SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91798; File No. SBSDR-2020-01)

May 7, 2021

Security-Based Swap Data Repositories; DTCC Data Repository (U.S.), LLC; Order Approving
Application for Registration as a Security-Based Swap Data Repository

I.   Introduction

On December 22, 2020, DTCC Data Repository (U.S.), LLC ("DDR") filed with the

Securities and Exchange Commission ("Commission") an application (the "DDR Application")

on Form SDR to register as a security-based swap data repository ("SDR") pursuant to Section

13(n)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and 17 CFR 240.13n-1

("Rule 13n-1") thereunder,[1] and as a securities information processor ("SIP") under Section

11A(b) of the Exchange Act.[2] DDR intends to operate as a registered SDR for security-based

swap ("SBS") transactions in the equity, credit, and interest rate derivatives asset classes.[3]

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[1]   15 U.S.C. 78m(n)(1); 17 CFR 240.13n-1. A copy of DDR's application on Form SDR
        and non-confidential exhibits thereto are available for public viewing on the
        Commission's website. In 2016, DDR submitted a prior application for registration as an
        SDR. See Release No. 34-78216 (June 30, 2016), 81 FR 44379 (July 7, 2016); Release
        No. 34-81302 (Aug. 3, 2017), 82 FR 37276 (Aug. 9, 2017). DDR withdrew this prior
        application in 2018. See Letter from Chris Childs, Managing Director, DDR, Mar. 27,
        2018, https://www.sec.gov/divisions/marketreg/sdr/dtcc-sdr-application-withdrawal-
        letter-032718.pdf.

[2]   15 U.S.C. 78k-1(b).

[3]   DDR has included the interest rate asset class in its application based on feedback from
        potential users of its SDR services. The potential users have identified certain types of
        transactions that will be reported through DDR's infrastructure for interest rate
        derivatives as falling within the Exchange Act definition of an SBS transaction.

The Commission published notice of the DDR Application in the *Federal Register* for public comment on February 10, 2021,[4] and the Commission received in response two comment letters from the International Swaps and Derivatives Association, Inc. ("ISDA").[5] While generally supportive of the DDR Application, ISDA Letter II includes three requests related to regulatory reporting and public dissemination, which are addressed in Part III.G. As discussed in Parts III and IV below, the Commission has carefully reviewed the DDR Application and the comments received. This order grants DDR's application to register as an SDR in the asset classes noted above, and as a SIP.

II.   Background

     A.   SDR Registration, Duties, and Core Principles

Section 13(n) of the Exchange Act makes it unlawful for any person, unless registered with the Commission, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of an SDR.[6] To be registered and maintain registration, an SDR must comply with certain requirements and core principles described in Section 13(n), as well as any requirements that the Commission may impose by rule or regulation.[7] In 2015, the Commission adopted 17 CFR 240.13n-1 to 13n-12 under the Exchange Act to establish Form SDR, the procedures for registration as an SDR, and the duties

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[4]   Release No. 34-91071 (Feb. 5, 2021), 86 FR 8977 (Feb. 10, 2021) ("DDR Notice").

[5]   Letters from Eleanor Hsu, Director, Data and Reporting, ISDA, dated Feb. 26, 2021 ("ISDA Letter I") and Apr. 9, 2021 ("ISDA Letter II"). ISDA Letter I did not address the substance of the DDR Application; ISDA Letter II provided comments that are discussed below.

[6]   15 U.S.C. 78m(n).

[7]   Id.

and core principles applicable to an SDR ("SDR Rules").[8] The Commission provided a

temporary exemption from compliance with the SDR Rules and also extended exemptions from

the provisions of the Dodd-Frank Act set forth in a Commission order providing temporary

exemptions and other temporary relief from compliance with certain provisions of the Exchange

Act concerning security-based swaps, and these temporary exemptions expired in 2017.[9]

The Commission also has adopted 17 CFR 242.900 to 909 under the Exchange Act

(collectively, "Regulation SBSR"), which governs regulatory reporting and public dissemination

of security-based swap transactions.[10] Among other things, Regulation SBSR requires each

registered SDR to register with the Commission as a SIP,[11] and the Form SDR constitutes an

application for registration as a SIP, as well as an SDR.[12]

In 2019, the Commission stated that implementation of the SBS Reporting Rules can and

should be done in a manner that carries out the fundamental policy goals of the SBS Reporting

Rules while minimizing burdens as much as practicable.[13] Noting ongoing concerns among

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[8]   See Release No. 34-74246 (Feb. 11, 2015), 80 FR 14438, 14438 (Mar. 19, 2015) ("SDR
        Adoption Release"). In 2016, the Commission subsequently amended 17 CFR 240.13n-4
        to address third-party regulatory access to SBS data obtained by an SDR. See Release
        No. 34-78716 (Aug. 29, 2016), 81 FR 60585 (Sep. 2, 2016).

[9]   See Release No. 34-80359 (Mar. 31, 2017), 82 FR 16867 (Apr. 6, 2017).

[10]   Release No. 34-74244 (Feb. 11, 2015), 80 FR 14563 (Mar. 19, 2015); Release No. 34-
        78321 (July 14, 2016), 81 FR 53546 (Aug. 12, 2016) ("Regulation SBSR Adopting
        Release"). Regulation SBSR and the SDR Rules are referred to collectively as the "SBS
        Reporting Rules."

[11]   See 17 CFR 242.909.

[12]   See Form SDR, Instruction 2.

[13]   Release No. 34-87780 (Dec. 18, 2019), 85 FR 6270, 6347 (Feb. 4, 2020) ("ANE
        Adopting Release").

market participants about incurring unnecessary burdens and the Commission's efforts to

promote harmonization between the SBS Reporting Rules and swap reporting rules, the

Commission took the position that, for four years following Regulation SBSR's Compliance

Date 1 in each asset class,[14] certain actions with respect to the SBS Reporting Rules would not

provide a basis for a Commission enforcement action.[15] The no-action statement's relevance to

DDR's application for registration as an SDR and SIP is discussed further below.

      B.   Standard for Registration

As noted above, to be registered with the Commission as an SDR and maintain such

registration, an SDR is required to comply with the requirements and core principles described in

Section 13(n) of the Exchange Act, as well as with any requirement that the Commission may

impose by rule or regulation.[16] In addition, Rule 13n-1(c)(3) under the Exchange Act provides

that the Commission shall grant the registration of an SDR if it finds that the SDR is so

organized, and has the capacity, to be able to: (i) assure the prompt, accurate, and reliable

performance of its functions as an SDR; (ii) comply with any applicable provisions of the

securities laws and the rules and regulations thereunder; and (iii) carry out its functions in a

manner consistent with the purposes of Section 13(n) of the Exchange Act and the rules and

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[14]   See id. Under Regulation SBSR, the first compliance date ("Compliance Date 1") for affected persons with respect to an SBS asset class is the first Monday that is the later of: (i) six months after the date on which the first SDR that can accept transaction reports in that asset class registers with the Commission; or (ii) one month after the compliance date for registration of SBS dealers and major SBS participants ("SBS entities"). Id. at 6346. The compliance date for registration of SBS entities is October 6, 2021. See id. at 6270, 6345.

[15]   See id. The specific rule provisions of the SBS Reporting Rules affected by the no-action statement are discussed in Part II.B.

[16]   See 15 U.S.C. 78m(n)(3).

regulations thereunder.[17] The Commission shall deny the registration of an SDR if it does not

make any such finding.[18] Similarly, to be registered with the Commission as a SIP, the

Commission must find that such applicant is so organized, and has the capacity, to be able to

assure the prompt, accurate, and reliable performance of its functions as a SIP, comply with the

provisions of the Exchange Act and the rules and regulations thereunder, carry out its functions

in a manner consistent with the purposes of the Exchange Act, and, insofar as it is acting as an

exclusive processor, operate fairly and efficiently.[19]

In determining whether an applicant meets the criteria set forth in Rule 13n-1(c), the

Commission will consider the information reflected by the applicant on its Form SDR, as well as

any additional information obtained from the applicant. For example, Form SDR requires an

applicant to provide a list of the asset classes for which the applicant is collecting and

maintaining data or for which it proposes to collect and maintain data, a description of the

functions that it performs or proposes to perform, general information regarding its business

organization, and contact information.[20] Obtaining this information and other information

reflected on Form SDR and the exhibits thereto—including the applicant's overall business

structure, financial condition, track record in providing access to its services and data,

technological reliability, and policies and procedures to comply with its statutory and regulatory

obligations—will enable the Commission to determine whether to grant or deny an application

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[17]   17 CFR 240.13n-1(c)(3).

[18]   Id.

[19]   See 15 U.S.C. 78k-1(b)(3).

[20]   See SDR Adopting Release, supra note 8, at 14459.

for registration.[21] Furthermore, the information requested in Form SDR will enable the

Commission to assess whether the applicant is so organized and has the capacity to comply and

carry out its functions in a manner consistent with the federal securities laws and the rules and

regulations thereunder, including the SBS Reporting Rules.[22]

Consistent with the Commission's no-action statement in the ANE Adopting Release,[23]

an entity wishing to register with the Commission as an SDR must still submit an application on

Form SDR, but can address the rule provisions included in the no-action statement by discussing

how the SDR complies with comparable Commodity Futures Trading Commission ("CFTC")

requirements.[24] Accordingly, in such instances the Commission will not assess an SDR

application for consistency or compliance with the rule provisions included in the Commission's

no-action statement. Specifically, the Commission identified the following provisions as not

providing a basis for an enforcement action against a registered SDR for the duration of the relief

provided in the Commission statement: under Regulation SBSR, aspects of 17 CFR 242.901(a),

901(c)(2) through (7), 901(d), 901(e), 902, 903(b), 906(a) and (b), and 907(a)(1), (a)(3), and

(a)(4) through (6); under the SDR Rules, aspects of Section 13(n)(5)(B) of the Exchange Act and

17 CFR 240.13n-4(b)(3) thereunder, and aspects of 17 CFR 240.13n-5(b)(1)(iii); and under

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[21]   See id. at 14458.

[22]   See id. at 14458–59.

[23]   See supra notes 13–15 and accompanying text.

[24]   See supra note 15.

Section 11A(b) of the Exchange Act, any provision pertaining to SIPs.[25] Thus, an SDR applicant

will not need to include materials in its application explaining how it would comply with the

provisions noted above, and could instead rely on its discussion about how it complies with

comparable CFTC requirements.[26] The applicant may instead represent in its application that it:

(i) is registered with the CFTC as a swap data repository; (ii) is in compliance with applicable

requirements under the swap reporting rules; (iii) satisfies the standard for Commission

registration of an SDR under Rule 13n–1(c); and (iv) intends to rely on the no-action statement

included in the ANE Adopting Release for the period set forth in the ANE Adopting Release

with respect to any SBS asset class or classes for which it intends to accept transaction reports.[27]

III.   Review of DDR's Application under SBS Reporting Rules

As noted above, DDR intends to operate as a registered SDR for the equity, credit, and

interest rate derivatives asset classes.[28] In its application, DDR represents that it is provisionally

registered with the CFTC as a swap data repository, is in compliance with applicable

requirements under the CFTC reporting rules applicable to a registered swap data repository, and

intends to rely on the Commission's position outlined in the ANE Adopting Release for

applicable reporting rules and SBSDR duties for the period set forth therein.[29] Below is a review

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[25]   The ANE Adopting Release provides additional discussion of the particular aspects of the
affected rules that would not provide a basis for an enforcement action. See ANE
Adopting Release, supra note 13, at 6347–48.

[26]   Id. at 6348.

[27]   Id. For example, an applicant need not describe in Exhibit S its functions as a SIP.

[28]   See DDR Rulebook, Ex. HH, sec. 3.1; see also Disclosure Document, Ex. D6, sec. 1.

[29]   See Form SDR, cover letter from Katherine Delp, General Manager, DTCC Data
Repository (U.S.) LLC.

of the representations made in the application materials against the SBS Reporting Rules, taking into account DDR's reliance on the Commission's position outlined in the ANE Adopting Release.

A. Organization and Governance

1. Summary of DDR's Application

DDR is a New York limited liability company and a wholly owned subsidiary of DTCC Deriv/SERV LLC ("Deriv/SERV"), which in turn is a wholly owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC").[30] DDR is governed by a board of directors ("DDR Board").[31] The number of directors on the DDR Board is determined by Deriv/SERV as the sole LLC member of DDR.[32] The DDR Board is composed of individuals selected from the following groups: employees of DDR's users (either fees paying users or end users) with derivatives industry experience, buy-side representatives, independents, and members of senior management or the Board of DTCC.[33] The Deriv/SERV Nominations Committee shall periodically review the composition of the DDR Board to assure that the level of representation of directors from users, management and non-users is appropriate for the interests of these constituencies in DDR.[34]

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[30]   DDR Rulebook, Ex. HH, sec. 2.1.

[31]   Id. at sec. 2.2. Defined terms taken from the DDR Application and used or summarized in this order are intended to have the same meaning as in DDR Application.

[32]   Id.

[33]   Id.

[34]   Id.

In addition, the DDR Board is responsible for the appointment and removal of the chief compliance officer ("CCO") and approval of CCO compensation, which is at the discretion of the Board and effected by a majority vote.[35] The CCO is responsible for establishing and administering the compliance program that is designed to prevent violations of the obligations of a swap data repository under the Dodd-Frank Act and other applicable regulations and is ultimately responsible for ensuring that DDR complies with the requirements of the Commodity Exchange Act, the Securities Exchange Act and other applicable laws and regulations.[36] The CCO has oversight over all compliance functions and staff related to DDR's compliance program.[37] The duties of the CCO include, but are not limited to, the following: (a) oversee and review DDR's compliance with applicable law in jurisdictions where DDR is registered, designated, recognized or otherwise licensed; (b) in consultation with the DDR Board or the Senior Officer, resolve any conflicts of interests that may arise, including, but not limited to, conflicts between business considerations and compliance requirements, conflicts between business considerations and compliance requirements for fair and open access, and conflicts between the management and members of the DDR Board; (c) establish and administer written policies and procedures reasonably designed to prevent violation of law; (d) take reasonable steps to ensure compliance with applicable law relating to agreements, contracts or transactions and confidentiality agreements entered into with foreign or domestic regulators; (e) establish procedures for the remediation of non-compliance issues identified by the CCO through a compliance office review, look-back, internal or external audit finding, self-reported error, or

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[35]   Id. at sec. 2.3.

[36]   Ex. P.

[37]   Id.

validated complaint; (f) notify the DDR Board as soon as practicable upon becoming aware of a circumstance indicating that DDR, or an individual acting on its behalf, is in non-compliance with the applicable laws of a jurisdiction in which it operates and either: (1) the non-compliance creates a risk to a user; (2) the non-compliance creates a risk of harm to the capital markets in which it operates; (3) the non-compliance is part of a pattern of non-compliance; or (4) the non-compliance may have an impact on DDR's ability to carry on business as a trade repository in compliance with applicable law; (g) establish and follow appropriate procedures for the handling, management response, remediation, retesting and closing of noncompliance issues; (h) establish and administer a written code of ethics; and (i) prepare and sign an annual compliance report in accordance with applicable regulations and associated recordkeeping.[38] In addition, the application provides that the CCO or a delegate thereof has the authority to investigate any potential rule violation and is responsible for enforcing sanctions related to violations and for following the procedures outlined for DDR system restrictions.[39]

The CCO, in consultation with the DDR Audit Committee, will resolve all conflicts of interest.[40] Any conflict of interest not resolved by the DDR Audit Committee shall be escalated to the DDR Board for resolution.[41] When resolving conflicts of interest involving DDR staff, the DDR CCO, DDR's senior officer, the audit committee, and the DDR Board consider all relevant

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[38]   DDR Rulebook, Ex. HH, sec. 2.3.

[39]   Id. at sec. 10.5.

[40]   Id. at sec. 11.1.

[41]   Id.

facts and circumstances.[42] With regard to director conflicts of interest, the application provides that a director conflict is present whenever the interests of DDR compete with the interests of a director or any party associated with a director.[43] The application also provides that a director conflict is present whenever a director's corporate or personal interests could be reasonably viewed as affecting his or her objectivity or independence in fulfilling his or her duties.[44] According to the application materials, DDR expects its directors to act "on the side of caution" and immediately bring to the attention of the DDR CCO and either the Board Chairman or DDR's legal counsel any matters involving conflicts of interest.[45]

2.   Discussion

Section 13(n)(7)(B) of the Exchange Act and Rule 13n-4(c)(2) thereunder require an SDR to establish governance arrangements that are transparent to fulfill public interest requirements and to support the objectives of the Federal Government, owners, and participants.[46] In addition, Rule 13n-4(c)(2) requires an SDR to (i) establish well-defined governance arrangements that include a clear organizational structure with effective internal controls; (ii) establish governance arrangements that provide for fair representation of market participants; (iii) provide representatives of market participants, including end-users, with the opportunity to participate in the process for nominating directors and with the right to petition for

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[42]   Id.

[43]   Id. at sec. 11.2.

[44]   Id.

[45]   Id. at sec. 11.3.

[46]   15 U.S.C 78m(n)(7)(B); 17 CFR 240.13n-4(c)(2).

alternative candidates; and (iv) establish, maintain, and enforce written policies and procedures reasonably designed to ensure that senior management and each member of the board or committee that has authority to act on behalf of the board possess requisite skills and expertise to fulfill their responsibilities in the management and governance of the SDR, have a clear understanding of their responsibilities, and exercise sound judgment about the SDR's affairs.[47]

Furthermore, Rule 13n-4(b)(11) requires an SDR to designate an individual to serve as CCO, and Rule 13n-11(a) requires the SDR to identify on Form SDR the person so designated.[48] Rule 13n-11(a) also requires that the compensation, appointment, and removal of the CCO shall require approval of a majority of the SDR's board of directors.[49] Rule 13n-11(c) requires the CCO to: (i) report directly to the board of directors or to the senior officer; (ii) review compliance with Section 13(n) of the Exchange Act and the rules thereunder; (iii) in consultation with the board or the senior officer, take reasonable steps to resolve any material conflicts of interest; (iv) be responsible for administering the policies and procedures required by Section 13(n) of the Exchange Act and the rules thereunder; (v) take reasonable steps to ensure compliance with the Exchange Act and the SDR Rules thereunder; (vi) establish procedures for the remediation of noncompliance; and (vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.[50]

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[47]   17 CFR 240.13n-4(c)(2)(i)–(iv).

[48]   17 CFR 240.13n-4(b), 13n-11(a).

[49]   17 CFR 240.13n-11(a).

[50]   17 CFR 240.13n-11(c)(1)–(7).

Additionally, Section 13(n)(7)(C) of the Exchange Act requires an SDR to establish and enforce rules to minimize conflicts of interest in the decision-making process of the SDR and establish a process for resolving any such conflicts of interest.[51] Rule 13n-4(c)(3) under the Exchange Act provides that an SDR must: (i) establish, maintain, and enforce written policies and procedures reasonably designed to identify and mitigate potential and existing conflicts of interest in the SDR's decision-making process on an ongoing basis; (ii) with respect to the decision-making process for resolving any conflicts of interest, require the recusal of any person involved in such conflict from such decision-making; and (iii) establish, maintain, and enforce written policies and procedures regarding the SDR's non-commercial and/or commercial use of the SBS transaction information that it receives.[52]

The Commission received no comments applicable to these requirements. As described above, the DDR Application includes provisions for the representation of market participants in the governance arrangements, as well as procedures providing an opportunity to participate in the process for nominating directors and the right to petition for alternative candidates. In addition, the DDR Application includes policies and procedures that set standards for the skills and expertise possessed by the DDR Board.

More generally, the DDR Application sets forth an organizational structure that is clear and includes provisions for internal controls. The DDR Application includes provisions for a CCO that has been designated by the DDR Board and whose compensation, appointment, and removal is set by the DDR Board. In addition, the DDR Application includes policies and procedures that require the CCO to report to the senior officer and be responsible for maintaining

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[51]   15 U.S.C. 78m(n)(7)(C)(i), (ii).

[52]   17 CFR 240.13n-4(c)(3)(i)–(iii).

compliance with applicable Commission rules, investigating any suspected violations thereof, and overseeing any necessary remediation. The DDR Application includes policies and procedures that identify and mitigate conflicts of interest, require the recusal from decision-making of members of the DDR Board when involved in a conflict, and delineate the commercial and non-commercial use of SBS transaction information received.

B. Access and Information Security

1. Summary of DDR's Application

According to DDR, access to and usage of its SDR service will be available to all market participants that engage in SBS transactions, and DDR does not and will not bundle or tie its SDR services with any other services.[53] The application provides that DDR's services would be available to all market participants on a fair, open, and equal basis.[54] Further, DDR does not impose membership qualifications on users of its services beyond (i) requiring execution of membership documents, such as a user agreement, (ii) the ability to comply with the technical specifications published by DDR, and (iii) compliance with applicable law, specifically those related to sanctions administered and enforced by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC").[55]

To be granted access to the DDR system, receive trade information, confirm or verify transactions, submit messages, or receive reports, a market participant must be onboarded as a user.[56] For those market participants that onboard, DDR will provide a mechanism for users to

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[53]   See DDR Rulebook, Ex. HH, at sec. 1.1.

[54]   See id.

[55]   See id.

[56]   See id.

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access the DDR system to confirm and verify transactions. Users are required to maintain at

least two Super Access Coordinators ("SuperACs") on the DDR System; SuperACs are

responsible for: (1) providing access to other individuals (referred to as "ACs") who are eligible

to access the System and use the SDR Services on behalf of the user; and (2) removing access for

any individuals who should no longer access the System on behalf of the user.[57]

To participate in the SDR services offered by DDR, each user will be required to enter

into a user agreement; by entering into a user agreement each user agrees to be bound by the

terms of the user agreement and DDR Operating Procedures, which incorporate terms of DDR's

Rulebook.[58] In addition, the DDR Rulebook provides that each user must comply with all

reasonable requests by DDR for information, documentation, or data concerning such user and

related to such user's use of the DDR system as DDR may deem necessary.[59] The DDR

Rulebook also states that DDR has the right to audit or inspect a user (and its facilities) with

respect to its use of the DDR system, upon reasonable notice.[60] Furthermore, the DDR Rulebook

provides that users must cooperate with such audits or inspections and with other inquiries by

DDR concerning their use of the DDR system.[61]

The DDR Operating Procedures provide that each user agrees to defend and indemnify

DDR from and against all reasonable losses, liabilities, damages, judgments, settlements, fines,

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[57]   Id. at sec. 1.2.

[58]   Id. at sec. 1.3.

[59]   Id. at sec. 10.5.

[60]   Id.

[61]   Id.

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costs, and expenses DDR may incur directly arising out of or directly relating to the acts or omissions of a user's participation or failure to participate (for itself or on behalf of others) in DDR's services or DDR's system, any unauthorized access to DDR's system through such user's interface with DDR's system, or any other matter directly relating to such user that is not the responsibility of DDR under the DDR Operating Procedures, except to the extent that such losses arise out of or relate to DDR's negligence or willful misconduct.[62]

With respect to prohibiting or limiting a person's access to SDR services, the DDR Rulebook outlines the process required for DDR to decline an application to become a user of SDR services.[63] For example, DDR may deny an applicant's access to the DDR system if required pursuant to applicable law (e.g., due to sanctions administered and enforced by OFAC or the Canadian Government's Office of the Superintendent of Financial Institutions).[64] The DDR Rulebook provides that any such applicants would receive notice and an opportunity for a hearing in the event that DDR declines an application.[65] The DDR Rulebook also provides that,

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[62]   Id., app. A, at sec. 9.

[63]   See DDR Rulebook, Ex. HH, sec. 10.2.

[64]   See id.

[65]   See id.

if the denial of an application is reversed,[66] such application will be accepted and the applicant granted access to the DDR system following completion of onboarding requirements.[67]

The DDR Rulebook also provides that DDR may temporarily deny access to or otherwise impose restrictions on the use of the DDR system on a user, or take such other actions as DDR deems reasonably necessary to protect its systems and other users, for (i) a violation of the DDR rules (including a failure to pay fees when due); (ii) any neglect or refusal by such user to comply with any direction DDR deems reasonably necessary to protect its systems and other users; or (iii) any error, delay, or other conduct that materially and adversely affects the operations of DDR (each a "Subject Event").[68] Limits to the activities, functions, or operation of users may include, but are not limited to, restricting access to the DDR system or a user's ability to submit data via a non-approved source and assessing users with all costs incurred by DDR in connection with a "Subject Event" and apply any deterrent financial penalties that DDR may deem necessary.[69] The DDR Rulebook provides that DDR is required to provide prompt notice

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[66]   The DDR Notice, supra note 4, inadvertently misstated a provision in the DDR Rulebook. Specifically, the DDR Rulebook does not include language that states denial of an application could be reversed "either by the DDR Board or by the Commission pursuant to Section 11A(b) of the Exchange Act." As noted in Part II.B, the Commission has identified Section 11A(b) as not providing a basis for an enforcement action against a registered SDR for the duration of the relief provided in the Commission statement in the ANE Adopting Release. See supra note 25 and accompanying text.

[67]   See DDR Rulebook, Ex. HH, sec. 10.2.

[68]   See id. at sec. 10.4.1.

[69]   See id.

to the designated regulators of any such action,[70] as well as furnish the user with a concise

written statement describing the Subject Event applicable to the user.[71]

With respect to information security, the DDR Rulebook provides that DTCC has

established a Technology Risk Management Team, whose role is to manage information security

risk and ensure the availability, integrity, and confidentiality of the organization's information

assets.[72] DDR will be responsible for monitoring the performance of DTCC regarding

implementation and maintenance of information security "within its infrastructure."[73] The DDR

Rulebook specifies that various policies have been developed to provide the framework for both

physical security and information security are routinely refreshed.[74] It also states that DDR's

Technology Risk Management Team carries out a series of processes to endeavor to ensure that

DDR is protected in a cost-effective and comprehensive manner, while still meeting the

requirements of applicable regulations.[75] This includes preventive controls such as firewalls,

appropriate encryption technology, and authentication methods.[76] Vulnerability scanning is used

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[70]   See id.

[71]   See id. at sec. 10.4.2 (setting out DDR's procedures for restrictive proceedings, including
         the user's response to the Subject Event written statement, the user's opportunity for a
         hearing, and the user's right to apply for review to the DDR Board).

[72]   Id. at sec. 9.2.

[73]   Id. at sec. 9.1.

[74]   Id. at sec. 9.2.

[75]   Id.

[76]   Id.

to identify high risks to be mitigated and managed and to measure conformance against the policies and standards.[77]

The DDR system is supported by DTCC and relies on the disaster recovery program maintained by DTCC.[78] To enable DDR to provide timely resumption of critical services should there be any disruption to its business, DDR follows these key principles for business continuity and disaster recovery: (i) achieve recovery of critical services within a four-hour window with faster recovery time in less extreme situations; (ii) disperse staff across geographically diverse operating facilities; (iii) operate multiple back-up data centers linked by a highly resilient network technology; (iv) maintain emergency command and out-of-region operating control; (v) utilize new technology which provides high-volume, high-speed, asynchronous data transfer over distances of 1,000 miles or more; (vi) maintain processes that mitigate marketplace, operational and cyber-attack risks; (vii) test continuity plan readiness and connectivity on a regular basis ensuring that users and third- party vendors/service providers can connect to DDR's primary and back-up sites; (viii) communicate on an emergency basis with the market, users and government agency decision-makers; and (ix) evaluate, test, and utilize best business continuity and resiliency practices.[79]

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[77]   Id.

[78]   See id. at sec. 8.1.

[79]   See id.

2.   Discussion

Rule 13n-4(c)(1)(ii) under the Exchange Act requires an SDR to permit market participants to access specific services offered by the SDR separately.[80] Rule 13n-4(c)(1)(iii) requires an SDR to establish, monitor on an ongoing basis, and enforce clearly stated objective criteria that would permit fair, open, and not unreasonably discriminatory access to services offered and data maintained by the SDR.[81] Rule 13n-4(c)(1)(iv) requires an SDR to establish, maintain, and enforce written policies and procedures reasonably designed to review any prohibition or limitation of any person with respect to access to services offered, directly or indirectly, or data maintained by the SDR and to grant such person access to such services or data if such person has been discriminated against unfairly.[82] In addition, Rule 13n-6 requires an SDR, with respect to those systems that support or are integrally related to the performance of its activities, to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its systems provide adequate levels of capacity, integrity, resiliency, availability, and security.[83]

The Commission received no comments applicable to these requirements. As described above, the DDR Application includes procedures for onboarding and maintaining ongoing access to users that are fair, open, reasonable and not unreasonably discriminatory. These procedures include user agreements that reflect clear and specific minimum standards for users to follow in seeking to access SBS data held at the SDR. The DDR Application also includes reasonable

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[80]   17 CFR 240.13n-4(c)(1)(ii).

[81]   17 CFR 240.13n-4(c)(1)(iii).

[82]   17 CFR 240.13n-4(c)(1)(iv).

[83]   17 CFR 240.13n-6.

provisions for limiting, denying, and revoking access to SDR systems that include procedures for

review and reconsideration of any determination related to limiting, denying, or revoking a

user's access. The Commission believes that the procedures described above further help ensure

that the access requirements are fair, open, and not unreasonably discriminatory. In addition, the

DDR Application includes policies and procedures designed to ensure that the SDR's automated

systems maintain adequate levels of capacity, integrity, resiliency, availability, and security that

protect against loss of data, employ geographic diversity in their site selection, and account for

service disruptions.

      C.   Acceptance and Use of SBS Data

      1.   Summary of DDR's Application

The DDR Application will provide market participants with the ability to submit data for

over-the-counter ("OTC") derivatives for credit, equity, rate, foreign exchange and other

commodity asset classes.[84] DDR may reject a transaction record submitted due to the

submission failing to meet DDR validations, including but not limited to the submission failing

to be in a format that can be ingested by DDR, failing to meet jurisdictional requirements or

failing to provide required data elements.[85] A rejected submission is deemed not to have been

submitted at all with respect to reporting to the jurisdiction for which it was rejected (it is

possible that one transaction record is submitted to comply with reporting obligations in more

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[84]   DDR Rulebook, Ex. HH, sec. 3.1; <u>see also</u> Disclosure Document, Ex. D6, sec. 1.
Although the DDR Application concerns registration with the Commission as an SDR for
credit, equity, and interest rate derivatives, as noted above, DDR is also provisionally
registered with the CFTC as a swap data repository.

[85]   DDR Rulebook, Ex. HH, sec. 1.3.

than one jurisdiction and accepted in one while rejected in another).[86] Upon submission, the

DDR system will perform validation checks to ensure that each submitted record is complete and

accurate, in accordance DDR's message ingestion requirements.[87] This process is completed

through validation and consistency checks.[88] If the record fails these validation or consistency

checks, the record will be rejected, and such rejection status will be communicated to the user(s)

to correct and re-submit.[89] According to DDR, its SDR service offers an end-to-end straight

through process. DDR states that, from the receipt of data, processing and maintenance of data,

and dissemination of data, processes are automated and do not require manual intervention, and

this straight through processing model is a key mitigant to modification or invalidation of any

data.[90]

DDR's Operating Procedures provides that DDR and each user agrees that each will treat

as confidential (both during and after the termination of a user's access to DDR's system) all

confidential information (defined as: (i) with respect to DDR, transaction data specified in

records received by DDR and any data, reports, summaries or payment amounts which may be

produced as a result of processing such transaction data, and (ii) with respect to any user, the

technical specifications of DDR's system (to the extent not publicly disclosed by DDR; but

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[86]   Id.

[87]   Id. at sec. 10.1.1.

[88]   Id.

[89]   Id.

[90]   Ex. EE.

confidential information does not include data distributed to the public in accordance will applicable law).[91]

2. Discussion

Rule 13n-5(b)(1)(i) under the Exchange Act requires an SDR to establish, maintain, and enforce written policies and procedures reasonably designed for the reporting of complete and accurate transaction data to the SDR and to accept all transaction data that is reported in accordance with such policies and procedures.[92] Additionally, Rule 13n-5(b)(1)(ii) requires that if an SDR accepts any SBS transaction in a particular asset class, the SDR must accept all SBS transactions in that asset class that are reported to it in accordance with its policies and procedures.[93] In addition, Rule 13n-5(b)(3) requires an SDR to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the transaction data and positions that it maintains are complete and accurate.[94] Rule 13n-5(b)(5) requires an SDR to establish, maintain, and enforce written policies and procedures reasonably designed to prevent any provision in a valid SBS transaction from being invalidated or modified through the procedures or operations of the SDR.[95] Rule 13n-5(b)(6) requires an SDR to establish

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[91] DDR Rulebook, Ex. HH, app. A, sec. 8; see also Disclosure Document, Ex. D6, sec. 5 (DDR's privacy and confidentiality policies and procedures).

[92] 17 CFR 240.13n-5(b)(1)(i).

[93] 17 CFR 240.13n-5(b)(1)(ii).

[94] 17 CFR 240.13n-5(b)(3).

[95] 17 CFR 240.13n-5(b)(5).

procedures and provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the SDR.[96]

Furthermore, Section 13(n)(5)(F) of the Exchange Act and Rule 13n-4(b)(8) thereunder each require an SDR to maintain the privacy of any and all SBS transaction information that the SDR receives.[97] In addition, Rule 13n-9(b)(1) requires an SDR to establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy of any and all SBS transaction information that the SDR receives and that include policies and procedures to protect the privacy of any and all SBS transaction information that the SDR shares with affiliates and non-affiliated third parties.[98] Rule 13n-9(b)(2) also requires an SDR to establish, and maintain safeguards, policies, and procedures reasonably designed to prevent the misappropriation or misuse, directly or indirectly, of any confidential information received by the SDR, material non-public information, or intellectual property, such as trading strategies or portfolio positions, by: (i) limiting access to such information and intellectual property; (ii) having standards for trading by persons associated with the SDR for their personal benefit or the benefit of others; and (iii) having adequate oversight to ensure compliance with these safeguards, policies, and procedures.[99]

The Commission received no comments applicable to these requirements. As described above, the DDR Application includes policies and procedures designed to protect transaction data and its systems by restricting access to users, who are obligated to comport with DDR's

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[96]   17 CFR 240.13n-5(b)(6).

[97]   See 15 U.S.C. 78m(n)(5)(F); 17 CFR 240.13n-4(b)(8), 240.13n-9.

[98]   17 CFR 240.13n-9.

[99]   See 17 CFR 240.13n-9(b)(2).

rules in a manner that facilitates DDR's compliance with its obligations under Commission rules. The Commission views this approach as reasonable. Access to DDR's systems to view trade data or verify information should be conditioned such that DDR retains the ability to protect the data, its systems, and its users. The Commission notes that DDR retains the responsibility, among other things, to ensure that its policies and procedures are reasonably designed to: (i) ensure trade data reported to it is complete and accurate, as required under Rule 13n-5(b)(1); (ii) ensure that its systems provide adequate levels of capacity, integrity, resiliency, availability and security, as required under Rule 13n-6; and (iii) ensure that it protects the privacy and confidentiality of transaction information, as required under Rule 13n-9(b). Additionally, the DDR Application includes procedures designed to ensure that any valid provisions of trade information are not modified or invalidated, and these procedures include controls that are regularly audited and processing systems designed to prevent unauthorized changes to SBS information. The Commission also believes that DDR provides procedures and facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the SDR.

Furthermore, the DDR Application contains policies and procedures regarding both data security and the privacy of SBS data, the latter of which includes in each case procedures limiting access to SBS data to employees with either direct or support responsibilities related to systems that maintain the data, and that limit the use of such data in all cases to the performance of job responsibilities. The Commission believes that such policies and procedures also establish a standard for the trading practices of personnel that prevents the use of the data for personal benefit or the benefit of others. In addition, DDR has policies and procedures that, when taken

together with policies and procedures regarding the duties of the CCO,[100] are reasonably

designed to protect the privacy of SBS transaction information, including information shared

with affiliates and third parties, through adequate oversight to ensure compliance with the

policies and procedures described above.

D.   Fees

1.   Summary of DDR's Application

The DDR Application includes DDR's fee schedules.[101] There are two types of fees,

Position Maintenance Fees and Account Management Fees.[102] DDR charges a monthly

"Position Maintenance Fee," based on the number of positions open at any time during the

applicable month and which decreases as the number of open positions increases on a tiered

basis.[103] Position count includes positions even if terminated or exited prior to the month end.[104]

Platforms, as that term is defined by Commission rules,[105] are not charged position maintenance

fees.[106] For a position where a clearing agency ("Clearer") is a counterparty, the Clearer shall be

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[100]   See supra Part III.A (describing policies and procedures regarding the CCO and conflicts
of interest).

[101]   See Ex. M. Additionally, DDR provides a fee schedule for DDR Users on its website at
http://www.dtcc.com/derivatives-services/global-trade-repository/gtr-us.

[102]   See Ex. M.

[103]   The Position Maintenance Fees only apply for a position count of five hundred or more
open positions during any month. See id. For examples of the calculation of the Position
Maintenance Fee, see Annex A to Exhibit M of the application.

[104]   See Ex. M.

[105]   See 17 CFR 242.900(v) (defining "platform" as a national securities exchange or
security-based swap execution facility that is registered or exempt from registration).

[106]   See Ex. M.

responsible for the Position Maintenance Fee, less a 75% reduction.[107] For all other positions, the Reporting Side, as that term is defined by Commission rules,[108] will be responsible for Position Maintenance Fees.[109] For entities grouped as a single account with subaccounts ("Grouped Accounts"), positions will be aggregated for purposes of determining position count threshold and to determine the applicable tiered Position Maintenance Fees.[110]

In addition to the Position Maintenance Fee, the application indicates that DDR will charge an annual "Account Management Fee," currently set at $1,200.00, that will apply to all accounts and will be prorated in the year the account is opened.[111] Accounts may be set up on an individual entity basis or, in certain instances, as Grouped Accounts, such as a corporate family[112] that chooses to structure its account as a single account with subaccounts for affiliates or an asset manager that chooses to structure its account as a single account with subaccounts for its managed funds. Grouped Accounts will be charged one Account Management Fee.[113]

DDR's fee policy further provides that users will have the option to elect to enter into a long-term commitment for a period ending December 31, 2024 ("Long Term Commitment"),

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[107]   See id.

[108]   See 17 CFR 242.900(gg) (defining "reporting side" as the side of a security-based swap identified by Rule 901(a)(2) as having the duty to report the transaction).

[109]   See Ex. M.

[110]   See id.

[111]   See id.

[112]   DDR organizes its users into families (each, a "Family") as directed by the users (through User Agreements or in such other manner as designated by DDR from time to time) that desire to be so organized. See DDR Rulebook, Ex. HH, app. A, sec. 2.

[113]   See Ex. M.

which would reduce the applicable Position Maintenance Fee and Account Management Fee by ten percent, exclusive of tax, for the duration of the Long-Term Commitment.[114] If the Long Term Commitment is terminated prior to the end of the applicable Long Term Commitment period, DDR explains that the non-Clearer User will be subject to an early termination fee equal to: (a) the difference between the total amount of fees due after application of the Long Term Commitment incentive and the total amount of fees that would have been due during the applicable portion of the Long Term Commitment period had no incentive been provided ("Total Incentive Provided"); plus (b) the greater of five percent of the Total Incentive Provided or $500.00.[115]

2.   Discussion

Section 13(n)(7)(A) of the Exchange Act prohibits an SDR (unless necessary or appropriate to achieve the purposes of the Exchange Act) from: (i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or (ii) imposing any material anti-competitive burden on the trading, clearing, or reporting of transactions.[116] Rule 13n-4(c)(1)(i) under the Exchange Act also requires an SDR to ensure that any dues, fees, or other charges that it imposes, and any discounts or rebates that it offers, are fair and reasonable and not unreasonably discriminatory.[117] It also requires that such dues, fees, other charges, discounts, or

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[114]   See id.

[115]   See id.

[116]   15 U.S.C. 78m(n)(7)(A).

[117]   17 CFR 240.13n-3(c)(1)(i).

rebates be applied consistently across all similarly situated users of the SDR's services.[118] In

discussing the fee provisions of the SDR Rules, the Commission stated that it would take a

flexible approach in evaluating the fairness and reasonableness of an SDR's fees and charges on

a case-by-case basis, recognizing that there may be instances in which an SDR could charge

different users different prices for the same or similar services.[119]

The Commission received no comments applicable to these requirements. As described

above, the DDR Application describes fees that include a fixed component and a variable

component that increases with the usage of SDR services. The Commission notes that such a fee

structure is generally in line with the economics of recordkeeping services for security-based

swaps, which involve a fixed cost investment and marginal costs of operation.[120] The fixed

component of DDR's fees would be consistent with the applicant recovering the fixed costs

investment associated with setting up and maintaining a user account, while the variable

component would be consistent with the applicant recovering marginal costs of operation, i.e.,

costs that increase with the provision of SDR services to the user.

With regard to DDR's fee schedule, which imposes an annual Account Management Fee

of $1,200 and a Positions Maintenance Fee that varies as a function of the number of open

positions each month, the fees are identical to those charged to customers reporting swap

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[118]   Id.

[119]   See SDR Adopting Release, supra note 8, at 14479. In making this statement, however,
the Commission also noted that charging different users different prices for the same or
similar services cannot be unreasonably discriminatory.

[120]   See generally Regulation SBSR Adopting Release, supra note 10, at 53551 (stating that
the provision of recordkeeping services for security-based swaps involves a
predominantly fixed cost investment with low marginal costs of operation).

transactions in credit, equity, and interest rate products pursuant to CFTC reporting rules and, as such, appear consistent with the Commission's own requirements.[121] Specifically, the Commission believes it is reasonable for DDR to establish similar fees across its CFTC and Commission reporting requirements where its obligations require similar levels of services and infrastructure. The Commission believes that the DDR Application sets fees at levels that are fair and reasonable and not unreasonably discriminatory.

E.   Recordkeeping

1.   Summary of DDR's Application

The DDR Rulebook provides that DDR will maintain all information as required by applicable law as well as maintain swap and security-based swap data throughout the existence of the swap and security-based swap and for fifteen years following termination of the swap or security-based swap or as otherwise required by applicable regulations.[122] The records will be readily accessible throughout the life of a swap or security-based swap and for five years following its termination and shall be in an electronic format that is non-rewriteable and non-erasable.[123] For the remainder of the retention period, the swap or security-based swap record will be retrievable within three business days.[124] In the event DDR ceases doing business or ceases to be a registered or designated trade repository it shall continue, for a period of not less

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[121]   See DDR Fee Schedule – CFTC Reporting, Oct. 1, 2016, http://www.dtcc.com/~/media/Files/Downloads/Data-and-Repository-Services/GTR/US-DDR/DDR_Fees.pdf.

[122]   DDR Rulebook, Ex. HH, sec. 1.4.1.

[123]   Id.

[124]   Id.

than five years or upon transfer to the Designated Regulator or its designee or another registered

or designated trade repository for that jurisdiction, to preserve, maintain, and make accessible to

each Designated Regulator or its designee, the records and data required by Applicable

Regulation in accordance with DDR's Wind-Down Policies and Procedures document.[125]

    2.   Discussion

Rule 13n-5(b)(4) of the Exchange Act requires an SDR to maintain transaction data and

related identifying information for not less than five years after the SBS expires and historical

positions for not less than five years in a place and format that is readily accessible and usable to

the Commission and other persons with authority to access or view such information and in an

electronic format that is non-rewriteable and non-erasable.[126] Rule 13n-7 requires an SDR to

make and keep current books and records relating to its business for at least five years, and for

the first two years, keep such records in a place that is immediately available to representatives

of the Commission for inspection and examination.[127] In addition, Rule 13n-5(b)(8) requires an

SDR to make and keep current a plan to ensure that the transaction data and positions that are

recorded in the SDR continue to be maintained in accordance with Rule 13n-5(b)(7),[128] including

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[125]   Id.

[126]   17 CFR 240.13n-5(b)(4).

[127]   17 CFR 240.13n-7.

[128]   Rule 13n-5(b)(7) states that, if an SDR ceases doing business or ceases to be registered pursuant to Section 13(n) of the Exchange Act, the SDR must continue to preserve, maintain, and make accessible the transaction data and historical positions required to be collected, maintained, and preserved by this section in the manner required by the Exchange Act and the rules and regulations thereunder and for the remainder of the period required by this section. 17 CFR 240.13n-5(b)(7).

procedures for transferring the transaction data and positions to the Commission or its designee.[129]

The Commission received no comments applicable to these requirements. As described above, the DDR Application provides for the recordkeeping of SBS transaction data for at least five years following the termination of the transaction,[130] and will be readily accessible throughout the life of a security-based swap in an electronic format that is non-rewriteable and non-erasable.[131] In addition, DDR provides for the transferring of transaction data and positions to the Commission via reports designed to provide visibility into positions and the status of submitted trades and also provides for direct electronic access to data reported to DDR in satisfaction of the Commission's regulatory requirements both for the Commission and, where such access is permitted by applicable law and any relevant Memorandum of Understanding or other arrangement, the Commission's designee.

F.   Disclosure

1.   Summary of DDR's Application

DDR publishes a disclosure document to provide a summary of information regarding its service offerings and the SBS data it maintains.[132] Specifically, the disclosure document sets forth a description of the following: (i) a description of access to services offered and swap data maintained; (ii) criteria for those seeking to connect to or link with its SDR; (iii) criteria for those

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[129]   17 CFR 240.13n-8.

[130]   See DDR Rulebook, Ex. HH, sec. 1.4.1.

[131]   See id.

[132]   See Disclosure Document, Ex. D6.

seeking to connect to or link with DDR systems; (iv) policies and procedures with respect to

DDR systems safeguards; (v) policies and procedures related to privacy and confidentiality; (vi)

policies and procedures regarding its non-commercial and commercial use of transaction data;[133]

(vii) procedures for dispute resolution; (viii) fees, rates, dues and other charges; and (ix)

governance arrangements.[134]

        2.   <u>Discussion</u>

Rule 13n-10 under the Exchange Act requires that, before accepting any SBS data from a

market participant or upon a market participant's request, an SDR shall furnish to the market

participant a disclosure document that contains certain written information, which must

reasonably enable the market participant to identify and evaluate accurately the risks and costs

associated with using the SDR's services.[135] This written information must contain the

following: (i) the SDR's criteria for providing others with access to the services offered and data

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[133]   <u>See also</u> DDR Rulebook, Ex. HH, sec. 6.3 ("As part of the SDR Services, DDR receives and collects swap and security-based swap data in the ordinary course of its business from various Market Participants and registered entities for the purpose of maintaining a centralized recordkeeping facility for swaps and security-based swaps. The collection and maintenance of this data is designed to enhance the transparency, promote standardization and reduce systemic risk by making this data available to regulators and the public pursuant to Applicable Law. Therefore, access to data maintained by DDR to Market Participants is generally prohibited, except to either counterparty to that particular swap or security-based swap, such counterparty's authorized third party service providers or other parties specifically authorized by the User or counterparty pursuant to Rule 1.3 or 6.4, or to other regulators or entities in accordance with Rule 6.5 below. DDR shall not, as a condition of the reporting of swap or security-based swap transaction data, require a Reporting Party to consent to the use of reported data for commercial or business purposes. DDR shall not make commercial use of real-time swap data prior to its public dissemination.").

[134]   <u>See</u> <u>id.</u>

[135]   17 CFR 240.13n-10.

it maintains; (ii) its criteria for those seeking to connect to or link with the SDR; (iii) a description of its policies and procedures regarding its safeguarding of data and operational reliability, as described in Rule 13n-6; (iv) a description of its policies and procedures reasonably designed to protect the privacy of SBS transaction information that it receives, as described in Rule 13n-9(b)(1); (v) a description of its policies and procedures regarding its noncommercial and commercial use of SBS transaction information that it receives, as described in Rule 13n-5(b)(6); (vi) a description of its dispute resolution procedures, as described in Rule 13n-5(b)(6); (vii) a description of all the SDR's services, including any ancillary services; and (viii) the SDR's updated schedule of any dues; unbundled prices, rates or other fees for all of its services, including ancillary services; any discounts or rebates offered; and the criteria to benefit from such discounts or rebates; and (ix) a description of its governance arrangements.[136]

The Commission received no comments applicable to these requirements. As described throughout this order, the DDR Application includes extensive discussion of DDR's policies and procedures with respect to access,[137] the use of SBS transaction information,[138] service offerings, including ancillary services,[139] and governance arrangements.[140] The Commission believes that the DDR Disclosure Document presents a reasonably comprehensive view of the applicant's

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[136]   See id.

[137]   See supra Part III.B (describing policies and procedures with respect to access and information security).

[138]   See supra Part III.C (describing policies and procedures with respect to acceptance and use of SBS data).

[139]   See supra Part III.D (describing policies and procedures with respect to fees).

[140]   See supra Part III.A (describing policies and procedures with respect to governance arrangements, the duties of the CCO, and conflicts of interest).

overall service offering, from which a potential user could identify and evaluate accurately the
risks and costs associated with using the SDR's services.[141] In addition, regarding the
requirement to furnish the document to market participants, the Commission understands that
DDR publishes similar disclosure documents on its website,[142] and anticipates the same for the
DDR Disclosure Document relevant to this application.

        G.   Regulatory Reporting and Public Dissemination

As a registered SDR, DDR would carry out an important role in the regulatory reporting
and public dissemination of SBS transactions. As noted above, DDR stated that it intends to rely
on the no-action statement included in the ANE Adopting Release for the period set forth in the
ANE Adopting Release with respect to SBS asset classes. Therefore, DDR was not required to
include materials in its application explaining how it would comply with the provisions of the
SBS Reporting Rules noted in the no-action statement.[143] Instead, DDR may rely on its
discussion about how it complies with comparable CFTC requirements pertaining to regulatory
reporting and public dissemination of swap transactions.

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[141]   See DDR Disclosure Document, Ex. D6.

[142]   See, e.g., https://www.dtcc.com/-/media/Files/Downloads/Data-and-Repository-Services/GTR/US-DDR/DDR_Disclosure.pdfhttps://www.dtcc.com/-/media/Files/Downloads/Data-and-Repository-Services/GTR/US-DDR/DDR_Disclosure.pdf (publishing a disclosure document pursuant to CFTC requirements).

[143]   However, the DDR Application includes provisions explaining how DDR would require users to identify SBS, as required by Rule 901(c)(1) of Regulation SBSR. See Ex. HH2, sec. 4.4 (regarding Unique Product Identifiers). The DDR Application also includes a provision explaining how DDR would comply with a condition to the no-action statement included in the ANE Adopting Release. See Ex. GG2, sec. 15.2.3.2 (providing, in the case of a credit security-based swap, for dissemination of a capped notional size of $5 million if the true notional size of the transaction is $5 million or greater).

In the no-action statement, the Commission stated that an applicant "will not need to include materials in its application explaining how it would comply with the provisions [specifically noted as not providing a basis for a Commission enforcement action during the pendency of the statement]."[144] The applicant "could instead rely on its discussion about how it complies with comparable CFTC requirements."[145] In its application, DDR provided exhibits that adapted its policies and procedures for regulatory reporting and public dissemination of swaps for use in the SBS market. The Commission believes that, with respect to its role in the regulatory reporting and public dissemination of SBS transactions, DDR has satisfied the approach described by the Commission in the no-action statement regarding the information and representations sufficient to support its approval for registration as an SDR and SIP.[146]

ISDA Letter II included three requests with respect to the DDR Application. First, ISDA stated that the DDR Rulebook should "discuss 'Counterparty 2' identifiers that will be permitted under the new [CFTC] swap data reporting rules."[147] To the extent that this suggestion involves changes to DDR's systems, policies, and procedures for complying with future CFTC requirements, they are not part of DDR's existing systems, policies, and procedures and thus are

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[144]   ANE Adopting Release, supra note 13, at 6348.

[145]   Id.

[146]   Because DDR has elected to rely on the no-action statement, see supra note 29, the Commission has not evaluated the DDR Application against any provisions of Regulation SBSR specifically noted as not providing a basis for a Commission enforcement action during the pendency of the statement.

[147]   ISDA Letter II at 3. The comment refers to revisions to Parts 43 and 45 adopted by the CFTC in September 2020, which include requirements for reporting new data elements as well as changes to how existing data elements should be reported. See Part 43 revisions, available at: www.cftc.gov/sites/default/files/2020/11/2020-21568a.pdf; Part 45 revisions, available at: www.cftc.gov/sites/default/files/2020/11/2020-21569a.pdf.

not germane to the application being considered by the Commission. However, the Commission expects that DDR will, in the future, explain to its participants how changes made to the systems, policies, and procedures for complying with CFTC swap data reporting requirements will impact the reporting of security-based swap transactions.

Second, ISDA expressed support for the approach to unique trade identifiers in the DDR Rulebook, but for clarity requested adding appropriate references to the Unique Swap Identifier ("USI") required by CFTC rules.[148] The no-action statement in the ANE Adopting Release does not impose any obligations on DDR to utilize a particular vocabulary when referring to data elements that will be utilized for both SEC and CFTC transaction reporting, so this request does not affect the Commission's evaluation of the DDR Application against the relevant statutory standards for registration as an SDR and as a SIP.

Third, ISDA notes that, although the specifications in the DDR Rulebook "technically align" with the SEC requirement that an SDR publicly disseminate immediately upon receipt, SDRs are also built to delay public dissemination under CFTC requirements. ISDA suggests that complying with the SEC requirement would require SDRs to incur the cost of adding functionality to disseminate immediately under Regulation SBSR, and ISDA therefore requests that the SEC align its requirement with the CFTC requirement.[149] To the extent ISDA is requesting that the Commission modify the no-action statement in response to ISDA's comment, the Commission declines to do so. Furthermore, because this comment pertains to a Commission

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[148]   See ISDA Letter II at 3.

[149]   See id. at 5.

position and not to the DDR Application, it does not affect the Commission's review of the DDR

Application under the relevant statutory standards for registration as an SDR and as a SIP.[150]

IV. Evaluation of DDR's Application and Commission Findings

Consistent with the standard for registration previously described in Part II.B,[151] the

Commission has considered whether DDR is so organized, and has the capacity, to be able to

assure the prompt, accurate, and reliable performance of its functions as an SDR, comply with

any applicable provisions of the securities laws and the rules and regulations thereunder, and

carry out its functions in a manner consistent with the purposes of Section 13(n) of the Exchange

Act and the rules and regulations thereunder. The Commission finds that DDR meets these

criteria for registration as an SDR for the reasons described throughout this order.

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[150] Under the CFTC's reporting rules, an SDR must publicly disseminate swap transaction and pricing data as soon as technologically practicable after such data is received, unless such swap transaction and pricing data is subject to a time delay described in § 43.5, in which case the swap transaction and pricing data shall be publicly disseminated in the manner described in § 43.5. See 17 CFR 43.3(b)(1). In addition, Appendix C to Part 43 provides clarification of the time delays for public dissemination set forth in § 43.5. An SDR subject to the CFTC's Part 43 rules must disseminate transaction and pricing data with a time delay if the transaction falls within § 43.5, and must disseminate transaction and pricing data "as soon as technologically practicable" if it does not. The Commission's no-action statement recognized that security-based swap transactions do not fall within § 43.5 or Appendix C of Part 43. See ANE Adopting Release, supra note 13, at 6347. Accordingly, an SDR, when utilizing CFTC rather than SEC protocols for dissemination of a security-based swap transaction, would not impose the time delay required for a swap transaction that falls within § 43.5. Nevertheless, to offer some accommodation for certain large-sized security-based swaps based on a single credit instrument or a narrow-based index of credit instruments, the Commission established a size cap of "$5MM+" for any transaction having a true notional size of $5 million or greater. As explained in the Commission's no-action statement, this cap is also applied by the Financial Industry Regulatory Authority when disseminating transaction reports of economically similar cash debt securities. See id. at 6347, n.768.

[151] See supra notes 16–18 and accompanying text.

To evaluate DDR's application to register as a SIP, and consistent with the standard for registration previously described in Part II.B,[152] the Commission has considered whether DDR is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a SIP, comply with the provisions of the Exchange Act and the rules and regulations thereunder, carry out its functions in a manner consistent with the purposes of the Exchange Act, and, insofar as it is acting as an exclusive processor, operate fairly and efficiently. The Commission finds that DDR meets these criteria for registration as a SIP for the reasons described throughout this order.

V.   Conclusion

For the reasons discussed above, the Commission finds that DDR meets the applicable requirements for registration as an SDR, including those standards set forth in Section 13(n) of the Exchange Act and Commission rules and regulations thereunder, and the applicable requirements for registration as a SIP under Section 11A(b) of the Exchange Act.

IT IS HEREBY ORDERED that the application for registration as a security-based swap data repository and a securities information processor filed by DTCC Data Repository (U.S.), LLC (File No. SBSDR-2020-01) pursuant to Sections 13(n) and 11A(b) of the Exchange Act be, and hereby is, APPROVED.

By the Commission.

Jill M. Peterson
Assistant Secretary

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[152]   See supra note 19 and accompanying text.