DTCC

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September 22, 2017

The Honorable Jay Clayton, Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: DTCC Data Repository (U.S.) LLC Request for Exemptive or Interpretive Relief from
            Certain Provisions of Section 13(n)(1) of the Securities Exchange Act of 1934 ("Exchange
            Act") and the Rules and Regulations Thereunder

Dear Chairman Clayton,

On September 18, 2017, DTCC Data Repository (U.S.) LLC ("DDR") formally submitted an amended
application for registration by the Securities and Exchange Commission ("SEC" or the "Commission") as a
security-based swap data repository ("SBSDR").[1] The submission of this Application marks an important
milestone in the Commission's and the industry's efforts to implement effective security-based swap
data reporting, and follows months of engagement and cooperation between Commission staff ("Staff")
and DTCC employees concerning the manner in which DDR would comply with the detailed
requirements of the Security-Based Swap Data Repository Registration, Duties, and Core Principles (the
"SBSDR Rule")[2] and applicable provisions of Regulation SBSR-Reporting and Dissemination of Security-
Based Swap Information ("Regulation SBSR").[3]

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[1] DDR's Form SDR and nonconfidential exhibits, as amended (the "Application"), are available at
https://www.sec.gov/cgi-bin/browse-edgar?company=dtcc&owner=exclude&action=getcompany. DDR is a
wholly-owned indirect subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DDR was provisionally
registered as a swap data repository by the Commodity Futures Trading Commission ("CFTC") on September 19,
2012, and as a designated or recognized trade repository in all Canadian provinces and territories in 2014 and
2016. Affiliates of DDR operate other regulated trade repositories in Europe and Asia.
[2] Exchange Act Release 34-74246, 80 Fed. Reg. 14438 (March 19, 2015)(codified at 17 C.F.R §240.13n-1 et seq.
(2016)).
[3] Exchange Act Release 34-74244, 80 Fed. Reg. 14563 (March 19, 2015); Exchange Act Release 34-78321, 81 Fed.
Reg. 53546 (August 12, 2016)(codified at 17 C.F.R. §242.900-909 (2016)).

As discussed during our meeting with you on September 6, 2017, we remain concerned that the Commission or other parties could, at a future date, question whether the methods that DDR intends to use to satisfy certain aspects of the SBSDR Rule and Regulation SBSR are fully compliant. These issues have been discussed at length with Staff, and DTCC greatly appreciates Staff's diligent and cooperative efforts to identify solutions that would address these concerns. However, we believe that formal guidance from the Commission would alleviate our continued reservations about the risks to DDR from any future questions concerning the adequacy of DDR's compliance with the SBSDR Rule and Regulation SBSR. Accordingly, DDR respectfully requests that the Commission issue either limited exemptions or interpretive guidance – which could be through concurrence with the following analysis in the approval order – regarding the specific elements of the SBSDR Rule and Regulation SBSR that govern the matters outlined below.

More generally, DTCC would like to reiterate our understanding that, if the Commission registers DDR as an SBSDR, such registration will indicate that the Commission finds that the policies and procedures described in the Application and this letter are generally compliant with the Commission's rules, regulations and guidance.

DTCC shares the Commission's ultimate goal of securing high-quality data concerning swap transactions so that the Commission and other financial regulators can effectively assess swap market risks and their impact on systemic risk in the financial industry. DTCC has substantial experience operating trade repositories, and we welcome the opportunity to employ that experience in continued dialogue among Staff, registered SBSDRs and the industry in order to further refine swap and security-based swap data reporting procedures and, if necessary, the rules governing swap and security-based swap data reporting.

The first section below outlines three rules for which DTCC seeks a limited exemption or interpretive guidance. Each rule involves an SBSDR reaching out to the counterparty to a security-based swap where such counterparty is not responsible itself under the rules to report the security-based swap (the "non-reporting side"). The relief sought is solely with respect to reaching out to a non-reporting side which has chosen not to become a member of the SBSDR. The second section supports an exemption regarding the use of industry standard identifiers that DTCC believes the Commission is considering and requests that the exemption be extended to the public dissemination of security-based swap data.

I.   Accuracy and Completeness of Data

A.   Rule 13n-4(b)(3)

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") amended the Exchange Act to provide that one of the duties of an SBSDR is to confirm with both counterparties the accuracy of data submitted.[4] Rule 13n-4(b)(3) codifies this requirement by setting out the duty of an SBSDR to confirm with both counterparties to the security-based swap the accuracy of the data that was submitted.[5]

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[4] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-204, §763, 124 Stat. 1376, 1762 (2010). A similar provision exists for swap data repositories under the Commodity Exchange Act.Id. at §728.
[5] 17 C.F.R §240.13n-4(b)(3)(2016).

While the duty of the SBSDR is to confirm the accuracy of the data with both counterparties, the obligation to report a security-based swap to the Commission is only required of the reporting side.[6] Yet the statute and regulations provide no mechanism for the SBSDR to compel the non-reporting side to cooperate in the confirmation process and no incentive for the non-reporting side to do so. Several commenters on the Application objected to DDR requiring the non-reporting side to establish membership ("on-board") in order to verify trade information, referring to it as a burden imposed, or authority extended outside of, the Exchange Act and its rules.[7]

DTCC worked with Staff to find a way to reach out to those counterparties that have no legal obligation to on-board because they have no reporting obligation and, therefore, have chosen not to be clients of DDR (a "non-User"). To respond to the rule in a manner that does not create an inherent conflict among the regulations, as well as addressing the spirit of Dodd-Frank in the most efficient and least burdensome way possible, DDR proposed policies and procedures that require its clients ("Users"), whether they were the reporting side or the non-reporting side, to verify the accuracy of a trade to which they are a counterparty. These policies and procedures enable DDR to meet its duty as far as is reasonably possible.[8] Certainly, firms can voluntarily choose to become a User in order to meet any obligations the Commission imposes upon them as market participants.

Accordingly, operationally and legally, DDR is limited with respect to outreach to the non-reporting side if they are not Users. A reasonable interpretation of Dodd-Frank and the SBSDR Rule would be that an SBSDR must confirm the accuracy of the security-based swap with the counterparties who are its Users.

      B.   Rule 13n-5(b)(1)(iii)

Rule 13n-5 prescribes data collection and maintenance requirements. Section (b)(1)(iii) requires an SBSDR to "establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the SDR is complete and accurate…."[9] However, this process is unnecessarily duplicative of the policies and procedures related to identifying and correcting errors and trade disputes which also are designed to address the accuracy and completeness of data. As described above, DDR has written policies and procedures that are reasonably designed to make sure that the transaction data that has been submitted is complete and accurate.[10] In

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[6] Dodd-Frank §766 (codified at 17 C.F.R. §242.901(a)(2016).

[7] *See* Investment Company Institute letter dated August 5, 2016 and SIFMA Asset Management Group letter dated August 30, 2017. In addition, ISDA suggested that any such verification is "redundant to a number of regulatory and bilateral processes to agree and verify the terms of" such transactions. See ISDA letter dated August 8, 2016. Comments on DDR's Application and amendments can be found at https://www.sec.gov/comments/sbsdr-2016-02/sbsdr201602.htm. DTCC's response to these comment letters expressed its concern that data confidentiality and system security necessitates on-boarding counterparties who are viewing and verifying data submitted to the SBSDR system. See DTCC letter dated September 1, 2016.

[8] It should be noted, however, that in any case, DTCC may not have the necessary information to reach counterparties who have not on-boarded with DDR, nor has the authority to require market participants to become members and verify the accuracy of a trade to which they are a counterparty.

[9] 17 C.F.R. §240.13n-5(b)(1)(iii)(2015).

[10] Note, it will be difficult to know for certain if the party DDR has contacted is the actual counterparty to the security-based swap and, so to preserve the confidentiality of the trade, DDR will only notify a firm that it "may" be named counterparty to a swap reported to DDR and that the firm must on-board to obtain details and provide the necessary verification or missing information.

addition, DDR amended its Rulebook and User Guide to indicate a non-reporting side User "may (but is not required to)" verify data.[11]

DDR's policies and procedures, as required by the SBSDR Rule, provide a means for Users to identify errors, dispute trades and exit or amend the trades as needed.[12] In addition, DDR's Rulebook requires all Users to keep data accurate and up to date. These policies and procedures are contracted between DDR and each of its Users, and place the burden of data accuracy and completeness on the parties best positioned to know and respond.[13] We believe outreach by SBSDRs to non-Users is beyond the duties of an SBSDR to act in the capacity of a financial market infrastructure to receive and store security-based swaps. Furthermore, DDR has no contractual authority with non-Users to enforce compliance with an accuracy and completeness requirement. [14] The obligation of an SBSDR to ensure the accuracy and completeness of data imbues the SBSDR with oversight responsibilities akin to those of a self-regulatory organization, but not the authority. Such outreach can only be accomplished through a manual process that imposes an onerous burden to the SBSDR and introduces risks and costs that outweigh the low probability that such outreach will result in a party agreeing to on-board, verify data and provide missing information.

In light of the complexities associated with this issue, DDR seeks interpretive guidance that the policies and procedures that explain that a non-reporting User "may (but is not required to)" verify the accuracy of data, together with those policies and procedures related to identifying and correcting errors and trade disputes, sufficiently comply with Rule 13n-5(b)(1)(iii) requirements without requiring the SBSDR to attempt communication with a non-User.

C. Rule 906(a)

In addition to verifying the accuracy of data, the non-reporting counterparty must also provide uniform identification codes ("UICs") such as Ultimate Parent and Affiliate UICs,[15] as well as other applicable UICs (Trader ID, Trading Desk ID, Branch ID).[16] Rule 906(a) refers specifically to sending a report to each participant "of the registered security-based swap data repository" and that a participant "of a

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[11] This aligns with ICE Trade Vault's proposed approach which brings consistency to the security-based swap reporting regime. ICE Trade Vault's April amended application Exhibit GG2, Section 4.2.3 available at https://www.sec.gov/rules/other/2017/ice-trade-vault/ice-trade-vault-form-sdr-ex-gg.2-amend-clean.pdf.

[12] Application Exhibit HH2 Rulebook, Rule 10.1; Application Exhibit GG3 User Guide, "How Do I Confirm, Verify or Dispute the Accuracy of a Security-Based Swap Transaction?".

[13] The CFTC is facing a similar challenge regarding how to improve data accuracy and completeness and has embarked on a plan to address the quality of data as part of their Roadmap to Achieve High Quality Swaps Data ("Roadmap"). CFTC Letter 17-33 (July 10, 2017). The Tranche 1 project of the Roadmap "Review of SDR Operations" includes a step for identifying the "most efficient and effective solution for swap counterparty(ies) to confirm the accuracy and completeness of data held in an SDR." Id., Roadmap attachment at 6.

[14] DDR proposed in the Application to reach out by email to a non-User for which DTCC trade repositories might have contact information (it may be difficult to know whether the entity in the User database is the same legal entity that is counterparty to a security-based swap), notify them that there may be a trade in the DDR system to which the entity may be a counterparty, and request that the non-User on-board, in which case it "may (but is not required to)" verify the accuracy of the security-based swap. Application Exhibit HH2 Rulebook, Rule 3.3.4.1; Application Exhibit GG3 User Guide "Missing Identification Codes and Accuracy verification."

[15] 17 C.F.R. §242.906(b)(2016).

[16] 17 C.F.R. §242.901(d)(2)(2016).

registered security-based swap data repository" that receives such a report, must provide the missing information with respect to "its side" of the security-based swap.[17] Although "participant" is broadly defined by Rule 900(u),[18] in the case of Rule 906, it is qualified by the phrase "of a registered security-based swap data repository."[19] A reasonable interpretation of such language is that the participant to whom the SBSDR must communicate is the SBSDR's User.

Registered SBSDRs must identify any missing UICs and report them daily to the counterparties in order for the counterparties to provide the missing UICs.[20] DDR's policies and procedures describe a systemic way for Users, both reporting and non-reporting sides, via trade message submission, to provide such information.[21] For a non-reporting side, however, the most efficient, safe and practical way for such information to be reported to an SBSDR and then onward to the Commission is for the non-reporting side to on-board and submit such information directly into the system where it can be associated with the counterparty and the trade itself.[22]

As noted above, there is no legal requirement for a non-reporting counterparty to on-board with DDR and, therefore, DDR cannot require non-reporting counterparties to on-board.[23]

DDR seeks assurance that its policies and procedures with respect to Rule 906 are sufficient to meet the requirements of the rule without providing a means for market participants who are not members of the SBSDR to submit UICs.

II.   Use of Codes

Staff has informed DTCC that it is considering recommending an exemption from provisions of Rule 903(a) that would have required SBSDRs to assign a product ID. Staff recognizes the industry efforts to adopt an internationally accepted product identifier and, in the interim, would approve submissions to the SBSDR using the ISDA taxonomy as the method for reporting a product UIC as described in DDR's policies and procedures. Reporting sides also would be permitted to use CUSIPs, ISINs, and RED IDs, which are standard industry practice for identifying the swap underlier.

DTCC appreciates the Staff's recognition of the international efforts to create a standard product identifier and the industry standard approach with respect to identifying underliers. DTCC believes that

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[17] 17 C.F.R. §242.906(a)(2016).
[18] 17 C.F.R. §242.900(u)(2016).
[19] 17 C.F.R. §242.906(a)(2016).
[20] 17 C.F.R. §242.906(a)(2016).
[21] See Exhibit HH2 Rulebook Rule 3.3.4.1 and Exhibit GG3 User Guide "Missing Identification Codes and Accuracy Verification."
[22] The policies and procedures also provide for the reporting side to be able to send in the Ultimate Parent and Affiliate IDs for its non-reporting counterparty. See Exhibit HH2 Rulebook Rule 4.2.3.2 and GG3 User Guide "Providing Identification Codes to DDR – Requirements and Process."
[23] Although DTCC's Application allows for non-Users to send in an email with the required information, such data will not be verified, will not be input into the system, and will not be associated with a swap, but will be maintained in email form and provided to the Commission when requested. The SBSDR is not in a position to input email submitted trade information into the system due to the risk of potentially corrupting reported data and the audit trail to the counterparties' own books and records of the trade.

once created, this standard approach could increase transparency and facilitate regulatory coordination. DTCC, therefore, encourages the Commission to issue this exemption.

In addition, DTCC notes that Rule 903(b) allows SBSDRs to permit the use of codes for publicly disseminated data where the codes are widely available to users of the information on a non-fee basis.[24] Following discussions with Staff regarding the use of codes, DTCC investigated industry use of codes. On the basis of those findings,[25] DTCC urges the Commission to permit use of CUSIPs, ISINs and RED IDs on the publicly disseminated data as well as data submitted. This approach reduces the regulatory burden by following standard industry practice and current technology coding rather than introducing SBSDR proprietary identifiers that must then be coded to by the industry. It would also use the most commonly understood method of identifying trades, which promotes greater transparency particularly with respect to publicly disseminated data from different registered SBSDRs.

Accordingly, DDR requests that the Commission issue an exemption allowing the submission of industry standard unique product identifiers until consensus is reached on a globally accepted identifier and, in addition, extend that exemption to —or to interpret Rule 903(b) to permit the use of—industry standard identifiers, such as CUSIPs, ISINs and RED IDs, in publicly disseminated data.

We believe that Commission issuance of limited exemptions or interpretive guidance on these issues would enable DDR to operate in accordance with a clear, effective and well-organized policy and procedures framework to maintain accurate records of security-based swap transactions, and to provide these records to the Commission. The ultimate objective of Dodd-Frank to enhance transparency in the security-based swap market is achieved when the internal policies and procedures of an SBSDR exist under a comprehensive and rational regulatory regime that takes into consideration existing operational and legal limitations.

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[24] 17 C.F.R. §242.903(b)(2016).

[25] Staff sought DTCC's opinion on a variety of options for identifying the underlier, including use of another entity's financial instrument global identifier ("FIGI"), establishing a proprietary code, or use of descriptive elements of a corporate bond. Our research indicates that FIGIs are not commonly used and that they are the product of an entity that has not yet registered with the Commission. A proprietary code would require the SBSDR to create and maintain identifiers, map them to the commonly used identifiers which appear on the trade submission and provide a lookup mechanism for the public. It is likely that any other SBSDR that is registered would have a different proprietary code or use different descriptive elements of a bond, further decreasing the transparency the Commission seeks. Use of the standard market identifiers is the most practical, cost effective and transparent means of reporting this information and has not been objected to in either of the two most recent comment letters on the Application.

We appreciate your consideration of this request. We would welcome any opportunity to further discuss these concerns.

Sincerely,

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Larry E. Thompson
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