



June 10, 2015

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 (17 CFR Part 232, 240, and 249); Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information (17 CFR Part 242); and Re-Proposal of Regulation SBSR Reporting SBSR—Reporting and Dissemination of Security-Based Swap Information (17 CFR Part 242)

Dear Ms. Murphy,

The DTCC Data Repository (U.S.) LLC, (“DDR”), ICE Trade Vault, LLC (“ICE Trade Vault”) and CME Group (“CME”) thank the U.S. Securities and Exchange Commission (the “SEC” or “Commission”) for considering our recent comments¹ related to certain provisions in the final and proposed security-based swaps regulations. We respectfully submit this letter to provide supplemental comments on issues of concern to DDR, ICE Trade Vault and CME in the Swap Data Repository (“SDR”) final registration regulation (“Final SB SDR Rule”)²; final proposed regulation governing the reporting and dissemination of security-based swaps (“Final Regulation SBSR”)³; certain proposed regulations governing the reporting and dissemination of security-based swaps (“Proposed Regulation SBSR”)⁴ 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”)⁵.

As background, DDR, ICE Trade Vault, and CME are currently operational as provisionally registered Swap Data Repositories by the Commodity Futures Trading Commission (“CFTC”).

¹ The Depository Trust & Clearing Corporation’s comment letter, based on its experience operating a swap data repository (which is DDR) as well as international trade repositories, and ICE Trade Vault’s comment letter are available at <http://www.sec.gov/comments/s7-03-15/s70315.shtml>.

² Security-Based Swap Data Repository Registration, Duties, and Core Principles (17 CFR Part 232, 240, and 249 [File Number 34-74246; File No. S7-35-10]).

³ Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information (17 CFR Part 242 [Release No. 34-74244; File Numbers S7-34-10])

⁴ Re-Proposal of Regulation SBSR Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information (17 CFR Part 242 [Release No. 34-74245; File Number S7-03-15])

⁵ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

Comments on Regulation SBSR

1. SDRs duty to provide reports to non-registered users.

Final Regulation SBSR requires Security-Based (“SB”) SDRs to “identify any security-based swap reported to it for which the registered security-based swap data repository 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 security-based swap data repository shall send a report to each participant of the registered security based swap data repository[.]”⁶ The definition of a Participant⁷ under Final Regulation SBSR and as amended by Proposed Regulation SBSR is expansive and inclusive of all swap counterparties regardless if these counterparties have reporting obligations. Furthermore, Final Regulation SBSR does not mandate that all Participants become registered users of an SB SDR. SB SDRs cannot effectuate the enrollment of non-reporting sides into their service which is a necessary precondition in order to preserve the data confidentiality provisions contained in Final SB SDR Rule⁸.

As such, DDR, ICE Trade Vault, and CME believe the expanded definition of a Participant will not itself cause counterparties to onboard to an SB SDR. Due to this reality, and consistent with the single-sided reporting methodology currently used in the U.S. and espoused by the Commission, DDR, ICE Trade Vault, and CME recommend that the Commission instead require any reports to only be provided to onboarded users. Additionally, Final Regulation SBSR should require reporting sides to be responsible for amending errors and omissions associated with previously submitted security-based swaps and for submitting subsequent life cycle events. This approach supports current operational workflows since the reporting side is the only party with a contractual relationship with the non-reporting side as it relates to the trade details.

2. SDR obligations to monitor and enforce data accuracy by third parties or non-participants.

Final Regulation SBSR requires an SB SDR to “confirm . . . with both counterparties to the [SB swap] the accuracy of the data that was submitted.”⁹ The imposition of such a confirmation obligation solely on SB SDRs does not effectively promote the ultimate objective of ensuring high quality data. The non-reporting side has no regulatory obligation to onboard with the SB SDR, provide its contact information to an SB SDR, and verify the accuracy of SB swap data reported on its behalf.

⁶ Final Regulation SBSR at §242.906 Other duties of participants.

⁷ With respect to a registered security-based swap data repository, means a counterparty, that meets the criteria of Final Regulation SBSR at § 242.908(b), of a security-based swap that is reported to that registered security-based swap data repository to satisfy an obligation under Final Regulation SBSR at § 242.901(a).

⁸ Final SB SDR Rule at §240.13n-9 Privacy requirements of security-based swap data repository.

⁹ Final SB SDR Rule at §240.13n-4(b) and §240.13n-5 Data collection and maintenance.

Based on our experience operating existing SDRs, there is no mechanism for an SDR to compel a non-reporting side to respond to its verification requests. DDR, ICE Trade Vault, and CME encountered this challenge under analogous CFTC rules and observed limited effort on the part of non-reporting sides to reconcile swaps reported on their behalf. DDR, ICE Trade Vault and CME anticipate this similar issue related to non-reporting sides will make it problematic for an SB SDR to effectively comply with Final Regulation SBSR 906(a). The requirement on non-reporting sides to submit certain identification data elements to an SB SDR (e.g., trader ID and trading desk ID) will result in SB SDRs storing incomplete SB swap data. Furthermore, the requirements under Final Regulation SBSR 906(a) and 13n-4(b) culminate in the creation of a dual-sided reporting framework, which is inconsistent with the Commission's single-sided reporting approach.

Our recommendation is that reporting sides be allowed to rely on a warranty and representation that security-based swaps submitted to SB SDRs are deemed confirmed with the non-reporting sides. Such representation could be achieved by the SB SDR receiving the trade record from an electronic confirmation platform, or an indicator on the trade record that the trade has been matched prior to submission to the SB SDR.

3. SDR obligations to issue all IDs.

DDR, ICE Trade Vault, and CME continue to strongly support the use of a unique identification code ("UIC"), including a legal entity identifier, to accurately identify market participants involved in SB swap transactions. However, we have concerns about the Final SBSR Rule with respect to the assignment of an UIC to the trader, trading desk and product.¹⁰

As there is no industry standard, these codes would be assigned by the SB SDR. Requiring these codes before an internationally recognized standard is developed would lead to unnecessary reporting complexity and hamper data aggregation efforts. The trader ID presents particular challenges related to the collection and disclosure of personal information. The cost, time and effort to collaborate, develop, implement, adopt and ultimately conform to a standard should not be underestimated for UICs related to trader, trading desk, and product IDs.

DDR, ICE Trade Vault and CME, therefore, recommend the Commission (1) consider removing requirements for the non-reporting party to provide a trader ID and, in any case, (2) propose a separate compliance schedule be adopted for UIC fields provided by reporting parties to allow sufficient time for the IDs to be developed in collaboration with the industry. This will allow for the maturity of various initiatives currently underway that would impact the use of IDs

¹⁰ Final SB SDR Rule 903

(e.g., the imminent CPMI IOSCO global proposal for a product ID standard) without the complication of temporary development and use of proprietary SB SDR IDs.

4. CCO prescriptive provisions.

The Final SB SDR Rule makes it unlawful for officers, directors or employees to “directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence the [SB SDR’s] chief compliance officer [“CCO”] in the performance of his or her duties [....]”¹¹ While the intent to prohibit bad behavior is laudable, there was no rule text or economic analysis included in the Commission’s initial notice for comment that would have provided the public meaningful opportunity to address whether such a rule is necessary, potential implications of such a rule and costs.

DDR, ICE Trade Vault and CME, therefore, recommend that Rule 13n-11(h) be repropose and, thereby, afford an opportunity for public comment. In doing so, the Commission should consider whether sufficient provisions are in place (such as conflicts of interest and corporate governance and ethics requirements) to address its concerns without introducing further regulation that has the potential to chill legitimate, constructive communication between board members, management, staff and the CCO. In addition, any final regulation should contain clear guidelines and standards of liability to distinguish acceptable from unacceptable behavior.

5. Compliance Date and SDR approval date.

The proposed compliance schedule, which ties reporting obligations to an SB SDR commencement of operations, causes uncertainty and could potentially disrupt an orderly registration process. The establishment of a date certain for compliance (or sufficient guidance on compliance being no earlier than a date set to reasonably provide for market participants and SB SDRs to be prepared to report) promotes the predictability essential to a successful launch.

Although the Commission appears to be cognizant of the competitive advantage a “first mover” would have by registering and commencing operations for a particular asset class, the proposed rules offer no certainty that this would not occur. Market participants then will have no choice but join the first registered SB SDR in order to assure they will meet compliance dates triggered off of that registration and commencement of operations.

As potential SB SDR registrants, DDR, ICE Trade Vault, and CME urge the Commission to revisit the proposed compliance schedule provisions to establish an unambiguous and predictable timeline for reporting in the final rule.

¹¹ Final SB SDR Rule 13n-11(h).



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 reporting system for increasing transparency through the SB SDR and SBSR rules. In fact, the Commission has the advantage of being able to benefit from the experience of existing reporting regimes and trade repository registrations in various jurisdictions to ensure a smooth launch of securities based swap reporting and supervision. DDR, ICE Trade Vault, and CME believe that amendment of certain final rules and further fine tuning of proposed rules will promote that result.

DDR, ICE Trade Vault, and CME look forward to working with the Commission on the SDR application process and appreciate the opportunity to comment on the abovementioned rule makings. Please do not hesitate to contact Kara Dutta ([REDACTED] or [REDACTED]) or Debra Cook ([REDACTED] or [REDACTED]) or Tim Elliott ([REDACTED] or [REDACTED]) if you have any questions regarding our comments.

Sincerely,

Marisol Collazo
Chief Executive Officer
DTCC Data Repository (U.S.) LLC

Bruce A. Tupper
President
ICE Trade Vault, LLC

Jonathan A. Thursby
Global Head of Repository Services
CME Group

cc:

Michael Gaw, Associate Director – Division of Market and Trading
Thomas Eady, Senior Policy Advisor - Division of Market and Trading
Debra Cook, Counsel – DTCC Data Repository (U.S.) LLC

DTCC



Kara L. Dutta, General Counsel – ICE Trade Vault, LLC
Tim Elliott, Executive Director and Associate General Counsel- CME Group