

DTCC Data Repository

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NEW YORK, NY 10041-0099

January 21, 2014

By Electronic Mail

Ms. Melissa Jurgens

Secretary

Commodity Futures Trading Commission

1155 21st Street, N.W.

Washington, D.C. 20581

DDR Rule Filing: 2014-01

Re: Amendments to DTCC Data Repository (U.S.) LLC Rulebook Pursuant to Section 5c(c)(1) of the Commodity Exchange Act and Commission Regulation § 40.6

Dear Ms. Jurgens:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commodity Futures Trading Commission (the “Commission”) Regulation § 40.6, DTCC Data Repository (U.S.) LLC (“DDR”) submits, by written certification, amendments to the DTCC Data Repository (U.S.), LLC Rulebook (“DDR Rulebook”). DDR has amended Rule 3.3.3.2 to provide greater detail related to both the End-User Exception and the Inter-Affiliate Exemption. Where appropriate, references to the applicable CFTC Regulation have been added, in addition to identifying which representations are required to be made on a swap-by-swap basis.

The amendments to the DDR Rulebook and DDR Operating Procedures outlined in this letter were approved by the DDR Board at its meeting held on January 8, 2014.

DDR certifies that these amendments comply with the Commodity Exchange Act and the rules and regulations promulgated by the Commission thereunder. No substantive opposing views have been expressed by Users or others with respect to the amendments. DDR further certifies that, concurrent with this filing today, a copy of this submission was posted on its website and may be accessed at: http://www.dtcc.com/products/derivserv/suite/ddr_amendments.php.

As noted above, enclosed with this letter is a marked version of the DDR Rulebook and Operating Procedures. If you have any questions or need further information, please contact me at 212.855.3273

Sincerely,



Paul Gottlieb
Counsel

Enclosures

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DTCC Data Repository (U.S.) LLC

Rulebook

Revised as of:
10/25/2013

This DTCC Data Repository (U.S.) LLC Rulebook, as amended, supplemented or modified from time to time, and together with any appendix, annex or supplement hereto is copyright © 2012 by DTCC Data Repository (U.S.) LLC.

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3.3.3.2 Exception and Exemptions from Clearing

Pursuant to Applicable Law, certain transactions submitted by Users may be exempt or subject to an exception to the clearing requirement. A User can qualify for the End-User Exception pursuant to CFTC Regulation 50.50¹, the Cooperative Exemption pursuant to CFTC Regulation 50.51, the Treasury Affiliate No-Action Letter pursuant to CFTC No-Action Letter 13-22, or the Inter-Affiliate Exemption pursuant to CFTC Regulation 50.52. In order to qualify for an exemption, exception or other relief from the clearing requirement, the User must confirm that at least one of the counterparties to the swap is eligible for, and has elected to claim, such exemption, exception or other relief from clearing.

a) End User Exception

~~End-user~~Section 2(h)(7)(A) of the CEA and CFTC Regulation 50.50 provide for an exception from clearing for swaps entered into by certain End Users that are financial entities.² Pursuant to CFTC Regulation 50.50(b), certain reporting obligations may be satisfied on either a swap-by-swap or annual basis. To make required reporting easier, each counterparty claiming the End-User Exception (“Electing Counterparty”) for swaps that are reported to DDR may provide the required information on an annual form to the DDR. This information includes, but is not limited to, confirmation that the swap is being utilized to hedge or mitigate risk, how the Electing Counterparty satisfies its financial obligations, as well as additional information if it is an issuer of securities.

The following elections and representations must be reported by the Reporting Counterparty on a swap-by-swap basis:

1. Notice of election of the End-User Exception;
2. The identity of the counterparty(s) making the election.

If the Electing Counterparty has not provided the annual form described above, the Reporting Counterparty must satisfy its reporting obligations on a swap-by-swap basis by providing the required information in the manner specified by DDR.

~~In addition to the End User exception claims from the mandatory clearing requirements are supported by allowing Users to populate specific fields as part of the trade details and snapshot interfaces. DDR shall maintain automated systems capable of identifying, aggregating, sorting and filtering all swap transactions that are reported to it which are exempt from the mandatory clearing requirements pursuant to section 2(h)(7) of the CEA; such capabilities shall be applicable to any information provided to DDR by or on behalf of an End User regarding how such End--User meets the requirements under Applicable Law.~~

~~¹ Within the End User Exception certain entities are either excepted or exempted from the definition of a Financial Entity pursuant to Section 2(h)(7) of the CEA and thus may qualify for the Cooperative Exemption or for the Treasury Affiliate NAR.~~

~~² Within the End-User Exception certain entities are either excepted or exempted from the definition of a Financial Entity pursuant to Section 2(h)(7) of the CEA or CFTC Regulation 50.50(d).~~

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- i. Confirmation of Conditions: By populating specific fields within the DDR system, the User is certifying that the relevant conditions imposed under Applicable Law have been satisfied, including:
- Non-Financial Entity: The ~~End-Reporting Counterparty~~ or the Electing Counterparty must also confirm that the End-User is not a financial entity; ~~or exempt from being classified as a financial entity~~, as defined under Applicable Law, including section 2(h)(7)(C)(i) of the CEA, (e.g., treasury affiliates or is eligible for exemptive relief issued by the CFTC, including:
 1. Eligible Treasury Affiliate: Consistent with the requirements of CFTC Staff No-Action Letter 13-22, the Reporting Counterparty has a reasonable basis to believe, and ~~exempt cooperatives~~; ~~and confirms on a swap-by-swap basis, that the Electing Counterparty~~ meets the General Conditions contained in CFTC Staff No-Action Letter 13-22.
 2. ~~The swap is being used to~~Exempt Cooperative: Consistent with the requirements of CFTC Regulation 50.51, the Reporting Counterparty has a reasonable basis to believe that the Electing Counterparty ~~will~~ is only electing the cooperative exemption for:
 - a. swaps entered into with a member of the an exempt cooperative in connection with originating a loan or loans for that member, which satisfies the requirements of CFTC Regulation §1.3(ggg)(5)(i)-(iii); or
 - ~~a-b.~~ swaps that hedge or mitigate commercial risk, related to loans to or swaps with members.
 - Qualified Hedge Transaction: The Reporting Counterparty or the electing counterparty, as applicable, ~~-~~ must also confirm that the exception is used by the electing counterparty to hedge or mitigate commercial risk as defined under CFTC Regulation 50.50(c).
- ii. Reporting Requirements: In addition to meeting the conditions described above, the ~~End-~~User must identify how it generally meets its financial obligations associated with entering into non-cleared swaps, by specifying one or more categories of financial resources. Additionally, if the ~~End-~~User is an issuer of securities, the ~~End-~~User must also provide its SEC Central Index Key number and acknowledge that approval of the decision to enter into a swap that is exempt from the clearing requirements of section 2(h)(1) and 2(h)(8) of the CEA has been obtained from an appropriate committee of the board of directors or equivalent body. This information must be provided to DDR in a form and manner specified by DDR or found to be acceptable to DDR. The annual form confirming that the reporting requirements have been met of the exception, exemption, or other relief from required clearing have been satisfied will be effective for 365 days following the date of such report pursuant to CFTC Regulation 50.50(d). During the 365-day period, the reporting party submitting such an annual report shall amend the report as necessary to reflect any material changes to the information reported.

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b) Inter-Affiliate Exemption

~~Swaps~~CFTC Regulation 50.52 provides an exemption from clearing for swaps between ~~affiliates~~eligible Affiliates counterparties, as defined under ~~Applicable Law~~, ~~may also be exempt from~~CFTC Regulation 50.52(a). Both Affiliates to a swap make the clearing following elections and representations on a swap-by-swap basis:

1. That each Affiliate confirms that it meets the requirements pursuant in CFTC Regulations 50.52(a) and 50.52(b).
2. That each Affiliate elects to exempt the swap from clearing.

Additionally, each Affiliate will need to provide certain information to DDR about how it satisfies its financial obligations, as well as additional information if it is an inter-affiliate issuer of securities. Pursuant to CFTC Regulation 50.52(d), each Affiliate may provide this information via an annual form and file the form with DDR prior to engaging in a swap subject to the Inter-Affiliate exemption provided under Applicable Law. from clearing rather than providing the same information for each individual swap.

The inter-affiliate exemption requirements are supported by allowing Users to populate specific fields as part of the trade details and snapshot interfaces.

- i. Confirmation of Conditions: ByOn a swap-by swap basis, by populating the specific fields required to identify that the swap meets the requirements of Applicable Laws, the reporting party certifies that:
 - Both Aaffiliates have elected not to clear the swap pursuant to the inter-affiliate exemption;
 - One counterparty, directly or indirectly holds a majority ownership interest in the other counterparty, or a third party holds a majority ownership interest in both counterparties;
 - Financial statements are reported on a consolidated basis; pursuant to CFTC Regulation 50.52(ba)(12); and
 - The terms of the swap are documented in a swap trading relationship document pursuant to CFTC Regulation 50.52(b)(2);
 - The swap is subject to a centralized risk management program that is reasonably designed to monitor and manage the risks associated with the swap; pursuant to CFTC Regulation 50.52(b)(3); and
 - The Affiliates comply with the outward-facing swap condition of CFTC Regulation 50.52(b)(4).
- ii. Reporting Requirements: In addition to meeting the conditions described above, each affiliateAffiliate must identify how it generally meets its financial

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obligations associated with entering into non-cleared swaps, by specifying one or more categories of financial resources. Additionally, if the [affiliateAffiliate](#) is an issuer of securities, the [affiliateAffiliate](#) must also provide its SEC Central Index Key number and acknowledge that approval of the decision to enter into a swap that is exempt from the clearing requirements of section 2(h)(1) and 2(h)(8) of the CEA has been obtained from [an appropriate committee of](#) the board of directors or equivalent body. This information must be provided to DDR in a form and manner specified by DDR or found to be acceptable to DDR. [The annual form confirming that the reporting requirements of the Inter-Affiliate Exemption have been met will be effective for 365 days following the date of such report pursuant to CFTC Regulation 50.52\(d\). During the 365-day period, each Affiliate shall amend the report as necessary to reflect any material changes to the information reported.](#)

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DTCC Data Repository (U.S.) LLC

Rulebook

Revised as of:
10/25/2013

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3.3.3.2 Exception and Exemptions from Clearing

Pursuant to Applicable Law, certain transactions submitted by Users may be exempt or subject to an exception to the clearing requirement. A User can qualify for the End-User Exception pursuant to CFTC Regulation 50.50, the Cooperative Exemption pursuant to CFTC Regulation 50.51, the Treasury Affiliate No-Action Letter pursuant to CFTC No-Action Letter 13-22, or the Inter-Affiliate Exemption pursuant to CFTC Regulation 50.52. In order to qualify for an exemption, exception or other relief from the clearing requirement, the User must confirm that at least one of the counterparties to the swap is eligible for, and has elected to claim, such exemption, exception or other relief from clearing.

a) End User Exception

Section 2(h)(7)(A) of the CEA and CFTC Regulation 50.50 provide for an exception from clearing for swaps entered into by certain End Users that are financial entities.¹ Pursuant to CFTC Regulation 50.50(b), certain reporting obligations may be satisfied on either a swap-by-swap or annual basis. To make required reporting easier, each counterparty claiming the End-User Exception (“Electing Counterparty”) for swaps that are reported to DDR may provide the required information on an annual form to the DDR. This information includes, but is not limited to, confirmation that the swap is being utilized to hedge or mitigate risk, how the Electing Counterparty satisfies its financial obligations, as well as additional information if it is an issuer of securities.

The following elections and representations must be reported by the Reporting Counterparty on a swap-by-swap basis:

1. Notice of election of the End-User Exception;
2. The identity of the counterparty(s) making the election.

If the Electing Counterparty has not provided the annual form described above, the Reporting Counterparty must satisfy its reporting obligations on a swap-by-swap basis by providing the required information in the manner specified by DDR.

DDR shall maintain automated systems capable of identifying, aggregating, sorting and filtering all swap transactions that are reported to it which are exempt from the mandatory clearing requirements pursuant to section 2(h)(7) of the CEA; such capabilities shall be applicable to any information provided to DDR by or on behalf of an End User regarding how such End-User meets the requirements under Applicable Law.

- i. Confirmation of Conditions: By populating specific fields within the DDR system, the User is certifying that the relevant conditions imposed under Applicable Law have been satisfied, including:
 - **Non-Financial Entity**: The Reporting Counterparty or the Electing Counterparty must also confirm that the End-User is not a financial entity

¹ Within the End-User Exception certain entities are either excepted or exempted from the definition of a Financial Entity pursuant to Section 2(h)(7) of the CEA or CFTC Regulation 50.50(d).

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as defined under Applicable Law, including section 2(h)(7)(C)(i) of the CEA or is eligible for exemptive relief issued by the CFTC, including:

1. **Eligible Treasury Affiliate:** Consistent with the requirements of CFTC Staff No-Action Letter 13-22, the Reporting Counterparty has a reasonable basis to believe, and confirms on a swap-by-swap basis, that the Electing Counterparty meets the General Conditions contained in CFTC Staff No-Action Letter 13-22.
 2. **Exempt Cooperative:** Consistent with the requirements of CFTC Regulation 50.51, the Reporting Counterparty has a reasonable basis to believe that the Electing Counterparty is only electing the cooperative exemption for:
 - a. swaps entered into with a member of an exempt cooperative in connection with originating a loan or loans for that member, which satisfies the requirements of CFTC Regulation §1.3(ggg)(5)(i)-(iii); or
 - b. swaps that hedge or mitigate commercial risk related to loans to or swaps with members.
- **Qualified Hedge Transaction:** The Reporting Counterparty or the electing counterparty, as applicable, must also confirm that the exception is used by the electing counterparty to hedge or mitigate commercial risk as defined under CFTC Regulation 50.50(c).
- ii. **Reporting Requirements:** In addition to meeting the conditions described above, the End-User must identify how it generally meets its financial obligations associated with entering into non-cleared swaps, by specifying one or more categories of financial resources. Additionally, if the End-User is an issuer of securities, the End-User must also provide its SEC Central Index Key number and acknowledge that approval of the decision to enter into a swap that is exempt from the clearing requirements of section 2(h)(1) and 2(h)(8) of the CEA has been obtained from an appropriate committee of the board of directors or equivalent body. This information must be provided to DDR in a form and manner specified by DDR or found to be acceptable to DDR. The annual form confirming that the requirements of the exception, exemption, or other relief from required clearing have been satisfied will be effective for 365 days following the date of such report pursuant to CFTC Regulation 50.50(d). During the 365-day period, the party submitting such an annual report shall amend the report as necessary to reflect any material changes to the information reported.

b) Inter-Affiliate Exemption

CFTC Regulation 50.52 provides an exemption from clearing for swaps between eligible Affiliate counterparties, as defined under CFTC Regulation 50.52(a). Both Affiliates to a swap make the following elections and representations on a swap-by-swap basis:

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1. That each Affiliate confirms that it meets the requirements in CFTC Regulations 50.52(a) and 50.52(b).
2. That each Affiliate elects to exempt the swap from clearing.

Additionally, each Affiliate will need to provide certain information to DDR about how it satisfies its financial obligations, as well as additional information if it is an issuer of securities. Pursuant to CFTC Regulation 50.52(d), each Affiliate may provide this information via an annual form and file the form with DDR prior to engaging in a swap subject to the Inter-Affiliate exemption from clearing rather than providing the same information for each individual swap.

The inter-affiliate exemption requirements are supported by allowing Users to populate specific fields as part of the trade details and snapshot interfaces.

- i. Confirmation of Conditions: On a swap-by swap basis, by populating the specific fields required to identify that the swap meets the requirements of Applicable Laws, the reporting party certifies that:
 - Both Affiliates have elected not to clear the swap pursuant to the inter-affiliate exemption;
 - One counterparty, directly or indirectly holds a majority ownership interest in the other counterparty, or a third party holds a majority ownership interest in both counterparties;
 - Financial statements are reported on a consolidated basis pursuant to CFTC Regulation 50.52(a)(1);
 - The terms of the swap are documented in a swap trading relationship document pursuant to CFTC Regulation 50.52(b)(2);
 - The swap is subject to a centralized risk management program that is reasonably designed to monitor and manage the risks associated with the swap pursuant to CFTC Regulation 50.52(b)(3); and
 - The Affiliates comply with the outward-facing swap condition of CFTC Regulation 50.52(b)(4).
- ii. Reporting Requirements: In addition to meeting the conditions described above, each Affiliate must identify how it generally meets its financial obligations associated with entering into non-cleared swaps, by specifying one or more categories of financial resources. Additionally, if the Affiliate is an issuer of securities, the Affiliate must also provide its SEC Central Index Key number and acknowledge that approval of the decision to enter into a swap that is exempt from the clearing requirements of section 2(h)(1) and 2(h)(8) of the CEA has been obtained from an appropriate committee of the board of directors or equivalent body. This information must be provided to DDR in a form and manner specified by DDR or found to be acceptable to DDR. The annual form confirming that the

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requirements of the Inter-Affiliate Exemption have been satisfied will be effective for 365 days following the date of such report pursuant to CFTC Regulation 50.52(d). During the 365-day period, each Affiliate shall amend the report as necessary to reflect any material changes to the information reported.