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Via Agency Website & Courier

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

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

Dear Ms. Murphy:

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

SUMMARY OF RESPONSE

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

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

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

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

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

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

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

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

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

OVERVIEW OF DTCC

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

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

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

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

OVERVIEW OF THE TRADE INFORMATION WAREHOUSE

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

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

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

DISCUSSION OF PROPOSED REGULATIONS

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

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

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

I. WHO MUST REPORT

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

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

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

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

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

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

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

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

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

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

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

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

Role of Third Parties

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

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

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

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

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

II. INFORMATION TO BE REPORTED IN REAL-TIME

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

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

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

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

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

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

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

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

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

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

III. ADDITIONAL REPORTING OF REGULATORY INFORMATION

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

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

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

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

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

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

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

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

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

A. Reporting Timeframes for Regulatory Information

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

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

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

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

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

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

B. REPORTING OF LIFE CYCLE EVENTS

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

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

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

C. ADDITIONAL REQUIREMENTS APPLICABLE TO REGISTERED SDRS OR PARTICIPANTS

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

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

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

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

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

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

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

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

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

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

Transaction ID and Unique Identification Code

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

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

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

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

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

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

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

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

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

Parent and Affiliate Information

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

Time Stamp

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

D. Reporting of Data for Historical SBSs

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

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

IV. Public Dissemination of Security-Based Swap Transaction Information

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

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

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

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

A. REGISTERED SDRS AS ENTITIES WITH DUTY TO DISSEMINATE

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

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

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

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

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

B. SBS INFORMATION THAT WILL NOT BE DISSEMINATED

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

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

C. OPERATING HOURS OF REGISTERED SDRS

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

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

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

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

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

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

V. POLICIES AND PROCEDURES OF REGISTERED SDRS

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

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

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

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

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

VI. JURISDICTIONAL MATTERS

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

A. WHEN IS A SBS SUBJECT TO REGULATION SBSR?

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

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

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

B. WHEN IS A COUNTERPARTY TO A SBS SUBJECT TO REGULATION SBSR?

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

Aggregate Data

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

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

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

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

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

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

VII. FAIR AND NON-DISCRIMINATORY ACCESS TO SBS MARKET DATA

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

VIII. IMPLEMENTATION TIMEFRAMES

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

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

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

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

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

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

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

Deferral

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

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

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

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

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

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

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

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

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

IX. GENERAL REQUEST FOR COMMENT

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

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

Harmonization

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

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

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

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

X. COST-BENEFIT CONSIDERATIONS

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

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

CONCLUSION

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

Regards,

Larry E. Thompson
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