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August 5, 2016

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: *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 (File No. SBSDR-2016-02)*

Dear Mr. Fields:

The Investment Company Institute (“ICI”)¹ appreciates the opportunity to comment on the application of DTCC Data Repository (U.S.) LLC (“DDR”) for registration with the Securities and Exchange Commission (“Commission” or “SEC”) as a security-based swap data repository (“SDR”).² Our members—investment companies that are registered under the Investment Company Act of 1940 (“funds”)—use security-based swaps and other derivatives in a number of ways to manage their portfolios prudently and deliver long-term returns to their shareholders.³ We generally support the Commission’s goal of increasing oversight and transparency of the security-based swap market, but we have concerns with proposed rules, policies, and procedures of SDRs that could impose on funds

¹ ICI is a leading, global association of regulated funds, including mutual funds, exchange-traded funds, closed-end funds, and unit investment trusts in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI’s U.S. fund members manage total assets of \$17.9 trillion and serve more than 90 million U.S. shareholders.

² See *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*, Securities Exchange Act Release No. 78216 (June 30, 2016). The application (“Application”) is available at <https://www.sec.gov/rules/other/2016/dtcc-data-repository-form-sdr.htm>.

³ For example, a fund may use security-based swaps to hedge other investment positions, equitize cash that the fund cannot immediately invest in direct equity holdings, manage the fund’s cash positions more generally, adjust the duration of the fund’s portfolio or manage the fund’s portfolio in accordance with the investment objectives stated in the fund’s prospectus.

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significant new burdens that the Commission did not intend when it adopted Regulation SBSR⁴ or the registration regime for SDRs.⁵

As we explained in detail in an earlier letter on the proposed rules of an SDR applicant, Regulation SBSR imposes few duties on funds and other counterparties that are not reporting sides. These non-reporting counterparties, however, still must have access to SDRs to report limited information about their businesses and corporate relationships.⁶ To ensure that SDRs offer access to non-reporting sides, including funds, on terms that are fair, reasonable, not unreasonably discriminatory, and proportionate to their SEC-mandated reporting obligations, we recommend that all SDR rules, policies and procedures meet three criteria. First, SDR rules should not require funds and other non-reporting sides to become participants or users of SDRs.⁷ Second, SDR rules should not require non-reporting sides to assume reporting duties exceeding those required by Regulation SBSR or the SDR Registration Rules. Third, an SDR's rules, policies and procedures, and other publicly available documents should provide enough information to enable users of the SDR to understand the SDR's operations.⁸

⁴ *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, Securities Exchange Act Release No. 74244 (February 11, 2015), 80 FR 14564 (March 19, 2015) (“Regulation SBSR Adopting Release”).

⁵ *Security-Based Swap Data Repository Registration, Duties, and Core Principles*, Securities Exchange Act Release No. 74246 (February 11, 2015), 80 FR 14438 (March 19, 2015) (“SDR Registration Rules”).

⁶ See Letter from Jennifer S. Choi, Associate General Counsel, ICI, to Brent J. Fields, Secretary, SEC, dated May 31, 2016, available at <https://www.ici.org/pdf/29940.pdf> (“ICE Trade Vault Letter”). Under Regulation SBSR, if a fund receives a report from an SDR identifying security-based swaps to which such fund is party for which the SDR lacks the counterparty ID and (if applicable) broker ID, branch ID, execution agent ID, trading desk ID, and trader ID (collectively, “UIC Information”), the fund must provide the missing information to the SDR within 24 hours. See Exchange Act Rule 242.906(a). The Commission has stated recently that the trading desk ID and trader ID fields would not be applicable for trades involving an execution agent. See *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, Securities Exchange Act Release No. 78321 at n. 312 (July 14, 2016) (“Regulation SBSR Amending Release”). The non-reporting side also must provide to each applicable SDR information sufficient to identify its ultimate parent(s) and any affiliate(s) that have security-based swaps reported to that SDR, and notify the SDR promptly of any changes to that information. See Exchange Act Rule 242.906(b). The SEC recently amended this rule to clarify that it does not apply to “externally managed investment vehicles,” including some funds. See Regulation SBSR Amending Release at 120-121.

⁷ The Commission's interpretation of Exchange Act Rule 242.906(a) and modifications to 242.906(b) discussed in note 6, supra, appear to reduce significantly the scope of potential reporting requirements on funds because funds generally act through an execution agent and would seldom, if ever, have parent or affiliate information to report. This means that, at most, a fund could have to report one or two fields of UIC information (e.g., counterparty ID) in the unlikely event that the reporting side does not supply this information on behalf of the fund. Before the Commission issued this new interpretation and rule, we believed that an SDR should have no authority to require a fund to become a full user or participant to report applicable UIC information and parent and affiliate information. Now that the Commission has effectively reduced reporting burdens on funds, we believe it would be even more unreasonable and disproportionate for the Commission to approve an SDR rule that compels a fund to become a full user or participant of the SDR merely to report an occasional UIC code.

⁸ We explained these principles more fully in the ICE Trade Vault Letter.

We urge the Commission to require DDR to modify its rulebook in three ways to meet these standards.⁹ First, DDR's rulebook should provide that a non-reporting side is not required to become a full "user" of DDR to perform its limited reporting obligations under Regulation SBSR. Second, DDR should clarify that a non-reporting side has no duty to verify information reported by the reporting side. Third, DDR should explain more comprehensively the operation of its fee schedule and public dissemination functionality.

I. SDR Rulebooks Should Not Require Non-Reporting Sides to Become SDR Users

Under the DDR rulebook, an entity must become a "user" to be granted access to the DDR system, to receive trade information, to confirm or verify transactions, to submit messages or to receive reports from DDR.¹⁰ Requiring a non-reporting side to assume all of the obligations of a DDR "user" merely to report applicable information under Rule 906 of Regulation SBSR is inconsistent with Exchange Act Rule 13n-4(c)(1)(ii), which requires an SDR to "[p]ermit market participants to access specific services offered by the security-based swap data repository separately." Moreover, requiring a fund to become a full "user" of a security-based swap data repository (with all of the attendant obligations) would not necessarily provide "fair" access as required by Exchange Act Rule 13n-4(c)(1)(iii)¹¹ and would be disproportionate to the fund's limited reporting duties under Regulation SBSR.¹² Becoming a "user" would subject the fund, for example, to the requirement to submit to an onsite audit by DDR.¹³

In adopting Regulation SBSR, the Commission sought to avoid imposing onerous obligations associated with SDR membership on non-reporting sides.¹⁴ To avoid evasion of this objective, the Commission should require DDR to provide a mechanism for non-reporting sides to report the limited security-based swap data required by Regulation SBSR without being required to access the full range of services offered by DDR to its users (and without becoming subject to full panoply of requirements that DDR would impose on users). One approach would be for DDR to provide non-reporting sides with a

⁹ See DTCC Data Repository (U.S.) LLC Rulebook, Exhibit HH to the Application ("Rulebook").

¹⁰ See Section 1.1 of the DDR proposed revised Rulebook ("Rulebook").

¹¹ SDRs are required to comply with certain core principles under Exchange Act Rule 13n-4(c). One such core principle is that an SDR must "...[e]stablish, monitor on an ongoing basis, and enforce clearly stated objective criteria that would permit fair, open, and not unreasonably discriminatory access to services offered and data maintained by the security-based swap data repository as well as fair, open, and not unreasonably discriminatory participation by market participants..." Exchange Act Rule 13n-4(c)(1)(iii).

¹² See ICE Trade Vault Letter, Section II.

¹³ See Section 10.5 of the Rulebook.

¹⁴ See ICE Trade Vault Letter at 4 (explaining that the Commission considered and rejected the possibility that Regulation SBSR would require a non-reporting side to agree to the terms and conditions of SDR membership merely to comply with the requirement to report UIC Information and parent and affiliate information).

secure method for uploading the required information that does not require acceptance of burdensome terms unnecessary to accomplish this limited reporting duty.

II. SDR Rulebooks Should Not Expand the Duties of Non-Reporting Sides

Section 3.3.4.1 of the Rulebook contains ambiguous language that might imply that non-reporting sides must verify information reported by their counterparty and become users of DDR to satisfy this obligation. The Rulebook provides that DDR's transaction verification procedures are designed to give the non-reporting side the "opportunity to verify" transaction information.¹⁵ If the non-reporting side does not verify or dispute the transaction within 48 hours, the transaction is "deemed verified." The Rulebook also states that DDR will attempt to contact certain counterparties to transactions that are reported to DDR that are not DDR "users" to notify such non-users "that a trade has been reported on which they may have been named a counterparty *and they must on board to DDR to verify the accuracy of the information submitted* and provide any missing information such as UICs, if applicable."¹⁶ We believe this language must be read to mean that the non-reporting side must on board to DDR if it wishes to verify the accuracy of information submitted, not that the non-reporting side has an obligation to verify such information. Given that neither the Exchange Act nor any Exchange Act rule authorizes an SDR to require a non-reporting side to verify any transaction information, we do not believe DDR's rulebook can impose this obligation.¹⁷ We therefore recommend that the Commission require DDR to revise the Rulebook to remove any ambiguity.

As explained in the ICE Trade Vault Letter, the Commission has recognized that funds and other non-reporting sides have limited reporting capabilities and, accordingly, should bear proportionately limited reporting obligations.¹⁸ We urge the Commission not to approve SDR rules that would impose duties on non-reporting sides exceeding those specified in Regulation SBSR because such rules would frustrate the Commission's intent to subject non-reporting sides to a lighter reporting obligation than reporting sides. To ensure that DDR's Rulebook does not expand the tailored burdens placed on non-reporting sides, we suggest that the Commission require DDR to revise the Rulebook to

¹⁵ Section 10.1 of the Rulebook. Under the Rulebook, a trade is "verified" if it is, for example, submitted by a "trusted source" (such as a swap execution facility or a clearing house), entered into through an electronic trading facility, or submitted on a confirmation platform. The Rulebook provides that a non-reporting side also may verify transaction information by sending a verification message. *See* Section 3.3.4.1 of the Rulebook ("In addition, the non-reporting [u]ser may verify the accuracy of the information that has been submitted by the [r]eporting [p]arty. A non-reporting [u]ser can do so by sending a verification message indicating it verifies or disputes each position where the non-reporting [u]ser is identified as the counterparty."). As noted above, to send verification messages, a non-reporting side must be a "user" of DDR. *See* Section 1.1 of the Rulebook.

¹⁶ Section 3.3.4.1 of the Rulebook (*italics supplied*).

¹⁷ We believe that the Exchange Act's omission of any authorization for an SDR to impose its rules on non-reporting sides is dispositive. We do not see how an SDR can burden non-reporting sides with compliance duties exceeding those supplied by the Exchange Act.

¹⁸ *See* ICE Trade Vault Letter, Section III.

clarify that a non-reporting side has no obligation to review or verify the transaction information reported by the reporting side.

Imposing an obligation on the non-reporting side to verify transaction information also would create significant operational burdens for funds and other non-reporting sides. It is not even clear how a non-reporting side would learn of any obligation to verify data. Under the Rulebook, DDR is required to contact a non-user counterparty only if a Legal Entity Identifier for the non-user counterparty is available and if an email address for the non-user counterparty is available “in the information or static data maintained by the DTCC trade repositories about their [u]sers.”¹⁹ Because such data may not include e-mail addresses for many non-user counterparties, the non-reporting side counterparties may never be contacted. Moreover, a fund or other non-reporting side might not know that its counterparty had reported a trade to DDR—the SDR that is chosen only by the reporting side. The Rulebook should not impose an obligation to verify transaction information on non-reporting users, which may not receive notice that their transaction information has been reported to DDR and have no choice of the SDR to which data is reported. The Rulebook should therefore make clear that it imposes no such obligation.

III. SDR Rulebooks Should Be Unambiguous and Complete

As explained in the ICE Trade Vault Letter, SDRs will play an important role in the Commission’s oversight of the security-based swap market. In the interest of improving data quality and minimizing burdens on market participants, we urge the Commission to ensure that SDR rules clearly and fully explain an SDR’s operations. DDR’s proposed Rulebook falls short of this standard in certain ways, including the following:

- The DDR fee schedule should be transparent about whether it applies to both sides of a trade or only to the reporting side. If the fee schedule would apply to both sides, we urge the Commission to require DDR to explain how this schedule is fair, reasonable, and not unreasonably discriminatory, given that trades between two users would incur higher charges than trades between a user and a non-user.²⁰
- Rule 902 of Regulation SBSR requires SDRs to disseminate publicly primary trade information for security-based swap transactions. Funds and other market participants may use the publicly disseminated information to improve their understanding of the market or inform trading decisions. We urge the Commission to ensure that all market

¹⁹ Section 3.3.4.1 of the Rulebook.

²⁰ Assume, for example, that Party A is a security-based swap dealer, with 50 trades reported to DDR. Parties B and C are funds, each with zero trades reported to DDR. Party B has elected to become a user of DDR, but Party C has not. If Party A reports a security-based swap with Party B to DDR, DDR proposes to charge \$7.00 per month for warehousing the transaction. By contrast if Party A reports a security-based swap with Party C to DDR, DDR would charge only \$3.50 per month for warehousing the transaction. See SEC Fee Schedule Draft, Exhibit M to the application.

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participants have access to publicly disseminated security-based swap information. We note that DDR's Rulebook recognizes that the SDR will disseminate publicly trade information, but it does not explain how market participants can view this information or how DDR intends to comply with Exchange Act Rule 903, which prohibits the use of coded information unless the information necessary to interpret the codes is widely available to users of the information on a non-fee basis.²¹

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We respectfully urge the Commission to require DDR to revise its Rulebook to satisfy the three criteria described above. If you have any questions on our comment letter, please feel free to contact me at (202) 326-5876.

Sincerely,

/s/ Jennifer S. Choi

Jennifer S. Choi
Associate General Counsel

cc: The Honorable Mary Jo White
The Honorable Kara M. Stein
The Honorable Michael S. Piwowar

Stephen Luparello, Director, Division of Trading and Markets
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²¹ See Section 5.1.2 of the Rulebook.