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Division of Data

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Time-Limited No-Action Relief from Certain Requirements of Part 49 for DTCC Data Repository LLC and from Certain Requirements of Part 45 and Part 46 for Registered Entities and Swap Counterparties Reporting Swaps Data to DTCC Data Repository LLC

This letter responds to a request received by the Division of Data of the Commodity Futures Trading Commission (the "Commission" or "CFTC"), pursuant to Commission Regulation 140.99, to provide DTCC Data Repository LLC ("DDR") with time-limited no-action relief from certain requirements of the swap data repository ("SDR") rules set forth at Part 49 of the Commission's regulations, and to provide registered entities and swap counterparties reporting swaps data to DDR with time-limited no-action relief from certain requirements of the swap data reporting rules set forth at Part 45 and Part 46 of the Commission's regulations.[1]

I. Background

On September 17, 2020, the Commission approved final rules that revised the SDR rules set forth at Part 49 of the Commission's regulations and the swap data reporting rules set forth at Part 45 and Part 46 of the Commission's regulations.[2] These revisions included, among other changes, a reduction in the number of swaps data elements required to be reported for each swap,[3] the removal of regulations permitting the submission of voluntary supplemental swaps reports,[4] and a modification to the requirement that SDRs establish policies and procedures to confirm the

[1] Letter from DDR (November 13, 2020) (the "Request Letter").

[2] *See*, Amendments to Regulations Relating to Certain Swap Data Repository and Data Reporting Requirements, available at https://www.cftc.gov/media/4786/federalregister091720c/download and Swap Data Recordkeeping and Reporting Requirements, available at https://www.cftc.gov/media/4781/federalregister091720b/download (collectively, the "SDR and Swap Data Reporting Final Rules").

[3] Swap Data Recordkeeping and Reporting Requirements at p21, p149.

[4] Id. at p119.

accuracy of swap data by notifying both counterparties of swap data received.[5] The SDR and Swap Data Reporting Final Rules are effective 60 days after publication in the Federal Register ("Effective Date")[6], and require that registered entities and swap counterparties comply within 18 months of publication in the Federal Register ("Compliance Date").[7] However, the SDR and Swap Data Reporting Final Rules permit registered entities and swap counterparties to implement the rule changes ahead of the Compliance Date.[8]

DDR is an SDR provisionally registered with the Commission. DDR expects to implement significant changes to its infrastructure and applications on November 20, 2020 ("DDR Re-architecture").[9] The DDR Re-architecture includes new functionality to implement several aspects of the SDR and Swap Data Reporting Final Rules.[10] The DDR Re-architecture will also eliminate current DDR functionality that enables the reporting of certain swaps and swap data elements, and certain confirmation processes, that will be removed from CFTC regulations by the SDR and Swap Data Reporting Final Rules on the Effective Date. Specifically, the DDR Re-architecture will remove functionality that supports:

(i) the reporting of swap data elements removed from CFTC regulations by the SDR and Swap Data Reporting Final Rules;[11]

(ii) the reporting of voluntary supplemental swaps reports that are currently reported pursuant to CFTC regulations eliminated by the SDR and Swap Data Reporting Final Rules;[12] and

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[5] See, eg, Amendments to Regulations Relating to Certain Swap Data Repository and Data Reporting Requirements at p118 (explaining that "[t]he Commission has excluded non-reporting counterparties from the [new] requirement to verify swap data").

[6] Swap Data Recordkeeping and Reporting Requirements at p1, Amendments to Regulations Relating to Certain Swap Data Repository and Data Reporting Requirements at p1.

[7] Id.

[8] Id., Swap Data Recordkeeping and Reporting Requirements at p165.

[9] DDR represents in the Request Letter that the DDR Re-architecture has been planned for several years and that DDR has been continuously communicating with its clients regarding the DDR Re-architecture with working group meetings and emails becoming more targeted throughout 2019-2020. DDR provided a simulator that enabled its clients to submit sample messages and understand how, post-DDR Re-architecture, DDR systems would acknowledge or not acknowledge client submissions.

[10] For example, the DDR Re-architecture will implement: (i) the reporting of many swap data elements according to the technical specification required by the SDR and Swap Data Reporting Final Rules, and (ii) a verification process wherein DDR will provide reported data to swap data submitters and any counterparties that are members of DDR in order for them to verify the accuracy of the data reported to the CFTC and correct any errors, if applicable.

[11] The DDR Re-architecture includes the removal of functionality that allows registered entities and swap counterparties to report several swaps data elements currently required to be reported pursuant to Part 45 or Part 46: (i) an indication of whether the reporting counterparty is a U.S. person, (ii) an indication of whether the non-reporting counterparty is a U.S. person, (iii) buyer pay averaging method, (iv) seller pay averaging method, (v) load type, (vi) international swap – identity of foreign trade repository to which swap is also reported, (vii) international swap – swap identifier used by the foreign trade repository to which swap is also reported, and (viii) any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap (collectively the "Removed Fields"). The SDR and Swap Data Reporting Final Rules do not require the reporting of the Removed Fields. See, Swap Data Recordkeeping and Reporting Requirements at p21, p149.

(iii) the process for notifying both swap counterparties of swap data submitted that is being removed from CFTC regulations by the SDR and Swap Data Reporting Final Rules.[13]

DDR represents in the Request Letter that DDR planned to remove the functionality enumerated above in anticipation of the SDR and Swap Data Reporting Final Rules. However, the DDR Re-architecture is scheduled to be implemented of November 20, 2020, which is before the Effective Date of the SDR and Swap Data Reporting Final Rules.[14] As such, the DDR Re-architecture will prevent DDR from complying with certain requirements of Part 49, and registered entities and swap counterparties reporting swaps to DDR from complying with certain requirements of Part 45 and Part 46, that the Commission approved removing from Parts 45, 46 and 49 on September 17, 2020.

Based on the foregoing, the Division of Data believes that it is appropriate to provide no-action relief from certain requirements of Part 49 for DDR, and from certain requirements of Part 45 and Part 46 for registered entities and swap counterparties reporting swaps data to DDR, that the Commission approved removing from Commission regulations in the SDR and Swap Data Reporting Final Rules. The Division of Data believes it is appropriate to provide such no-action relief for the time period beginning on the planned implementation date of DDR's Re-architecture, November 20, 2020, and ending on the Effective Date of the SDR and Swap Data Reporting Final Rules.

II. No-Action Relief

(i) For reasons discussed above, pursuant to Commission Regulation 140.99 the Division of Data will not recommend that the Commission take an enforcement action between November 20, 2020 and the Effective Date of the SDR and Swap Data Reporting Final Rules against DDR for failure to accept and promptly record the Removed Fields and voluntary supplemental swaps reports as currently required by Part 49.10(a), or for failure to confirm the accuracy of data by notifying both swap counterparties as required by Part 49.9(a)(2) and Part 49.11(a) and (b). The Division of Data will similarly not recommend that the Commission take an enforcement action between November 20, 2020 and the Effective Date of the SDR and Swap Data Reporting Final Rules against registered entities and swap counterparties reporting swaps data to DDR for failure to report the Removed Fields as required by Part 45 or Part 46.

(ii) The no-action relief provided in this letter does not extend to the recordkeeping requirements of Part 45 and 46.

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[12] The DDR Re-architecture includes the planned removal of functionality that allows swap counterparties to submit voluntary, supplemental swap reports pursuant to Part 45.12. The SDR and Swap Data Reporting Final Rules removed Part 45.12 regulations that allow for voluntary supplemental reporting. See, Swap Data Recordkeeping and Reporting Requirements at p119.

[13] See, Amendments to Regulations Relating to Certain Swap Data Repository and Data Reporting Requirements at p118.

[14] The SDR and Swap Data Reporting Final Rules have not been published in the Federal Register as of the date of this letter. The SDR and Swap Data Reporting Final Rules are effective 60 days after publication in the Federal Register.

This letter, and the no-action position taken herein, represent the views of the Division of Data only, and do not necessarily represent the position or views of the Commission or of any other division or office of the Commission's staff. The no-action position taken herein does not bind the Commission or Commission staff outside the Division of Data, nor does it excuse affected persons from compliance with any other applicable requirements of the Commodity Exchange Act or the regulations thereunder. As with all no-action letters, the Division of Data retains the authority to condition further, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

Should you have any questions concerning this correspondence, please contact Tom Guerin, Special Counsel, Division of Data, at (202) 836-1933 or tguerin@cftc.gov, or Dan Bucsa, Deputy Director, Division of Data, at (202) 418-5435 or dbucsa@cftc.gov.

Sincerely,

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