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October 30, 2015

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps [RIN 3038-AE12]

Dear Mr. Kirkpatrick,

The Depository Trust & Clearing Corporation (“DTCC”),¹ in conjunction with its provisionally registered swap data repository (“SDR”), DTCC Data Repository (U.S.) LLC (“DDR”), submits this letter to the Commodity Futures Trading Commission (“CFTC” or “Commission”) in response to the proposed Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps (“Proposed Rules”) under the Commodity Exchange Act (“CEA”), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).²

DTCC appreciates the Commission’s efforts to evaluate the issues related to the Part 45 regulations, including through the interdivisional working group formed to identify reporting issues and make recommendations, as well as through its request for comment on Part 45 and related swap data reporting provisions in March 2014.³ DTCC has long recognized the need for market participants and the Commission to develop a clearer understanding of the issues attendant to the implementation of the current rules to enable the Commission to consider whether and what specific changes should be made to the swap data reporting regulations. In

¹ The Depository Trust & Clearing Corporation (“DTCC”) provides critical infrastructure to serve all participants in the financial industry, including investors, commercial end-users, broker-dealers, banks, insurance carriers, and mutual funds. DTCC operates as a cooperative that is owned collectively by its users and governed by a diverse Board of Directors. DTCC’s governance structure includes more than 300 shareholders.

² Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, 80 Fed. Reg. 52,544 (Aug. 31, 2015) (“Proposed Rules”).

³ See Review of Swap Data Recordkeeping and Reporting Requirements, 79 Fed. Reg. 16,689 (Mar. 26, 2014).

response to the Commission's request for public comment last year, DTCC submitted detailed responses to many of the Commission's specific questions related to the reporting of cleared swaps and other associated issues.⁴ DTCC looks forward to further Commission action on such matters which are important to improving data quality within SDRs and would welcome any follow up discussion that would be helpful to the Commission in this regard.

Turning to the Proposed Rules, DTCC appreciates the Commission's re-consideration of Part 45 reporting requirements related to cleared swaps which is intended to provide clarity regarding the respective reporting obligations of reporting counterparties and registered entities. Since the Commission's promulgation of final Part 45 rules in 2011, market participants have held differing interpretations of certain requirements related to the reporting of cleared swaps, resulting in regulatory uncertainty that has impacted the ability of the industry to implement reporting workflows for cleared swaps. As such, DTCC welcomes the Commission's decision to re-propose requirements for cleared swap reporting and supports its decision to do so through the transparent notice-and-comment rulemaking process.

DTCC remains concerned, however, that aspects of the Proposed Rules will fail to achieve the comprehensive benefits of swap data reporting because, under the proposed approach, it would be likely that reports for the alpha, beta, and gamma components of a cleared swap transaction would be reported to more than one SDR. As discussed previously, DTCC believes that such an approach will yield inferior results in terms of regulatory transparency versus reporting all data related to an original (alpha) trade, including data for subsequent clearing (beta and gamma) trades, to a single SDR.⁵ Reporting all such data to a single SDR would prevent data fragmentation and thereby minimize the financial, operational, and quality costs associated with potentially difficult data aggregation that would be incurred by the CFTC and other regulatory authorities. Based on DTCC's experience with receiving all data related to a single swap transaction that has been cleared by certain DCOs, DTCC has observed first-hand that this approach is by far the most efficient as it requires no further efforts to piece together all relevant data. Further, adopting an approach that permits data fragmentation for a single swap transaction would inhibit the development of U.S. and global views of the swap market and mask risks in the trading strategies of original counterparties.

Lastly, DTCC offers certain considerations for the clearing swap reporting rulemaking to ensure that, among other things, data related to alpha swaps and beta and gamma swaps can be properly linked.

⁴ See DTCC Letter to CFTC (May 27, 2014), in response to CFTC Request for Comment on Part 45 and Related Provisions of the Commission's Swap Data Reporting Rules [RIN 3038-AE12], *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59882&SearchText=>.

⁵ See *id.*

As discussed below, in this letter DTCC:

- (1) encourages the Commission to adopt an approach that avoids data fragmentation by requiring the entity or counterparty with the obligation to report the original swap to choose the SDR for the entire swap transaction;
- (2) discusses certain anticompetitive concerns for the Commission's consideration; and
- (3) offers specific recommendations to promote data quality and accuracy.

I. The choice of SDR for the entire swap transaction, including the original swap and clearing swaps, should rest with the registered entity or reporting counterparty that has the obligation to report the original swap.

Under the Proposed Rules, a derivatives clearing organization (“DCO”) would be the reporting counterparty for clearing swaps (*e.g.*, beta and gamma swaps)⁶ and would be required to report all required swap creation data for the clearing swap, including all confirmation data and all primary economic terms (“PET”) data.⁷ In addition, the Commission proposes that, for clearing swaps, the DCO would be permitted to select the SDR to which to report such clearing swap creation data, even if that SDR is different from the SDR which received the data for the original (alpha) swap.⁸

Importance of the Single SDR Approach

As a preliminary matter, DTCC notes that the determination of which counterparty must report is independent from the determination of which entity may select an SDR. In other words, it is entirely feasible for the Commission to require a DCO to have the reporting obligation for clearing swaps, but not have the ability to select an SDR for such clearing swaps, particularly a different SDR than the one that received the original swap data following execution.

While DTCC has been supportive of the concept of requiring DCOs to report data for clearing swaps, contrary to the Proposed Rules, DTCC continues to believe that DCOs should not have the exclusive ability to select the SDR to which data related to the clearing swaps is to be reported, given the subsequent implications for data quality and aggregation, as discussed further below. Rather, a DCO should have regulatory reporting obligations to submit data for clearing swaps to the SDR selected by either the original counterparties for swaps executed off-facility or by the swap execution facility (“SEF”) or designated contract market (“DCM”) for swaps executed on-facility. DTCC continues to strongly believe that such an approach is necessary to ensure that clearing swaps are reported to the same SDR to which the original swap was reported (referred to as the “single SDR approach”).

⁶ Proposed Rules, at 52,577.

⁷ *Id.* at 52,573.

⁸ *Id.* at 52,557.

DTCC has consistently repeated this refrain before regulators and policymakers—that the single SDR approach is vitally important to realizing the full benefits of swap data reporting, including having a readily accessible, full audit trail for a swap and the efficient ability to aggregate data across SDRs. With all data related to a specific swap transaction maintained in a single SDR, the Commission would be able to quickly access all relevant information on a swap from one source and avoid the significant cost and effort of piecing together data across SDRs using the continuation data fields for original swaps (*e.g.*, the LEI of the SDR to which cleared swaps are reported, the unique swap identifier (“USI”) of the original swap, and the USIs of the clearing swaps).⁹ Maintaining all records related to an original swap in a single SDR will help to ensure that regulators are able to efficiently access and analyze all reports related to a swap regardless of where or how the transaction was executed and whether or where it is cleared.

Significant Costs of the Proposed Approach

If the Commission permits a DCO to report to the SDR of its choice as proposed, the Commission would effectively endorse an approach that fragments a swap transaction across multiple SDRs.¹⁰ In other words, in many instances, data on an original swap would be maintained in one SDR, whereas related data on subsequent clearing swaps would be maintained in another SDR. As a result, actionable and meaningful transparency into swap market activity would be limited because of the difficulty that the Commission and other regulators would encounter in harmonizing data sets from multiple SDRs for a single transaction.¹¹ While the need to connect swap data between the original swap and the clearing swaps may be less important from the perspective of the mutualized risk of a cleared trade, market oversight and systemic risk reduction efforts are thwarted when regulators lack a comprehensive, global view of the interconnected risk relationships among market participants, regardless of the execution venue, cleared or uncleared state, and the DCO that guarantees the creditworthiness of the transaction. Ensuring a single, consolidated trail of transaction data helps regulators to oversee market participants and DCOs alike in a single, efficiently digestible form.

In the preamble to the Proposed Rules, the Commission suggests that it would be able to trace the audit trail of the swap through the use of continuation data fields.¹² DTCC believes that the

⁹ *See id.* § 45.4(c), at 52,574.

¹⁰ *See id.* at 52,556 (stating that “[w]hile some commenters stated that the Commission should require resulting swaps to be reported to the same SDR as original swaps, the Commission is proposing to require that all swap data for the clearing swaps that can be traced back to the same original swap be reported to the same SDR, but is not requiring that the clearing swaps be reported to the same SDR as the original swap”).

¹¹ In recent remarks, Chairman Massad discussed the progress related to swap data reporting and remarked that “creating the system to collect and effectively use data is a big project . . . and [the CFTC is] dealing with unanticipated roadblocks and challenges.” Remarks of Chairman Timothy Massad before the 3rd Annual OTC Derivatives Summit North America, Sept. 29, 2015, *available at* <http://www.cftc.gov/PressRoom/SpeechesTestimony/opamassad-28>. DTCC submits that the fragmentation that would ensue under the Proposed Rules would present yet another set of “roadblocks and challenges” for the Commission.

¹² *See Proposed Rules*, at 52,553 (stating “including the LEI of the SDR where required swap creation data for each clearing swap was reported will permit the Commission and other regulators to ascertain the SDR where the clearing swaps associated with a particular original swap reside. This will enable the Commission and other regulators to

Commission underestimates the complexity and costly nature of aggregating data related to a swap transaction across SDRs. Based on DTCC's experience to date with swap data reporting regimes in the U.S. and internationally, different trade repositories may store, maintain, and furnish data to regulators in differing formats, adding greater complexity to data aggregation efforts.¹³ Admittedly, the Commission must already gather information from multiple SDRs, but the Proposed Rules would guarantee the imposition of a more complex, onerous burden on the Commission by forcing it to stitch together data *for a single transaction* across multiple SDRs. DTCC believes, therefore, that the Commission would be forced to expend significant resources harmonizing data sets from multiple SDRs, thereby hindering the Commission's ready access to a comprehensive audit trail.

In terms of the Commission's considerations for DCOs with respect to the choice of SDR, DTCC believes there is no compelling reason to permit DCOs to select the SDR where clearing swaps are to be reported.

First, in the preamble to the Proposed Rules, the Commission states that the "amendments to § 45.3(j) [governing the choice of SDR] will not impose any additional costs because the amendments simply codify existing practice."¹⁴ DTCC disagrees with the Commission's observation that permitting a DCO to select an SDR would not impose any additional costs because, as discussed above, it would result in significant costs for the Commission and other regulatory authorities to aggregate the information into a readily consumable format. As regulatory authorities become increasingly interested in utilizing the swap data submitted to SDRs for regulatory oversight and supervisory purposes, DTCC believes that the approach under the Proposed Rules would unnecessarily increase regulators' costs of using the data. Given the likelihood of significant costs to consolidate separate SDR data streams, maintaining the status quo or "simply codify[ing] existing practice" is an insufficient reason to promulgate the proposed approach. DTCC respectfully submits that the Commission should further quantify in a cost-benefit analysis the actual costs that it would assume under the proposed approach before finalizing the rules.

The Commission also states that "allowing DCOs to choose the SDRs to which they report creation and continuation data is cost-minimizing for DCOs because it allows them to select the SDR which is most cost effective."¹⁵ DTCC does not believe that allowing DCOs to select an SDR is "cost-minimizing" or "more cost effective." First, DCOs have already made connections with the major CFTC-registered SDRs. Second, under the Proposed Rules, DCOs would be required to report to the SDR that received the original swap data certain continuation data for

review and more effectively associate data available at multiple SDRs in circumstances where the reporting entity or counterparty selects one SDR for the original swap and the DCO selects a different SDR for the clearing swaps under § 45.3").

¹³ Through the Trade Information Warehouse ("TIW"), DTCC has had substantial experience with managing consolidated information, which has been referenced extensively by regulators to, among other things, understand market activity. From a regulatory perspective, TIW serves as an example of the power of standardized, consolidated information.

¹⁴ Proposed Rules, at 52,564-65.

¹⁵ *Id.*

the original swap.¹⁶ As a result, DCOs either have already connected or would need to incur costs to establish connections with other SDRs regardless of whether it is permitted to report clearing swaps to an SDR of its choice.

In addition, any benefits to the DCO of this approach should be weighed against the benefits to original counterparties of having their data reported to a single SDR. The counterparties to an original swap, which is subsequently cleared, have a legitimate business interest in having their original swap data and clearing swaps data reported to a single SDR. For example, the ability of a counterparty to successfully undertake risk management programs designed to monitor and manage the risks associated with its swap activities would be undermined by the fragmentation of swap data across multiple SDRs for that counterparty's activities, as it "could not access data for [its] transactions in an integrated manner through reports at a single SDR containing a common data format."¹⁷

Rather than establishing a complex reporting process for clearing swaps, DTCC urges the Commission to consider preservation of high quality data and ready access to a full audit trail as the paramount interests that should govern the choice of SDR for clearing swaps. DTCC believes that these benefits outweigh any unsubstantiated DCO cost concerns.

Reinterpretation of the Single SDR Rule that Fails to Promote Efficient Market Oversight

Lastly, DTCC opposes the proposed reinterpretation of Commission Rule 45.10, which nominally requires that all swap data for a given swap be reported to a single SDR. Under the Proposed Rules, with respect to clearing swaps, a DCO would be required to report all required swap creation data for clearing swaps related to a particular original swap to a single SDR.¹⁸

This proposed reinterpretation of Rule 45.10 effectively renders this provision meaningless and violates the entire concept of a "single SDR" rule because, as a practical matter, DCOs would not report swap data for particular clearing swaps to more than one SDR. DTCC believes that the Commission's apparent concern for re-proposing Rule 45.10 in this regard—fragmentation among clearing swaps¹⁹—is unfounded. Instead, the Commission should address existing, known fragmentation concerns—namely, the fragmentation of original swap data and clearing swap data—by requiring that all data related to a swap transaction, including original swap and clearing swaps data, be reported to a single SDR.²⁰

¹⁶ See *id.* at 52,574.

¹⁷ See Citigroup letter, Jan. 14, 2013, <http://www.sec.gov/comments/s7-34-10/s73410-166.pdf>; see also ISDA letter, Jan. 7, 2012, <http://www.sec.gov/comments/s7-34-10/s73410-166.pdf> (noting that a "fragmented reporting structure" would result in "aggregation and reconciliation challenges for both market participants and the [CFTC]").

¹⁸ See Proposed Rules, at 52,556.

¹⁹ See *id.*

²⁰ In addition, DTCC believes that an SDR should be required to be able to accept any and all swaps and not be permitted to selectively choose only those swaps that are most economically beneficial for the SDR. At present, however, it is our understanding that the captive SDRs of DCOs do not accept non-cleared swaps for reporting purposes.

II. The Commission’s proposed requirements for cleared swap reporting raise anticompetitive concerns.

The CEA requires the CFTC to “take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means” of achieving its goals.²¹ Accounting for antitrust considerations, the Commission stated in the preamble to the Proposed Rules that it is “generally concerned with market concentration, the vertical integration of registered entities (DCMs, SEFs, DCOs, and SDRs), and the use of market power rather than competitive forces to determine the success or failure of particular SDRs.”²²

Contrary to the statutory mandate to take the “least anticompetitive” approach,²³ DTCC believes that, by permitting a DCO to report to an affiliated SDR, particularly after the original swap data has been reported to another SDR, the Proposed Rules unnecessarily permit DCOs to bundle services and would further entrench DCOs’ existing vertical integration in trade execution, clearing, and data reporting. In turn, DTCC believes that this would further increase the barriers to entry for exchanges, clearinghouses, and independent SDRs that are unaffiliated with DCOs. The practical effect of the proposed approach would be to pick captive SDRs as winners because, if permitted, DCOs will always report to their affiliated SDR.

DTCC submits that the anticompetitive outcome of the Proposed Rules in this regard is yet another factor that counsels against the Commission permitting a DCO to report to an affiliated SDR that was not selected by the entity that has the obligation to report the alpha swap. Rather, as discussed above, the registered entity or reporting counterparty that has the obligation to report the alpha swap should have the choice of SDR for the entire swap transaction, including the original and clearing swaps.

III. The Commission should incorporate the following recommendations into the cleared swap reporting rulemaking to promote data quality.

Under the Proposed Rules, following a DCO’s acceptance of a swap for clearing, a DCO would be required “to report all required continuation data for original swaps, including original swap terminations, to the SDR to which the swap that became such original swap was reported,” including the LEI of the SDR to which cleared swaps are reported, the USI of the original swaps, and the USI of the clearing swaps.²⁴ The Commission notes that the DCO would be required to report such continuation data “using the facilities, methods, or data standards provided or required” by the SDR where the original swap was reported.²⁵ In addition, the Commission proposes to add new PET data fields to the data tables found in Appendix 1 to Part 45.²⁶

²¹ CEA § 15(b).

²² Proposed Rules, at 52,571.

²³ CEA § 15(b).

²⁴ See Proposed Rules, at 52,552.

²⁵ See *id.* at 52,557 (citing 15 CFR § 45.13(b)).

²⁶ See *id.* at 52,558-59.

In brief, DTCC submits that the Commission should amend the Proposed Rules to:

- Incorporate the existing process for linking alpha, beta, and gamma records using the prior USI field in instances where a DCO sends the clearing swap reports to the SDR that received the original swap report;
- Clarify that any new PET fields that the Commission mandates be required to be reported solely for prospective swap transactions, and not for transactions that have been previously executed and reported; and
- Address how DCOs and market participants should handle the trades executed since the implementation of Part 45 requirements, including previously reported and cleared trades.

Format, Method, and Standards of Data Records

DTCC supports the Commission's recognition that any continuation or termination data that is submitted to an SDR to which the original swap was reported must be in the format, methods, and standards prescribed by the SDR that received the original swap.²⁷ DTCC underscores the importance of the ability of the SDR that received the original swap to process continuation and termination data according to its specifications. Contrary to this regulatory requirement, DTCC has encountered instances where certain DCOs have failed to report data to DTCC according to DTCC's specifications. Accordingly, DTCC appreciates the Commission's recognition of this important regulatory requirement and encourages the Commission to highlight this principle in the rulemaking.

Linking Original Swaps and Clearing Swaps

DTCC respectfully submits that the Commission should differentiate in the regulations what data must be reported by the DCO to link all related data for a transaction when: (1) all data related to a single transaction, including the alpha, beta, and gamma information, is reported to a single SDR; versus (2) those situations where the alpha swap data is reported to a different SDR than the beta and gamma swap data.

Currently, certain DCOs have adopted the most efficient approach of reporting all data related to a single transaction, including data for the alpha, beta, and gamma swaps, to a single SDR. As discussed above, this approach yields the greatest overall regulatory benefits. Based on DTCC's experience, such DCOs indicate the link between the beta and gamma swaps to the previously reported alpha swap by noting the alpha USI in the "prior USI" field of the beta and gamma reports. DTCC believes the current market practice of linking the original swaps to the clearing swaps through the use of the "prior USI" field is efficient and produces a complete audit trail. Accordingly, this well-functioning practice should not be altered by requiring such DCOs to report any new data fields. Requiring new data fields to be reported would unnecessarily impose new build requirements for such DCOs and SDRs that are already utilizing means to ensure original swaps are linked to clearing swaps.

²⁷ See *id.* at 52,552.

By contrast, in those situations where alpha data is reported to an SDR that is not the same as the SDR where the beta and gamma data are reported, DTCC agrees that, at minimum, a DCO should be required to report the LEI of the SDR to which cleared swaps are reported, the USI of the original swaps, and the USI of the clearing swaps.

Proposed New PET Data Fields

Under the Proposed Rules, the Commission has included the addition of certain new PET data fields applicable to reporting entities for all swaps and DCOs for clearing swaps.²⁸ DTCC submits that any such new fields should apply solely to prospective swap activity and not to swap transactions that have previously been executed and reported. Further, market participants, DCOs, and SDRs would need a delayed implementation period to develop and test the new technology and enable market participants to adapt and comply with such new obligations.

Addressing the Existing Population of Previously Reported and Cleared Trades

Following active engagement with market participants, DTCC recommends that the Commission address in any final rulemaking how SDRs, DCOs, and any other affected entities are to handle those trades executed since the implementation of Parts 45 and 46 that previously have been reported and cleared. For example, DTCC recommends that the Commission provide market participants with guidance regarding how to address existing records for cleared swaps, especially those original swaps for which an SDR currently does not have termination reports.

Such Commission guidance should address:

- Which entity types should be involved in any such clean-up efforts;
- Whether such efforts should occur on a retrospective and/or prospective basis, *i.e.*, whether the effort would (1) apply to solely those original swaps previously reported to an SDR that were subsequently cleared and for which the maturity date of the clearing swaps has yet to pass, or (2) include records of cleared trades for which the maturity date has passed;
- The date certain for which records of positions would need to be considered; and
- The timeframe to complete such efforts, providing market participants with a sufficiently delayed implementation period to coordinate and implement any new requirements.

As a general matter, any clean-up effort should be narrowly defined to modify and update prior reports, rather than require the reporting of new data fields. Further, in terms of any guidance for records of cleared trades for which the maturity date has passed, DTCC recommends that the Commission first consider the current data elements being provided by DCOs to SDRs to evaluate whether such data elements are useful for regulatory purposes, *e.g.* linking together alpha, beta, and gamma reports, to obviate the need for further revisions to swap records.

²⁸ *See id.* at 52,558-59.

In terms of the timeframe for implementation, DTCC believes that, at minimum, six months following the effective date of any new final rules for cleared swap reporting would be necessary. DCOs would need to submit appropriate termination reports to the SDR maintaining the original swap records in the manner required by the original SDR. In addition, SDRs would need to coordinate with DCOs and the Commission to make technical preparations in advance of such effort.

* * *

Conclusion

Should the Commission wish to discuss these comments further, please contact me at 212-855-3240 or lthompson@dtcc.com, or Marisol Collazo at 212-855-2670 or mcollazo@dtcc.com.

Sincerely yours,

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

Larry E. Thompson
General Counsel