

August 8, 2016

Submitted via <https://www.sec.gov/rules/other.shtml>

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

Re: Comments regarding DTCC Data Repository (U.S.) LLC Form SDR; File No. SBSDR-2016-02

Secretary Fields,

The International Swaps and Derivatives Association, Inc. (“ISDA”)¹ appreciates the opportunity to provide comments to the Securities and Exchange Commission (“SEC” or “Commission”) on behalf of its members which may have obligations under *Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information; Final Rule* (“SBSR”) with respect to the application of DTCC Data Repository (U.S.) LLC (“DDR”) to be a recognized as a security-based swap data repository (“SDR”). ISDA supports the SDR application of DDR, submitted in respect of the Commission’s *Security-Based Swap Data Repository Registration, Duties and Core Principles; Final Rule* (the “SDR Rule”). DDR has proven its ability and reliability as a trade repository for the collection of derivatives data in a number of global jurisdictions and across asset classes, including the U.S., Canada, the European Union and Japan. Current participants of DDR will benefit from a more efficient and cost effective implementation by expanding their use of its trade reporting platform to comply with SBSR. Parties that are either not yet reporting in any jurisdiction and those which may be using another trade repository will benefit from the opportunity to choose between the services of different SDRs and select one that best meets their needs.

As a general matter, ISDA believes that the requirements of SDRs which are recognized by the Commission should be harmonized to the greatest extent possible in order to promote build efficiencies and mitigate costs for sides that are required to onboard to more than one SDR to comply with their obligations under SBSR. Following are ISDA’s specific comments regarding aspects of DDR’s SDR application, with primary focus on Exhibits GG, policies and procedures required under SBSR.

¹ Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 850 member institutions from 67 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association’s web site: www.isda.org.

Flags

In exhibit GG1, DDR advises it has established the following flags that indicate that additional information is needed to understand the publicly disseminated price: Inter-affiliate, Nonstandard flag, Off market flag, Pricing context, and Compressed trade. We believe these flags overlap in purpose and that DDR should clarify the purpose and application of each in order to promote consistent use and to improve the value of the flags to market observers.

Specifically, we believe that the “Off market” flag should be removed as it would be difficult for reporting sides to populate in a consistent and meaningful manner. There are a number of factors that may impact the price of a SBS transaction, but these factors do not always mean the price is off-market. It would not be possible to determine a set of parameters, thresholds or other considerations that would definitively allow a reporting side to determine whether this flag is applicable. Instead, we recommend that DDR require reporting entities to use the Pricing Context field and the associated coding scheme values that have been developed in FpML specifically to meet the requirements of SBSR and/or existing stand-alone fields that cover the same values (i.e., Inter-affiliate, Compression and Non-standard). By providing a pricing context (such as Inter-Affiliate, NettingOrCompression, ClearingForcedTrade, DefaultTransaction, PackageOrBespoke or PrimeBrokerage) when applicable, reporting sides will meet the SEC’s objective for market observers to understand the cases in which the SBS data which is publicly available may not contain all the information necessary to understand the price while providing some additional insight into the relevant factor(s). Market observers can then make their own assessments regarding the relative pricing of similar transactions.

ISDA understands that DDR’s non-standard flag could be used by reporting sides to comply with §242.901(c)(1)(v) of SBSR in cases where there is not another flag that provides more specific information regarding the customized nature of the SBS and/or its pricing context. We support that approach and recommend that DDR provide greater clarity regarding the delineated use of its flags to help promote consistent application.

Since the Commission has determined in its final version of SBSR that all SBS transactions associated with a SBS transaction which is executed via a prime brokerage arrangement must be publicly reported, we believe that DDR should add use of a prime brokerage flag into its requirements. A value of PrimeBrokerage is planned for inclusion with the Pricing Context values created by FpML.

Unique Identification Codes (UICs)

Transaction ID Methodology

ISDA supports the Transaction ID methodology outlined in exhibit GG3, which provides that it is the responsibility of the reporting side to create and provide the Transaction ID. However, we think that DDR could clarify that it is the responsibility of the reporting side to create, or to ensure a Transaction ID is created, and provided with the transaction report. To ensure timely creation and communication of a Transaction ID between the parties, the value may be generated by a central platform such as an execution platform, affirmation platform or confirmation platform even if such party is not responsible for reporting the SBS or is not being used by the reporting side to meet its reporting obligation.

ISDA is a strong proponent of the use of a single Unique Trade Identifier (“UTI”) for the global identification of a derivatives transaction for reporting and other regulatory and non-regulatory purposes.

We anticipate that the UTI for reporting under SBSR will generally be created by the reporting side, but where a transaction is reportable in multiple jurisdictions, the UTI generating party may be determined accordance with the hierarchy in ISDA’s publication “Unique Trade Identifier (UTI): Generation, Communication and Matching”², or a succeeding standard recommended by the Harmonisation Group established by the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commission IOSCO (IOSCO) (the “Harmonisation Group”) and subsequently implemented by the industry.

Legal Entity Identifiers

ISDA supports the DDRs requirement for a Legal Entity Identifier (“LEI”) to identify, when applicable, the Platform ID, Ultimate Parent ID, Broker ID and Execution Agent ID. These entities should have an existing LEI. If they do not, it is reasonable to expect them to obtain one.

For Ultimate Parent ID, we observe that DDR’s intention to require an Ultimate Parent ID at the time a user on-boards contradicts the final version of SBSR in which the Commission has established the relevant Compliance Date 2 as the deadline for reporting sides to provide data to an SDR pertaining to its Ultimate Parent and its affiliates. We suggest that a user should be encouraged to provide an Ultimate Parent ID as part of on-boarding, but not be required to do so.

ISDA supports the DDR’s approach to Counterparty ID which requires use of an LEI for entities which are on-boarded to its platform or which are registered major security based swap participants (MSBSP) or security based swap dealers (SBSD), as it is reasonable to expect that these entities have or will obtain an LEI. We support DDR’s recognition that an Internal ID may be used for natural persons and for non-on-boarded entities which do not have an LEI.

ISDA firmly recognizes the value of LEIs to precisely identify the parties involved in a transaction within derivatives transaction reporting. Despite the widespread adoption of LEIs for global regulatory reporting, there are still some jurisdictions in which derivatives market participants are not required by their regulator to obtain an LEI. We believe these exceptions are limited and will reduce over time, but until they are eliminated reporting sides need an alternative to identify their counterparty in reported data.

We do not believe that SDRs should implement requirements regarding LEIs that go beyond those of the applicable regulatory requirements, as this places an unfair burden on a reporting side. A reporting side should be able to meet its reporting obligations even if its counterparty has not obtained an LEI, especially if it is not an SEC Participant which is required by the Commission to obtain an LEI.

Trading Desk ID and Trader ID

In absence of an industry or global standard endorsed by the Commission, SBSR requires an SDR to assign UICs³. For trading desk ID and trader ID, DDR has proposed that each user will be required to create the identifiers in prescribed formats, and that it shall be each user’s responsibility to maintain such identifiers (including, but not limited to, any internal mapping of static data) and to ensure their continued accuracy. ISDA supports this approach and believes it is preferable to an SDR requiring that a reporting side submit the relevant information in advance to the SDR so that it can assign a unique ID.

We believe that for many market participants, it would be more timely and efficient for them to create and maintain their own UICs for inclusion in their reports for these data fields until such time as the

²http://www2.isda.org/attachment/NzczMg==/2015%20July%2020%20UTI%20Best%20Practice%20v11.6_final.pdf

³ §242.903(a)

Commission endorses a standard. Allowing a side to create and maintain its own UICs would facilitate consistent use of a UIC for a particular trader, trading desk or branch across SDRs, and potentially across regulations, that would ease the Commission’s aggregation and analysis of these data elements. For instance, parties that have an obligation to identify their trading desks under the Volcker Rule⁴ could use the same value as the UIC when identifying the desk under SBSR. In addition, some sides will face data privacy limitations regarding disclosure of the identity of their traders to an SDR. The ability to create their own values and maintain their own mapping may alleviate such concerns.

SDRs are not part of a federated network like the Local Operating Units authorized by the Global LEI Regulatory Oversight Committee (“LEI ROC”), and therefore do not have an established framework to share UICs or check the existence of a UIC created by another SDR before issuing one. Determining with accuracy in all cases that trading desk ID or trader ID is for the same identified entity would be extremely difficult without a uniform, mandated requirement for how the relevant information must be provided. So we do not think it is realistic that SDRs will be able to ensure a single value is used for these UICs across SDRs. SDRs should not be forced to become registration authorities for these identifiers. Instead a reporting side should be allowed to create these values until such time as the Commission has endorsed an industry standard.

For trading desk ID and trader ID, we request that the Commission require all SDRs to provide an option to accept UICs created and maintained by the side, even if the SDR offers a service to assign a value for the side upon request. A uniform approach to UICs among the SDRs would allow non-reporting sides to provide UICs more efficiently and consistently and opens up greater possibilities for interoperability or aggregation between SDRs.

Branch ID

On July 11, 2016, the LEI ROC of the Global LEI Foundation (GLEIF) issued a policy document⁵ which sets forth the policy design, definitions, and conditions for issuance of LEIs for international branches. Although we anticipate the Commission may eventually endorse the GLEIF standard for branch identification for SBSR, the timing for implementation of the standard and the broad availability of branch IDs from the LEI system remains to be determined. In the meantime, it will be necessary for SDRs and the SBS market to prepare for an alternative approach to branch identification.

For branch ID, ISDA has proposed to both DDR and ICE TV that the FpML businessCenterScheme⁶ would be a suitable uniform standard for branch ID. This standard combines the ISO country codes and city codes to create unique values for an expansive list of cities. This coding scheme is freely available and is supported already by FpML users to report the Business Days which apply to each transaction. DDR has proposed the use of a similar approach that combines ISO country code and a city code along with an integer. We believe it would be more efficient to use an existing standard rather than create an SDR-specific one that might have variations with no discernable benefit.

In addition, ISDA believes that use of an integer to indicate multiple branches within a city is unnecessary and would create confusion regarding the level at which a legal branch for a derivatives transaction is assigned. Under an ISDA Master Agreement, each party specifies whether or not it is legally a multi-branch entity and if so, specifies its established branches based on a list of cities only, with each specified city being a branch through which the multi-branch party may enter into its

⁴ §619 (12 U.S.C. §1851) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)

⁵ https://www.leiroc.org/publications/gls/roc_20160711-1.pdf

⁶ <http://www.fpml.org/spec/coding-scheme/> 5.11 businessCenterScheme

derivatives transactions. When specified on a confirmation, only the relevant city is provided which coincides with the ISDA Master Agreement. A branch ID should be reported only in accordance with a reporting side's status as a multi-branch entity in its ISDA Master Agreement.

Product ID

ISDA supports DDRs plan to use the ISDA Taxonomy as the Product ID for SBSR. We anticipate that the Commission will endorse the global Unique Product Identifier ("UPI") standard which is recommended by the Harmonisation Group as the Product ID for SBSR. But, in the event that UPI standard is not endorsed and implemented by the industry ahead of the first Compliance Date 1, we believe the ISDA Taxonomy is an appropriate interim solution since it is already supported by most market participants for reporting in other jurisdictions. We do not believe the Commission or SDRs should require SBS entities to implement a new interim standard for Product ID for which the application may be short-lived.

Verification Methodology

ISDA supports the verification methodology proposed by DDR in exhibit GG3. Specifically, we believe it is appropriate and effective for DDR to consider the data for a SBS transaction as "verified" if any of the following apply: (i) the transaction data has been received from a DDR Trusted Source, a recognized affirmation or confirmation platform or was executed on an electronic trading facility, (ii) the data pertains to an inter-affiliate transaction or (iii) the non-reporting side sends a verification message. We also support DDR's intention to tag a SBS transaction as "deemed verified" in cases where the SBS transaction has not been verified as described in the preceding sentence or disputed by the non-reporting side. Not all non-reporting sides will onboard to all SDRs, build the mechanisms to verify or dispute data and develop and maintain process and procedures to actively dispute or verify all SBS transactions to which they are a counterparty. It is more likely that a non-reporting side would prioritize an ability to dispute data.

As such, if a non-reporting side does not exercise the opportunity to verify or dispute, then ISDA believes it is acceptable for the SDR to deem the transaction as verified until and unless the non-reporting side disputes the data. Although we acknowledge that SDRs are required to confirm the accuracy of the data with both counterparties by the Dodd-Frank Act and the SDR Rule, ISDA sees this requirement as redundant to a number of regulatory and bilateral processes to agree and verify the terms of the SBS transaction, which help to assure the data reported is accurate.

There are numerous bilateral and regulatory mandated processes through which the parties agree to and verify the terms of a derivatives transaction that will be reported under SBSR. This occurs bilaterally at the point of trade execution, via trade affirmation and most importantly via the confirmation of the SBS which provide legal certainty to the parties. In order to manage their own risk, the parties are independently motivated to ensure the trade terms are agreed and confirmed timely and captured accurately in their systems. The reported trade data is sourced from those same systems, ensuring the reporting side is providing the terms of the SBS as it knows and has agreed with its counterparty. Regulatory mandates for trade acknowledgement, portfolio reconciliation and portfolio valuation and dispute resolution are additional avenues through which the accuracy of trade terms are substantiated. If a discrepancy in trade terms is discovered through any of these processes, a correction is made in the party's trade capture system, automatically prompting a correction to any previously reported transaction data. Therefore, the Commission should be able to rely on the accuracy of reported data even if the non-reporting side has not actively verified or disputed the data.

Out-reach to Non-User Counterparties

ISDA believes that the DDR's approach to outreach to non-user counterparties for the purpose of promoting trade verification and missing UICs strikes an appropriate balance between encouraging non-reporting party participation and avoiding a transference of the associated responsibility to the reporting side by, for instance, requiring it to obtain, maintain and provide appropriate contact information for this purpose.

Interest Rates

ISDA respectfully requests that the Commission grant DDR registration status for each of the equity, credit and interest rates asset classes. Although the scope of interest rates transactions that reporting sides expect to report under SBSR as SBS transactions are limited in number, products such as bond forwards, bond options and certain interest rates exotic transactions are understood by market participants to meet the definition of SBS as opposed to swap. Firms are reporting these transactions in other global jurisdictions under interest rates trade repository templates. Having to support these products on alternative templates associated with another asset class solely for SBSR would be costly, impact the efficiency of multi-jurisdictional reporting and impair meaningful data aggregation across borders.

Conclusion

ISDA is committed to helping its members and the industry to prepare to meet their obligations under SBSR. We would like to thank the Commission for its consideration of the comments provided in this letter regarding the SDR application of DDR. ISDA reiterates its support for this application, and looks forward to the Commission's recognition of DDR in each of the equities, credit and rates asset classes.

Sincerely,



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