



55 WATER STREET
NEW YORK, NY 10041-0099

TEL: [REDACTED]

May 4, 2015

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information [File No. S7-03-15]

Dear Mr. Fields,

The Depository Trust & Clearing Corporation (“DTCC”)¹ appreciates the opportunity to provide comments to the Securities and Exchange Commission (“SEC” or “Commission”) on proposed Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information (“Proposed Rules” or “Proposed Reg. SBSR”) under the Securities and Exchange Act of 1934 (“Exchange Act”).²

DTCC’s experience operating a swap data repository (“SDR”) provisionally registered with the Commodity Futures Trading Commission (“CFTC”), as well as other trade repositories internationally,³ enables it to provide useful insight with respect to requirements that create an effective regulatory reporting framework, facilitate the underlying statutory goal of transparency, and avoid downstream implementation challenges for market participants. We look forward to working with the Commission to effectuate a robust security-based (“SB”) swap data reporting and public dissemination system as envisioned by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).

¹ The Depository Trust & Clearing Corporation (“DTCC”) provides critical infrastructure to serve all participants in the financial industry, including investors, commercial end-users, broker-dealers, banks, insurance carriers, and mutual funds. DTCC operates as a cooperative that is owned collectively by its users and governed by a diverse Board of Directors. DTCC’s governance structure includes more than 300 shareholders.

² Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 Fed. Reg. 14,740 (Mar. 19, 2015) (“Proposed Rules”).

³ DTCC’s global trade repository (“GTR”) service supports data reporting in various jurisdictions, including in Australia, Canada, Europe, Japan, Singapore, and Hong Kong.

I. INTRODUCTION

DTCC has been providing regulated trade repository services since the commencement of CFTC swap data reporting in October 2012. For two and a half years, DTCC has been expanding its Global Trade Repository (“GTR”) services to support regulatory reporting mandates across the globe, resulting in over thirty-five major implementations in nine jurisdictions. We serve a client base of over 5,000 firms, representing 50,000 accounts which have over 35 million open positions globally.

Throughout this journey, DTCC has observed instances in which different reporting requirements and obligations on a cross-jurisdictional basis present significant compliance challenges to and raise costs for market participants, infrastructure providers, and trade repositories. While certain jurisdictions, such as Canada and Australia, have sought to recognize requirements in the U.S. and Europe, the remaining differences among the various regulatory reporting regimes have created complexities in global reporting for over-the-counter (“OTC”) derivatives. The disharmony among regulatory regimes has hampered the ability to effectively aggregate regulatory data and has been one factor that has contributed to diluted data quality.

Based on this perspective and our implementation experience with regulatory reporting regimes globally, DTCC strongly cautions the Commission to reconsider the deviations of certain of its reporting requirements from existing CFTC requirements and to weigh the regulatory benefits of any additional SEC requirements against the compliance costs and complexities for market participants and SB SDRs. Specifically, DTCC discusses in the following comments certain significant challenges introduced by additional SEC requirements, such as reporting of new identifiers, collection of data from non-reporting sides, and additional oversight burdens imposed on SB SDRs.

II. EXECUTIVE SUMMARY

Specifically, DTCC provides the following comments on Proposed Reg. SBSR and respectfully submits certain concerns and recommendations related to provisions under Security-Based Swap Data Repository Registration, Duties, and Core Principles (“Final SB SDR Rule”)⁴ and final Regulation SBSR (“Final Reg. SBSR”).⁵

1. A cleared SB swap should be linked to the alpha trade and reported to the same SB SDR to which the alpha trade was reported to preserve a comprehensive audit trail and complete view of the life of that trade and facilitate data aggregation.
2. The Commission should clarify the responsibilities of all market participants, including the non-reporting side, to ensure data quality. Final Reg. SBSR requires an SB SDR to communicate with the non-reporting side to verify the data reported as well as collect

⁴ Security-Based Swap Data Repository Registration, Duties, and Core Principles, 80 Fed. Reg. 14,438 (Mar. 19, 2015) (“Final SB SDR Rule”)

⁵ Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 Fed. Reg. 14,564 (Mar. 19, 2015) (“Final Reg. SBSR”).

additional unique identification code (“UIC”) information, effectively creating a dual-sided reporting and confirmation framework. Given the role of non-reporting sides in data reporting, DTCC requests that the Commission provide greater clarity regarding the non-reporting side’s obligations to comply with such communication attempts. Further, DTCC seeks clarity as to whether such verification or data collection efforts with the non-reporting side can be discharged through a third-party provider or by the reporting-side, via a delegated offering, reporting the trade as pre-verified and with all relevant IDs to the SB SDR. DTCC also respectfully recommends that, prior to establishing a final compliance schedule, the Commission seek feedback from those entities that will likely be non-reporting sides regarding the costs and burdens that would be associated with implementing these requirements.

In addition, DTCC does not believe that the Commission has fully taken into account the magnitude of the implementation costs associated with certain data confirmation requirements in its final rules. We recommend that the Commission re-evaluate the costs and benefits of these rules before the first compliance date or institute a delayed implementation schedule.

3. DTCC requests that the Commission establish a phased implementation schedule for certain UICs based on the recognition of an international standard. The development of these data fields should be harmonized on a cross-border basis, rather than on a bespoke basis per trade repository or jurisdiction.
4. To provide market participants with regulatory certainty, the Commission should consider adopting unambiguous compliance dates for the commencement of reporting. Establishing dates certain would allow reporting firms to more efficiently plan their development efforts and build to an SB SDR.
5. DTCC highlights certain concerns and respectfully submits recommendations regarding the SB SDR registration process, CCO related obligations, and an SB SDR’s wind-down procedures under the Final SB SDR Rule.
6. Following public dissemination, an SB SDR should be permitted to charge user fees on aggregated SB swap data, provide value-added services using SB swap data, and manage the redistribution of data that has been publicly disseminated.

III. GENERAL COMMENTS

1. Clearing transactions should be reported to the same SDR to which the alpha trade was reported to preserve an audit trail and facilitate data aggregation.

Contrary to Final Reg. SBSR⁶ and Proposed Reg. SBSR,⁷ DTCC respectfully disagrees with the Commission's view that clearing is not a lifecycle event and that the clearing agency may choose the SB SDR to which to report the beta and gamma trades.

A clearing agency's acceptance of a bilateral transaction for clearing results in novation. In order to facilitate data aggregation and preserve regulators' ready access to a digestible, complete audit trail of all transaction-level activity related to a particular swap transaction, DTCC strongly believes that novated beta and gamma trades should be reported to the same SB SDR where the original executed alpha trade resides. Maintaining all records related to an alpha trade in a single SB SDR will help to ensure that regulators are able to efficiently access and analyze all reports related to an SB swap regardless of where or how the transaction was executed and whether it is cleared.

Under the Proposed Rules, the Commission recognizes the importance of communicating with the original SB SDR that received the alpha SB swap report ("original SB SDR"). Specifically, the Commission proposes requiring those with a duty to report an SB swap that has been submitted to clearing to provide the registered clearing agency with the transaction ID of the SB swap and the identity of the SB SDR to which the alpha transaction will be reported or has been reported.⁸ DTCC believes that the clearing agency should communicate to the original SB SDR the status of clearing—whether an alpha swap is accepted or rejected—as well as the data pertaining to the subsequent novated trades, *i.e.*, the beta and gamma swaps.

In the preamble to the Proposed Rules, the Commission declined to propose that "reports of betas and gammas go to the same registered SDR that received the report of the associated alpha" because: (1) "the registered clearing agency would be required to report to a registered SDR that might not offer it the greatest ease of use or the lowest fees"; and (2) "the Commission preliminarily believes that it would have sufficient tools to be able to track related transactions across SDRs."⁹

For the following reasons, however, DTCC believes that such "greatest ease of use" argument is not a compelling justification for permitting a clearing agency to report to an SB SDR other than the original SB SDR. First, under the Proposed Rules, clearing agencies would be required to

⁶ See Final Reg. SBSR at 14,599, n.291 (stating that "[u]nder Rule 900(g), [an SB] swap that results from clearing is an independent [SB] swap and not a life cycle event of [an SB] swap that is submitted to clearing").

⁷ See Proposed Rules at 14,746 (proposing that a registered clearing agency "would have the duty to report" all clearing transactions and "would have the ability to choose the registered SDR").

⁸ *Id.* at 14,747.

⁹ *Id.* at 14,746.

report to the original SB SDR whether or not it has accepted the alpha trade for clearing.¹⁰ As a result, clearing agencies would already need to incur costs to establish connections with other SDRs regardless of whether it is permitted to report beta and gamma trades to an SB SDR of its choice.

Further, the Commission's proposed reporting process for clearing transactions would add a layer of complexity to the reporting framework, as those with a duty to report an SB swap that has been submitted for clearing would be required to provide the transaction ID of the SB swap to the clearing agency. The proposed process assumes that, in all instances, the transaction ID provided to the clearing agency would be accurate. DTCC has encountered issues under the CFTC swap data reporting framework wherein transaction identifiers have been inconsistently reported for the same trade. Only the SB SDR to which the alpha trade is reported will be able to ascertain whether the alpha transaction ID is valid based on its existing inventory. Rather than establishing a complex reporting process for clearing transactions and potentially introducing data quality issues, DTCC urges the Commission to consider preservation of high quality data and ready access to a full audit trail as the paramount interests that should govern the choice of SB SDR for clearing transactions. DTCC believes that these benefits outweigh the "greatest ease of use" consideration.

In terms of the Commission's statement that "it would have sufficient tools to be able to track related transactions across SDRs"¹¹ given its ability to link transactions using the transaction ID, DTCC believes that the Commission would encounter various implementation challenges in this regard. Based on its experience to date with other swap data reporting regimes in the U.S. and internationally, DTCC observes that trade repositories may store, maintain, and furnish data to regulators in formats different from other trade repositories, adding greater complexity to data aggregation efforts. DTCC believes, therefore, that the Commission would likely be forced to expend significant resources harmonizing data sets from multiple SDRs, thereby hindering the Commission's ready access to a comprehensive audit trail.

DTCC proposes another alternative to cleared swap reporting for the Commission's consideration.¹² The following alternative proposal would achieve the highest degree of data quality, avoid data duplication and fragmentation, and support data aggregation capabilities within an SB SDR. These recommendations are based on our extensive experience with trading platforms and clearinghouses that currently report swap data to DTCC:

- Any reporting side, including a platform or a clearing agency, should be required to onboard as a participant of an SDR to which it reports data.¹³

¹⁰ *See id.* at 14,747.

¹¹ *Id.* at 14,746.

¹² In the preamble to the Proposed Rules, the Commission considered various alternatives to proposed Rule 901(a). *See id.* at 14,745-46. DTCC offers this alternative proposal for the Commission's consideration.

¹³ As used in this letter, the term "onboard" means that an entity would become a user of an SB SDR and adhere to its policies and procedures.

- Where a trade has been executed on a platform, the platform should be the reporting side for the alpha transaction. The platform is best situated in all cases to report such trade data.¹⁴
- For clearing transactions, the clearing agency should be considered the reporting side and should be required to report whether the alpha trade has been accepted or rejected to the SB SDR where the alpha trade was reported.
- If an alpha trade has been accepted for clearing, then the clearing agency should be required to report the termination of the alpha swap, along with the beta and gamma records, to the same SB SDR to which the original swap was reported.

In its request for comment, the Commission inquires about the costs that registered SDRs would incur to implement policies and procedures addressing the circumstance “where the registered SDR receives a termination report of an alpha . . . before it receives the initial report of the alpha.”¹⁵ The 24-hour interim delay for alpha reporting introduces such out-of-sequence logic, which does not presently exist in any other jurisdiction as reporting timeframes are aligned for all trade events. DTCC believes that the 24-hour interim delay should be reconsidered, given the complexities in the reporting workflow that would arise if an SB SDR has not yet received an alpha swap report yet receives a termination message from a clearing agency on such alpha swap. Specifically, DTCC recommends that the Commission permit the SB SDR to manage the 24-hour interim delay by publicly disseminating submitted trade data on a 24-hour delayed basis.

2. The Commission should clarify the responsibilities of all market participants, including the non-reporting side, to ensure data quality.

DTCC appreciates the Commission’s recognition of the importance of ensuring that complete and accurate information is reported and maintained within SB SDRs and the promulgation of rules related to market participants’ data quality obligations. However, based on our experience implementing swap data reporting rules, DTCC believes that further clarity regarding market participants’ respective obligations is necessary and requests that the Commission clarify such obligations as follows.

The Commission should provide absolute clarity regarding the entity responsible for ensuring the accuracy and completeness of a record reported to an SB SDR. Preliminarily, DTCC notes that the counterparties to a trade are the only entities that can ensure the substantive accuracy of the terms of the trade. Further, DTCC believes that, under a single-sided reporting model, the obligation to ensure such substantive accuracy and completeness of a reported record should rest with the reporting side. In other words, as the entity with the regulatory responsibility, the

¹⁴ DTCC strongly opposes a novel, complex reporting process flow, in which a registered clearing agency would report platform-executed swaps that will be submitted for clearing. Not only would such an approach depart from current market practice, it would also create different reporting process flows for SEF executed and cleared trades versus SEF executed and uncleared trades. The complexity and potential for unintended consequences of such an approach would be amplified in the context of mixed swaps.

¹⁵ See Proposed Rules at 14,753.

reporting side should be primarily responsible for ensuring that the reported record is complete, accurate, and current, and reflects the terms agreed upon by the counterparties.

Separately, an SB SDR has an important role in facilitating data quality, including by establishing guidelines with respect to SB swap data content and implementing data validations on submitted data records. In addition, an SB SDR should be able to provide reports to the reporting side and non-reporting side—provided both sides have onboarded with the SB SDR—which assist the counterparties in reconciling their books and records against the reported data records.

DTCC notes that certain Commission rules require an SB SDR to communicate with non-reporting sides that may not have onboarded with the SDR. In order to enable an SB SDR to satisfy such obligations, the Commission should clarify that: (1) the non-reporting side has an obligation to verify the accuracy and completeness of a trade record reported to an SB SDR on its behalf; and (2) such obligation can be met if (a) a reporting-side, including a platform, a clearing agency, and an individual firm, specifies that the trade has been verified by both sides before reporting it to an SDR, or (b) a non-reporting side onboards with the SB SDR to which its trades are reported and performs such verification (“alternative compliance mechanism”).

For example, Final SB SDR Rule 240.13n-4(b) requires an SB SDR to “confirm . . . with both counterparties to the [SB swap] the accuracy of the data that was submitted.”¹⁶ Based on DTCC’s experience to date, imposing such a confirmation obligation solely on the SB SDR does not effectively promote the ultimate objective of ensuring high quality data, as a non-reporting side has no regulatory obligation to onboard with the SB SDR, provide its contact information to an SB SDR, and verify the accuracy of SB swap data reported on its behalf. Further, there is no mechanism for an SB SDR to compel a non-reporting side to respond to its verification requests. DTCC has encountered this very challenge under analogous CFTC rules and has observed very little effort on the part of non-reporting parties to reconcile trades reported on their behalf.

DTCC anticipates that similar issues related to non-reporting sides will make it problematic for an SB SDR to effectively comply with Final Reg. SBSR rule 906(a), which requires a non-reporting side to report certain identification data elements to an SB SDR, *e.g.*, trader ID and trading desk ID. In effect, the requirements under rules 906(a) and 13n-4(b) culminate in the creation of a dual-sided reporting framework, which is inconsistent with the Commission’s single-sided reporting approach generally. To ameliorate the burdens associated with these requirements, DTCC recommends that the Commission: (1) reconsider the need for non-reporting sides to report these additional identification data elements; or (2) clarify that non-reporting sides and SB SDRs may satisfy their respective obligations under these requirements through the alternative compliance mechanism, as described above.

¹⁶ The Commission explained that “[r]equiring the SDR to take steps regarding the accuracy of the transaction data submitted to it, should help ensure that the data submitted to the SDR is accurate and agreed to by both counterparties.” Final SB SDR Rule at 14,491. The Commission states that an SB SDR may fulfill such confirmation responsibilities “by developing reasonable policies and procedures that rely on confirmations completed by another entity, such as an SB SEF, clearing agency, or third party vendor, as long as such reliance is reasonable.” *Id.*

As a fundamental principle, DTCC notes that an SB SDR should not make any substantive modifications to a reported trade record unless instructed by a trade party to the record in the manner and format required for submissions. As stated above, the only entities with the ability to unequivocally ascertain substantive data accuracy are the counterparties to the trade and only those parties should be able to make substantive changes, including error corrections to a trade record. Chain of custody for the data must be preserved to ensure high quality data and preserve an audit trail. If an SB SDR identifies any obvious errors or omissions, its obligation is to notify the onboarded counterparties, urging them to correct and resubmit such trade report.

However, if the Commission views the SB SDR as primarily responsible for ensuring the substantive accuracy and completeness of a reported record, rather than the counterparties, DTCC believes that this would significantly expand the scope of an SDR's mission well beyond that contemplated by regulatory authorities in other jurisdictions. In effect, if the Commission takes this perspective, the final rules would impose upon SB SDRs novel, extremely onerous obligations akin to that of an SRO with market oversight responsibilities. Rather than operating fundamentally as a central facility for swap data reporting and recordkeeping,¹⁷ SB SDRs would assume substantive regulatory responsibilities to conduct confirmation functions for which they are not particularly well-suited, as explained above.

Specifically, SB SDRs would be forced to establish robust matching and confirmation systems that would be extremely costly to develop and, as the costs translate to onboarded counterparties, would materially raise the cost of reporting for market participants. In this regard, SB SDRs would need to develop internally—or contract with third parties to undertake—services that have the capability, in real-time, to receive all data records for executed SB swap trades and affirmatively confirm with both counterparties that the reported terms are accurate and all relevant data fields are populated so that the SB SDR could accept the report as a bona fide SB swap trade record.

DTCC does not believe that the Commission has fully taken into account the magnitude of such costs to SB SDRs and SB swap counterparties in adopting these aspects of its final rules. Such obligations could challenge the economic model of a viable SB SDR. Therefore, we recommend that the Commission re-evaluate these costs and the associated benefits before the first compliance date.

¹⁷ The function and purpose of an SB SDR is circumscribed by statute, which does not confer a registered SB SDR with authorities akin to those provided to a market regulator. *See* Exchange Act § 3(a)(75), 15 U.S.C. § 78c(a)(75). Under the Exchange Act, an SB SDR is defined as “any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps.” In other words, the core SB SDR services prescribed by statute involve the receipt and storage of SB swap data.

3. DTCC requests that the Commission establish a phased implementation schedule for certain unique identification codes (“UICs”) based on the recognition of an international standard. The development of these data fields should be harmonized on a cross-border basis, rather than on a bespoke basis per trade repository or jurisdiction.

DTCC has been a vocal advocate for the use of UICs in reporting and appreciates the Commission’s recognition that “[t]hey make reporting more efficient because providing just one code—a product ID, for example—can eliminate the need to report multiple data elements individually.”¹⁸ DTCC further agrees that codes “facilitate the standardized representation of [SB] swap data and thereby make reporting (and understanding reported data) more reliable and efficient.”¹⁹ Indeed, DTCC has been actively collaborating with the industry and regulatory authorities in pursuit of the goal of developing standardized codes for swap data.

For example, with respect to the legal entity identifier (“LEI”), DTCC has strongly supported the global effort to create an LEI solution, which allows for the unique identification of legally distinct entities to financial transactions and serves as a valuable building block for increasing transparency and risk mitigation in the financial markets. DTCC continues to support the use of a global LEI to accurately identify all market participants involved in SB swap transactions.

DTCC has concerns about the near-term feasibility of the requirements imposed on SB SDRs under Final Reg. SBSR rule 903 with respect to the trader ID, trading desk ID, branch ID, and product ID. Final Reg. SBSR rule 903 represents a significant departure from the current swap data reporting regimes and, indeed, there are no industry standards by which to define, create, standardize, and maintain these UICs.

Under Final Reg. SBSR rule 903(a), if the Commission has not recognized an internationally recognized standards-setting system (“IRSS”), or “a recognized system has not assigned a UIC to a particular person, unit of a person, or product (or has not endorsed a methodology for assigning transaction IDs),” the registered SB SDR is required to assign a UIC to that person, unit or person, or product “using its own methodology (or endorse a methodology for assigning transaction IDs).”²⁰ While the Commission has recognized the Global LEI System (“GLEIS”) as an IRSS for assigning LEIs,²¹ the Commission has not recognized an IRSS for other types of UICs, such as for trader IDs, trading desk IDs, branch IDs, and product IDs.²² Accordingly,

¹⁸ See Final Reg. SBSR at 14,634.

¹⁹ See *id.* at 14,634.

²⁰ The following UICs are specifically required by Regulation SBSR: counterparty ID, product ID, transaction ID, broker ID, branch ID, trading desk ID, trader ID, execution agent ID, platform ID, and ultimate parent ID. The term “UIC” means “a unique identification code assigned to a person, unit of a person, product, or transaction.” Final Reg. SBSR rule 900(qq).

²¹ See *id.* at 14,631.

²² See *id.* at 14,632.

under Final Reg. SBSR, a registered SDR is required to assign UICs for such UICs using its own methodology.²³

DTCC is concerned that permitting each SB SDR to establish its own UIC system in advance of an internationally recognized standard would generate great complexities and costs and frustrate data aggregation efforts. In our experience, it is very difficult and requires significant time, cost, and effort to adopt and conform to an international standard after proprietary models have been implemented. Given the multitude of network connections among market participants, third-party providers, and other relevant market structures that would facilitate the reporting of UICs, DTCC believes that more time is necessary to allow market participants and potential standard-setting bodies to develop these standards and deliver a high quality solution.

Absent such additional time for development, market participants will be further delayed in their implementation of an IRSS, as they will be focused on unraveling existing connections to conform to new, bespoke, ultimately less efficient solutions. Further, following the development of an IRSS, market participants would face the challenge of scrubbing data previously reported under bespoke systems in order to translate such data under the IRSS. In sum, if the Commission provides for additional time to develop an IRSS, it will reduce the time necessary to achieve the ultimate goal of having access to high data quality.

Accordingly, DTCC suggests that the Commission consider the following approach for certain UICs given complexity and privacy considerations. Before market participants are required to use certain UICs in reporting under the compliance schedule for Final Reg. SBSR, DTCC recommends that the Commission:

- For branch ID and product ID, consult and agree with market participants on a standard to be applied. An agreed upon public standard would provide greater certainty to reporting sides and SB SDRs to build to one uniform standard as opposed to bespoke models for each SDR. DTCC believes that SB SDRs will require approximately six to nine months following the acceptance of a standard to comply.²⁴
- For trading desk ID, consult with market participants to develop a standard and agree upon the extent to which trading desk ID may be known to other parties based upon such established standard. Potentially, trading desk ID can be considered for the first compliance date for Regulation SBSR, depending on the resolution of privacy concerns related to the disclosure of such information and the granularity of the standard applied. DTCC recommends a 6 month timeline after the standard is agreed upon for SB SDRs to comply.

²³ *See id.* In the preamble to Final Reg. SBSR, the Commission states that “requiring registered SDRs to develop their own UICs—but only for UICs that are not assigned by or through an IRSS that has been recognized by the Commission—will result in less confusion than the currently available alternatives, such as allowing each reporting side to utilize its own nomenclature conventions, which would subsequently have to be normalized by registered SDRs themselves or by the Commission.” *Id.* The Commission further “believes that market participants can work with entities that are likely to register with the Commission as SDRs on pilot programs for certain products and conventions for assigning UICs.” *Id.*

²⁴ Please see DTCC’s comments below regarding the proposed compliance schedule.

- For trader ID, consult with market participants to develop a standard.
 - This UIC contains the most sensitive information to be reported to an SB SDR.
 - As trader ID requires regular maintenance, *e.g.*, if a trader leaves a firm, such consultation must consider what entity will become the issuing agent of the standard and methodology for maintenance.
 - Further, as trader ID will also be used for Europe MiFID II reporting anticipated in 2017, DTCC recommends that a global standard be adopted before requiring the reporting of such field.
 - DTCC believes that a separate compliance date should apply to the trader ID field, given the privacy and international considerations. DTCC recommends a 9 month timeline for SB SDRs to implement to a global standard.

In general, DTCC suggests that the Commission consider a separate compliance schedule for UIC fields to allow sufficient time for SB SDRs to work collaboratively with market participants, including prospective UIC issuers, to develop an industry standard or, at minimum, an SB SDR-specific methodology, which takes into consideration related privacy concerns. In terms of privacy concerns related to the trader ID, the Commission's requirement to assign a trader ID would essentially mandate a registration process for natural persons. DTCC is concerned that creating this UIC involves significant legal and privacy challenges given the cross-border nature of registering individual names and IDs and laws governing such disclosure of natural persons within each jurisdiction. As a consequence, any issuer of these IDs will face significant challenges from a cost and complexity perspective in attempts to collect personal information on a global scale and to disclose such information to authorities or any other entities. DTCC recommends that the Commission re-evaluate the need for requiring trader ID and trading desk ID, particularly as it relates to non-reporting sides, given the attendant privacy concerns, reporting complexity, and costs that they will introduce to the current reporting framework.

Either solution—whether at the industry level or at each individual SB SDR—would require significant time to build a utility, register persons or entities, and provide such information publicly in order to enhance the efficient flow of information among market participants. DTCC notes that the risk of any delay in this regard is far outweighed by the need to appropriately address the privacy concerns and development issues related to these UICs.

- 4. To provide market participants with regulatory certainty, the Commission should consider adopting unambiguous compliance dates for the commencement of reporting. Establishing dates certain would allow reporting firms to more efficiently plan their development efforts and build to an SB SDR.***

The compliance schedule proposed for Final Reg. SBSR, which triggers reporting obligations for market participants upon SB SDR commencement of operations, is fraught with potential uncertainties and unintended consequences, including reduced competition among SB SDRs, higher prices for market participants, and disruption of reporting firms' planned development efforts.

As a preliminary matter, though the proposed compliance schedule is tied to the commencement of operations of a registered SB SDR in an asset class, “commencement of operations” is not defined. It is unclear how this date will be determined and how market participants will be made aware of this date and the resulting compliance dates.

In addition, DTCC is concerned that the proposed compliance schedule would confer a significant “first-mover” advantage that would ultimately be detrimental to not only a competitive SB SDR environment but also reporting entities’ development efforts. If a single SB SDR registers and commences operation for a particular asset class²⁵ in advance of other competing SB SDRs for the same asset class, given that market participants would not know with certainty whether another SDR will become registered before the compliance date with sufficient time for onboarding, market participants will likely be compelled to begin the onboarding process with the first registered SB SDR. Thereafter, even if another SB SDR—with which market participants have already connected for swap data reporting following the investment of millions of dollars—were to subsequently become registered, market participants may have already begun the onboarding process with the first registered SDR, effectively providing the first registered SDR with a significant competitive advantage and harming those reporting firms with established derivatives reporting infrastructures.²⁶

In establishing the compliance schedule for Regulation SBSR, the Commission has an opportunity to establish an orderly registration process based on a predictable compliance schedule. Such action would go far toward facilitating a successful launch of SB derivative swap reporting.

In order to provide for a competitive SB swap market and enable market participants to select and connect to an SB SDR based on their business preferences, DTCC recommends that the Commission adopt an unambiguous compliance timeline for Final Reg. SBSR. Specifically, DTCC recommends that Compliance Date 1 be set as the later of either: (1) March 18, 2016, the compliance date of the SDR rules; or (2) 3 months after the first SDR becomes registered.²⁷

²⁵ DTCC notes that, under the Commission’s proposed compliance schedule, compliance dates could be split by asset class, which would inject unnecessary complexity into the implementation process and potentially cause confusion among market participants.

²⁶ As described above, the uncertainty with respect to compliance means the “first mover(s)” could potentially benefit from the limited number of available registered SB SDRs, which could in turn result in an opportunity to exert unfair pricing power.

²⁷ The Commission states that “a delay in implementation to permit additional registrations would be inconsistent with the objectives of Title VII.” Proposed Rules at 14,769. While DTCC supports the prompt implementation of SB reporting, we believe that competitive concerns should not be discounted. DTCC submits that the ultimate objectives of Title VII will be best served by fostering a competitive environment among registered SB SDRs, which will provide an additional check on any unreasonable practices of a single SB SDR.

5. DTCC highlights certain concerns and respectfully submits recommendations regarding the SB SDR registration process, CCO related obligations, and an SB SDR's wind-down procedures under the Final SB SDR Rule.

Registration Process

As the Commission noted that its registration rules are “substantially similar” to those of the CFTC,²⁸ DTCC respectfully recommends that the Commission adopt a principles-based approach in reviewing an SB SDR’s registration materials. To the extent that the Commission’s requirements are substantially similar and analogous to CFTC provisions, DTCC believes that the Commission should recognize current SDR registration documents under the CFTC swap data reporting regime as substantially compliant with the Commission’s registration requirements. Such an approach would allow an SB SDR registrant to amend existing policies and procedures to incorporate references to the Commission’s SB swap data reporting rules, where appropriate, as opposed to generating entirely new documentation.

Adopting such an approach would, to the extent possible, minimize the time and costs for both the Commission and the SB SDR applicant associated with the SB SDR registration process and ensure that trade repositories registered with both the SEC and CFTC maintain consistent operating structures. DTCC believes that maintaining different policies and procedures for trade repositories with SEC and CFTC would be costly, as additional personnel resources would be required to manage and update the duplicative documentation. In turn, increased operating costs could potentially translate into increased costs for users of the trade repository services.

CCO Provision

DTCC believes that the Commission adopted Rule 13n-11(h) without providing a sufficient opportunity for public comment.²⁹ Accordingly, DTCC requests that the Commission re-propose Rule 13n-11(h) concerning interactions between SB SDR staff and the CCO to provide the public with an opportunity to comment on this requirement.

As a procedural matter, the proposing SB SDR release posited a number of *questions* for consideration, including whether the Commission should prohibit any officers, directors, or employees of an SDR from, directly or indirectly, taking any action to coerce, manipulate, mislead, or fraudulently influence the SDR’s CCO in the performance of his responsibilities.³⁰

²⁸ In the preamble to the Final SB SDR Rule, the Commission observed that “the CFTC’s Part 49 rules and Part 45 rules applicable to swap data repositories are substantially similar to the [Final SB SDR Rule].” Final SB SDR Rule at 14,457. The Commission further stated that “[b]ecause of the substantial similarity between the Commissions’ rules, to the extent that the SDRs are in compliance with the CFTC’s rules, they are likely already in substantial compliance with the Commission’s [Final SB SDR Rule].” *Id.*

²⁹ Final SB SDR Rule 13n-11(h) states that “[n]o officer, director, or employee of a [SB SDR] may directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence the [SB SDR’s] chief compliance officer [“CCO”] in the performance of his or her duties under this section.”

³⁰ Security-Based Swap Data Repository Registration, Duties, and Core Principles, 75 Fed. Reg. 77,306, 77,341 (Dec. 10, 2010) (“Proposed SB SDR Rules”).

The Commission did not inform the public that, based on the comments received in response to a single question, the Commission would adopt a final rule provision for SB SDRs, though rule text was not explicitly included in the proposing release. In addition, the preamble to the Final SB SDR Rule notes that a single commenter responded to the posed question, and based on that commenter's recommendation, the Commission decided to adopt the provision as Rule 13n-11(h).³¹ As this requirement was not presented to the public as a proposed rule, DTCC believes that commenters were not provided with sufficient notice and opportunity to comment.

As Rule 13n-11(h) did not benefit from more comprehensive public comment, the Commission's cost-benefit analysis did not consider the wide range of potential implications and cost impacts on prospective SB SDR registrants. Further, DTCC is concerned that the rule may substantially alter the scope of liability for an SB SDR in a ways that far exceed trade repository obligations and duties observed in other jurisdictions.

SB SDR Wind-Down Procedures

DTCC requests that the Commission phase the requirement for an SB SDR to provide a wind-down policy and procedure plan under Exhibit FF of Form SDR to follow one year after the SB SDR commences operations.³²

A phased approach in this regard would provide SB SDRs with sufficient opportunity to become operational before assessing potential successors and determining how best to comply with this requirement. Further, DTCC notes that the risk of an SB SDR withdrawal from registration within its first year is limited, given that an SB SDR would not have been registered without evidence of robust operational risk and business continuity procedures and sufficient capital to manage an orderly wind-down.

6. Following public dissemination, an SB SDR should be permitted to charge user fees on aggregated SB swap data, provide value-added services using SB swap data, and manage the redistribution of data that has been publicly disseminated.

In the Proposed Rules, the Commission requested comments regarding whether an SB SDR should be permitted to charge user fees for SB swap information that such SDR is required to publicly disseminate.³³

Following public dissemination, DTCC believes that SB SDRs should be permitted to commercialize aggregated SB swap data and charge fees for value-added data products that

³¹ In response to the Commission's request for comment, "one commenter recommended that the Commission adopt such a prohibition." Final SB SDR Rule at 14,515, citing Letters from Better Markets (dated Jan. 24, 2011 and Oct. 18, 2013). Based on this one commenter, the Commission "decided to adopt Rule 13n-11(h)." *See id.*

³² Exhibit FF to Form SDR calls for "a plan to ensure that the transaction data and position data that are recorded in the applicant continue to be maintained after the applicant withdraws from registration as a security-based swap data repository, which shall include procedures for transferring the transaction data and position data to the Commission or its designee (including another registered security-based swap data repository)." *Id.* at 14,562.

³³ Proposed Rules at 14,762.

incorporate the regulatorily mandated transaction data.³⁴ An SB SDR that is permitted to do so would likely be better equipped to bear the costs associated with operating a Commission-registered SB SDR. In turn, to the extent that such commercialization offsets the costs of operating the SDR, the costs of reporting for reporting counterparties would likely be reduced.

Furthermore, DTCC believes there should be no limitations on a registered trade repository's ability to manage the redistribution of data it has previously publicly disseminated. To do so would effectively tie the hands of the trade repository from a potential revenue stream that could be used to recover operating expenses, which could in turn translate to lower costs for market participants. In addition, SB SDRs must be able to protect themselves from claims related to data sourced or scraped from the trade repository and redistributed by others where there are quality issues with respect to data redistributed.

Typical restrictions on the use of data obtained from the trade repository's public dissemination might include restricting data to internal use without a license and limiting publishing, redistributing, databasing, archiving, creating derivative works, or using the data to compete with the trade repository or in a manner otherwise adverse to the trade repository. These are relatively standard clauses in data licenses.

IV. Specific Responses to Commission Requests for Comment

Question 9. Would a registered clearing agency have the information necessary to report a platform-executed alpha that will be submitted to clearing? If so, should the registered clearing agency, rather than the platform, be required to report the transaction? Why or why not? How long does it typically take between the execution of a security-based swap on a platform and submission to clearing?

DTCC believes that a platform is best placed to report the alpha trade because it has performed the execution and has all the relevant economic terms, IDs, and timestamps, to report to the SB SDR. Further, platforms are already established to perform this reporting obligation for other jurisdictions and complexity would be introduced if some trades are reported and others are not. Importantly, DTCC believes that requiring a clearing agency to report a platform-executed alpha swap would also have a data quality impact as the clearing agency may not be privy to all the reportable elements currently submitted by platforms.

³⁴ Conversely, DTCC agrees with the Commission that an SB SDR should not be permitted to charge fees for SB swap data that it is required to publicly disseminate pursuant to Final Reg. SBSR *before* the SB swap data has been publicly disseminated. *See id.*

Question 10. *Rule 901(d)(2), as adopted, requires the reporting side to report— “as applicable”—the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID with respect to the direct counterparty on the reporting side. As described above, the Commission is proposing that the registered clearing agency would be the reporting side for all clearing transactions to which it is a counterparty. Would the branch ID, broker ID, execution agent ID, trader ID, or trading desk ID ever be applicable to a registered clearing agency? Why or why not?*

DTCC does not believe that such information is needed for a clearing agency.

Question 11. *Rule 906(a), as adopted, provides a mechanism for a registered SDR to obtain the branch ID, broker ID, execution agent ID, trading ID, and trading desk ID—“as applicable”—for the non-reporting side of a security-based swap. Thus, mechanisms exist under Regulation SBSR, as adopted, for the Commission to learn the UICs, as applicable, for both sides of the alpha transaction. Would these UICs be applicable to the non-clearing agency side of a clearing transaction? Why or why not? If not, do you believe that the Commission should provide guidance that there is no requirement under Rule 906(a) to report the UICs for the non-clearing agency counterparty of a clearing transaction?*

DTCC believes the Commission should address the purpose of these IDs for clearing transactions. DTCC has noted above in Section III (3) the complexities associated with the collection of IDs for the non-reporting side and strongly urges the Commission to undertake a cost-benefit analysis to consider the need for these fields to be reported for the non-reporting side against the costs of compliance for SB SDRs and market participants.

Question 13. *Would other market participants be able to report clearing transactions or terminations of transactions submitted to clearing more efficiently or cost effectively than the registered clearing agency? What costs might counterparties incur if one of the sides of the alpha were assigned the duty to report a clearing transaction rather than the registered clearing agency?*

DTCC believes that the most efficient process for reporting clearing transactions would permit each reporting side of an alpha swap to select, at or before the time of execution, the SB SDR to which all data related to such alpha swap should be reported, including data for clearing transactions. This would not mean that the reporting side would be required to report clearing transaction data to the SB SDR, but rather that it should be able to instruct a clearing agency on where to send the data.

This process is the most efficient for several reasons. First, a counterparty would be able to fully reconcile all data reported to the Commission to ensure data accuracy and completeness. Second, an SB SDR would be able to establish policies and procedures to ensure that SB swap dealers perform such reconciliations. Third, the Commission would be able to more efficiently review and monitor an SB swap dealer’s reported data without having to encounter further complexity in aggregating data from multiple repositories. This process would create an efficient, simple market structure that promotes data completeness and accuracy and reduces implementation costs for both market participants and Commission.

Question 15. *Under proposed Rule 901(e)(1)(ii), a registered clearing agency would be required to report whether or not it has accepted a security-based swap for clearing. Should this information be required to be reported to the same registered SDR that receives the transaction report of the alpha? If not, how would the Commission and other relevant authorities be able to ascertain whether or not the alpha had been cleared? If so, what costs would be imposed on registered clearing agencies for having to report this transaction information to a registered SDR not of their choosing?*

DTCC believes the clearing agency should report the termination of the alpha trade and the associated beta and gamma records to the SB SDR that receives the alpha transaction. At minimum, the clearing agency would have to incur costs to perform the baseline effort of reporting to an alpha trade SB SDR that the alpha trade has been cleared and terminated. As such, the costs to provide additional information for the beta and gamma trades should be minimal. Further, the cost consideration should be weighed against the greater benefit that the Commission would receive from a complete and ready audit trail and simplified workflow which promotes greater data quality. Please refer to Section III (1) for further comments on this question.

Question 16. *Is it appropriate to require a registered clearing agency to become a participant of the alpha SDR solely as a result of reporting whether or not it has accepted an alpha for clearing? What costs would be imposed on registered clearing agencies as a result of this requirement? If a registered clearing agency did not become a participant of the alpha SDR solely by virtue of reporting the disposition of an alpha, in what other way should the registered clearing agency be required to report the disposition of an alpha such that the systems of the alpha SDR can accept and understand that report?*

DTCC believes that the clearing agency should become an onboarded participant of the SB SDR and adhere to the policy and procedures to report data in the format required by the SB SDR. In this regard, separate accommodations should not be made for clearing agencies, which should be required to comply with an SB SDR's policies and procedures to the same extent as other market participants. DTCC notes that this is the current practice for platforms and some clearing houses currently reporting to DTCC's SDR for CFTC reporting. Please also see the response provided in Section III (1) above.

Question 18. *Should platforms and registered clearing agencies be participants of the registered SDRs to which they report? If not, how would a registered SDR ensure that these persons provide data in a format required by the registered SDR?*

Any reporting side, including a platform or a clearing agency, should be required to be an onboarded participant of an SB SDR to which it reports data.

Question 19. *How might the policies and procedures of a registered SDR address the circumstance where the registered SDR receives a termination report of an alpha pursuant to proposed Rule 901(e)(1)(ii) before it receives the initial report of the alpha? What costs would registered SDRs incur to implement policies and procedures addressing this scenario?*

As stated in Section III (1) above, the introduction of the 24-hour interim delay for alpha reporting introduces out-of-sequence logic, which does not presently exist in any other jurisdiction as reporting timeframes are aligned for all trade events. DTCC believes that the 24-hour interim delay should be reconsidered, given the complexities in the reporting workflow that would arise if an SB SDR has not yet received an alpha swap report yet receives a termination message from a clearing agency on such alpha swap.

Question 32. *Should Rule 906(c) be expanded to include platforms and registered clearing agencies? Why or why not?*

Yes. The rule should be expanded to include platforms and registered clearing agencies for the reasons specified in response to questions 16 and 18 above.

Question 33. *Do you agree with the proposed conforming amendment to Rule 908(b) to include platforms and registered clearing agencies? Why or why not?*

Yes. It should be included if platforms or clearing agencies are to have reporting obligations.

Question 34. *Do you believe any other conforming amendments to Regulation SBSR are necessary or desirable in light of the Commission's proposal to extend reporting duties to platforms and registered clearing agencies as discussed above? If so, please describe.*

Rule 905 should be amended to include an obligation for platforms and clearing agencies to correct any misreported information to an SB SDR. Further, rule 905 should provide for the obligation of the non-reporting side to verify the trade record and an SB SDR's ability to rely upon any representations made by the parties that such trade has been matched, confirmed, or verified before being reported to the SB SDR. Please see Section III (2) above for further comments.

Question 35. *Do you believe that registered SDRs should be prohibited from charging users fees for or imposing usage restrictions on the security-based swap transaction information that registered SDRs are required to publicly disseminate under Rule 902(a)? Why or why not?*

DTCC believes that an SB SDR should not be prohibited from charging fees for information that has already been publicly disseminated that a non-SB SDR would otherwise be able to download to provide services. A number of entities are using publicly available SDR data to provide commercial, value-added services and have expressed interest for DTCC to assist in providing additional support for such value-added services. An SB SDR should not be restricted from providing such value-added services that a non-SB SDR could provide from the published and disseminated data. These value-added services could help to defray costs for an SB SDR and enable it to maintain lower costs for its participants.

Question 36. *What effects would result if registered SDRs were permitted to charge users fees for regulatorily mandated public dissemination even though CFTC-registered SDRs are prohibited from doing so?*

The SEC and CFTC standards should be the same.

Question 37. *Do means exist for registered SDRs to recoup their operating costs other than by imposing fees on users for receiving and using the publicly disseminated transaction data? If so, please describe those means.*

SDRs should be able to charge for value-added services that are related to the data, e.g. post-trade services to perform asset-servicing on such records to facilitate lifecycle event processing.

Question 38. *Should a registered SDR be prohibited from imposing any usage restrictions on the regulatorily mandated security-based swap transaction data that it publicly disseminates? Why or why not? What kinds of usage restrictions are typically included in user agreements for other types of market data? What would be the effect of prohibiting such usage restrictions from being imposed on the regulatorily mandated security-based swap transaction information that is publicly disseminated by registered SDRs?*

Users should be required to attribute any use of an SB SDR's data to that SB SDR. A user should be limited to using the data for internal use. Specifically, a user of the data should not be permitted to redistribute the data without first engaging the SB SDR and agreeing on licensing terms.

Question 39. *Should a registered SDR be permitted to impose a prohibition against bulk re-dissemination of the regulatorily mandated transaction data that it publicly disseminates? Why or why not?*

Please see the response to question 38.

Question 41. *Would the proposed compliance timeline allow reporting parties and registered SDRs sufficient time to implement the requirements of Regulation SBSR? Why or why not? If not, why not and what alternative time period(s) of time would be sufficient?*

Section III above addresses DTCC's concerns regarding significant aspects of the rules that will make the proposed compliance timeline problematic. DTCC provides recommended approaches to the compliance timeline specifically related to UICs in Section III (3) and a uniform compliance date in Section III (4).

Question 42. *Do you generally agree with the Commission's proposed approach to calculating the compliance dates based on the first registered SDR to accept security-based swaps in a particular asset class commencing operations as a registered SDR? If not, how should the Commission calculate compliance dates? If the Commission used an alternative method for*

calculating compliance dates, how could the Commission prevent or minimize evasion of the public dissemination requirement?

DTCC does not agree with the approach. Please refer to Section III (4) for DTCC's recommended approach on compliance dates.

Question 43. *Do you believe that the proposed implementation schedule and SDR registration process would minimize potential "first mover" advantages for the first SDR to register? Why or why not? How could the Commission further minimize any potential "first mover" advantage?*

DTCC does not believe the proposed approach would minimize the first mover advantage as discussed in Section III (4).

Question 44. *Do you agree that the current infrastructure that supports swap reporting also can be used to support security-based swap reporting? Why or why not? If so, how much time would be necessary for participants and registered SDRs to make necessary changes to report security-based swaps to registered SDRs? If not, how much time would be needed to create the necessary infrastructure?*

While the reportable data fields are largely similar, there are some key differences in terms of the scope of trades to be reported, e.g. prime brokerage trades, the required UIC fields, and SB SDR obligations with respect to non-reporting sides, which significantly impacts the implementation timeline. Please see Section III for DTCC's recommendations related to the sequencing of certain compliance dates to address these differences.

Question 49. *Do you believe that registered SDRs will be able to time stamp and assign transaction IDs to pre-enactment and transitional security-based swaps even if they are reported prior to Compliance Date 1? Why or why not? If not, would registered SDRs require additional time to comply with the requirements to time stamp and/or assign transaction IDs?*

DTCC's SDR currently supports submission timestamps for records reported to its SDR. However, for transaction IDs, there is no current requirement for SDRs to provide such IDs to reporting parties as described in Final Reg. SBSR rule 901(g). Rather, a "first touch principle" is applied whereby (1) the platform provides the transaction ID, if a trade is electronically executed, or (2) one of the counterparties issues the ID, if the trade is bilaterally executed. Further, under the existing CFTC swap data reporting framework, an SDR is not required to issue a transaction ID for pre-enactment or transitional swaps, but rather the reporting side must submit its internal transaction ID.

DTCC proposes that the Commission consider adopting the same approach for pre-enactment and transitional swaps. In addition, the Commission should recognize the "first touch principle" as an acceptable standard for SB SDRs to meet their 901(g) obligations. Such recognition would avoid any unnecessary fragmentation of the current process, further costs to SB SDRs and market participants, and additional complexity to support two different standards.

Question 51. *Do you believe that registered SDRs would be able to satisfy their obligations by proposed Compliance Date 2? Why or why not? If nine months after the first registered SDR that accepts security-based swaps in a particular asset class commences operations as a registered SDR is not a sufficient amount of time to comply, what amount of time would be sufficient?*

DTCC believes that nine months after the first compliance date for Regulation SBSR should be a sufficient timeframe for SB SDRs to comply, provided that the complexities related to the first compliance date and the issues we have outlined in this letter are resolved.

Question 52. *Do commenters agree with the Commission's preliminary belief that persons likely to apply for registration as SDRs with the Commission would already be registered with the CFTC as swap data repositories? If so, how easily and how quickly could the systems and processes that support swap data dissemination be configured to support security-based swap data dissemination? Would this process take more or less than the 3 months that is proposed? Why or why not?*

DTCC does not agree with the Commission's preliminary belief, as the differences in the CFTC requirements and the SEC requirements are significant enough to potentially discourage SDRs from applying as SB SDRs. For example, SB SDR applicants would be forced to expand their operations considerably, particularly to address the confirmation functions and code issuance responsibilities. While applicants may have SDRs, DTCC believes that existing SDRs would need to conduct cost-benefit analyses with respect to meeting these additional requirements.

Conclusion

Should the Commission wish to discuss these comments further, please contact me at [REDACTED] or [REDACTED], or Marisol Collazo at [REDACTED] or [REDACTED].

Sincerely yours,



Larry E. Thompson
Vice Chairman and General Counsel of DTCC

cc: Ms. Marisol Collazo, Chief Executive Officer, DTCC Data Repository (U.S.) LLC
The Honorable Mary Jo White, Chair
The Honorable Luis Aguilar, Commissioner
The Honorable Daniel Gallagher, Commissioner
The Honorable Kara Stein, Commissioner
The Honorable Michael Piwowar, Commissioner
Mr. Stephen Luparello, Director, Division of Trading and Markets
Mr. Michael Gaw, Assistant Director, Division of Trading and Markets