anti-competitive, this type of vertical bundling would also (a) reverse the principal-agent relationship explicitly set forth in Dodd-Frank (see footnote 4 above); and (b) add a layer of unnecessary risk to the control processes that market participants may determine are needed (*e.g.*, by forcing unwanted multiple control points). Ultimately, the risk of SDR data being incomplete and/or inaccurate would increase.

- *Cross-subsidies between services should also be explicitly prohibited*. The "no bundling" principle described above cannot be fully realized unless the fees charged for these services are determined based upon the true costs of providing each service (*i.e.*, there is no cross-subsidy between services). Nor is this requirement sufficient in itself. While market participants should be able to enjoy the economies of shared platforms (*e.g.*, DCO recordkeeping doubling as SDR recordkeeping where practical), the allocations of platform operating costs between services cannot be arbitrary. If a clearing provider were to simply charge for repository operations at the margin, for example, that would be a clear subsidy.[7] Allocations of the costs of ongoing shared services and generic development need to have a rational basis.

- *Open access is absolute*. Upstream providers should not be permitted to refuse or delay linkages with downstream providers (*e.g.*, Trading Platforms to DCOs and SDRs and DCOs to SDRs) who employ open access principles, such as publicized APIs, standard testing procedures, widely used commercially available links, and others, when there is customer demand for the linkages. Nor should upstream providers be permitted, for competitive or commercial reasons, to prioritize downstream linkages with lower customer demand over downstream linkages with higher customer demand. Likewise, all downstream providers must follow open access principles and must deal with all upstream providers on an impartial basis, regardless of whether they are affiliated or identical with such providers.

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[5] As a corollary, the CFTC's Proposed Regulation 49.10 requires SDRs to accept data with respect to all swaps in an asset class for which the SDR has registered, not just those swaps that are cleared. DTCC strenuously objects to arguments in favor of limiting reporting to cleared swaps. *See* CME letter to CFTC, dated February 22, 2011.

[6] This "no bundling" principle should expressly apply relative to all three services, not just reporting.

[7] We do not mean, by this example, that costs incurred by a DCO in the original building of its clearing platform ought to be re-allocated every time a new service is added. No company can operate that way (imagine IBM having to re-allocate all of its R&D costs with each new service), and the industry needs to be able to build on past developments and take advantage of prior development projects.

- *The Commissions should clarify rules protecting choice and open access generally*. To avoid any provider taking advantage of gaps in specific rules, the Commissions should clarify their rules regarding the following points, which will enhance enforcement: (a) prevent predatory or coercive pricing by providers engaged in any two or more of trading, clearing or repository services; and (b) prevent any other unfair or coercive direct or indirect linking or blocking of links between trading, clearing or repository services.

- *Similar rules should apply to prevent unfair horizontal bundling of services across asset classes*. Identical rules ought to apply within each of the trading, clearing and reporting services under the Dodd-Frank infrastructure to prevent unfair horizontal bundling of services across asset classes. Any provider offering trading clearing or repository services for one asset class should not be permitted any of the above bundling or tying when providing services for other asset classes.

Conclusion

DTCC appreciates the opportunity to offer these comments on the Commissions' implementation of the Dodd-Frank Act. Should the Commissions wish to discuss these comments further, please contact me at 212-855-3240 or lthompson@dtcc.com.

Sincerely yours,

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