

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form <http://www.sec.gov/rules/sro.shtml>); or
- Send an Email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISE Mercury-2016-12 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-ISE Mercury-2016-12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of ISE Mercury. All comments received will be posted without change; the Commission does not edit personal identifying

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE Mercury-2016-12 and should be submitted by July 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78216; File No. SBSDR-2016-02]

### Security-Based Swap Data Repositories; DTCC Data Repository (U.S.) LLC; Notice of Filing of Application for Registration as a Security-Based Swap Data Repository

June 30, 2016.

#### I. Introduction

On April 6, 2016 and as amended on April 25, 2016, DTCC Data Repository (U.S.) LLC ("DDR") filed with the Securities and Exchange Commission ("Commission") a Form SDR seeking registration as a security-based swap data repository ("SDR") under Section 13(n) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and the Commission's rules promulgated thereunder.<sup>2</sup> DDR states that it proposes to operate as a registered SDR for security-based swap ("SBS") transactions in the credit, equity, and interest rates<sup>3</sup> derivatives asset classes. The Commission is publishing this notice to solicit comments from interested persons regarding DDR's Form SDR,<sup>4</sup> and the Commission will

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78m(n)(3).

<sup>2</sup> 17 CFR 240.13n-1 through 240.13n-12.

<sup>3</sup> DDR seeks to include in its application the "rates" asset class based on feedback from potential DDR participants who have identified certain types of transactions which will be reported through the interest rate infrastructure within the industry and that the industry participants have identified as falling under the definition of a SBS. The Commission notes that DDR's application is for registration as a SBS data repository, which the Exchange Act defines as a "person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps." 15 U.S.C. 78c(a)(75).

<sup>4</sup> DDR filed its Form SDR, including the exhibits thereto, electronically with the Commission. The descriptions set forth in this notice regarding the structure and operations of DDR have been derived, excerpted, and/or summarized from information in

consider any comments it receives in making its determination whether to grant DDR registration as an SDR.<sup>5</sup>

#### II. Background

##### A. SDR Registration, Duties and Core Principles, and Regulation SBSR

Section 763(i) of the Dodd-Frank Act added Section 13(n) to the Exchange Act, which requires an SDR to register with the Commission and provides that, to be registered and maintain registration as an SDR, an SDR must comply with certain requirements and "core principles" described in Section 13(n) and any requirement that the Commission may impose by rule or regulation.<sup>6</sup>

The Commission adopted Exchange Act Rules 13n-1 through 13n-12 ("SDR rules"), which require an SDR to register with the Commission and comply with certain "duties and core principles."<sup>7</sup> Among other requirements, the SDR rules require an SDR to collect and maintain accurate SBS data and make such data available to the Commission and other authorities so that relevant authorities will be better able to monitor the buildup and concentration of risk exposure in the SBS market.<sup>8</sup>

Concurrent with the Commission's adoption of the SDR rules, the Commission adopted Regulation SBSR,<sup>9</sup> which, among other things, provides for the reporting of SBS information to registered SDRs, and the public dissemination of SBS transaction, volume, and pricing information by registered SDRs. In addition, Regulation SBSR requires each registered SDR to register with the Commission as a securities information processor.<sup>10</sup>

##### B. Standard for Granting SDR Registration

To be registered with the Commission as an SDR and maintain such

DDR's Form SDR application, and principally from DDR's Rulebook (Exhibit HH.2), which outlines the applicant's policies and procedures designed to address its statutory and regulatory obligations as an SDR registered with the Commission. DDR's Form SDR application and non-confidential exhibits thereto are available on [appropriate EDGAR reference to be inserted]. In addition, the public may access copies of these materials on the Commission's Web site at: [appropriate Web site address to be inserted].

<sup>5</sup> DDR's Form SDR application also constitutes an application for registration as a securities information processor. See Exchange Act Release No. 74246 (Feb. 11, 2015), 80 FR 14438, 14458 (Mar. 19, 2015) ("SDR Adopting Release").

<sup>6</sup> 15 U.S.C. 78m(n).

<sup>7</sup> See SDR Adopting Release, 80 FR 14438.

<sup>8</sup> See SDR Adopting Release, 80 FR at 14450.

<sup>9</sup> See Exchange Act Release No. 74244 (Feb. 11, 2015), 80 FR 14563 (Mar. 19, 2015) ("Regulation SBSR Adopting Release").

<sup>10</sup> See Regulation SBSR Adopting Release, 80 FR at 14567.

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

registration, an SDR is required (absent an exemption) to comply with the requirements and core principles described in Exchange Act Section 13(n), as well as with any requirements that the Commission adopts by rule or regulation.<sup>11</sup> Exchange Act Rule 13n-1(c)(3) provides that the Commission shall grant the registration of an SDR if it finds that the SDR is so organized, and has the capacity, to be able to (i) assure the prompt, accurate, and reliable performance of its functions as an SDR; (ii) comply with any applicable provisions of the securities laws and the rules and regulations thereunder; and (iii) carry out its functions in a manner consistent with the purposes of Section 13(n) of the Exchange Act and the rules and regulations thereunder.<sup>12</sup> The Commission must deny registration of an SDR if it does not make such a finding.<sup>13</sup>

In determining whether an applicant meets the criteria set forth in Rule 13n-1(c), the Commission will consider the information reflected by the applicant on its Form SDR, as well as any additional information obtained from the applicant. For example, Form SDR requires an applicant to provide, among other things, contact information, a list of the asset class(es) for which the applicant is collecting and maintaining data or for which it proposes to collect and maintain data, a description of the functions that it performs or proposes to perform, and general information regarding its business organization.<sup>14</sup> This, and other information reflected on the Form SDR, will assist the Commission in understanding the basis for registration as well as the SDR applicant's overall business structure, financial condition, track record in providing access to its services and data, technological reliability, and policies and procedures to comply with its statutory and regulatory obligations.<sup>15</sup> Furthermore, the information requested in Form SDR will enable the Commission to assess whether the SDR applicant would be able to comply with the federal securities laws and the rules and regulations thereunder, and ultimately whether to grant or deny an application for registration.<sup>16</sup>

### III. DDR Application for Registration

DDR currently operates as a trade repository under the regulatory framework of other authorities.

Specifically, DDR is a swap data repository regulated and provisionally registered by the Commodity Futures Trading Commission ("CFTC").<sup>17</sup> In that capacity, DDR has been accepting derivatives data for the commodity, foreign exchange, interest rate, and credit asset classes in the United States since December 2012.<sup>18</sup> Additionally, in 2014, DDR was approved by the Ontario Securities Commission,<sup>19</sup> the Autorité des marchés financiers,<sup>20</sup> and the Manitoba Securities Commission<sup>21</sup> as a Canadian Trade Repository to serve the commodity, credit, equity, interest rate, and foreign exchange asset classes.<sup>22</sup>

#### A. Corporate Structure and Governance Arrangements

DDR is a New York limited liability company, and is a wholly owned subsidiary of DTCC Deriv/SERV LLC, which, in turn, is a wholly owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC").<sup>23</sup> DDR is managed by a Board of Directors

<sup>17</sup> See Order of Provisional Registration, In the Matter of the Request of DTCC Data Repository (U.S.), LLC for Provisional Registration as a Swap Data Repository Pursuant to Section 21 of the Commodity Exchange Act and Part 49 of the Commodity Futures Trading Commission's Regulations (Sept. 19, 2012), available at <http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/dtccbodsonletter091912.pdf>; Order Adding Asset Class, In the Matter of the Request of DTCC Data Repository (U.S.), LLC to Amend Its Form SDR to Add the Other Commodity Asset Class Pursuant to Part 49 of the Commission's Regulations (Dec. 3, 2012), available at <http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/dtccsdrbdsonltr120312.pdf>.

<sup>18</sup> See Press Release, DTCC, DTCC Swap Data Repository Real-Time Reporting Now Live (Jan. 03, 2013), available at <http://www.dtcc.com/news/2013/january/03/swap-data-repository-real-time>.

<sup>19</sup> See Ontario Securities Commission, Order (Section 21.2.2 of the Securities Act), in the Matter of the Securities Act, R.S.O. 1990, Chapter S.5, as amended, and in the Matter of DTCC Data Repository (U.S.) LLC (Sept. 19, 2014), available at [http://www.osc.gov.on.ca/en/SecuritiesLaw\\_ord\\_20140923\\_dtcc-data-repository.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20140923_dtcc-data-repository.htm).

<sup>20</sup> See Autorité des marchés financiers, Decision 2014-PDG-0110, Bulletin 2014-09-25, Vol. 11, n°38 (Sept. 23, 2014), available at [https://www.lautorite.qc.ca/files/pdf/bulletin/2014/vol11no38/vol11no38\\_7.pdf](https://www.lautorite.qc.ca/files/pdf/bulletin/2014/vol11no38/vol11no38_7.pdf).

<sup>21</sup> See Manitoba Securities Commission, Order No. 7013 (Oct. 23, 2014), available at <http://docs.mbsecurities.ca/msc/oe/en/105125/1/document.do>.

<sup>22</sup> Other trade repository subsidiaries of the Depository Trust & Clearing Corporation ("DTCC") operate in Europe, Japan, Hong Kong, Singapore, and Australia. See generally <http://dtcc.com/derivatives-services/global-trade-repository>.

<sup>23</sup> See Exhibit HH.2, Section 2.1. DTCC is the parent company of a variety of entities, including three clearing agencies registered under Section 17A of the Exchange Act and that have been designated as systemically important by the Financial Stability Oversight Council under Title VIII of the Dodd-Frank Act (*i.e.*, the National Securities Clearing Corporation, the Fixed Income Clearing Corporation, and the Depository Trust Company).

("Board") responsible for overseeing its operations.<sup>24</sup> The Board (directly or by delegating certain responsibilities to its committees) fulfills its responsibilities under its charter and DDR's mission statement by: (i) Overseeing management's activities in managing, operating, and developing DDR as a firm and evaluating management's performance of its responsibilities; (ii) ratifying management's selection of the CEO and providing advice and counsel to the CEO; (iii) providing oversight of the performance of the CEO and of DDR to evaluate whether the business is being appropriately managed; (iv) setting expectations about DDR's tone and ethical culture and reviewing management efforts to instill an appropriate tone and culture; (v) reviewing and approving DDR's financial objectives and major corporate plans and actions; (vi) providing guidance to the CEO and to management in formulating corporate strategy and approving strategic plans; (vii) providing oversight of risk assessment and risk management monitoring processes; (viii) providing input and direction to governance structures and practices to position the Board to fulfill its duties effectively and efficiently consistent with DDR's principles of governance; (ix) providing oversight and guidance regarding the design of informational reporting to the Board and relevant regulators; (x) adopting principles governing new initiative approval processes and overseeing DDR's processes relating to new business selection and development of new businesses and new or expanded products and services, including guidelines for the analyses supporting any material operational or risk management changes that are proposed by management; (xi) providing oversight of DDR's internal and external audit processes, financial reporting, and disclosure controls and procedures, including approving major changes in auditing and accounting principles and practices; (xii) fostering DDR's ability to ensure compliance with applicable laws and regulations including derivatives, securities, and corporation laws and other applicable regulatory guidance and international standards; (xiii) ensuring that in DDR's decision-making process an Independent Perspective as defined in Section 49.2 of the CFTC's regulations, is considered;<sup>25</sup> and (xiv)

<sup>24</sup> See *id.*

<sup>25</sup> The CFTC has defined the term "Independent Perspective" to mean "a viewpoint that is impartial regarding competitive, commercial, or industry concerns and contemplates the effect of a decision on all constituencies involved." 17 CFR 49.2(a)(6).

<sup>11</sup> See Exchange Act Section 13(n)(3), 15 U.S.C. 78m(n)(3).

<sup>12</sup> See 17 CFR 240.13n-1(c)(3).

<sup>13</sup> See *id.*

<sup>14</sup> See SDR Adopting Release, 80 FR at 14458.

<sup>15</sup> See *id.*

<sup>16</sup> See SDR Adopting Release, 80 FR at 14458-59.

performing such other functions as the Board believes appropriate or necessary, or as otherwise prescribed by rules or regulations.<sup>26</sup>

According to DDR, the number of directors on the Board is determined by DTCC Deriv/SERV LLC (“DTCC Deriv/SERV”) as the sole LLC member of DDR.<sup>27</sup> DDR represents that DTCC Deriv/SERV will strive to include on the Board an equal number of representatives of U.S. and non-U.S. domiciled firms.<sup>28</sup> DDR represents that the Board is composed of individuals from the following groups: Employees of DDR’s users (either fees-paying users or end users) with derivatives industry experience, buy-side representatives, independents, and members of DTCC’s senior management or DTCC’s Board of Directors, with the understanding that at least two Board members will be DTCC senior management or DTCC Board members.<sup>29</sup> DDR represents that DTCC Deriv/SERV’s Nominating Committee shall periodically review the Board’s composition to assure that the DDR directors possess the skills required to direct and oversee management in the best interests of its shareholders and other stakeholders, with these skills including derivatives industry experience, risk management experience, business specialization, technical skills, industry stature, and seniority and experience at their own organizations.<sup>30</sup>

Additionally, DDR represents that it welcomes suggestions from market participants of proposed or alternative candidates to serve on the DDR Board, which may be submitted through the notices procedures described in the Operating Procedures of DDR’s Rulebook.<sup>31</sup>

DDR’s Rulebook provides that its Chief Compliance Officer (“CCO”) is appointed by the Board and reports directly to the chief executive officer of DDR.<sup>32</sup> The Board is responsible for the appointment and removal of the CCO and approval of CCO compensation, which is at the discretion of the Board and effected by majority vote.<sup>33</sup> In addition, the Board shall meet with the

CCO at least annually.<sup>34</sup> According to DDR, the CCO also works directly with the Board in certain instances, for example, when resolving conflicts of interest.<sup>35</sup> DDR represents that the CCO’s responsibilities include, but are not limited to, the following items: (i) Oversee and review DDR’s compliance with the applicable regulations; (ii) establish and administer written policies and procedures reasonably designed to prevent violation of the applicable regulations; (iii) take reasonable steps to ensure compliance with applicable regulations relating to agreements, contracts or transactions; (iv) establish procedures for the remediation of non-compliance issues identified by the CCO through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint; (v) notify the Board as soon as practicable upon becoming aware of a circumstance indicating that DDR, or an individual acting on its behalf, is in non-compliance with the applicable laws of a jurisdiction in which it operates and either: (a) The non-compliance creates a risk to a DDR User;<sup>36</sup> (b) the non-compliance creates a risk of harm to the capital markets in which it operates; (c) the non-compliance is part of a pattern of non-compliance; or (d) the non-compliance may have an impact on DDR’s ability to carry on business as a trade repository in compliance with applicable law; (vi) establish and follow appropriate procedures for the handling, management response, remediation, retesting and closing of noncompliance issues; (vii) establish and administer a written code of ethics; and (viii) prepare and sign an annual compliance report in accordance with applicable regulations and associated recordkeeping.<sup>37</sup>

DDR directors must comply with DDR’s Board Code of Ethics and Conflicts of Interest Policy (the “Code”), which is intended to focus directors on their duties as fiduciaries and provide guidance to directors to help them recognize and deal with ethical issues, provide mechanisms to report unethical conduct, help foster a culture of honesty and accountability, and address actual and potential conflicts of interest.<sup>38</sup> In addition, each director is required to complete a certificate attesting to compliance with DDR’s Code upon

becoming a director, and, thereafter, on an annual basis. According to DDR’s Code, key responsibilities for directors include: (i) Acting honestly, in good faith and in the best interests of DDR and all of the users of DDR; (ii) using best efforts to avoid conflicts between personal and professional interests as they relate to DDR where possible; (iii) disclosing any conflicts and otherwise pursuing the ethical handling of conflicts (whether actual or apparent) when conflicts or the appearance of conflicts are unavoidable; (iv) complying with all applicable laws, regulations and DDR policies; (v) promptly reporting any violations of the Code to the Chairman of DDR’s Board or to DDR’s counsel and DDR’s CCO; (vi) seeking guidance where necessary; and (vii) being accountable personally for adherence to the Code.<sup>39</sup>

#### B. Description of DDR’s SDR Service

DDR has applied to register as an SDR with the Commission to accept data in respect of all SBS transactions in the credit, equity, and interest rates derivatives asset classes.<sup>40</sup>

DDR represents that, if registered with the Commission, it would, among other things: (i) Perform all of the required functions of an SDR under the Commission’s Rules 13n–1 through 13n–11; (ii) accept, from or on behalf of Users, transaction and life-cycle data for SBS as specified in the Commission’s Regulation SBSR, as and when required to be reported to an SDR thereunder; (iii) verify and maintain swap and SBS data as required by such regulations; (iv) publicly disseminate SBS data as and when required under the Commission’s Regulation SBSR, either directly or through one or more third parties; (v) provide access to swap and SBS data to appropriate regulators; and (vi) generate reports with respect to transaction data maintained in DDR, in each case as specified in further detail in DDR’s Operating Procedures and applicable publications.<sup>41</sup>

#### C. Access

DDR represents that it would provide access to its SDR service on a fair, open and equal basis.<sup>42</sup> According to DDR, access to and usage of its SDR service would be available to all market participants that engage in SBS transactions, and DDR does not and would not bundle or tie its SDR services

<sup>26</sup> See Exhibit D.2 (DDR Mission Statement and Board Charter).

<sup>27</sup> See Exhibits D (governance narrative), D.2, and HH.2, Section 2.2.

<sup>28</sup> See Exhibits D and D.2.

<sup>29</sup> See *id.*; see also Exhibit HH.2, Section 2.2. DDR states that the Board will include appropriate representation by individuals who are independent as specified by applicable regulations. See *id.*

<sup>30</sup> See Exhibit D.

<sup>31</sup> See Exhibit HH.2, Section 2.2 and attached Operating Procedures.

<sup>32</sup> See Exhibit HH.2, Section 2.3.

<sup>33</sup> See *id.*

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

<sup>35</sup> See *id.*

<sup>36</sup> DDR defines the term “User” to mean an entity that has executed a DDR User Agreement, which allows for participation in one or more DDR services or systems. See Exhibit HH.2, Section 12.

<sup>37</sup> See Exhibit HH.2, Section 2.3.

<sup>38</sup> See Exhibit D.4 (DDR Board Code of Ethics).

<sup>39</sup> See *id.*

<sup>40</sup> See DDR Form SDR, Item 6; see also Exhibit HH.2, Section 3.1.

<sup>41</sup> See Exhibit HH.2, SDR Appendix to the DDR Operating Procedures.

<sup>42</sup> See Exhibits U, V, Y, and HH.2, Section 1.1.

with any other services.<sup>43</sup> DDR represents that to participate in its SDR services, each User would be required to (i) enter into a User Agreement in one of the forms provided by DDR and (ii) agree to be bound by the terms of the User Agreement and DDR's Operating Procedures.<sup>44</sup> According to DDR, an entity would be permitted to view the records relating to an individual transaction if it is: (i) A counterparty or an authorized agent of a counterparty to the transaction; (ii) a regulator and the transaction is reportable to that regulator; or (iii) a third-party agent submitter of the transaction, provided that agents who are submitters will not be able to view the current positions, unless authorized by a counterparty to the transaction, but will be able to see the submission report only for the purpose of viewing the success or failure of messages submitted by such agents.<sup>45</sup> DDR represents that it shall retain exclusive control over the system through which its SDR services are provided.<sup>46</sup>

DDR represents that it may summarily terminate a User's account and access to SDR services when the Board determines that: (a) The User has materially breached its User Agreement, DDR's Operating Procedures, or the rules contained in its Rulebook, which threatens or may cause immediate harm to the normal operation of DDR's system, or any applicable law including those relating to the regulations administered and enforced by the U.S. Department of Treasury's Office of Foreign Assets Control or the Canadian Government Office of the Superintendent of Financial Institutions; or (b) the User's account or User's IT system is causing material harm to the normal operation of DDR's system.<sup>47</sup> According to DDR, the following actions must take place before DDR staff initiates any actions which may result in a User's termination of access to the DDR system and, specifically, SDR services: (i) DDR senior management, as well as DDR's counsel and CCO, must be involved in any decision to involuntarily terminate a User; and (ii) the Chairman of the Board of DDR must be notified in advance of any involuntary termination.<sup>48</sup> DDR represents that, upon a summary termination of a User's access pursuant to its rulebook, DDR shall, as soon as possible, notify the

impacted User of the termination in writing or via email, with such notice stating, to the extent practicable, in general terms how pending transaction submissions and other pending matters will be affected and what steps are to be taken in connection therewith.<sup>49</sup>

#### D. Use of Data

DDR represents that its services would be available to all market participants on a fair, open and equal basis. DDR represents that a market participant must be on-boarded as a DDR User to be granted access to the DDR system, receive trade information, confirm or verify transactions, submit messages, or receive reports.<sup>50</sup> For those market participants that on-board, DDR would provide a mechanism for Users to access the DDR system to confirm and verify transactions and provide Unique Identification Code ("UIC") information as required under its procedures. Additionally, DDR represents that access to U.S. swap or SBS data maintained by DDR to market participants is generally prohibited except to: (i) Either counterparty to that particular swap or SBS; (ii) authorized third-party service providers or other parties specifically authorized by the User or counterparty pursuant to DDR's Rulebook; (iii) or to appropriate domestic or foreign regulators in accordance with applicable regulation and DDR's Rulebook.<sup>51</sup>

#### E. Asset Classes Accepted; Submission Requirements; Validation

DDR has represented that it would accept data in respect of all SBS trades

<sup>49</sup> See *id.* Because persons applying to be SDRs are also applying to be SIPs with the Commission, the procedures for notifying the Commission of any prohibitions or limitations of access to services as provided in Section 11A(b)(5)(A) would apply. See SDR Adopting Release, 80 FR at 14482 ("Rule 909 of Regulation SBSR, which the Commission is concurrently adopting in a separate release, requires each registered SDR to register as a SIP, and, as such, Exchange Act Section 11A(b)(5) governs denials of access to services by an SDR. This section provides that '[i]f any registered securities information processor prohibits or limits any person in respect of access to services offered, directly or indirectly, by such securities information processor, the registered securities information processor shall promptly file notice thereof with the Commission.' Accordingly, an SDR must promptly notify the Commission if it prohibits or limits access to any of its services to any person.").

<sup>50</sup> See Exhibit HH.2, Section 1.1.

<sup>51</sup> See Exhibit HH.2, Section 6.3. With respect to regulator access, DDR also represents that pursuant to applicable law, the designated regulators (which is defined to include regulators which supervise DDR, including the Commission and CFTC) shall be provided with direct electronic access to DDR data reported to DDR in satisfaction of such regulator's regulatory mandate to satisfy their legal and regulatory obligations. See *id.*, Sections 6.2 and 12.

in the credit equity, and interest rate<sup>52</sup> derivatives asset classes.<sup>53</sup> DDR has represented that Users would be required to submit trade information in the data format required by DDR. DDR would accept data using the following open-source structured data formats: Financial Products Markup Language ("FpML") and Comma-separated Value ("CSV") file.<sup>54</sup>

Exhibits GG.2 (for credit derivatives), GG.4 (for equity derivatives), and GG.6 (for interest rates) to DDR's application enumerate the required fields and acceptable values for the submission of trade information into the DDR system. Upon submission of a transaction, DDR will perform validation checks to ensure that each submitted record is in the proper format and will also perform validation and consistency checks against certain data elements, including, for example, sequencing of time and date fields (*e.g.*, the termination date must be greater than the trade date).<sup>55</sup> These validation types include:

- Schema validations—check that a submission is consistent with the accepted format (*i.e.*, CSV is valid, the fields are formatted correctly);
  - Core validations—the basic checks that ensure the submission can be accepted into the SDR (*i.e.*, Permission, USI/UTI lock, transaction and action type consistency validations);
  - Business validation—applied at the point of in-bound submission processing to ensure integrity and logical consistency. These validations will ensure that the messages are well formed and provide a logical and complete description of the core trade economics and ensure that DDR does not degrade the quality of the information held within the repository by allowing incomplete or illogical trade descriptions to be accepted and stored; and
  - Regulatory validations—regulatory-specific validations applied following the normal business validations. (For example, if the same field is required by one jurisdiction and is optional for another, the jurisdiction requiring the field would have a regulatory validation to check for the field.)<sup>56</sup>
- DDR further represents that it would accept or reject transactions based on its validation process.<sup>57</sup> DDR's policies and procedures state that acceptance messages are called ACKs (acceptance) and rejection messages are called

<sup>52</sup> See n.3 *supra*.

<sup>53</sup> See Form SDR and Exhibit HH.2, Section 3.1.

<sup>54</sup> See Exhibit GG.3.

<sup>55</sup> See Exhibit HH.2, Section 10.1.1.

<sup>56</sup> See Exhibit GG.3.

<sup>57</sup> See Exhibit GG.3.

<sup>43</sup> See Exhibit HH.2, Section 1.1.

<sup>44</sup> See Exhibit HH.2, Section 1.2.

<sup>45</sup> See Exhibit HH.2, Section 1.3.

<sup>46</sup> See *id.*

<sup>47</sup> See Exhibit HH.2, Section 10.3.1.

<sup>48</sup> See *id.*

NACKs (negative acceptance).<sup>58</sup> Where a transaction is accepted, both the submitting party and its on-boarded counterparty would receive electronic ACK messages. Where a transaction was not accepted, the submitting party would receive an electronic NACK message along with an associated error code so that they can correct the transaction and retransmit to DDR. Where a transaction is accepted but fails one of the jurisdictional (*i.e.*, regulatory) validations, the submitting party will receive an electronic notification along with the associated error code so it can correct the transaction and retransmit to DDR.<sup>59</sup>

DDR represents that DDR may reject a transaction record submitted due to the submission failing to meet DDR validations, including but not limited to the submission failing to be in a format that can be ingested by DDR, failing to meet jurisdictional (*i.e.*, regulatory) requirements or failing to provide required data elements.<sup>60</sup> DDR further represents that a rejected submission is deemed not to have been submitted at all with respect to reporting to the jurisdiction for which it was rejected, and that it is possible that one transmission is submitted to comply with reporting in more than one jurisdiction and may be acceptable for one jurisdiction, but rejected for the other.<sup>61</sup>

In connection with the reporting of “pre-enactment and transitional SBS,” DDR represents that it will accept the following types of historical trades: (i) “Historical Expired,” which are pre-enactment SBS executed before July 21, 2010 but expired or terminated before the compliance date for Regulation SBSR, (ii) “Historical,” which are transitional SBS executed after July 21, 2010 but expired or terminated before the compliance date for Regulation SBSR, and (iii) “Backload,” which are pre-enactment SBS or transitional SBS in existence on or after the compliance date for Regulation SBSR.<sup>62</sup> DDR states that it does not validate whether or not the historical expired trade satisfies the Commission’s definition of an expired pre-enactment or transitional swap, and that the Historical and Historical Expired trades will be subject to a minimal set of validations in order for the submission to be accepted by DDR, which will focus on core fields necessary for the system to ingest the trade (including a valid Unique

Transaction Identifier).<sup>63</sup> DDR further states that Backload trades will have the standard validations that are applied on all SBS submissions and must meet the requirements in order for the submission to be ingested and reported to the Commission.<sup>64</sup>

#### F. Verification of Transaction Data

DDR represents that its SDR services verification processes are designed to reasonably establish that the transaction data that has been submitted to DDR is complete and accurate.<sup>65</sup> Once a position is established either through a snapshot or DDR’s own calculation of events from transaction records, the terms of the position are designated as either verified, disputed, pending verification, or deemed verified.<sup>66</sup>

According to DDR, a transaction record is verified if it (i) is submitted by a Trusted Source (which is defined as an entity, which has entered into a User agreement, been recognized as a Trusted Source by DDR and provides the definitive report of a given position),<sup>67</sup> (ii) is a trade between affiliated parties, (iii) is submitted from an affirmation or confirmation platform, or (iv) was executed on an electronic trading facility.<sup>68</sup> In addition, the non-reporting User is responsible for verifying the accuracy of the information that has been submitted by the reporting party User. DDR represents that a non-reporting User can verify the accuracy of such information by sending a verification message indicating that it verifies or disputes each position where it is identified as the counterparty.<sup>69</sup>

DDR represents that it would attempt to contact counterparties to a trade reported to DDR who are not Users (a “Non-User”), where such party’s LEI is provided and there is email contact information available to DDR in the information or static data maintained by the DTCC trade repositories<sup>70</sup> about their Users, to notify the non-User that a trade has been reported on which it might have been named a counterparty and it must on-board to DDR to verify the accuracy of the information submitted and provide any missing information such as UICs, if

applicable.<sup>71</sup> DDR represents that, if no LEI is provided or if the email information is not available (for example, under local privacy laws or contractual obligations between the counterparty and the trade repository with which it has contracted as a User), it would take no further action.<sup>72</sup> In addition, DDR will not verify the accuracy of the email, nor follow up if an email bounces back.<sup>73</sup> DDR represents that it will provide the Commission and CFTC with a monthly status of the outreach to Non-Users.<sup>74</sup>

The DDR system will provide trade detail reports that will enable Users to view all transaction records, which will allow Users to reconcile the transaction records in the SDR services to their own risk systems.<sup>75</sup> DDR’s policies and procedures provide that, in the event that both counterparties to a trade agree that data submitted to DDR contains erroneous information (*e.g.*, through a mutual mistake of fact), such Users may each submit a cancel record, effectively cancelling the incorrect transaction record.<sup>76</sup> If a trade record has been submitted by only one counterparty and it is determined by the submitting User that it is erroneous, the submitting User may submit a cancel record.<sup>77</sup> A User may cancel only its own submitted record and cannot cancel a record where it is not the submitting party of the record.<sup>78</sup> DDR shall maintain a record of all corrected errors pursuant to applicable regulations and such records shall be available upon request to the applicable designated regulator.<sup>79</sup>

#### G. Disputed Trade Data

Under DDR’s policies and procedures, Users are responsible for resolving any disputes between themselves uncovered during any reconciliation process and, as appropriate, for submitting correct information.<sup>80</sup> If a User disputes a transaction record alleged to apply to it by the counterparty, or disputes any of the terms within the alleged transaction, the User shall register such dispute by submitting a “dispute” message.<sup>81</sup> If such User fails to register such dispute within 48 hours of the relevant trade detail report being issued, the record will be marked as “deemed verified” in

<sup>58</sup> See *id.*

<sup>59</sup> See *id.*

<sup>60</sup> See Exhibit HH.2, Section 3.3.4.

<sup>61</sup> See *id.* A “snapshot” refers to a message that reflects the current state of the trade, which DDR refers to as the trade’s position.

<sup>62</sup> See Exhibit HH.2, Section 12.

<sup>63</sup> See Exhibit HH.2, Sections 3.3.4 and 3.3.2.1 and Exhibit GG.3.

<sup>64</sup> See *id.*

<sup>65</sup> DTCC operates trade repositories in a number of other jurisdictions. See n.22 *supra*.

<sup>71</sup> See Exhibit HH.2, Sections 3.3.4 and 3.3.2.1 and Exhibit GG.3.

<sup>72</sup> See *id.*

<sup>73</sup> See *id.*

<sup>74</sup> See Exhibit HH.2, Section 3.3.4.1.

<sup>75</sup> See Exhibit HH.2, Section 10.1.2.

<sup>76</sup> See Exhibit HH.2, Section 10.1.1.

<sup>77</sup> See *id.*

<sup>78</sup> See Exhibit HH.2, Section 10.1.1.

<sup>79</sup> See *id.*

<sup>80</sup> See Exhibit HH.2, Section 10.1.2.

<sup>81</sup> See *id.*

<sup>58</sup> See *id.*

<sup>59</sup> See *id.*

<sup>60</sup> See *id.*

<sup>61</sup> See Exhibit HH.2, Section 1.2 and Exhibit GG.3.

<sup>62</sup> See Exhibit GG.3.

the DDR system.<sup>82</sup> All reports and trade records provided to regulators will include the status of these transaction records, including dispute and verification status.<sup>83</sup> Where DDR has received conflicting or inconsistent records from more than one submitter in respect of a particular transaction (such as from a security-based swap execution facility and a reporting party User), DDR would maintain all such records (unless cancelled or modified in accordance with the terms of the Rulebook) and make such records available to designated regulators in accordance with the terms of the User Agreement and applicable law.<sup>84</sup>

#### H. Application and Dissemination of Condition Flags

DDR represents that, with respect to flags that are applied to publicly disseminated reports to help prevent a distorted view of the market, DDR has established the following flags that indicate that additional information is needed to understand the publicly disseminated price: Inter-affiliate, Nonstandard flag, Off market flag, Pricing context, and Compressed trade.<sup>85</sup> DDR also states that further information regarding the flags is available in its matrices under the narrative column.<sup>86</sup>

#### I. Calculation and Maintenance of Positions

DDR's SDR service would allow DDR to calculate open positions for persons with open SBS for which DDR maintains records. DDR's policies and procedures relating to its calculation of positions are provided in Exhibit DD.

#### J. Assignment of Unique Identification Codes

DDR's policies and procedures state that pursuant to Commission regulation (e.g., Regulation SBSR), all registered SDRs must have a systemic means of identifying and tracking all products and persons involved in a SBS transaction, and that Commission regulation (e.g., Regulation SBSR) has prescribed 10 identifiers where a UIC shall be used.<sup>87</sup> Further, DDR represents that it requires all Users to obtain a valid LEI where it exists, from an internationally recognized standards-

setting system ("IRSS") that is recognized by the Commission, and that, where LEIs are populated, DDR performs a digit check on the LEI.<sup>88</sup>

DDR has proposed that its Users will be required to provide Legal Entity Identifiers for the following fields: Platform ID, ultimate parent ID, counterparty ID, broker ID, and execution agent ID.<sup>89</sup> For other UICs (transaction ID, branch ID, trading desk ID, trader ID, and product ID) as discussed further below, DDR has further proposed that each User will be required to create the identifiers in prescribed formats, and that it shall be each User's responsibility to maintain such identifiers (including, but not limited to, any internal mapping of static data) and to ensure their continued accuracy.<sup>90</sup>

#### K. Transaction ID Methodology

DDR represents that it accepts transaction IDs in the UTI field.<sup>91</sup> To validate the uniqueness of each transaction ID, DDR would apply a methodology, which it refers to as "Locks," that prevents the transaction ID from being used for another trade in the same or another jurisdiction.<sup>92</sup> However, DDR also represents that it is the responsibility of the reporting party User to create and provide the transaction ID on each transaction.<sup>93</sup>

#### K. Ultimate Parent and Affiliate Information

DDR represents that it captures the UIC for ultimate parent ID in DDR's system at the time a User on-boards to DDR as this is static information that does not vary by trade. DDR requires that each User provide the LEI of the ultimate parent for each account that is registered with DDR, with the exception of (1) natural persons who are not required to provide an LEI for ultimate parent and (2) asset managers and the funds they manage (for asset managers, if the ultimate parent LEI of the fund is unavailable, DDR will accept the LEI for the fund).<sup>94</sup>

#### M. Branch, Trading Desk, and Trader ID

DDR represents that each User is required to create, among other

identifiers, the branch ID, trading desk ID, and trader ID. With respect to branch ID, DDR represents that it requires the User to provide the two digit ISO alpha country code and the two digit subdivision (city) code where the branch or other unincorporated office is located. DDR represents that if the User has more than one branch in the same subdivision (city), the branch ID will also include a single digit following the country and city code referencing the specific branch, such as 1 or 2, for example.<sup>95</sup> DDR represents that it requires that Users populate the trading desk ID and trader ID fields using an alphanumeric code with ten characters or less.<sup>96</sup>

#### N. Product ID

DDR represents that each User is required to create the product ID. DDR represents that the product ID for all asset classes will be the ISDA taxonomy.<sup>97</sup>

#### O. Missing UIC Information

Rule 906(a) of Regulation SBSR requires a registered SDR to identify any SBS reported to it for which the registered SDR does not have the counterparty ID and (if applicable) the broker ID, branch ID, execution agent ID, trading desk ID, and trader ID of each direct counterparty. Once a day, the registered SDR must send a report to each participant of the registered SDR (or, if applicable, an execution agent) identifying, for each SBS to which that participant is a counterparty, the SBS(s) for which the registered SDR lacks the counterparty ID and (if applicable) broker ID, branch ID, execution agent ID, trading desk ID, or trader ID.

DDR's policies and procedures provide that to assist each User in identifying and supplying missing UIC information, the User's position report, which shall be made available each day to all Users, can be used to identify each SBS transaction for which DDR lacks any of the required UICs.<sup>98</sup> DDR further represents that it will utilize a procedure similar to its process for contacting non-Users to confirm transactions to attempt to obtain missing UIC information.<sup>99</sup>

#### P. Public Dissemination

According to DDR, its public price dissemination ("PPD") solution provides Users with a way to report prices publicly pursuant to the

<sup>82</sup> See *id.*

<sup>83</sup> See *id.*

<sup>84</sup> See *id.*

<sup>85</sup> See Exhibit GG.1.

<sup>86</sup> See *id.*; see also Exhibits GG.2, GG.4, and GG.6, which are the matrices that enumerate the required fields and acceptable values for the submission of trade information into the DDR system.

<sup>87</sup> See Exhibit GG.3; see also Exhibit HH.2, Section 4.1.

<sup>88</sup> See Exhibit GG.3. DDR also notes that the Commission has recognized the global Legal Entity Identifier ("LEI") as an internationally recognized standards-setting system ("IRSS").

<sup>89</sup> See *id.* For counterparty IDs for entities that do not have an LEI (such as a natural person), DDR has proposed alternative methods for providing a counterparty ID.

<sup>90</sup> See *id.*

<sup>91</sup> See Exhibit GG.3.

<sup>92</sup> See *id.*

<sup>93</sup> See *id.*

<sup>94</sup> See *id.*; see also Exhibit HH.2.

<sup>95</sup> See Exhibit GG.3.

<sup>96</sup> See *id.*

<sup>97</sup> See *id.*

<sup>98</sup> See Exhibit HH.2, Section 4.2.3.3.

<sup>99</sup> See *id.*

Commission regulations for SBS (e.g., Regulation SBSR). DDR's policies and procedures state that reporting sides are provided with a specific message (the "PPD Message"), with which to provide information required to be disseminated. The PPD Message is available for dissemination if the fields "Reporting Obligation Party 1" or "Reporting Obligation Party 2" are populated with "SEC" and the message passes validations.<sup>100</sup> According to DDR, the PPD platform will perform validations on every PPD Message submitted, and based on the result of that validation, it will issue a response to the relevant parties indicating a positive or negative validation result (i.e., the "ACK" or "NACK" messages discussed in Section III.E).

DDR's policies and procedures state that DDR requires a separate message for public dissemination and for updating the position record.<sup>101</sup> DDR's policies and procedures also state that DDR requires that PPD Messages be sent at the same time as position messages (i.e., Primary Economic Terms ("PET"), Confirmation, and/or Snapshot messages).<sup>102</sup> Further, DDR's policies and procedures provide that DDR does not determine whether a PPD Message should be disseminated publicly, and that any such PPD Message received is disseminated publicly if it passes validations and is directed to the Commission, as discussed above.<sup>103</sup> Further, DDR states that it requires that the reporting party User provide only PPD Messages that are required to be disseminated under the regulations.<sup>104</sup>

DDR represents that the PPD will receive messages with the following potential entries in the "Action" field for a UTI: New, Modify, and Cancel.<sup>105</sup> A New message will be the first report for a trade event submission, and only one UTI with an action of New will be allowed.<sup>106</sup> A Modify message will be a valid modification or correction to an existing trade event that has previously been reported by a submitting party, and the Modify action will be displayed to the public as a Cancel of the original submission and a Correction representing the Modify submission.<sup>107</sup> A cancel message will instruct the PPD

Platform to cancel the last submission on a particular UTI, and, if the previous submission has been disseminated, the PPD Platform will disseminate the cancel with the original dissemination ID link.<sup>108</sup>

#### Q. Safeguarding Data, Operational Reliability, and Emergency Authority

DDR represents that the DDR system is supported by DTCC and relies on the disaster recovery program maintained by DTCC.<sup>109</sup> DDR's policies and procedures provide the key principles below for business continuity and disaster recovery that DDR follows to enable DDR to provide timely resumption of critical services should there be any disruption to DDR business: (i) Achieve recovery of critical services within a four-hour window with faster recovery time in less extreme situations; (ii) disperse staff across geographically diverse operating facilities; (iii) operate multiple back-up data centers linked by a highly resilient network technology; (iv) maintain emergency command and out-of-region operating control; (v) utilize new technology which provides high-volume, high-speed, asynchronous data transfer over distances of 1,000 miles or more; (vi) maintain processes that mitigate marketplace, operational and cyber-attack risks; (vii) test continuity plan readiness and connectivity on a regular basis, ensuring that Users and third-party vendors/service providers can connect to DDR's primary and back-up sites; (viii) communicate on an emergency basis with the market, Users, and government agency decision-makers; and (ix) evaluate, test, and utilize best business continuity and resiliency practices.<sup>110</sup>

DDR represents that it retains the right to exercise emergency authority in the event of circumstances determined by DDR to require such response or upon request by the designated regulators as applicable, and that any exercise of DDR's emergency authority shall be adequate to address the nature and scope of any such emergency.<sup>111</sup> DDR further represents that its CEO shall have the authority to exercise emergency authority, and that in his/her absence, any other officer of DDR shall have such authority.<sup>112</sup> DDR has stated that circumstances requiring the invocation of emergency authority

include, but are not limited to, occurrences or circumstances: (a) Determined by DDR to constitute an emergency; (b) which threaten the proper functioning of the DDR system and the SDR services; or (c) which materially and adversely affect the performance of the DDR system and the SDR services.<sup>113</sup> DDR states that emergencies include, but are not limited to, natural, man-made and information technology emergencies.<sup>114</sup>

Pursuant to its policies and procedures, DDR shall notify the designated regulators, as soon as reasonably practicable, of an invocation of emergency authority or a material system outage is detected by DDR.<sup>115</sup> Such notification shall be provided in accordance with applicable regulations and will include the reasons for taking such emergency action, how potential conflicts of interest were minimized and documentation of the decision-making process.<sup>116</sup> Documentation underlying the emergency shall be made available to the designated regulators upon request.<sup>117</sup> DDR also represents that it shall issue an "Important Notice" as to all Users as soon as reasonably practicable in the event such emergency authority is exercised.<sup>118</sup>

DDR represents that it shall avoid conflicts of interest in decision-making with respect to emergency authority taken.<sup>119</sup> If a potential conflict of interest arises, the CCO shall be notified and consulted for the purpose of resolving the potential conflict.<sup>120</sup>

DDR represents that any emergency actions taken by DDR may be terminated by the CEO and in his/her absence, any other officer of DDR, and that any such termination of an emergency action will be followed by the issuance of an Important Notice as soon as reasonably practicable.<sup>121</sup>

#### R. Data Confidentiality; Sensitive Information and Security

DDR represents that DTCC has established a Technology Risk Management Team, whose role is to manage information security risk and ensure the availability, integrity, and confidentiality of the organization's information assets, but that DDR will be

<sup>100</sup> See Exhibit GG.3.

<sup>101</sup> See Exhibit GG.3.

<sup>102</sup> See *id.* DDR's User Guide (Exhibit GG.3) also provides descriptions of each of these types of messages. For example, a PET message is used to report the full details of the economic terms for trade and lifecycle events prior to confirmation.

<sup>103</sup> See *id.* and Exhibit HH.2, Section 5.1.2.

<sup>104</sup> See *id.*

<sup>105</sup> See Exhibit GG.3.

<sup>106</sup> See *id.*

<sup>107</sup> See *id.*

<sup>108</sup> See *id.* The dissemination ID is a DDR-generated identifier used to uniquely identify a message without exposing the UTI and will be used to manage cancellations and corrections.

<sup>109</sup> See Exhibit HH.2, Section 8.1.

<sup>110</sup> See *id.*

<sup>111</sup> See Exhibit HH.2, Section 7.3.

<sup>112</sup> See *id.*

<sup>113</sup> See *id.*

<sup>114</sup> See *id.*

<sup>115</sup> See Exhibit HH.2, Section 7.3.

<sup>116</sup> See *id.*

<sup>117</sup> See *id.*

<sup>118</sup> See *id.* An "Important Notice" is a formal notice sent to Users describing significant changes to DDR Rules, DDR Systems or other processes. See *id.*, Section 12.

<sup>119</sup> See Exhibit HH.2, Section 7.3.

<sup>120</sup> See *id.*

<sup>121</sup> See *id.*

responsible for monitoring the performance of DTCC with regard to implementation and maintenance of information security within its infrastructure.<sup>122</sup> DDR further represents that various policies have been developed to provide the framework for both physical and information security and are routinely refreshed. The Technology Risk Management Team carries out a series of processes to endeavor to ensure DDR is protected in a cost-effective and comprehensive manner. This includes preventative controls such as firewalls, appropriate encryption technology, and authentication methods. Vulnerability scanning is used to identify high risks to be mitigated and managed and to measure conformance against the policies and standards.<sup>123</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning DDR's Form SDR, including whether DDR has satisfied the requirements for registration as an SDR. To the extent possible, commenters are requested to provide empirical data and other factual support for their views. In addition, the Commission seeks comment on the following issues:

1. Please provide your views as to whether DDR's application for registration as an SDR demonstrates that DDR is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as an SDR, comply with any applicable provisions of the securities laws and the rules and regulations thereunder, and carry out its functions in a manner consistent with the purposes of Section 13(n) of the Exchange Act and Commission's SDR rules.

2. Exchange Act Rule 13n-5(b)(1)(iii) requires every SDR to establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the SDR is complete and accurate. Please provide your views as to whether DDR's policies and procedures concerning verification of trade data are sufficiently detailed and reasonably designed to satisfy DDR that the transaction data that has been submitted to DDR is complete and accurate, as required by Exchange Act Rule 13n-5(b)(1)(iii).

3. Please provide your views as to whether DDR's policies and procedures to address confirmation of data accuracy and completeness for bespoke, bilateral

SBS transactions (*i.e.*, DDR will attempt to contact a non-User counterparty to verify the accuracy of a trade if DDR has been provided with the non-User counterparty's LEI and can access email contact information for the non-User counterparty in the static data maintained by the DTCC trade repositories about their Users) are appropriate and reasonably designed to meet its obligations under Exchange Act Rule 13n-5(b)(1)(iii).

4. Please provide your views as to whether DDR's policies and procedures are sufficiently detailed and reasonably designed to ensure that the transaction data and positions that it maintains are complete and accurate, as required by Exchange Act Rule 13n-5(b)(3).

5. Please provide your views as to whether DDR's policies and procedures are sufficiently detailed and reasonably designed to ensure that it has the ability to protect the privacy of SBS transaction information that it receives, as required by Exchange Act Rule 13n-9.

6. Please provide your views as to whether DDR's policies and procedures are sufficiently detailed and reasonably designed to ensure that it has the ability to calculate positions, as required by Exchange Act Rule 13n-5(b)(2).

7. Please provide your views as to whether DDR's policies and procedures are sufficiently detailed and reasonably designed to provide a mechanism for Users and their counterparties to effectively resolve disputes over the accuracy of SBS data that DDR would maintain, as required by Exchange Act Rule 13n-5(b)(6). Are DDR's policies and procedures, including with respect to the specified timeframe, relating to dispute resolution adequate? Why or why not?

8. Please provide your views as to whether DDR's policies and procedures are sufficiently detailed and reasonably designed to ensure that its systems that support or are integrally related to the performance of its activities provides adequate levels of capacity, integrity, resiliency, availability, and security, as required by Exchange Act Rule 13n-6.

9. Please provide your views as to whether DDR's policies and procedures are sufficiently detailed and reasonably designed for the CCO's handling, management response, remediation, retesting, and closing of noncompliance issues, as required by Exchange Act Rule 13n-11(c)(7).

10. Please provide your views as to whether DDR's policies or procedures could result in an unreasonable restraint of trade or impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

11. Please provide your views as to whether DDR's proposed dues, fees, or other charges, discounts or rebates and the process for setting dues, fees, or other charges, discounts or rebates are fair and reasonable and not unreasonably discriminatory. Please address whether such proposed dues, fees, other charges, discounts, or rebates are applied consistently across all similarly situated users of DDR's services, including, but not limited to, Users, market infrastructures (including central counterparties), venues from which data can be submitted to DDR (including exchanges, SBS execution facilities, electronic trading venues, and matching and confirmation platforms), and third party service providers.

12. Exchange Act Rule 13n-4(c)(2)(i)-(iii) provides that each SDR (i) shall establish governance arrangements that are well defined and include a clear organizational structure with effective internal controls; (ii) must establish governance arrangements that provide for fair representation of market participants; and (iii) must provide representatives of market participants, including end-users, with the opportunity to participate in the process for nominating directors and with the right to petition for alternative candidates. Please provide your views as to whether DDR's governance arrangements are appropriate in light of the requirements of Rule 13n-4(c)(2)(i)-(iii).

13. Exchange Act Rule 13n-4(c)(3)(i)-(ii) provides that each SDR must establish, maintain, and enforce written policies and procedures reasonably designed to identify and mitigate potential and existing conflicts of interest in the SDR's decision-making process on an ongoing basis, and, with respect to the decision-making process for resolving any conflicts of interest, each SDR shall require the recusal of any person involved in such conflict from such decision-making. Please provide your views as to whether DDR's policies and procedures are appropriate in light of the requirements of Exchange Act Rule Exchange Act Rule 13n-4(c)(3)(i)-(ii).

14. Rule 903(a) of Regulation SBSR provides, in relevant part, that if no system has been recognized by the Commission, or a recognized system has not assigned a UIC to a particular person, unit of a person, or product, the registered SDR shall assign a UIC to that person, unit of person, or product using its own methodology. Is the methodology that DDR proposes to use with respect to UICs as described in its application materials appropriate in light of the requirements under Rule

<sup>122</sup> See Exhibit HH.2, Section 9.1.

<sup>123</sup> See Exhibit HH.2, Section 9.



903(a) of Regulation SBSR? Why or why not?

15. Rule 907(c) of Regulation SBSR requires a registered SDR to make its Regulation SBSR policies and procedures publicly available on its Web site. The Commission has stated that this public availability requirement will allow all interested parties to understand how the registered SDR is utilizing the flexibility it has in operating the transaction reporting and dissemination system, and will provide an opportunity for market participants to make suggestions to the registered SDR for altering and improving those policies and procedures, in light of the new products or circumstances, consistent with the principles set out in Regulation SBSR.<sup>124</sup> DDR has proposed to satisfy its obligation under Rule 907(c) of Regulation SBSR by making the policies and procedures contained in Exhibit GG (including GG.1 through GG.6) and Exhibit HH.2, and the other application exhibits referenced therein available on its public Web site. Is the information that is included in or referenced in GG (including GG.1 through GG.6) and Exhibit HH.2 appropriate in light of the requirements of Rule 907(c)?

16. Regulation SBSR imposes duties on various market participants to report SBS transaction information to a registered SDR. Please provide your views as to whether the DDR application and the associated policies and procedures (including technical specifications for submission of data) provide sufficient information to potential participants of DDR about how they would discharge these regulatory duties when reporting to DDR. In particular, please provide your views as to whether DDR's technical specifications for submission of data are sufficiently detailed, especially with regard to historical SBSs (including pre-enactment and transitional SBS) and bespoke SBS. Please describe in detail what additional information you believe is necessary to allow you to satisfy any reporting obligation you may incur under Regulation SBSR.

17. Rule 906(a) of Regulation SBSR provides, in relevant part, that a participant of a registered SDR must provide the missing information with respect to its side of each SBS referenced in the report to the registered SDR within 24 hours. DDR represents that in order to be granted access to the DDR system, receive trade information, confirm or verify transactions, submit messages, or receive reports, a market

participant must be on-boarded as a DDR User. Please provide your views as to whether this form of access afforded to the non-reporting-side is fair, open, and not unreasonably discriminatory.

18. Please provide your views as to whether DDR's policies and procedures relating to Rule 906(a) are sufficiently detailed, appropriate and reasonably designed to ensure data accuracy and completeness, including with respect to the requirement that once a day, a registered SDR shall send a report to each participant identifying, for each SBS to which that participant is a counterparty, the SBS for which the registered SDR lacks counterparty ID and (if applicable) broker ID, branch ID, execution agent ID, desk ID, and trader ID.

19. Please provide your views as to whether DDR's policies and procedures relating to Rule 905(b) are sufficiently detailed, appropriate and reasonably designed to ensure data accuracy and completeness.

20. Please provide your views as to whether DDR has provided sufficient information to explain the SBS transaction information that it would publicly disseminate to discharge its duties under Rule 902 of Regulation SBSR. Please describe any additional information that you feel is necessary. Please offer any suggestions generally for how the publicly disseminated information could be made more useful.

21. Please provide your views as to whether DDR has provided sufficient information to explain how Users would be required to report life cycle events under Rule 901(e). Please describe any additional information that you feel is necessary. In particular, please indicate whether you believe DDR's specifications are reasonably designed to identify the specific data element(s) that change and thus that trigger the report of the life cycle event.

22. Please provide your views as to whether DDR has provided sufficient information about how an agent could report SBS transaction information to DDR on behalf of a principal (*i.e.*, a person who has a duty under Regulation SBSR to report). Please describe any additional information that is necessary. In particular, please provide your views as to whether DDR should differentiate between agents who are Users of DDR because they themselves at times are principals (*i.e.*, they are counterparties to one or more SBSs that are reported to DDR on a mandatory basis) and agents who are never principals (*e.g.*, a vendor).

23. Please provide your views as to whether DDR's policies and procedures for the use of condition flags for

transactions having special characteristics under Rule 907(a)(4) of Regulation SBSR are consistent with the goal of preventing market participants without knowledge of these characteristics receiving a distorted view of the market. Are there additional condition flags that you believe DDR should utilize? If so, please describe them and why you believe they are appropriate.

24. Exchange Act Rule 13n-10 requires that, before accepting any SBS data from a market participant or upon a market participant's request, an SDR shall furnish to the market participant a disclosure document that contains certain written information, which must reasonably enable the market participant to identify and evaluate accurately the risks and costs associated with using the SDR's services. This written information includes the SDR's criteria for providing others with access to its services and data it maintains, its criteria for those seeking to connect to or link with it, its description of its policies and procedures regarding its noncommercial and/or commercial use of the SBS transaction information that it receives from a participant, any registered entity, or any other person, its description of all the SDR's services, including any ancillary services, and its description of its governance arrangements. Based on the materials provided in DDR's Form SDR application, please provide your views as to whether the disclosures provided by the application are sufficiently detailed to meet the objectives of Exchange Act Rule 13n-10.

25. In addition to serving as an SDR for the credit and equity derivatives asset classes, DDR has applied to serve as an SDR for what it describes as SBS transactions in the interest rates derivatives asset class. Please provide your views about DDR's description of this asset class. Please also provide your views as to whether DDR has provided sufficient information about how a User reports SBS transaction information in this asset class. Is this information provided sufficient? Why or why not? Please describe any additional information that you believe should be provided.

26. Exchange Act Rule 13n-4(b)(5) requires that an SDR shall provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity). Based on the materials provided in DDR's Form SDR application, please provide your views as to whether DDR's policies and procedures are sufficient to meet the

<sup>124</sup> See Regulation SBSR Adopting Release, 80 FR at 14648.

objectives of Exchange Act Rule 13n-4(b)(5).

27. Rule 901(i) of Regulation SBSR provides that a person must report information about a pre-enactment SBS or transitional SBS “to the extent that information about such transaction is available.” Is it clear that DDR’s policies and procedures, including regarding validations, will allow parties to submit transaction records for pre-enactment SBS and transitional SBS with data elements missing, pursuant to Rule 901(i)?

28. Please provide your views as to whether DDR’s policies and procedures relating to how it would conduct validations of transaction records for historic and newly executed SBS are sufficiently detailed to meet the objectives of Exchange Act Rule 13n-5(b)(1)(iii), and what further clarifications, if any, you believe would be appropriate.

Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SBSDR-2016-02 on the subject line.

#### *Paper Comments*

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SBSDR-2016-02.

To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/other.shtml>).

Copies of the Form SDR, all subsequent amendments, all written statements with respect to the Form SDR that are filed with the Commission, and all written communications relating to the Form SDR between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

should submit only information that you wish to make available publicly. All submissions should refer to File Number SBSDR-2016-02 and should be submitted on or before August 8, 2016.

**Brent J. Fields,**

*Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-78206; File No. SR-FICC-2016-002]**

### **Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Suspend the Interbank Service of the GCF Repo<sup>®</sup> Service**

June 30, 2016.

On May 5, 2016, the Fixed Income Clearing Corporation (“FICC” or the “Corporation”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-FICC-2016-002 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change was published for comment in the **Federal Register** on May 20, 2016.<sup>3</sup> The Commission received no comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

#### **I. Description of the Proposed Rule Change**

FICC seeks the Commission’s approval to suspend the interbank service of the GCF Repo<sup>®</sup> service, as described more fully below. The suspension does not require changes to the text of the Government Securities Division (“GSD”) Rulebook (the “GSD Rules”), however, the suspension requires changes to FICC’s Real-Time Trade Matching (“RTTM<sup>®</sup>”) system.

##### *A. The GCF Repo Service*

The GCF Repo service allows dealer members of FICC’s Government Services Division to trade general collateral finance repos (“GCF Repos”) <sup>4</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 34-77840 (May 16, 2016), 81 FR 31996 (May 20, 2016) (SR-FICC-2016-002).

<sup>4</sup> A GCF Repo is one in which the lender of funds is willing to accept any of a class of U.S. Treasuries, U.S. government agency securities, and certain mortgage-backed securities as collateral for the repurchase obligation. This is in contrast to a specific collateral repo.

throughout the day without requiring intraday, trade-for-trade settlement on a delivery-versus-payment basis.<sup>5</sup> The service allows dealers to trade GCF Repos, based on rate and term, with inter-dealer broker netting members on a blind basis. Standardized, generic CUSIP numbers have been established exclusively for GCF Repo processing, and are used to specify the type of underlying security that is eligible to serve as collateral for GCF Repos. Only Fedwire eligible, book-entry securities may serve as collateral for GCF Repos. Acceptable collateral for GCF Repos include most U.S. Treasury securities, non-mortgage-backed federal agency securities, fixed and adjustable rate mortgage-backed securities, Treasury Inflation-Protected Securities and separate trading of registered interest and principal securities.<sup>6</sup>

The GCF Repo service has operated on both an “interbank” and “intraday” basis. “Interbank” means that the two GCF Repo Participants which have been matched in a GCF Repo transaction each clear at a different clearing bank. “Intraday” means that the two GCF Repo Participants which have been matched in a GCF Repo transaction clear at the same clearing bank.

##### *B. Suspension of the Interbank Service of the GCF Repo Service*

Since 2011, FICC has made several changes to its GCF Repo service in order to comply with recommendations made by the Tri-Party Repo Infrastructure Reform Task Force (“TPR”), an industry group formed and sponsored by the Federal Reserve Bank of New York. The main purpose of the TPR was to develop recommendations to address the risk presented by triparty repo transactions due to the morning reversal (commonly referred to as the “unwind”) process, by replacing it with a process by which transactions are collateralized all day. The GCF Repo service was originally designed to have transactions “unwind” every morning in order to mirror the transactions in the triparty repo market. Prior to Triparty Reform, transactions submitted on “Day 1” unwound on the morning of “Day 2.” To “unwind” means that the securities are returned to the lender of securities in the transaction and the cash is returned to the borrower of securities. Because of certain changes to the way in which the Triparty Reform effort was to proceed

<sup>5</sup> Delivery-versus-payment is a settlement procedure in which the buyer’s cash payment for the securities it has purchased is due at the time the securities are delivered.

<sup>6</sup> See Securities Exchange Act Release No. 34-58696 (September 30, 2008), 73 FR 58698, 58699 (October 7, 2008) (SR-FICC-2008-04).