



November 19, 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; and Re-Proposal of Regulation SBSR (File Numbers S7-02-13, S7-34-10)

Dear Ms. Murphy,

The Chicago Mercantile Exchange Inc. ("CME") and ICE Trade Vault, LLC ("Trade Vault") appreciate 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, CME and Trade Vault are currently operational as provisionally registered SDRs by the Commodity Futures Trading Commission ("CFTC"). This comment letter is in response to our joint meeting with SEC Staff on October 16, 2013.

Comments on Proposed SB SDR Rules

1. The Clearing Agency should have the unambiguous reporting requirement for cleared swaps.

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

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).

“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 swaps 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.” CME and ICE 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 cleared swaps 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 CME and Trade Vault believe the Commission’s proposed reporting hierarchy is appropriate for OTC bilateral markets; however, this same reporting hierarchy should not be applied to cleared swaps because the clearing model substantially differs from OTC bilateral markets. For cleared swaps, the Clearing Agency is the sole party who holds the complete and accurate record of transactions and positions. CME and Trade Vault strongly urge the Commission to modify the proposed hierarchy to require Clearing Agencies to be the reporting party for all cleared swaps. The Clearing Agency is best positioned to have the sole responsibility to accurately report this required swap data⁷ to a SB SDR as soon as technologically practicable after acceptance for clearing.

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”).

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

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. This process allows a Clearing Agency to exercise its fiduciary responsibility as the sole and central counterparty to all open interest within the clearinghouse. Furthermore, after a swap enters the Clearing Agencies’ system, there are no 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.

CME and Trade Vault recommend 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. Clearing Agencies can trace the alpha swap to corresponding beta and gamma swaps by use of the Unique Swap Identifier (“USI”).

As mentioned above, under the current clearing model, the original alpha swap between counterparties is terminated and replaced by resulting beta and gamma swaps between counterparties and the Clearing Agency. Upon acceptance of a swap by the Clearing Agency, the alpha swap is extinguished thus necessitating (a) the transmission of a termination message for the pre-cleared swap and (b) the subsequent reporting of the creation data for the new beta and gamma swaps. This process is commonly referred to as the “Novation Process.” Due to their role as the central counterparty, Clearing Agencies are well positioned to issue the termination message for the alpha swap and subsequently report the beta and gamma swaps to a SB SDR. In addition, during the Novation Process Clearing Agencies store and trace the alpha swap to the corresponding beta and gamma swaps through the use of the USI. Clearing Agencies have the ability to accept alpha swaps with USIs generated by other parties (e.g., venues of executions and market participants). Tracking USIs through the Novation Process will provide transparency and traceability of swaps to the Commission during this initial clearing process.

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



CME and Trade Vault believe that Clearing Agencies should report separate messages to SB SDRs for (a) the acceptance of an alpha swap with the initial USI; (b) termination of the alpha swap using the USI; and (c) creation of the beta and gamma swaps with two new USIs which link the original alpha swap USI. As part of this messaging protocol, SB SDRs shall require and validate USIs on messages from reporting parties. As a result of the Novation Process, Clearing Agencies are best positioned to report the underlying swaps and corresponding USIs to an SB SDR. CME and Trade Vault urge the Commission to update the Proposed SB SDR Rules with the Novation Process and the aforementioned reporting structure.

4. Cost/Benefit Issues

The Commission has an obligation to consider carefully the benefits and associated costs with any rulemaking in light of applicable statutory directives. We believe Congress understood the unique role that clearing agencies play with respect to security-based swaps ("SBS") that are cleared. The Exchange Act, as modified by DFA, makes clear that "each security-based swap *that is not accepted for clearing by any clearing agency or [DCO]*" must be reported to an SDR to ensure the Commission has access to such data.⁹ This provision recognizes that the Commission's oversight of clearing agencies already provides it with an efficient means to access cleared SBS data that has already been collected and maintained by a Clearing Agency.

CME and Trade Vault believe that any rulemaking addressing cleared swap reporting must account for the central role of the Clearing Agency. It must also be cost efficient and yield the highest quality of data possible. As discussed above, there should be little doubt from an operational perspective that the Clearing Agency is best positioned to make the most accurate reports regarding the required swap data to a SB SDR as soon as technologically practicable after an SBS is accepted for clearing. In contrast to uncleared SBS, the Clearing Agency is the sole party who holds the complete and accurate record of transactions and positions for cleared SBS and in fact is the only entity capable of providing accurate and useful positional information on cleared SBS for systemic risk monitoring purposes.

Given these realities, our view is that any system that would require a Clearing Agency to make duplicative reports to an outside third party regarding SBS it clears would be costly and unnecessary. The Clearing Agency possesses this information and the Commission has access to it. Further, these costs would seem to come without any apparent corresponding benefits

⁹ See new Section 13A(a)(1) of the Exchange Act, as amended by Section 766(a) of DFA. Another provision of the Exchange Act, as modified by DFA, also requires that data on "each security-based swap (whether cleared or uncleared)" must be reported to an SDR. The placement of this provision in DFA suggests that the purpose of this reporting provision was to effectuate real time reporting requirements rather than the separate purpose of maintaining a non-public audit trail of SBS for regulatory purposes. For example, see new paragraphs (4)(B) and (C) in Section 13(n) of the Exchange Act, as amended by Section 763(i) of DFA, Congress explicitly directs the Commission to "adopt data collection and maintenance standards for security-based swap data repositories" that are "comparable to the data standards imposed by the Commission on clearing agencies in connection with their clearing of security-based swaps". These provisions suggest that Congress intended the Clearing Agency to act as the warehouse of cleared SBS data



given that the Clearing Agency is the sole party who holds the complete and accurate record of cleared SBS positions.¹⁰ CME and Trade Vault therefore believe that to the extent a Clearing Agency is required by rule to make reports to an SB SDR, the Clearing Agency that accepts SBS for clearing should be permitted to select the SB SDR to which the data will be reported. This approach would minimize the added costs and would yield the most accurate data. Requiring otherwise would significantly increase costs to market participants and would introduce unnecessary operational inefficiencies and new potential points of failure.

5. 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. CME and Trade Vault look forward to working with the Commission on implementing SB SDRs and appreciate the opportunity to comment on the foregoing rule makings. Please do not hesitate to contact me ([REDACTED] or [REDACTED]) or Tim Elliott ([REDACTED]) if you have any questions regarding our comments.

Sincerely,

Kim Taylor
President, Clearing
CME Group

Kara L. Dutta
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cc:

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¹⁰ Further, any system that includes separate sets of trade details at a Clearing Agency and at a third-party SB SDR introduces potential ambiguity about the true state of a trade or position. When an SBS is cleared on a Clearing Agency, the Clearing Agency must always be the holder of the "gold copy" of the SBS. This is required because the Clearing Agency must margin the position, calculate open interest and interact with the back office systems of its clearing members.