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Via Agency Website & Courier

November 15, 2010

David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

RE: RIN 3038–AD24, Interim Final Rule for Reporting Pre-Enactment Swap Transactions

Dear Mr. Stawick:

The Depository Trust & Clearing Corporation (“DTCC”) appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (“Commission”) on its interim final rule for reporting pre-enactment unexpired swap transactions (the “Interim Final Rule”).¹ DTCC is supportive of a swap reporting regime that brings increased transparency and oversight to over-the-counter (“OTC”) derivatives markets.

Summary of Response

DTCC supports the Commission’s efforts to ensure that data from pre-enactment unexpired swap transactions are preserved and retrievable in the future. DTCC respectfully suggests that the reporting of a binding, legal electronic record agreed to by the two counterparties to a pre-enactment unexpired swap should be treated by the Commission as satisfying the Interim Final Rule’s reporting requirement and the information and document retention policy suggested by the interpretive note to Rule 44.02(a), as well as certain obligations of swap dealers and major swap participants.² Additionally, DTCC provides comments to the scope of information that should be preserved under the Commission’s information and documents retention policy, based upon our experience operating the Trade Information Warehouse (the “Warehouse”) and the centralized global repository for credit default swaps (“CDS”). Finally, DTCC offers its comments on how the single counterparty reporting obligation set forth in Rule 44.02(b) could result in the fragmentation of swap market data and decrease the utility of

¹ Interim Final Rule for Reporting Pre-Enactment Swap Transactions, 75 Fed. Reg. 63,080 (Oct. 14, 2010).

² *Id.* at 63,085.

the information collected by a swap data repository and on the designation of a consolidated data repository. These comments are preceded by an overview of DTCC and the Warehouse.

Overview of DTCC

DTCC, through its subsidiaries, provides clearing, settlement and information services for equities, corporate and municipal bonds, government and mortgage-backed securities, money market instruments and over-the-counter derivatives. In addition, DTCC is a leading processor of mutual funds and insurance transactions, linking funds and carriers with their distribution networks. DTCC's depository provides custody and asset servicing for 3.6 million securities issues from the United States and 121 other countries and territories, valued at almost \$34 trillion. In 2009, DTCC settled more than \$1.48 quadrillion in securities transactions.

Overview of the Trade Information Warehouse

Industry Established Trade Information Warehouse to Increase Transparency, Bring Stability

In November 2006, at the initiative of swap market participants, DTCC launched the Warehouse to operate and maintain the centralized global electronic database for virtually all CDS contracts outstanding in the marketplace. The Warehouse has received information with respect to trades executed prior to its inception. During 2007, DTCC back-loaded physical records in the Warehouse with information on over 2.2 million outstanding CDS contracts. Today, data for over 95 percent of all OTC credit derivatives are captured in this automated environment.³ The Warehouse database currently represents about 98 percent of all credit derivative transactions in the global marketplace, constituting approximately 2.4 million contacts with a notional value of \$29.6 trillion (\$24.9 trillion electronically "gold" records and \$4.7 trillion paper confirmed).

The Warehouse maintains the most current CDS contract details on the official legal, or "gold," record for both cleared and bilaterally-executed CDS transactions. The repository also stores key information on market participants single-sided, non-legally binding or "copper," records for CDS transactions to help regulators and market participants gain a clearer and more complete snapshot of the market's overall risk exposure to OTC credit derivatives instruments.

Warehouse "Gold" Records Are Binding, Legal Electronic Record between Counterparties

Once an executed contract has been matched and confirmed, the trade record is sent to the Warehouse's repository. A "gold" record represents the current legal state of the contract. In fact, each user of the Warehouse's services has signed a binding agreement

³ For more information about the Warehouse, please see http://www.dtcc.com/products/derivserv/suite/ps_index.php.

that states that, notwithstanding any provisions in any other applicable documentation relating to such transaction, the contracts maintained by the Warehouse represent the definitive record of each transaction and supersede any other documentation or understanding, whether written, oral, or electronic, between the parties. The Warehouse documents are relied upon to resolve any dispute between counterparties and to determine any payments or settlements by the Warehouse.

For “gold” records, DTCC assigns a unique reference identifier to each contract and performs automated recordkeeping to maintain the “current state” contract terms, taking into account post-trade events. The Warehouse also maintains a complete audit trail of the initial trade and every modification or assignment agreed to by the counterparties. These records are updated in real-time and, because the Warehouse is the official legal record of electronically confirmed contracts and centrally processes payments and credit events, counterparties ensure that these files are kept up to date and accurate.

Global regulators are provided information on “gold” and “copper” CDS contracts, as appropriate and upon request. Because contract details are located in a single central location, the Warehouse provides regulators across the globe with the ability to view market exposure on these contracts and assess risk from a central vantage point, which is critical, particularly in times of crisis. The availability of this data is necessary for regulators to identify and address risks to financial markets in a timely fashion.⁴ Beginning next year, all credit derivative trade data held in the Warehouse will also be simultaneously held in DTCC Derivatives Repository, Ltd., an FSA regulated subsidiary based in London, in order to help assure regulator access to data across multiple jurisdictions.

Discussion of Interim Final Rule

The Submission and Maintenance of Binding, Legal Electronic Record Should Satisfy the Reporting Requirements for Pre-enactment Unexpired Swaps and also Certain Requirements for Swap Dealers and Major Swap Participants.

Rule 44.01 requires a counterparty to a pre-enactment unexpired swap transaction to report to a registered swap data repository or the Commission by the compliance date established in the reporting rules required under Section 2(h)(5) of the Commodity Exchange Act, or within 60 days after a swap data repository becomes registered with the Commission and commences operations to receive and maintain data related to such swap, whichever occurs first.⁵ The purpose of the swap data repository is to “assist the CFTC and SEC in their oversight and market regulation responsibilities.”⁶

⁴ As an example, while the Warehouse reported counterparty specific positions to regulators at the time of the AIG insolvency, virtually none of the AIG trades creating the exposure that lead to the company’s downfall were registered in the Warehouse. A mandate for all trade activity to be reported into a central swap data repository maintaining all positions would have assisted in identifying risk posed by AIG’s market activity and provided an opportunity to reduce the risk promptly.

⁵ See Interim Final Rule for Reporting Pre-Enactment Swap Transactions, 75 Fed. Reg. at 63,084.

⁶ Statement of Sen. Blanche Lincoln. 156 Cong. Rec. S5920 (2010).

Although the Warehouse is not yet a registered swap data repository, DTCC intends to register the Warehouse as a swap data repository upon promulgation of the relevant regulations by the Commission. In the interim, in consultation with the OTC Derivatives Regulators' Forum, the Warehouse makes available its records for regulators and provides aggregated trade data to nearly 30 global regulators and central banks, including the Commission, the Securities and Exchange Commission, the Federal Reserve Bank of New York, the European Central Bank, Banque De France, and the Financial Services Authority.

DTCC respectfully suggests that, in addition to satisfying the filing requirements for pre-enactment unexpired swaps, the submission and maintenance of a binding, legal electronic record on a regular basis should be used to satisfy some of the ongoing obligations of swap dealers and major swap participants. In particular, the entity charged with keeping swap data up to date, as the possessor of this information, could easily report on behalf of a swap dealer or major swap participant regarding its transactions, positions and financial condition,⁷ maintain its books and records,⁸ and maintain daily trading records of the swaps of the registered swap dealer or major swap participant and all related records (including related cash or forward transactions), as may be required by the Commission and for each swap counterparty.⁹

The designation of the submission and maintenance of a binding, legal electronic record for pre-enactment unexpired swaps within the Interim Final Rule would reduce the burden on counterparties that do not transact frequently in OTC markets and lack the infrastructure for duplicative reporting obligations.¹⁰ Similarly, the value of having one agreed-upon electronic record governing an agreement between counterparties is also recognized by more frequent market participants.¹¹

Further, it is inefficient and jeopardizes systemic risk to establish a reporting regime that results in regulators relying on counterparty-reported information that could differ from the binding, legal electronic record maintained at a central location by a neutral third party that the counterparties consider the official record. For asset classes where current

⁷ Commodity Exchange Act ("CEA") Section 4r(f)(1)(A).

⁸ CEA Section 4r(f)(1)(B)-(D).

⁹ CEA Section 4r(g)

¹⁰ *See, e.g.*, Comments from Joseph R. Glace, Chief Risk Officer, Exelon, representing Coalition for Derivatives End-Users, ("The important part for us again is [to] have users who are satisfying the reporting obligations . . . so again, you know, to me to have that [reporting] process go on, which is a useful business process, and then to duplicate it again in some other fashion is just an additional cost.") Joint Public Roundtable to Discuss Data for Swaps and Security-Based Swaps, Swap Data Repositories, Security-Based Swap Data Repositories, and Real-Time Public Reporting, September 14, 2010 ("Roundtable Transcript") at 194-195. Available at <http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/derivative18sub091410.pdf>.

¹¹ *See, e.g.*, Comments from John Gidman, Executive Vice President, Loomis, Sayles & Company, representing the Association of Institutional Investors, ("We think the public overall, are much better served by having gold records that we can rely on, particularly at the aggregate level of the market and the markets.") Roundtable Transcript at 227.

market practice dictates reporting and confirmation of trade information to a central repository, establishing a parallel track for regulatory oversight would only duplicate reporting obligations and establish an opportunity for conflicting swap data. Because market participants recognize the value in and currently report and maintain binding, legal electronic records, DTCC suggests that this practice satisfy any additional reporting requirement for pre-enactment unexpired swap transactions.

For these same reasons, DTCC believes the information retention requirements set forth in Rule 44.02(a) for future reporting should be satisfied when trade information has been reported and recognized by the counterparties as the binding, legal electronic record.

Fragmentation of Swap Market Data Caused by Single Party Reporting and Lack of Consolidation of Repository Data Poses Risks

Rule 44.02(b) requires only one party to report pre-enactment unexpired swap transaction data, and depending on the classification of the counterparties as major swap participants¹² or swap dealers,¹³ it is possible that the counterparties may select the responsible party.¹⁴ This reporting arrangement differs from current market practice and is inconsistent with the existing repository reporting infrastructure. Currently, the receipt of information from both parties to a swap data repository guarantees reconciliation of the information and confirmation that the information entering into the Warehouse is accurate. Reducing the reporting obligation to only one side leaves open the possibility of incorrect data and jeopardizes the value placed on binding, legal electronic records such as our “gold” records for CDS. Further, a single-reporting regime will confront international legal obstacles, such as domestic privacy laws, which will restrict the reporting party’s ability to disclose counterparty information. Bilateral reporting obligations alleviate some of these burdens and produce more valuable, trustworthy information which can be relied upon by counterparties and regulators.

The issue of incorrect or fragmented data presents a second risk that concerns many market participants.¹⁵ DTCC recognizes the value of aggregated reporting to repositories and regulators and strongly urges the Commission to consider consolidation of repository data, either by asset class or across all products.

The Dodd-Frank Act provides authority for the Commission to mitigate the risk posed by fragmented market data caused by multiple swap data repositories. Under section 21 of

¹² CEA Section 1a(33).

¹³ CEA Section 1a(49).

¹⁴ See Interim Final Rule for Reporting Pre-Enactment Swap Transactions, 75 Fed. Reg. at 63085.

¹⁵ See, e.g., Comments from Athanassos Diplas, Managing Director, Deutsche Bank, (“what regulators have is to have a single report per asset class so that all that information can be contained in one place and we don't have actually information falling through the gaps. Part of the problem in the past has been that information was fragmented and that caused the actual problems.”) Roundtable Transcript at 23. See also Comments from Bruce Tupper, Director, Market Development ICE eConfirm, (“I think the big question is aggregating the data amongst energy clearing houses and also the OTC data. Is that a responsibility that the Commission wants to have, or is that something of the repository?”) Roundtable Transcript at 71.

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the CEA, as amended by the Dodd-Frank Act, swap data repositories shall “provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity).”¹⁶ Under this authority, the Commission could designate one swap data repository as the recipient of other swap data repositories’ information in order to have consolidation and direct electronic access for the Commission.

Conclusion

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

Regards,

A handwritten signature in cursive script that reads "Larry E. Thompson".

Larry E. Thompson
General Counsel

¹⁶ CEA Section 21.