



**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*

**Via Agency Website & Courier**

February 7, 2011

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

Re: Real-Time Public Reporting of Swap Transaction Data (RIN 3038-AD08)

Dear Mr. Stawick:

The Depository Trust & Clearing Corporation (“DTCC”) appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (“CFTC” or “Commission”) on its proposed regulation regarding real-time public reporting of swap transaction data (“Proposed Regulation” or “Proposed Rule”) under the Commodity Exchange Act (“CEA” or “Act”).<sup>1</sup> DTCC’s comments are provided with the goal of assisting the Commission in assessing how best to bring increased transparency and oversight to over-the-counter (“OTC”) derivatives markets.

**SUMMARY OF RESPONSE**

DTCC supports the Commission’s efforts to establish a comprehensive new framework for the regulation of swaps, including regulations that provide for the public availability of swap transaction and pricing data in real-time to enhance price discovery. As an industry utility that currently plays an important role in providing transparency to the derivatives market, as well as other markets, DTCC brings a unique perspective to the dialogue concerning the implementation of real-time public reporting requirements. In general, DTCC believes that the Commission’s Proposed Rule should be fashioned in a way to ensure that the improvements to transparency and operations that have been achieved in the past few years are not lost, but rather built upon as new processes and systems are developed.

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<sup>1</sup> See Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. 76,140 (December 7, 2010).

Importantly, DTCC urges the Commission and the Securities and Exchange Commission (“SEC”) to harmonize their respective regulatory regimes establishing reporting processes for credit and equity derivatives, thereby eliminating the risk and costs associated with developing and maintaining two separate regulatory reporting processes when only a single, comprehensive process is needed. The agencies’ current regulatory proposals exhibit significant similarities, but differ in the details, creating potential inconsistencies that could increase risks of inaccurate reporting, as well as operational costs for market participants and swap data repositories (“SDRs”). DTCC urges the CFTC and SEC, when possible, to formulate consistent requirements with respect to data elements, reporting parties and reportable price-forming events.

It is important to aggregate data across the market, and the Commission should set and apply consistent thresholds for block trades in public dissemination by both SDRs and any market operators who directly disseminate information. The level of public transparency from mandatory regulatory reporting should not vary, whether based on the choice of the SDR to which a trade is reported or the market over which it is traded. DTCC believes that there should be relatively few asset classes defined, as this drives an increased aggregation of service provision, reducing the risks of duplication or omission in public dissemination, limits the possibility of erroneous consolidation by the public of available data, and reduces the burden on market participants to connect and reconcile to multiple SDRs. In this regard, DTCC strongly supports the proposals for acceptance of all swaps in an asset class. This action promotes sound public policy. For example, such a requirement will discourage potential SDRs from cherry picking only those swaps that are considered “easy” - a practice which contributes to data fragmentation and could undermine any economic case for taking the “hard” swaps. The net effect would lead to “hard” swaps falling to the Commission, resulting in an unnecessary monetary burden and wasted taxpayer resources.

While DTCC generally supports the Commission’s approach that allows third party service providers to support reporting parties in fulfilling their reporting obligations, there is concern that the proposed rules will cause confusion for reporting parties. The Commission’s proposal allows unregulated, non-SDRs to accept data reporting from swap markets and to serve the function as a real-time disseminator to fulfill the public reporting requirements under Part 43. DTCC questions whether an unregulated entity should be fulfilling the Commission’s dissemination requirements, when SDRs are created by the statute to collect the very same data for regulatory and reporting purposes. If such third party dissemination by a non-SDR were to be allowed under the final rule, it is important to clarify that reporting trade data to such a third party real-time disseminator specifically does not fulfill the reporting requirements that counterparties to transactions must meet under Part 45. DTCC intends to comment further on these issues in its comment letter in response to Part 49 dealing with SDR registration and duties.

It is DTCC's view that the responsibility for reporting should be required of a principal to the trade, (most commonly the swap dealer), with the ability to appoint an agent to perform the reporting on the principal's behalf. In addition, DTCC encourages the use of existing standard business processes to support the reporting obligations, as the use of existing processes will enhance the accuracy of the reported data, improving error and omission controls and reducing the costs involved in the creation of entirely new reporting and compliance systems and procedures. DTCC also calls for the extension of the application of Proposed Rule 45.7, reporting to a single SDR, to include real-time reporting.<sup>2</sup> This will increase the integrity of reporting and appropriately align the relationship through all subsequent reporting to the SDR. This sound public policy appears to be consistent with the requirements of the CEA.<sup>3</sup>

After the final rules are adopted, market participants must be given adequate time to develop and implement appropriate reporting and compliance systems and procedures. Once these systems are fully tested and operational, real-time public reporting requirements should be implemented gradually to avoid market disruptions as the market reacts to the increased transparency. A phased-in public reporting protocol, beginning with reporting requirements for the most liquid centrally cleared contracts, will allow the Commission to study the impact of transparency on the market, and if necessary, make adjustments to both the timing of the dissemination and the data that should be disseminated.

DTCC's detailed comments are preceded by a brief overview of DTCC and the Trade Information Warehouse ("TIW" or "Warehouse"), a centralized global repository for trade reporting and post-trade processing of OTC credit derivatives contracts, which is operated by DTCC's wholly-owned subsidiary, The Warehouse Trust Company LLC.<sup>4</sup>

## **OVERVIEW OF DTCC**

DTCC, through its subsidiaries, provides clearing, settlement and information services for virtually all U.S. transactions in equities, corporate and municipal bonds, U.S. government securities and mortgage-backed securities transactions, money market instruments and OTC derivatives. DTCC is also a leading processor of mutual funds and annuity transactions, linking funds and insurance carriers with their distribution networks. DTCC does not currently operate a clearing agency for derivatives. However,

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<sup>2</sup> See Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. 76,574, 76,604 (December 8, 2010).

<sup>3</sup> See CEA Section 2(a)(13)(G) ("Each swap (whether cleared or uncleared) shall be reported to a registered swap data repository.") (emphasis added).

<sup>4</sup> DTCC filed a separate letter with the Commission on February 7, 2011 addressing Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. 76,574. DTCC believes there is significant overlap of the issues addressed in the two letters and urges Commission staff to consider both sets of comments.

DTCC owns a 50% equity interest in New York Portfolio Clearing, LLC (“NYPC”)<sup>5</sup>, which has been granted registration as a derivatives clearing organization (“DCO”) by the CFTC.

DTCC has three wholly-owned subsidiaries which are registered clearing agencies under the Securities Exchange Act of 1934 (“Exchange Act”), subject to regulation by the SEC. These three clearing agency subsidiaries are The Depository Trust Company (“DTC”), National Securities Clearing Corporation (“NSCC”) and Fixed Income Clearing Corporation (“FICC”). DTCC is owned by its users and operates as a not-for-profit utility with a fee structure based on cost recovery.

DTC currently 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, DTC settled more than \$1.48 quadrillion in securities transactions. NSCC provides clearing, risk management, (for some securities) central counterparty services and a guarantee of completion for certain transactions. FICC provides clearing, risk management and central counterparty services (through its Government Securities Division) in the fixed income, mortgage backed and government securities markets. Thus, DTCC, through its subsidiaries, processes huge volumes of transactions – more than 30 billion a year – on an at-cost basis.

## **OVERVIEW OF THE TRADE INFORMATION WAREHOUSE**

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 position data on credit default swap (“CDS”) contracts outstanding in the marketplace. Since the life cycle for CDS contracts can extend over five years, in 2007, DTCC “back-loaded” records in the Warehouse with information on over 2.2 million outstanding CDS contracts effected prior to the November 2006 implementation date. Today, data for over 95 percent of all OTC credit derivatives are captured in this automated environment. The Warehouse database currently represents about 98 percent of all credit derivative transactions in the global marketplace; constituting approximately 2.3 million contracts with a notional value of \$29 trillion (\$25.3 trillion electronically confirmed “gold” records and \$3.7 trillion paper-confirmed “copper” records).<sup>6</sup>

In addition to repository services (as contemplated by the proposed rules relating to SDRs, the acceptance and public and regulatory dissemination of data reported by reporting counterparties), the Warehouse provides both legal recordkeeping and central

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<sup>5</sup> NYSE Euronext owns the other 50% equity interest. Neither DTCC nor NYSE owns a majority of the equity interests in NYPC. NYPC has its own management team which controls the day to day operations of the company.

<sup>6</sup> Data provided as of December 31, 2010. For more information about the Trade Information Warehouse, please see [http://www.dtcc.com/products/derivserv/suite/ps\\_index.php](http://www.dtcc.com/products/derivserv/suite/ps_index.php).

life cycle event processing for all swaps registered therein. By agreement with its 17,000+ users worldwide, 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 complete snapshot of the market’s overall risk exposure to OTC credit derivatives instruments.

DTCC’s Warehouse is also the first and only centralized global provider of life cycle event processing for OTC credit derivatives contract positions throughout their multi-year terms. Various events can occur, such as calculating payments and bilateral netting, settling payments, credit events, early termination and company renames and reorganizations, which require action to be taken by the parties to such CDS contracts. DTCC’s Warehouse is equipped to automate the processing associated with those events and related actions. The performance of these functions by the Warehouse distinguishes it from any swap data repository that merely accepts and stores swap data information.

## **DISCUSSION OF PROPOSED REGULATIONS**

Pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), the Proposed Regulation establishes a framework for the public availability of swap transaction and pricing data in real-time.<sup>7</sup> Under Section 2(a)(13)(A) of the CEA, the definition of “real-time public reporting” means reporting “data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed.”<sup>8</sup>

The Proposed Rule applies to all swaps, including: (i) swaps subject to the mandatory clearing requirement (including those swaps that may qualify for a non-financial end-user exception from the mandatory clearing requirement); (ii) swaps not subject to the mandatory clearing requirement but cleared at a registered DCO; (iii) swaps not cleared at a registered DCO and reported to a registered SDR or to the Commission; and (iv) swaps “determined to be required to be cleared” under the CEA but not cleared.<sup>9</sup>

The Proposed Rule sets out the framework for: (i) the entities or persons that must be responsible for reporting swap transaction and pricing data; (ii) the entities or persons that must be responsible for publicly disseminating such data; (iii) the data fields and guidance on the appropriate order and format for data to be reported to the public in real-

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<sup>7</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

<sup>8</sup> See Real-Time Public Reporting of Swap Transaction Data 75 Fed. Reg. at 76,140.

<sup>9</sup> See *id.* at 76,141.

time; (iv) the appropriate minimum size and time delay for block trades and large notional swaps; and (v) the proposed effective date and implementation schedule for the Proposed Rule.<sup>10</sup>

### **The Need for Harmonized Regulation**

While DTCC strongly supports the development of thoughtful regulations regarding real-time trade reporting, it is important to put the Commission's Proposed Regulation in the context of the larger changes to the infrastructure of the OTC derivatives markets. With regard to real-time trade reporting, both this Commission and the SEC have proposed lengthy rulemakings. While these proposals are similar, they diverge in several respects, requiring market participants to address such differences when building out technology systems to handle reporting requirements. DTCC does not believe that the underlying differences between swaps and securities-based swaps necessitate differing regulatory treatment from a transaction reporting perspective.

DTCC urges the Commission and the SEC to harmonize their respective regulatory regimes establishing reporting and dissemination processes. A more cohesive approach would eliminate the risk and costs associated with developing and maintaining two separate regulatory reporting regimes when only a single, comprehensive framework is necessary. Moreover, the differing details in the two proposals create potential inconsistencies that could unnecessarily increase risks of inaccurate reporting and dissemination, as well as operational costs for market participants and SDRs. DTCC urges the CFTC and SEC to formulate a unified implementation schedule for real-time reporting with consistent requirements with respect to reporting transaction and pricing data, public dissemination of such data, specific data fields, and the calculation and reporting of block trades.

### **The Need for Aggregate and Consolidated Data**

For real-time reporting, there must be consistent block trade definitions and thresholds across the global market. These should be representative of the entire market and reflective of market depth and liquidity for a given product – rather than reflective of localized subsets, based on narrow reporting populations, such as those defined by components of market infrastructure, counterparty location or fragmentation of reported information by reporting of trade executions to multiple SDRs. A localized block trade definition will provide participants with a potential means to avoid or delay public dissemination. Therefore, the Commission needs to determine how to establish consistent block trade rules and thresholds across the market.

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<sup>10</sup> See *id.*

DTCC believes that the dissemination function under this rule should be performed by a registered SDR. Allowing other entities to fulfill the regulatory requirements of real-time dissemination may add to the processes by which counterparties are required to submit data and further complicate the rules for market participants. Furthermore, the rules and core principles that will govern SDRs will help ensure that such dissemination is carried out in a manner consistent with the public utility function that is being provided. Also, reliance on an unregistered and unregulated third party real time disseminator to fulfill regulatory dissemination requirements fails to provide an oversight mechanism for the Commission to ensure the accuracy and completeness of the data disseminated.

As DTCC will discuss in its Part 49 comment letter, SDRs should not own or commercialize the data. However, the issue here is the regulatory requirements of dissemination, not commercialized or value added services. The contributors of the data should retain the rights and ownership of such commercialized services after the real time reporting requirements are fulfilled.

Furthermore, having the SDR provide the dissemination function will streamline reporting and avoid any confusion that reporting to a third party non-SDR disseminator is somehow fulfilling a counterparty's reporting requirements under Section 45.

DTCC believes that there should be relatively few asset classes defined, as this drives increased aggregation of service provision, reducing the risks of duplication or omission in public dissemination, or erroneous consolidation by the public of available data, and reduces the burden on market participants to connect and reconcile among multiple SDRs.

DTCC strongly supports Proposed Rule 43.3(c)(2), which requires the acceptance of all swaps in an asset class. There is limited difference between offerings within an asset class, and a partial service offering will limit the provision of a consolidated public record, increase complexity and costs in reporting (with reporting parties having to maintain additional relationship and support additional rules in their systems), weaken the error correction process (introducing additional routing logic to this), and leave some swaps without a provider or process for real-time dissemination.

### **Service Providers and Swap Dealer Reporting**

DTCC believes that the burden of reporting should mostly fall to dealers, who generally will have more highly automated systems and connectivity capabilities than many customers. Most importantly, DTCC believes the reporting party should be a party to the trade, and they should be responsible for contracting with any third party to fulfill any reporting obligation to the SDR on their behalf. DTCC's rationale for this arises from the benefits of unambiguous accountability for data quality in an SDR and the recognition that in reporting all events to an SDR, the parties will need to operate

reconciliation and control process to reconcile individual reports and the cumulative portfolio position against the SDR.

Furthermore, given that initial reporting will determine the SDR to which all subsequent data is reported, the initial reporting decision will need to align with a determination of the full cost burden and availability of services from the chosen SDR. DTCC believes this decision should be with the party who will bear this cost (*i.e.*, a party to the contract rather than an execution venue).

TIW has approximately 1,700 customers, operating 17,000+ accounts for the global CDS market. Well over half of these are located in the U.S. and regularly transact business through dealers who are not U.S. persons. Unless the Commission encourages arrangements through which dealers who are non-U.S. persons can act as submitting parties for their U.S. customers, the costs of implementation are likely to impose significant burdens and costs on U.S. money managers, which are, in turn, are likely to be passed through to U.S. consumers, such as individual investors, pension funds and state and local governments.

### **Efficiency and Integrity in Reporting**

Pursuant to the CEA, SDRs shall have reasonable discretion in complying with the core principles outlined in Section 21 of the Act.<sup>11</sup> Accordingly, in order to avoid placing unreasonable and unnecessarily costly compliance burdens on regulated entities, DTCC encourages the Commission to adopt regulations that allow SDRs flexibility in determining the best reporting methods to promote complete, timely and accurate swap data is available to the Commission.

Reporting parties do not want to face excessive complexity in the reporting process. Issues with respect to determining the reporting party or the reporting requirements increase when considering that further regulations will need to be issued by other G20 countries to comply with the reporting requirements for all OTC derivatives to trade repositories. It should, however, be noted that many of these services can be fully integrated into existing business processes by middleware providers, as trade capture and confirmation services often are today.

DTCC believes the current TIW model is efficient because it reuses data from the confirmation process. Further, the TIW model ensures the quality of that data by performing asset servicing on the data and its users have agreed that the record in TIW has legally binding status. The asset servicing and legal status encourages customers to actively reconcile their internal data to TIW's data on an ongoing basis. This process

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<sup>11</sup> See CEA Section 21(a)(3)(B) ("Unless otherwise determined by the Commission by rule or regulation, a swap data repository . . . shall have reasonable discretion in establishing the manner in which the swap data repository complies with the core principles described in [Section 21 of the CEA].").



replaces multiple bilateral portfolio and trade level reconciliations and creates a more efficient model. In addition, for market events and updates, TIW has the benefit of multiple participants reviewing the calculations performed by DTCC processes, and the users appoint third party data servicers to act on their behalf while they retain the responsibility to maintain the most up-to-date record of the trade in TIW. This approach strengthens the quality of data in the TIW, but would not be available for a stand-alone, reporting-only solution.

While real-time reporting is limited to price-forming events, it will also benefit from strong linkage to existing business processes, particularly linkage to trade capture and middleware or confirmation services. In some cases, the confirmation process is driving the booking of the trade into firms trade capture and risk systems and therefore represents the earliest point for feeding to a real-time reporting process. Real-time reporting would also benefit from additional integrity to error and omission reporting processes, with strong integration with existing business processes and subsequent reporting.

Therefore DTCC recommends that the Commission extend the reporting to a single SDR in Proposed Rule 45.7 to include real-time reporting.<sup>12</sup> DTCC believes this is required by the CEA<sup>13</sup> and will result in increased integrity of reporting, which is sound public policy. Furthermore, the Commission should not try to develop a specific nomenclature for real-time reporting, as it adds further complexity and inconsistency to usage of terms in the market.

Financial Products Markup Language (“FpML”)™ is broadly used as a standard in the OTC derivatives markets and should be the basis for reporting to an SDR. At times, SDRs will need to develop their own FpML tags, as often product development is ahead of formal market FpML development, and SDRs should have the discretion to do so. However, SDR-unique FpML tags should be converted to the market standard FpML in a reasonable time period. FpML has good coverage of trade terms, but will need to be extended to cover some of the data elements required in the Proposed Regulation.

Therefore a registered SDR should have flexibility to specify acceptable data formats, connectivity requirements and other protocols for submitting information. Market practice, including the structure of confirmation messages and detail of economic fields, evolve over time, and the SDR should have the capability to adopt and set new formats. In addition, the SDR will need to support an appropriate set of connectivity methods; the Commission should not, however, require SDRs to support all connectivity methods, as the costs to do so would be prohibitive.

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<sup>12</sup> See Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. 76,604.

<sup>13</sup> See CEA Section 2(a)(13)(G) (“**Each** swap (whether cleared or uncleared) shall be reported to a registered swap data repository.”) (emphasis added).

The data formats of the SDR should be publicly available, and the SDR should publish Application Program Interfaces (“APIs”) to permit direct submission by reporting parties and their agents (with appropriate validations by the SDR). The SDR is well positioned to establish standards for certain reporting attributes in situations where these standards are not defined elsewhere.

DTCC believes market standard forms of data should be used, including reference data codes, rather than a newly created set of reference data codes. New codes will need ongoing maintenance and require that specific processes be developed for reporting purposes, likely resulting in poorer quality data submissions. Currently, Markit Reference Entity Database (“RED”)™ codes are widely used in trade confirmations for credit derivatives, and Reuters Instrument Codes (“RIC”) are used in electronic messages for equity derivatives. These are subject to licensed use. DTCC supports the ongoing usage of licensed codes (with the provision that these codes be made available to small volume players at appropriately reduced costs).

### **Phase-in and Implementation Timeline**

Since final rules will not likely be available until Q2 2011, SDRs that apply for registration in July 2011 will do so largely having already developed functionality based on the Commission’s proposed regulations, with a view to broad compliance as the priority over efficient usage and, therefore, with a potentially sub-optimal burden on reporting parties. Based on the final rules, SDRs and third party service providers will further enhance their offering. However, due to the complexity of, and the precision demanded from, the processes involved, a relatively long lead time should be expected – for example, a minimum of six months. Based on the final rules, SDRs and third party service providers will further enhance their offering. However, due to the complexity of, and the precision demanded from, the processes involved, an appropriate lead time should be anticipated to ensure systems are developed and implemented consistent with the intent of the regulation. Based on our experience in the development of similar systems, the time frame expected for the creation of functional specifications (4-6 weeks), technical specifications (4-6 weeks), actual development (8-10 weeks), regression testing (4-6 weeks), and user acceptance testing (6-8 weeks) – can be between 26-36 weeks.

Further, given that this implementation would have to be market-wide, market-wide testing periods and design periods are likely to be even longer than these estimates, as market-wide initiatives need wide co-ordination. In that regard, DTCC notes that when it developed the TIW in conjunction with market participants and the OTC Derivatives Supervisors Group (“ODSG”), systemic risk considerations dictated that it be implemented in phases:

- Year 1, design and build basic trade loading and storage capacity, with particular focus on data quality and inventory control. At the end of Year 1 all electronically confirmed new trades were automatically maintained in the Warehouse. To coordinate this effort across the industry globally, one of the “big 4” accounting firms was engaged and expended considerable resources.
- Year 2, back load all legacy inter-dealer transactions and implementation of automated payment calculation and central settlement through CLS bank. The back loading effort itself was a separately managed effort lead by the “big 4” accounting firm, which remained as program coordinator for the overall effort. Additionally in year 2, the design of life-cycle event processing was agreed.
- Year 3, back load dealer-to-customer trades, begin reporting of non-electronically confirmed trades and central processing of life-cycle events.

While much of this infrastructure can form the core of the processes required by the Commission’s proposed regulations, it is inevitable that substantial new industry-wide processes will have to be implemented, particularly (though not exclusively) around real-time reporting. These new processes will take substantial coordination, testing and development, as noted above, and this will ultimately depend on the adoption of the final rules.

Reporting parties’ development would have to follow the publication of final specifications by the SDR and ideally that of third party vendors. These dependencies make it unlikely that the first reporting could be implemented prior to the April 1, 2012 implementation date. April 1 would still be an early target, but DTCC believes it could be a realistic date for the first reporting, with a later date consistent with the time frame discussed above more suitable for mandatory market-wide adoption. Imposing an earlier deadline may lead reporting parties to have to develop solutions ahead of this, which may later be replaced by enhanced functionality at the SDR or third party vendors. In addition, credit products are more reporting-ready than equities products, because credit products’ current operational processes show higher levels of automation.

The phasing proposals for public dissemination limits the initial information in the public domain to the most traded contracts, which may enable a better understanding of the impact of public dissemination of less liquid contracts. However, this does not mitigate the delivery risk for the reporting processes, as all processes have to be fully functional before the first reporting period.

DTCC experience with new industry-wide processes indicates there will likely be a “shakeout” period during which any number of problems with reported data will be discovered. The Commission should take this into account and provide a means of assuring that publicly disseminated information is of high quality before dissemination is permitted. In this regard, DTCC understands that TRACE was initially introduced with a

reporting deadline of more than an hour, which was tightened over a period of 18 months. DTCC would advocate a similar approach in this case, starting with a similar deadline and tightening over a similar period to TRACE.

### **The Need to Preserve Liquidity and Protect Anonymity**

To date, DTCC has looked to regulators and market participants in determining the information which TIW disseminates publicly. The liquidity studies published by DTCC show that credit derivative trading is extremely thin on the majority of roughly 3,000 single name underlyers, and even this data is in aggregate across all maturities for a single reference entity.<sup>14</sup> In addition, the proposed execution model, when combined with public dissemination, may lead to potential unintentional disclosure. For example, a request for quote (“RFQ”) process with 5 counterparties will likely enable those parties to link RFQs to specific executions, given that there is less than one trade per hour per underlying for the majority of credit derivative underlyings.<sup>15</sup>

DTCC’s discussions with market participants and regulators prior to publishing data have revealed high levels of sensitivity to disclosing small data samples, particularly from narrow time periods, given that such disclosure may not preserve the anonymity of the trading parties. Currently, DTCC does not report credit default swap information beyond the top 1,000 names, because regulators and market participants have expressed concerns with respect to unintentional disclosure of parties as a result of low trading activity levels. Consistent with the Dodd-Frank Act, the Proposed Regulation should not require SDRs to make disclosures that could cause the unintentional disclosure of counterparty information.<sup>16</sup> DTCC urges the Commission to consider this issue fully in determining the phase-in period and the scope of public dissemination.

With respect to non-standardized swaps, it is difficult to compare price data across transactions that are non-standard and have different terms, particularly when only limited information as to the non standard feature (as presented by an indicator only) is available. As a result, publication of only price (or other limited) transaction data for non-standard transactions is unlikely to benefit market participants and may, in fact, be confusing or misleading. DTCC does not think that further trade attributes should be reported, as only the most technically sophisticated recipients would be able to interpret the additional published data. DTCC believes that any dissemination of information with respect to highly structured trades should be phased in, if required at all, and that no

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<sup>14</sup> TOP 1000 SINGLE NAMES: AGGREGATED TRANSACTION DATA BY REFERENCE ENTITY, [http://www.dtcc.com/products/derivserv/suite/ps\\_index.php](http://www.dtcc.com/products/derivserv/suite/ps_index.php).

<sup>15</sup> See Core Principles and Other Requirements for Swap Execution Facilities 76 Fed. Reg. 1214 (Jan. 7, 2011).

<sup>16</sup> See CEA Section 2(a)(13)(E)(i) (“With respect to the rule providing for the public availability of transaction and pricing data for swaps . . . , the rule promulgated by the Commission shall contain provisions . . . to ensure such information does not identify the participants.”).

dissemination for these products should occur until an analysis is conducted as to the impact and potential for misleading the investing public.

**Hours of Operation; Recordkeeping and Fees**

DTCC believes that SDRs should operate 24/6, allowing for continuous access to data by regulators, including during periods where individual exchanges or other trading platforms are closed. Requiring such operating hours recognizes the global nature of trading in derivatives markets and the round-the-clock participation in these markets by U.S. persons. One of the primary issues that reporting to a repository is designed to address is the analysis of the consequential impact of the failure of an institution, an event which is not limited to U.S.-based standard hours.

DTCC's believes that real-time data should be retained for an appropriate period from the date of the price-forming event to allow re-publication of historic price data, and support the error correction process. As a practical matter, SDRs may need to hold all data to maturity of the contract. This will allow participants to complete any error correction processes, given that detection of an error may only be triggered by a subsequent event on that trade and recognition of an erroneous previous report at that stage.

Currently, TIW provides public data at no charge. DTCC envisions this practice continuing for both the weekly and periodic reporting available at [www.dtcc.com](http://www.dtcc.com) and any real-time price reporting required by the Proposed Regulation. TIW considers the data reported to it through agreement with supervisors (and pursuant to regulation, after implementation of the Commission's final rules) to be that of the market participants, not TIW's own, and provides additional services only as approved by its user board of directors, or where contractually required, to the individual customers themselves. It is good public policy that the aggregating entity not itself use the data for commercial purposes, particularly where data is required to be reported to an aggregator serving a regulatory purpose. The data may then be made available to value added providers on a non-discriminatory basis, consistent with restrictions placed on the data by the data contributors themselves. DTCC operates the TIW on an at-cost basis and believes this is an appropriate model for the operation of an SDR, given the central role SDRs play in supporting regulator surveillance generally.

David A. Stawick  
RIN 3038-AD08  
February 7, 2011  
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## CONCLUSION

We appreciate the opportunity to comment on the Commission's Proposed 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](mailto:lthompson@dtcc.com).

Regards,

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

Larry E. Thompson  
General Counsel