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

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

Dear Ms. Murphy:

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

Summary of Response

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

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

² See *id.* at 64,653-54.

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

Overview of DTCC

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

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

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

Overview of the Trade Information Warehouse

Industry Established Trade Information Warehouse to Increase Transparency, Bring Stability

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

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

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

Warehouse “Gold” Records Are Binding, Legal Electronic Record between Counterparties

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

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

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

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

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

Discussion of Interim Final Temporary Rule

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

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

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

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

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

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

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

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

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

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

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

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

⁹ See Exchange Act Section 15F(g).

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

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

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

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

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

Rule 13Aa-2T(c) requires only one party to report pre-enactment security-based swap transaction data, and depending on the classification of the counterparties as major security-based swap participants¹² or security-based swap dealers,¹³ it is possible that the counterparties may select the responsible party.¹⁴ This reporting arrangement differs from current market practice and is inconsistent with the existing repository reporting infrastructure. Currently, the receipt of information from both parties to a security-based swap data repository guarantees reconciliation of the information and confirmation that the information entering into the Warehouse is accurate. Reducing the reporting obligation to only one side leaves open the possibility of incorrect data and jeopardizes the value placed on binding, legal electronic records such as our “gold” records for CDS. Further, a single-reporting regime will confront international legal obstacles, such as domestic privacy laws, which will restrict the reporting party’s ability to disclose counterparty information. Bilateral reporting obligations alleviate some of these burdens and produce more valuable, trustworthy information which can be relied upon by counterparties and regulators.

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

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

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

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

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

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

Conclusion

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

Regards,



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¹⁶ See Exchange Act Section 13.