



September 23, 2013

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549

RE: Security-Based Swap Data Repository Registration, Duties, and Core Principles (File Number S7-53-10); Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information (File Number S7-34-10); Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR (File Numbers S7-02-13, S7-34-10)

Dear Ms. Murphy,

ICE Trade Vault, LLC (“Trade Vault”) appreciates the opportunity to provide the U.S. Securities and Exchange Commission (the “SEC” or “Commission”) comments related to certain provisions in the proposed rules regarding security-based (“SB”) Swap Data Repository (“SDR”) registration, duties, and core principles (“Proposed SB SDR Rules”),¹ proposed Regulation SBSR governing the reporting and dissemination of SB swap information² and proposed rules and interpretive guidance that address the application of the provisions of the Securities Exchange Act of 1934, as amended (“Exchange Act”), that were added by Subtitle B of Title VII of the Dodd Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),³ to cross-border security-based (“SB”) swap activities (“Cross-Border Proposal.”)⁴

As background, Trade Vault is currently operational as a provisionally registered as a SDR by the Commodity Futures Trading Commission (“CFTC”) for the commodity and credit asset classes. Trade Vault has a global customer base of over 700 participants and has received over sixteen million trades to date. Furthermore, ICE Trade Vault Europe Limited (“Trade Vault Europe”) is incorporated in England and Wales and is a wholly-owned subsidiary of ICE. Trade Vault Europe is seeking registration with the European Securities and Markets Authority (“ESMA”) to be a Trade Repository (“TR”) with an offering for the commodity, credit, equity and interest rate asset classes.

¹ Security-Based Swap Data Repository Registration, Duties, and Core Principles, 75 Fed. Reg. 77,306 (Dec. 10, 2010).

² Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. 75,208 (Dec. 2, 2010).

³ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (2010).

⁴ Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, 78 Fed. Reg. 30,968 (May 23, 2013).

Comments on Proposed SB SDR Rules

1. The Clearing Agency should have the unambiguous reporting requirement for cleared swaps.
 - a. The Clearing Agency is the sole party to a swap who can accurately report cleared swap data.

Under the current clearing model, the original swap between counterparties (the “alpha swap”) is terminated and replaced by two different, *unique* resulting swaps (the “beta” and “gamma” swaps) between each counterparty and the Clearing Agency. Upon the acceptance of the swap by the clearinghouse, the alpha swap is extinguished thus necessitating (a) the transmission of a termination message for the pre-cleared swap⁵ and (b) the subsequent reporting of the creation data for the new beta and gamma swaps. Because of this mechanism, Clearing Agencies hold the master record of all cleared transactions and have well-documented controls to ensure the accuracy of all such data. Furthermore, 17 CFR §240.17a-1(a) requires a registered Clearing Agency to retain documents, including all “ notices, accounts, and other such records as shall be made or received by it in the course of its business as such and in the conduct of its self-regulatory activity.” ICE’s Clearing Agencies comply with these requirements and retain all necessary and reportable swap data. In addition, clearing members and market participants, including Securities-Based Swap Dealers (“SB SDs”) or Securities-Based Major Swap Participant (“SB MSPs”), will be dependent on Clearing Agencies to provide swap data that needs to be reported to SB SDRs including mark to market, collateral, timestamps and end of day settlement prices. Rather than clearing members and SB SDs/SB MSPs receiving and processing such data from Clearing Agencies in order to report to SB SDRs, it would be far more efficient for Clearing Agencies to directly report all swap data to SB SDRs. Lastly, by having Clearing Agencies report, there will be no confusion as to the selection of the reporting party.

Proposed Rule 242.901(a) provides a reporting hierarchy in which SB SDs/SB MSPs have the reporting obligation when transacting with a non-SB SDs/non-SB MSPs. Notably, the Commission has not designated a Clearing Agency as the reporting party for swaps cleared through a Clearing Agency and has classified the Clearing Agency as an “end-user” and non-reporting party. The Commission has stated that “for the sake of uniformity and ease of applicability, the duty to report a [SB swap] should attach to the same counterparty regardless of whether the [SB swap] is cleared or uncleared.”⁶ Trade Vault believes the Commission’s proposed reporting hierarchy is appropriate for OTC bilateral markets; however, this same reporting hierarchy should not be applied to cleared transactions because the clearing model substantially differs from OTC bilateral markets. For cleared transactions, the Clearing Agency is the sole party who holds the complete and accurate record of transactions and positions. Trade Vault strongly urges the Commission to modify the proposed hierarchy to require Clearing Agencies to be the reporting party for all cleared transactions. The Clearing Agency is best positioned to have the sole

⁵ 17 C.F.R. § 45.4, “Swap data reporting: continuation data,” requires reporting entities, including both counterparties and DCOs, to report Life Cycle Event Data, which includes termination messages. Accordingly, § 49.10, “Acceptance of Data,” requires a SDR to accept all swap data in its selected asset class that is required to be reported pursuant to Part 45 of the CFTC Regulations.

⁶ See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. 75,208, 75,211 (Dec. 2, 2010) (hereinafter “Initial Regulation SBSR Proposing Release”).

responsibility to accurately report this required swap data⁷ to a SB SDR as soon as technologically practicable after acceptance for clearing.

- b. Clearing Agencies should be required to report all lifecycle events.

Trade Vault recommends the Commission to require Clearing Agencies to report all lifecycle events and position data. This will provide the Commission with full visibility of the Clearing Agencies exposure to its clearing members and ultimately its customers. As outlined above, the clearing model substantially differs from that of the OTC bilateral markets. Under an agency clearing model, which is used in the United States, clearing members act as agent for their clients. In turn, clearing members guarantee their clients' performance to the DCOs.

Once transactions enter a Clearing Agencies' clearing system, the clearing member assigns these transactions to accounts for post-trade administration and risk management purposes which are referred to as "lifecycle events." These lifecycle events are either initiated by the Clearing Agencies directly or at the request of a clearing member in accordance with each Clearing Agencies' rules and procedures. Cleared swaps may be: 1) held gross (at the trade level) for the full lifecycle of the contract; 2) compressed into a single compressed trade or 3) netted down into a single position. This may vary by asset class and the services offered by Clearing Agencies. Thus, lifecycle events will occur at the original trade level, the compression or netting event and the new position.

The clearing, netting and risk management processes of Clearing Agencies fundamentally expand the reporting scope beyond the Commission's current approach, which singularly views transactions. After a trade enters the Clearing Agency's clearing system, there is no direct link between the two OTC matched counterparties. The Clearing Agency is now the central counterparty to the beta and gamma swaps. Once transactions are netted down through the compression event, it is impossible to determine which parties were originally related to each other. As a result, Clearing Agencies, in their unique position as the central counterparty, are best-placed to report all life cycle events and position data so that Commission has full visibility of all activities that influence a Clearing Agencies exposure to its clearing members (and ultimately its customers). Trade Vault supports transparency and visibility for SB swap reporting and believes that reporting by the Clearing Agency will allow the Commission to achieve market transparency and oversight which are key objectives of the Dodd-Frank Act.

2. The Life Cycle Event definition should be modified to reflect the termination of the alpha swap.

Proposed Rule 242.900(p) defines a life cycle event as "any event that would result in a change in information reported to the registered security-based swap data repository."⁸ As proposed, the Commission has defined the acceptance of a swap by the Clearing Agency as a lifecycle event as opposed to the termination of the alpha swap and replacement with beta and gamma swaps. The Commission's classification of a swap being accepted for clearing as a life cycle event is inconsistent with the operations of a Clearing Agency. The clearing model is predicated upon the Clearing Agency being the central counterparty to the transaction and the termination of the pre-existing alpha swap in order to create two new, unique swaps. Furthermore, after a swap enters the Clearing Agencies' system, there are no

⁷ See page 292 of Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. 75,208 (Dec. 2, 2010).

⁸ 78 Fed. Reg. 31211 (emphasis added).

remaining links between the two OTC original counterparties. The notion that a relationship persists throughout the clearing process is flawed. The Clearing Agency cannot assume its central counterparty role unless the alpha swap is terminated. The Clearing Agency must assume the central counterparty role to perform netting, compression and portfolio reconciliation. These processes require the Clearing Agency to manage positions which delivers a capital efficient model to counterparties.

Trade Vault recommends that the Commission modify the definition of life cycle event to clarify that upon the acceptance of a transaction by the clearinghouse, the alpha swap between counterparties is required to be terminated and replaced by *unique* resulting swaps (the beta and gamma swaps) between each counterparty and the Clearing Agency.

3. The Commission should harmonize the reporting hierarchy with the CFTC to avoid regulatory divergence.

Trade Vault encourages the Commission to work, to the extent possible, with the CFTC to minimize the number of regulatory inconsistencies between the two agencies. Given the number of registered entities that will face dual oversight, distinctions in the registration and regulation of these entities risk jeopardizing regulatory compliance, add confusion to Dodd-Frank Act implementation and ultimately impose unnecessary costs on market participants. Given that some derivatives will be reportable under several global regulatory regimes, reporting should be as consistent as possible in order to provide harmonization across the regimes.

While Trade Vault identifies many similarities between SEC and CFTC real-time reporting and dissemination of transaction data, there is a need for consistent regulations related to the reporting cleared swaps. CFTC regulations require Clearing Agencies to report all primary economic terms and confirmation data (collectively, “Creation Data”) of a swap to a SDR as soon as technologically practicable after acceptance for clearing. The CFTC has mandated that the clearing of swaps requires the novation and extinguishment of the alpha swap and subsequent replacement by the beta and gamma swaps.⁹ The CFTC has further clarified that the reporting hierarchy set forth in §45.8 applies to both cleared and non-cleared swaps and that for cleared swaps, Clearing Agencies will report creation data on the resulting swaps to the SDR.¹⁰ Lastly, with respect to the definition of non-SD/non-MSP set forth in §45.1, the CFTC believes that “DCOs have reporting obligations irrespective of their characterization as a Reporting Counterparty.”¹¹

Proposed Rule 242.901(a) places the reporting requirement for cleared swaps on market participants and not the Clearing Agency; this runs counter to the CFTC approach. This divergence from CFTC regulations introduces more confusion to the Dodd-Frank Act reporting requirements as market participants will have differing obligations under various regulatory regimes. This places additional reporting burdens and costs on market participants. Trade Vault strongly recommends the Commission adopt consistent reporting regimes and harmonize reporting requirements between the two agencies.

⁹ 17 C.F.R. §39.12(b)(6).

¹⁰ CFTC, Frequently Asked Questions on the Reporting of Cleared Swaps-Revised (Nov. 29, 2012).

¹¹ *Id.*

4. Requiring SB SDs/SB MSPs to report cleared swaps does not provide the Commission with accurate and sufficient data.

A key objective of the Dodd-Frank Act is transparency through swap data reporting. “SDR’s are intended to play a key role in enhancing transparency by retaining complete records of security-based swap transactions, maintaining the integrity of those records, and providing effective access to those records to relevant authorities and the public consistent with their respective information needs.”¹² Trade Vault supports these objectives and believes that the information reported to SDRs should provide the Commission with transparency for assessing systemic risk across bilateral and cleared swaps. To that end, Trade Vault believes Proposed Rule 242.901(a) does not fully meet these objectives due to the SB SDs/SB MSPs inability to report sufficient cleared swap data for the Commission to view position level reports and the elements comprising the position.

Clearing Agencies however create and maintain positions as part of their core business function. A position can be comprised of several trades being combined into a single position record. Additional lifecycle events may then be applied to that position. Once the transactions are netted into a position, it is no longer possible to trace back to a single transaction. However, using the elements that make up a position, Clearing Agencies can and should report position level information to an SDR thus providing a clear and accurate market view for the Commission. For example, the netting process can be equated to filling up a car tank with gas. Each transaction can be equated to a deposit of gas: trade 1 provides 10 gallons; trade 2 provides 20 gallons; and trade 3 provides 15 gallons; resulting in the tank holding 35 liters of gas. The car is driven and uses 8 gallons of gas. It is impossible to ascertain which 8 gallons were utilized and which 27 gallons remain because of the gallons have all been netted together. The lack of exact traceability does not adversely affect the correct calculation of the position - 27 gallons. Each position holds several attributes in common with the original trades. By mandating Clearing Agencies report to a SDR, the Commission will have a complete and accurate view of all transactions and the resulting positions.

In contrast, SB SDs/SB MSPs are unable to monitor or report the position management activities of its original alpha transactions. SB SDs/SB MSPs are prohibited by the Clearing Agencies from viewing an FCM or any other market participants’ position information. As a result, SB SDs/SB MSPs do not have the necessary information to create and maintain data at the position level. It is essential for the Commission to monitor swap data at the position level to accurately access market participants’ risk. As such, Trade Vault recommends the Commission to modify the §242.901(a) reporting hierarchy to require Clearing Agencies to have the reporting obligation for cleared transactions. Alternatively, Trade Vault proposes the Commission issue interpretive guidance which requires Clearing Agencies to have reporting obligations irrespective of their characterization as a reporting party or the reporting side.¹³

¹² See SDR Proposing Release, 75 FR at 77307.

¹³ The CFTC clarified in its Frequently Asked Questions on the Reporting of Cleared Swaps- Revised (Nov. 29, 2012) that “with respect to the definition of non-SD/MSP set forth in § 45.1 of the Commission’s Regulations, the Staff believes that DCOs have reporting obligations irrespective of their characterization as a Reporting Counterparty.”

5. Consideration given to ICE Trade Vault’s provisional registration.

Trade Vault is a provisionally registered SDR with the CFTC for the credit and commodities asset classes. Trade Vault has been fully operational since October, 2012 and currently has enrolled over 700 participants. Over sixteen million swaps have been reported to the SDR. Trade Vault’s public dissemination of swap data is fully operational pursuant to CFTC Regulations. Trade Vault has developed new technology, hired experienced support and development staff and instituted robust legal and compliance programs. To that end, Trade Vault respectfully requests an expedited review for registration as a SB SDR.

Additionally, Proposed Rule 240.13n-1(d) provides that “the Commission, upon the request of a security-based swap data repository, may grant temporary registration of the security-based swap data repository.” Trade Vault recommends that the Commission establish clear standards and requirements for temporary registration.

6. Conclusion

Transparency of the swaps market is a key goal of the Dodd-Frank Act. The Commission has made great strides towards creating a system for increasing transparency through the Proposed SB SDR Rules. Trade Vault looks forward to working with the Commission on implementing a SB SDR and appreciates the opportunity to comment on the foregoing rule makings. Please do not hesitate to contact me (770.906.7812 or kara.dutta@theice.com) or Bruce Tupper (770.738.2122 bruce.tupper@theice.com) if you have any questions regarding our comments.

Sincerely,



Kara L. Dutta
General Counsel
ICE Trade Vault, LLC

cc:

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