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**Via Electronic Submission**

Christopher Kirkpatrick  
Secretary of the Commission  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street N.W.  
Washington, D.C. 20581

Re: Proposed Amendments to the Commission's Regulations Relating to Certain Swap Data Repository and Data Reporting Requirements (RIN: 3038-AE32)

Dear Secretary Kirkpatrick,

DTCC Data Repository (U.S.) LLC ("DDR"), a wholly-owned subsidiary of the Depository Trust & Clearing Corporation ("DTCC"), appreciates the opportunity to provide comments to the Commodity Futures Trading Commission ("CFTC" or the "Commission") on its proposed regulations related to swap data repository ("SDR") operations and governance.<sup>1</sup> In addition to the comments submitted jointly with ICE Trade Vault, LLC, and Chicago Mercantile Exchange Inc. (the "Joint SDR Letter"), DDR submits the following comments addressing issues outside the scope of the Joint SDR Letter.

We look forward to the Commission's forthcoming proposals that, together with this proposal, intend to achieve the goals of improving the quality, accuracy, and completeness of the data reported to the Commission, streamlining data reporting, and clarifying obligations for market participants.<sup>2</sup> We support the Commission's plan to re-open the comment period for this proposal when the Commission releases the part 43 and part 45 rulemakings "to provide market participants with an opportunity to comment collectively on the three rulemakings together, because the proposals address interconnected issues."<sup>3</sup> The comments below and in the Joint SDR Letter are subject to change depending on the substance of the other two forthcoming proposals.

DDR appreciates the Commission's efforts to consolidate all SDR duties into proposed part 49. By reducing the need to reference multiple parts, this step will add clarity to the scope of SDR obligations. In addition, DDR supports many of the Commission's proposed section specific changes and believes that, if finalized, these would have a positive impact on the accuracy of swap data that SDRs maintain. Where DDR believes a proposed rule can be improved or clarified, it has set forth its recommended amendments or requests for clarity in the sections below. Thank you for consideration of these comments and we look forward to further discussion on these important proposals.

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<sup>1</sup> Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044 (May 13, 2019) [hereinafter "Proposing Release"].

<sup>2</sup> *Id.* at 21045.

<sup>3</sup> *Id.* at 21046.

## **Section Specific Comments:**

### **§49.2 – Definitions**

- *“Open Swap”*

DDR appreciates the Commission’s efforts to clarify and further define certain terms. In particular, DDR supports the Commission’s proposal to define the term “open swap” as “an executed swap transaction that has not reached maturity or the final contractual settlement date, and has not been exercised, closed out, or terminated.”<sup>4</sup> DTCC agrees that defining this term provides valuable guidance to SDRs in determining what must be included in the open swaps report.

- *“SDR Data”*

DDR would like a clarification of the definition of “SDR data”; specifically, the language “two or more of parts 43, 45, 46, and/or 49 of this chapter, as applicable in the context.”<sup>5</sup> DDR believes the proper scope for this definition should be to include all data reported to an SDR pursuant to parts 43, 45, or 46. For clarity, therefore, DDR recommends the definition be revised to read “the specific data elements and information required to be reported to a swap data repository pursuant to parts 43, 45, and/or 46 of this chapter, as applicable in the context.” This revision would make clear that any data reported to an SDR pursuant to these parts would be considered SDR data.

- *“Swap Data”*

DDR would like a clarification of the definition of “Swap data”. DDR believes the proper scope of this definition is to include data reported to the SDR pursuant to part 45 and believes this data is captured by the language of the definition that states “the specific data elements and information required to be reported to a swap data repository pursuant to part 45 of this chapter....”<sup>6</sup> As such, it is not clear what additional material would be brought under the scope of the definition by the inclusion of “or made available to the Commission pursuant to this part, as applicable.” DDR, therefore, recommends that this language be removed from the definition.

- *“Swap Transaction and Pricing Data”*

DDR would like a clarification of the definition of “Swap transaction and pricing data”. DDR believes the proper scope of this definition is to include data reported to the SDR pursuant to part 43 and believes this data is captured by the language of the definition that states “the specific data elements and information required to be reported to a swap data repository . . . pursuant to part 43 of this chapter....”<sup>7</sup> Therefore, it is not clear what additional material would be brought under the scope of the definition by the inclusion of “or publicly disseminated by a swap data repository pursuant to part 43 of this chapter, as applicable.” DDR recommends that this language be removed from the definition.

- *“Position”*

While not a proposed change to part 49, DDR believes the definition of Position in proposed section 49.2 should either be revised to remove attributes (5) and (6) or to define the term “risk” used therein.<sup>8</sup> SDRs are not the correct entities to calculate the risk of any trade, especially if the term risk is not defined. Use of the terms “long risk” and “short risk”, without further definition of how to calculate it, could lead to erroneous reporting from a single SDR that calculates risk as it believes it should be calculated and across SDRs if each has its own definition of what risk is.

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<sup>4</sup> Proposing Release, 84 FR at 21047.

<sup>5</sup> *Id.* at 21101.

<sup>6</sup> *Id.* at 21102.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 21101.

### **§49.3(a)(5) – Procedures for Registration**

DDR appreciates the Commission's removal of the requirement for an SDR to make an annual Form SDR filing from the filing requirements set forth in proposed section 49.3(a)(5).<sup>9</sup> The removal of this requirement will reduce the burden on SDRs by eliminating the need to staff and compile this time intensive filing. In addition, as the information contained in Form SDR and its exhibits would be available to the Commission upon request under proposed section 49.29, this change will not impact the information available to the Commission. DDR suggests that the Commission slightly modify the language to make clear that the obligation to report amendments to the information reported on Form SDR does not apply to provisionally registered SDRs as well as fully registered SDRs. We suggest adding the words "or provisionally granted" after the word "granted" in this subsection.

### **§49.9 – Open Swaps Reports Provided to the Commission**

- *§49.9(a) – Content Standardization*

DDR is supportive of the Commission's effort to ensure content standardization for the open swaps report as set forth in proposed section 49.9(a).<sup>10</sup> In general, DDR strongly endorses all efforts to standardize input to SDRs and output from SDRs to make processes more efficient for all parties (including the Commission) who report to SDRs or consume data from SDRs. Specifically, standardizing this report will allow the Commission to more easily aggregate data from any existing SDR.

- *§49.9(b) – Transmission*

DDR believes proposed section 49.9(b) is vague as to what may be required of an SDR in the transmission of the open swaps report to the Commission. Specifically, as proposed, section 49.9(b) provides no detail as to the method, timing, format or transmission frequency that would be required of an SDR.<sup>11</sup> Without clarity on these points, DDR cannot determine the systems or staffing necessary to meet its obligations and, therefore, is unable to provide an accurate assessment of the costs associated with the proposed regulation.

DDR believes proposed section 49.9(b) can be improved while still providing the Commission with the flexibility to modify over time the method, timing, format and transmission frequency requirements associated with delivery of the open swaps report to the Commission. To accomplish this, DDR recommends the introduction of reasonable constraints on the instruction process by amending the text of proposed section 49.9(b) to include "as soon as practicable, given the nature of the instructions and the swap data repository's circumstances" at the end of the first sentence.

In the Proposing Release, the Commission recognizes the need for collaboration with an SDR in crafting instructions and in determining the appropriate compliance timeframe.<sup>12</sup> The Commission further recognized that SDRs will need time to implement the technical changes necessary to comply with the instructions and that the time given should be reasonable.<sup>13</sup> In order to determine a reasonable time frame for compliance with an instruction given under section 49.9 in accordance with the Commission's stated intent, the Commission would need to weigh both the complexity of the instruction and the SDR's circumstances after consultation with the SDR. As such, DDR believes the inclusion of language to this effect (as proposed) would provide reasonable constraints to the instruction process in proposed section 49.9 while also conforming to the Commission's stated intent.

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<sup>9</sup> Proposing Release, 84 FR at 21102.

<sup>10</sup> *Id.*

<sup>11</sup> *See Id.*

<sup>12</sup> *Id.* at 21050 ("The Commission intends to work with the SDRs before creating or modifying any instructions pursuant to proposed § 49.9 and would provide a reasonable amount of time for SDRs to adjust their systems before any instructions take effect.")

<sup>13</sup> *Id.*

### **§49.17(b)(3) – Direct Electronic Access**

DDR agrees with the Commission that flexibility as to future technological advancements and innovations is an important consideration in an SDR's provision of direct electronic access to the Commission.<sup>14</sup> However, DDR believes the definition of "direct electronic access" in proposed section 49.17(b)(3)<sup>15</sup> is too broad. The inclusion of the term "SDR data" brings part 46 data, in addition to part 43 data and part 45 data, under the direct electronic access requirements. As part 46 data is not current, DDR believes there should be no need for such time sensitive access to it. DDR, therefore, recommends that the reference to "SDR data" in proposed section 49.17(b)(3) be replaced with a reference to "swap data and swap transaction and pricing data".

DDR also recommends that the Commission amend the text of proposed section 49.17(b)(3) to replace "that is acceptable to the Commission" with "that has been agreed to by the Commission, in its reasonable discretion, following consultation with the SDR." The Commission notes in the Proposing Release that the inclusion of "acceptable to the Commission" in the definition of direct electronic access "would make it clear that the Commission anticipates working with SDRs to decide the acceptable methods and forms of direct electronic access."<sup>16</sup> While DDR appreciates the Commission's stated intent to work with SDRs, there is nothing in the regulation that requires it to do so. In addition, as proposed, section 49.17(b)(3) lacks reasonable constraints on the Commission's discretion to approve or reject a method of direct electronic access. DDR believes the inclusion of the proposed language would address both items by including a reasonableness standard on form and method decisions and by expressly requiring consultation with the SDR in accordance with the Commission's stated intent.

### **§49.17(c)(1) – Commission Access**

- *Maintenance of SDR Data*

DDR believes proposed section 49.17(c)(1) deprives SDRs of the discretion needed in business operations regarding the storage and maintenance of data without a clear regulatory purpose for doing so. By requiring that all SDR data reported to the SDR be maintained "in a format acceptable to the Commission..."<sup>17</sup>, the SDR is left to respond reactively to instructions from the Commission rather than proactively, to develop more efficient methods without the fear that the method could be deemed unacceptable at a future date. This could stifle the development of new technological approaches. In addition, as an SDR must comply with its obligations to provide the Commission with the required data access regardless of the format the data is stored in, it is unclear what regulatory purpose is served by the Commission stepping in to require an SDR use one storage format over another. To ensure SDRs have the necessary flexibility in this space, DDR recommends the Commission remove "in a format acceptable to the Commission" from the second sentence of proposed section 49.17(c)(1).

- *Transmission Instructions*

To provide reasonable limitations on the instruction process for the transmission of SDR data to the Commission, DDR recommends that the text of proposed section 49.17(c)(1) be amended to include "as soon as practicable, given the nature of the instructions and the SDR's circumstances" at the end of the second sentence. Such constraints are particularly important here given the lack of prescriptive requirements prevents an SDR from acting proactively to build systems or hire staff to meet known requirements.

In the Proposing Release, the Commission recognizes that "SDRs may need to update their systems in response to changing Commission instructions over time" and that it "expects to work with the SDRs to ensure

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<sup>14</sup> Proposing Release, 84 FR at 21060 ("The Commission believes flexibility in terms of the technology SDRs use to provide direct electronic access could accommodate rapid advances in technology and would not inadvertently prevent the use of future technological innovations that may provide more efficient direct electronic access to SDR data.")

<sup>15</sup> *Id.* at 21105.

<sup>16</sup> *Id.* at 21060.

<sup>17</sup> *Id.* at 21105.

that any changes are practical and reasonable and will provide time for the SDRs to adjust their systems.”<sup>18</sup> In order to determine if instructions are practical and reasonable and to provide sufficient time for an SDR to make needed changes, the Commission would need to evaluate the complexity of the instruction and the SDRs specific circumstances. As such, DDR believes the inclusion of the proposed language would provide reasonable constraints to the instruction process in proposed section 49.17(c)(1) while also conforming to the Commission’s stated intent.

- *Costs*

Proposed section 49.17(c)(1) provides no specificity as to the method, timing, format or transmission frequency for required transmission of SDR data requested by the Commission.<sup>19</sup> In addition, this section leaves the requirements associated with both the provision of direct electronic access and the maintenance of SDR data to be determined by the Commission at a later date.<sup>20</sup> As a result, DDR is unable to determine the systems or staffing necessary to meet its obligations under this proposed rule. Without the ability to make these determinations, DDR cannot accurately estimate the costs associated with the proposed regulation.

#### **§49.22 – Chief Compliance Officer**

DDR has minor comments to some of the Commission’s proposed changes to the rules applicable to the Chief Compliance Officer (CCO). DDR offers the following:

- With respect to the definition of the term “senior officer,” the Commission should consider clarifying in proposed section 49.22(a)<sup>21</sup> that an SDR is permitted to designate any individual as the “senior officer,” not just the CEO or equivalent officers. This would eliminate existing ambiguity around which individual may fulfill that role in the SDR.
- Generally, DDR believes that the current rules addressing the duties for CCOs related to conflict of interests<sup>22</sup> are adequate and do not necessarily require revisions.
- In response to Commission question 20,<sup>23</sup> DDR does not believe that prohibiting the CCO from also serving as the general counsel would pose any significant challenge to DDR.

DDR is supportive of the change in proposed section 49.22(e)(5) to add a materiality measurement to the CCO annual compliance report certification.<sup>24</sup> This should reduce burden on the SDRs and increase the value of the annual compliance report by allowing SDRs to focus on material elements.

DDR appreciates the extension of the time for submitting the Annual Compliance Report to 90 days after the end of the fiscal year in proposed section 49.22(f)(2).<sup>25</sup> Such an extension will reduce the burden on the SDRs without materially decreasing the transparency to the Commission.

#### **§49.25 – Financial Resources**

DDR appreciates the Commission extending the reporting time for financial reports for all quarters in proposed section 49.25(f)(3).<sup>26</sup> Such an extension will reduce the burden on the SDRs without materially decreasing the transparency to the Commission.

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<sup>18</sup> Proposing Release, 84 FR at 21061.

<sup>19</sup> See *Id.* at 21105.

<sup>20</sup> See *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> 17 C.F.R. 49.21.

<sup>23</sup> Proposing Release, 84 FR at 21063.

<sup>24</sup> *Id.* at 21106.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

## §49.28 – Operating Hours of SDRs

- *Normal and Special Closing Hours*

Proposed section 49.28(a) sets out the factors an SDR must consider when enacting normal closing hours and special closing hours.<sup>27</sup> For special closing hours, proposed section 49.28(a)(2), requires the SDR to provide reasonable prior notification and, in the event advance notice is not reasonably possible, notice as soon as reasonably possible after declaring the special closing hours.<sup>28</sup> DDR supports these requirements and believe they recognize the importance of system maintenance to the safe operation of an SDR's systems.

DDR, however, opposes the requirement in proposed section 49.28(b) that the adoption or amendment of special closing hours be subject to part 40 filing requirements.<sup>29</sup> Due to the nature of derivative products, which are always evolving, the relative immaturity of the trade reporting process and the changing technological landscape, for the foreseeable future SDRs may need to frequently make use of special closing hours to accommodate changes to their systems to handle new products being reported, to remediate issues still being uncovered in the reporting process and to keep up with changing technology. A requirement to conform to part 40 filing requirements for each of these instances would impose an administrative burden that does not provide a corresponding benefit to impacted parties.

The primary consideration with respect to special closing hours should be to ensure relevant parties are notified of the downtime. DDR, therefore, recommends the deletion of “and special closing hours” from proposed section 49.28(b) and adding “, the Commission” after both instances of “to market participants” in the final sentence of proposed section 49.28(a)(2). These changes would ensure the Commission, members of the SDR, and the public are all provided with notification when SDR special closing hours are needed in the most efficient way possible.

- *Acceptance of SDR Data During Closing Hours*

While generally in line with its's current practices, DDR does not believe it is necessary for an SDR to hold in queue all SDR data reported during normal or special closing hours.

DDR agrees with the Commission's approach to recognize that there are certain activities that would prevent an SDR from holding data in queue (e.g. during a disaster recovery test), as set forth in proposed 49.28(c)(2).<sup>30</sup> However, DDR disagrees with the process described in proposed 49.28(c)(2). Specifically, DDR disagrees with the requirement to provide notifications to “all swap execution facilities, designated contract markets, reporting counterparties, and the public”<sup>31</sup> upon resumed normal operations when the downtime was planned and previously communicated to the SDR's members and the public (as necessary). In these situations, the impacted parties would be prepared for the resumption of normal operations and, therefore, a notification to that effect is unnecessary. In situations where the downtime was unplanned and not previously communicated by the SDR, DDR agrees a notice of resumed normal operations should be distributed to the SDR's members and the public, as necessary.

## §49.29 – Information Relating to SDR Compliance

- *Provision of Information*

DDR supports the Commission's inclusion of a requirement to provide information on an as needed basis in place of a requirement for SDRs to file an annual Form SDR update in proposed section 49.29.<sup>32</sup> DDR recommends that the Commission amend the text of proposed subsections 49.29(a) and 49.29(b) to include “as soon as practicable, given the nature of the request and the SDR's circumstances” at the end of the

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<sup>27</sup> Proposing Release, 84 FR at 21107.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

second sentences in each subsection. This change would recognize that SDRs will need a reasonable amount of time to gather materials and implement any technical changes necessary to comply with the request. It will also encourage collaboration between the SDR and Commission in determining the appropriate form, manner and timing associated with the request. As such, DDR believes the inclusion of the proposed language would provide clarity and reasonable constraints to the request processes described in proposed section 49.29.

- *Costs*

As proposed, the language of section 49.29 is vague as to what may be required of an SDR to meet its requirements. Specifically, both subsections 49.29(a) and 49.29(b) provide no detail as to the potential scope of a request or to the form, manner and timing associated with satisfying the request.<sup>33</sup> Without clarity on these points, an SDR cannot determine the systems or staffing necessary to meet its obligations under this section, which prevents DDR from providing an accurate assessment of the costs associated with proposed section 49.29.

### **§49.30 – Form and Manner of Reporting and Submitting Information to the Commission**

- *Form and Manner*

DDR recommends that the Commission amend the text of proposed section 49.30 to include “as soon as practicable, given the nature of the request and the SDR’s circumstances” after “[u]nless otherwise instructed by the Commission,”. This change would recognize that SDRs will need a reasonable amount of time to implement any technical changes necessary to comply with the request. It will also encourage collaboration between the SDR and Commission in determining the appropriate form, manner and timing associated with the request. As such, DDR believes the inclusion of the proposed language would provide reasonable constraints to the request process in proposed 49.30.

- *Costs*

As proposed, DDR believes section 49.30 is vague as to what may be required of an SDR to comply with its requirements under this section. Specifically, proposed section 49.30 leaves the timing, format, coding structure, and electronic data transmission procedures, necessary to satisfy the requirements of this section to be determined by the Commission at a later date.<sup>34</sup> Without clarity on these points, the SDR is unable to determine the systems or staffing necessary to meet its obligations and, therefore, cannot provide an accurate assessment of the costs associated with the proposed regulation.

### **Closing**

DDR appreciates the CFTC’s willingness to consider our views and maintain an open dialogue moving forward. Should the Commission or staff wish to discuss this correspondence further, please contact me at (212) 855-4760 or kdelp@dtcc.com.

Sincerely,



Katherine Delp  
Business Manager  
DTCC Data Repository (U.S.) LLC

Cc: Mark Bramante, DTCC Data Repository (U.S.) LLC, Chief Compliance Officer  
Debra Cook, DTCC Data Repository (U.S.) LLC, Counsel

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<sup>33</sup> See Proposing Release, 84 FR at 21107.

<sup>34</sup> See *Id.*