



**The Depository Trust &  
Clearing Corporation**  
55 Water Street  
New York, NY 10041-0099

*Larry E. Thompson*  
General Counsel

Tel: 212-855-3240  
Fax: 212-855-3279  
lthompson@dtcc.com

June 3, 2011

The Honorable Mary Schapiro  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

The Honorable Gary Gensler  
Chairman  
U.S. Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

Re: Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act; Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information (RIN 3235–AK80); Security-Based Swap Data Repository Registration, Duties, and Core Principles (RIN 3235–AK79); Real-Time Public Reporting of Swap Transaction Data (RIN 3038-AD08); Swap Data Recordkeeping and Reporting Requirements (RIN 3038 AD19); Swap Data Repositories (RIN 3038–AD20); Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges With Respect to Security-Based Swaps Under Regulation MC (RIN 3235–AK74); Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest (RIN 3038–AD01)

Dear Chairman Schapiro and Chairman Gensler:

The Depository Trust & Clearing Corporation (“DTCC”) appreciates the opportunity to provide additional comments related to the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) and implementation by the Securities and Exchange Commission (“SEC” or a “Commission”) and the Commodity Futures Trading Commission (“CFTC” or a “Commission” and, together with the SEC, the “Commissions”). Following formal comments previously submitted in response to the SEC and CFTC’s proposed rules (the “Proposed Rules”),<sup>1</sup> DTCC offers additional comments on the substantive issues raised, as well as feedback on the most efficient methods to harmonize and implement the Proposed Rules to achieve the transparency and risk mitigation goals of the Dodd-Frank Act.

---

<sup>1</sup> See, e.g., letter to CFTC, dated November 17, 2010; see also letter to SEC, dated November 26, 2010; letter to SEC, dated January 18, 2011; letter to SEC, dated January 24, 2011; letter to CFTC, dated February 7, 2011; letter to CFTC, dated February 7, 2011; letter to CFTC, dated February 22, 2011.

*Subsidiaries:*  
The Depository Trust Company  
National Securities Clearing Corporation  
Fixed Income Clearing Corporation  
DTCC Deriv/SERV LLC  
DTCC Solutions LLC

The Honorable Mary Schapiro  
The Honorable Gary Gensler  
June 3, 2011  
Page 2 of 9

As the rulemaking process continues and implementation becomes the focus, DTCC offers the following points, many of which were discussed with the Commissions during the joint staff roundtable on May 3 and May 4, 2011.

Some provisions of the Securities Exchange Act of 1934 (“1934 Act”) and the Commodity Exchange Act (“CEA”), as amended by the Dodd-Frank Act, will have the full force of law on July 16, 2011. DTCC is concerned that, unless the Commissions provide regulatory relief, on the effective date, the requirements of the Dodd-Frank Act will jeopardize the operations of existing swap data repositories and security-based swap data repositories (collectively referred to as “SDRs”). The primary concern is that key components of the industry infrastructure and the provision of market information to regulators and the public will be interrupted, thereby creating significant systemic risk. DTCC urges the SEC and CFTC to provide guidance to market participants as soon as possible in order to minimize disruption to market activities and facilitate a smooth transition to the new Dodd-Frank Act regulatory regime.

The implementation of the Dodd-Frank Act will also significantly impact the interrelationship between SDRs, derivatives clearing organizations (“DCOs”) and swap execution facilities (“SEFs”), particularly as it relates to open access and other requirements of the statute. It is vital that the rules governing the relationship among the three give full effect to the intent of the Dodd-Frank Act and be implemented in such a way that ensures accurate, reliable information is available to regulators in an expedient manner. To that end, DTCC intends to provide a more detailed analysis of this issue in comments DTCC intends to file next week on implementation issues.

When applied to the Proposed Rules, the following comments are critical if SDRs are to fulfill the infrastructure role envisaged by the Dodd-Frank Act:

***Proposed Structural Governance Requirements Will Mitigate Conflicts of Interest***

From its perspective as a user-owned and governed, at-cost financial market service provider, DTCC strongly advocates that ownership and voting limitations be eliminated in their entirety. DTCC supports the mitigation of conflicts of interest through the imposition of structural governance requirements designed to ensure an independent perspective on the Board of Directors and committees, as well as broad representation from all classes of market participants.

DTCC believes that structural governance requirements offer the best solution to reduce risk, increase transparency and promote market integrity within the financial system while avoiding the potential negative impact on capital, liquidity and mitigating systemic risk that could result from any ownership or voting limitations.<sup>2</sup>

---

<sup>2</sup> DTCC reiterates the points made in comments in response to the SEC’s proposed Regulation MC and the CFTC’s proposed requirements for derivatives clearing organizations, designated contract markets and swap

***Swap Data Repositories Should Serve a Central Role in Mitigating Market Risk***

DTCC views the following as critical to the successful implementation of the new regulatory regime for SDRs. As the Commissions consider issues related to SDR registration, core principles and duties, the following are of utmost importance:

- The Repository Function Should Be Impartial and Independently Governed. Since all swaps, whether cleared or uncleared, must be reported to SDRs, SDRs should serve an impartial, utility function. Although permitted to be offered by entities offering other services such as clearing or trading services, the particular repository function must remain neutral and not tied to the interests, commercial or otherwise, of other providers.

DTCC supports the SEC's proposal that would require each SDR to permit market participants to access specific services offered by the SDR separately. This is consistent with the international guidelines set forth in a consultative report from the Committee on Payment and Settlement Systems ("CPSS") and the Technical Committee of the International Organization of Securities Commissions ("IOSCO") concluding that, "[t]o the extent a [trade repository] provides complementary post-trade processing services, these should be available independently from its recordkeeping function so that users can selectively utilise the services they require from the suite of services a [trade repository] may offer."<sup>3</sup>

- SDRs Should Provide Open Access and Preserve User-Control over Data. An SDR should provide an open access platform to the services it offers and the data it maintains. DTCC supports open access to data by other service providers (based on the consent of the parties for that provider to receive the data). It is critical to preserve the trading parties' control over their own data.

Reporting counterparties, facing the statutory obligation for trade reporting, must ensure the integrity of trade reporting through the life of the trade. The Commissions' rules must reflect that any agent for the reporting party, whether a SEF, clearinghouse, confirmation facility or other service provider, is acting on behalf of the reporting counterparty. The SDR to which the trade is reported should be dependent on the counterparty's selection and not determined by the reporting party's agent (whether a DCO, SEF or other entity).

---

execution facilities ("SEFs") regarding the mitigation of conflicts of interest. DTCC believes that structural governance requirements will mitigate conflicts of interest for SDRs in a similar manner.

<sup>3</sup> See Considerations for Trade Repositories in OTC Derivatives Markets, CPSS-IOSCO (May 2010, available at <http://www.bis.org/press/p100512.htm>).

- To Counter the Risks of Data Fragmentation, A Swap Data Repository Should Be Able to Handle All Swaps in Any Asset Class for Which It Is Registered, and All Information Relating to A Single Swap Should Be Held in the Same Repository. The CFTC Proposed Rules provide that all data relating to a single swap be held within the same SDR and that any SDR must be able to receive and manage all swaps in any asset class for which it is registered in accordance with the requirements of the Commission.

These provisions are critical for avoiding multiple counting of swap data and for assuring that the more complex and non-standard transactions, typically the higher risk creating transactions (*e.g.*, certain mortgage related transactions held by the American International Group), are appropriately registered in SDRs so accurate risk and market activity profiles can be maintained. If providers are permitted to select which trades they will or will not handle, it becomes more likely that the non-standard, more complex transactions simply won't be serviced by SDRs. Those trades would then have to be reported to, and serviced by, the Commissions, creating unnecessary costs and risks. DTCC urges the SEC to clarify that their reporting rules will harmonize with the CFTC standard.

- Swap Data Repositories Should Possess Strong Operational Capabilities that Promote Market Stability and Transparency. To promote transparent and stable financial markets, registered SDRs must be able to demonstrate an infrastructure which supports critical operational capabilities. Specifically, DTCC recommends that SDRs operate on a 24/6.5 basis to reflect the global nature of the financial markets, process transactions in real-time, maintain multiple levels of operational redundancy and data security. Given the importance of systemic risk oversight of financial markets and the critical role SDRs will play in providing market transparency, a failure to demonstrate robust resiliency, security and redundancy in operations should preclude an entity from registering as an SDR. Assessment of these core capabilities is a critical component of any registration process, including a temporary registration.
- To Promote Comprehensive Regulatory Oversight, Registered SDRs Should Be Solely Responsible for Meeting the Real-time Public Reporting Requirements. While DTCC generally approves of third party service providers' support of reporting parties in fulfilling their reporting obligations, real-time public reporting should be within the exclusive province of registered SDRs (as provided in the SEC Proposed Rules). Unregulated, non-SDRs should not be authorized to serve the function of a real-time public disseminator, which DTCC believes is a core function of registered SDRs. The compliance functions inherent in real-time public reporting (*e.g.*, managing block trade exemptions and tracking whether reporting entities are meeting their reporting requirements) require entities performing these functions to meet certain operational and governance standards and to be subject to regulatory oversight. Such regulatory oversight is essential to ensure the accuracy and completeness of disseminated data.

***Recordkeeping, Reporting and Dissemination Rules Should Promote Access to Aggregated, Accurate Market Data***

In addition to the SDR rules and requirements, each Commission's rules related to regulatory reporting and public dissemination of market information constitute an important component of systemic risk mitigation and increased market transparency. Based on DTCC's experience in operating the Trade Information Warehouse (the "Warehouse") since 2006 and its direct online access portal for regulators, DTCC believes that issues of recordkeeping, reporting and dissemination should be considered carefully:

- Regulators Should Ensure that the Aggregate Public Reporting of Market Information from SDRs Is Complete and Accurate. DTCC supports a regulatory framework governing SDRs that promotes complete and accurate information for each swap or security-based swap asset class in a timely manner. A registered SDR should possess the ability to provide (i) enforcement agents with necessary information on trading activity; (ii) regulatory agencies with counterparty-specific information about systemic risk based on trading activity; (iii) aggregate trade information for publication on market-wide activity and aggregate gross and net open interest; and (iv) a framework for real-time reporting from SEFs and bilateral counterparties and related dissemination. When there are multiple SDRs in any particular asset class, the Commissions should take such action as is necessary to eliminate any overstatements of open interest or other inaccuracies that may result from having broader market data published from separate SDRs.
- Swap Data Repositories Should Leverage Existing and Developing Automation to the Maximum Extent Possible to Promote Data Quality and Risk Mitigation. DTCC supports the utilization of automated processing to help ensure that the highest quality data is maintained in SDRs. Preferred data sources should always be authoritative when involving an electronic agreement by both parties as to the terms of the reported transactions. The Commissions' rules should take advantage of advances in automation wherever and whenever possible.
- The Precise Manner of Reporting Should Not Be Prescribed by Regulation. SDRs should use the best possible data available at all times. Overly prescriptive rules for how data is reported will almost certainly result in less reliable or redundant data flowing into an SDR when higher quality data is available. The Commissions should not prescribe the exact and detailed means of reporting required for SDRs to meet regulatory obligations. SDRs should be afforded the flexibility to devise the most efficient, effective and reliable methods of furnishing the Commissions with the complete set of data necessary to fulfill regulatory obligations.

- SDRs Should Be Open to All Reporting Market Participants. As SDRs are required by the Dodd-Frank Act to confirm with both counterparties to any transaction the accuracy of any data submitted with respect to that transaction, SDRs should be open and able to accept trades in any manner consistent with the regulations, from any market participant, whether or not they are subject to the mandatory trade reporting obligation. All registered SDRs should have appropriate communications links, to the extent feasible, with all parties to its transactions. Similarly, clearinghouses and SEFs should have the ability to report trades to SDRs in any manner within the framework of the rules to allow these entities to satisfy their customers' reporting preferences. Connectivity between clearinghouses and SEFs, as well as SDRs, is easy to establish (and, in many instances, already exists) and should not be the reason for delaying the implementation of real-time reporting rules.

### ***Importance of Domestic and International Harmonization***

It is imperative that the SEC and CFTC work together to reconcile their regulatory proposals to establish a harmonized regulatory regime. Without harmonization, applicant SDRs will face potentially burdensome, redundant and possibly conflicting rules, which will divert resources from the efficient operation of the SDR. Further, the SEC and CFTC must work with global regulators to prevent regulatory arbitrage between jurisdictions.

- Registration for SDRs Should Be Harmonized Between Commissions. Harmonization in the registration process for SDRs is necessary. Requiring one SDR to complete three sets of registration forms – an SDR application to the CFTC, an SDR application to the SEC and Form SIP to the SEC – demonstrates a specific instance where the regulatory agencies should come together, determine the information necessary for registration and jointly publish a common registration application. DTCC supports separate regulatory oversight by the Commissions, but strongly urges that such oversight be accomplished in a manner that reduces the regulatory burden.

Similarly, DTCC urges the CFTC to review the SEC's proposed real-time reporting rule and consider adoption of the SEC's approach, which limits entities responsible for public dissemination of information to registered SDRs, ensuring that publishers of market data meet certain minimum requirements before engaging in such activity.

- Regulatory Regime Must Be Result of Global Coordination. It is critical that the United States, the European Union and the other major global markets align their regulatory regimes to limit opportunities for market distorting arbitrage. The creation of a global credit default swap repository would not have occurred without the global regulatory cooperation achieved through the OTC Derivatives Regulators' Forum ("ODRF") and the OTC Derivatives Regulators Supervisors Group ("ODSG"). It is important that the global SDR framework incorporate their efforts,

particularly the ODRF's guidelines on regulatory access to information stored in trade repositories for over-the-counter derivatives.<sup>4</sup>

- International Regulatory Framework For Systemic Risk Oversight Must Be Globally Consistent. To ensure that consolidated asset class data remains readily available for critical decision-making information about future reporting entities which may acquire positions that are systemically risky, it is vital that consistent rules are enacted across jurisdictions.

Global regulators must be able to access the core infrastructure and consolidated asset class databases to protect against the build up of systemic risk. The Warehouse, as an example, offers regulators a model for information sharing. The organization and operation of the Warehouse was designed with direct input from global regulators through the cooperative efforts of the ODRF.

- Global Access to Consolidated, Accurate Information. The global SDR framework emerging from the Dodd-Frank Act and European regulatory processes must provide comprehensive data for all derivatives markets globally. If the global regulatory process is not harmonized, both the published and regulator-only accessible data will be fragmented, resulting in misleading reporting of exposures, uncertain risk concentration reports and a decreased ability to identify systemic risk. Fragmentation of data – either by asset class or jurisdiction – would leave to regulators the time consuming, complicated and expensive task of rebuilding complex data aggregation and reporting mechanisms (including extra-territorial trades on locally relevant underlyings).
- Jurisdictional Issues Must Be Resolved in A Way That Promotes Information Sharing. Global regulators need to develop a policy to guide situations in which data on trades is not reportable to U.S. regulators under the statute (due to the jurisdiction of execution or the counterparties involved), but is nonetheless collected by an SDR. DTCC believes that a letter from the ODRF membership related to global regulator access to the Warehouse's data is illustrative as a means to resolve this issue.<sup>5</sup>

The ODRF view contemplates a U.S. regulator (the SEC or CFTC) receiving data from the Warehouse that goes beyond the scope of information proposed by the Dodd-Frank Act or the Commissions' Proposed Rules, such as data related to overseas transactions entered into by non-U.S. persons on U.S. underlyings. The Warehouse routinely provides this transaction data to U.S. regulators (and,

---

<sup>4</sup> OTC DERIVATIVES REGULATORS' FORUM – June 2010, *available at* [http://www.dtcc.com/downloads/products/derivserv/ODRF\\_guidelines.pdf](http://www.dtcc.com/downloads/products/derivserv/ODRF_guidelines.pdf).

<sup>5</sup> See letter from OTC Derivatives Regulators' Forum to the Warehouse Trust Company, dated June 18, 2010. *Available at:* [http://www.dtcc.com/downloads/legal/imp\\_notices/2010/derivserv/tiw044.zip](http://www.dtcc.com/downloads/legal/imp_notices/2010/derivserv/tiw044.zip).

conversely, routinely provides data related to transactions in the U.S. by U.S. persons on European underlyings to European regulators), as contemplated by the ODRF regulatory standards. This spirit of cooperation and coordination between regulators around the world should be encouraged and expanded. Without global regulatory cooperation, the SEC or CFTC's ability to routinely receive details of purely European transactions written on U.S. underlyings will be frustrated.

### ***Implementation of Final Rules***

The following points should be considered by the Commissions as they determine appropriate time frames for requiring compliance with final rules and the order in which the Proposed Rules are implemented.

- Rulebooks and Other Requirements Prior to Registration. The Commissions should require rulebooks for SDRs prior to operation and as part of the registration process. SDRs will need to complete legal agreements with clearing-houses and among the users of an SDR. These agreements generally constitute the agreement of the user to abide by published rules and/or procedures of the SDR and generally have a notice of change to permit amendments without having to re-execute with all users. These agreements should be in place before SDRs operate under the new regulatory regime.
- Trade Reporting Should Be A Priority Among Requirements. The reporting of all trades – cleared and uncleared – to SDRs should be among the first requirements to be made effective. The Commissions will depend on current, accurate trade information to make appropriate decisions related to other parts of the Dodd-Frank Act, including mandatory clearing and mandatory trade execution on SEFs. SDR trade information will also educate the agencies on the cleared open interest and the kind of liquidations that may give rise to in order to understand the extent to which restrictions ought to be put on markets.
- Provide for Phased Reporting By Asset Class, with the Most Automated Asset Classes First. Under the Commissions' approach of phased implementation by asset class, DTCC believes that the phasing should focus first on the products with the greatest automation and then on products with less automation. The more widespread the automated processing, the higher quality the data reported to SDRs. As automated processing is most widely prevalent in credit derivatives, with over 98% of the market confirmed electronically and with life-cycle events processed through an automated central processor, it should be the first asset class implemented. Interest rate derivatives, being the next most widely automated asset class, would be next, followed by FX derivatives, then commodity and equity derivatives last.



The Honorable Mary Schapiro  
The Honorable Gary Gensler  
June 3, 2011  
Page 9 of 9

- Real-Time Dissemination Should Have A Thorough Phase-In Period. The potential for misleading real-time price dissemination, with concomitant market disruptions and potential economic damage, should cause regulators to proceed with caution. The OTC derivative market has peculiar features which make it difficult to determine when a transaction is a price determining transaction and when not, what are the actual price relevant details (leading to the potential for lumping essentially different contracts into the same category), and what are the appropriate hedging periods.

Additionally, in OTC derivatives markets, there will likely be more cancels and corrections after initial reporting than with other types of transactions. These considerations all argue in favor of a relatively thorough phase-in period during which only regulators receive reported data which otherwise would be disseminated in real-time.

### ***Conclusion***

DTCC appreciates the opportunity to offer these comments on the substance and implementation of the above-referenced Proposed Rules. Should the Commissions wish to discuss these comments further, please contact me at 212-855-3240 or [lthompson@dtcc.com](mailto:lthompson@dtcc.com).

Sincerely yours,



Larry E. Thompson  
General Counsel