

May 4, 2015

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

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

Dear Ms. Murphy,

ICE Trade Vault, LLC (“ICE 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 Regulation SBSR governing the reporting and dissemination of security-based swap (“SBS”) information¹ (“Proposed Regulation SBSR”) 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”)². As background, ICE Trade Vault is currently operational as provisionally registered Swap Data Repository (“SDR”) by the Commodity Futures Trading Commission (“CFTC”). This comment letter is in response to the Commission’s request for comments contained in Proposed Regulation SBSR.

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

ICE Trade Vault supports the Commission’s proposed changes to the Proposed Regulation SBSR which recognizes the Clearing Agency (“CA”) as the reporting side for any security-based swap (“SBS”) it accepts for clearing and commends the Commission for addressing the differences between the reporting cleared and uncleared SBSs. As previously stated³, ICE Trade Vault believes the Commission’s reporting hierarchy is appropriate for OTC bilateral markets; however, this same reporting hierarchy should not be applied to cleared SBSs because the clearing model substantially differs from OTC bilateral markets. For cleared SBSs, the CA is the sole party who holds the complete and accurate record of transactions and positions. The CA is best positioned to have the sole responsibility to accurately report this swap data⁴ to a SDR in the most direct and efficient way after acceptance for clearing. The Commission appropriately modified the reporting hierarchy to require CAs to be the reporting side for all cleared swaps. ICE Trade Vault acknowledges and supports the Commission requiring CAs to report cleared trades and to have the right to report to a registered SDR of its choosing.

¹ Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information (17 CFR Part 242 [Release No. 34-74245; File Number S7-03-15]).

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

³ Letter from Kim Taylor, President CME Group and Kara Dutta, General Counsel ICE Trade Vault, LLC to Elizabeth Murphy, Secretary Commission, dated November 13, 2013.

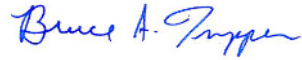
⁴ See page 14744 of Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information (17 CFR Part 242 [Release No. 34-74245; File Number S7-03-15]).

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 Proposed Regulation SBSR. ICE Trade Vault looks forward to working with the Commission on implementing SDRs and appreciates the opportunity to comment on the foregoing rule makings. Please do not hesitate to contact Kara Dutta (██████████) or (██████████) if you have any questions regarding our comments.

Sincerely,



Kara Dutta
General Counsel
ICE Trade Vault, LLC



Bruce A. Tupper
President
ICE Trade Vault, LLC

cc:
Michael Gaw, Associate Director - Division of Trading and Markets
Thomas Eady, Senior Policy Advisor - Division of Trading and Markets
Jeffrey S. Mooney, Associate Director - Division of Trading and Markets

Annex A – Ancillary Comments to Proposed Instruments

The follow are responses to the Commission’s request for comments on specific aspects of Proposed Regulation SBSR. Questions are numbered in accordance to Proposed Regulation SBSR and reprinted in italics below with ICE Trade Vault’s responses immediately following.

Question 2: *Do you believe that the principal model of clearing is or is likely to become sufficiently prevalent in the U.S. market that the Commission should address how Regulation SBSR would apply to different steps in the clearing process under the principal model? If so, do you think that further guidance is necessary to apply Regulation SBSR effectively to the principal model? What aspects of the principal model should the Commission focus on for purposes of providing further guidance?*

Response: The Commission correctly assumed the agency model as the predominate model of clearing in the U.S. swaps markets. As such, the agency model workflows should be assumed for the reporting of all cleared SBSs. If SBSs under the principal model are required to be reported pursuant to the Proposed Regulation SBSR, these swaps should be reported in accordance with the agency model workflows. Under foreign jurisdictions that deploy the principal clearing model, reporting is unnecessarily overcomplicated and costly since these reporting rules require the inclusion of clearing members. This reporting method results in a duplicative representation of cleared records submitted to repositories (e.g., submission record A = customer to clearing member and submission record B = clearing member to CA). Subsequently, repositories must perform a daily inter-repository reconciliation process to net the dually reported submission records for cleared transactions. This reconciliation process has proven to be error prone and difficult for repositories to implement which has led to data aggregation issues. ICE Trade Vault strongly recommends the Commission assume the agency model and it underlying reporting workflows for all SBSs.

Question 3: *At the time that a security-based swap is accepted for clearing, will any person other than the registered clearing agency have complete information about the beta and the gamma that result from clearing?*

Response: After a thorough analysis of the various reporting alternatives, the Commission correctly concluded that CAs are best positioned to report cleared swaps⁵. CAs are uniquely situated as the sole central counterparty to the open interest of cleared SBSs as a function of their fiduciary duties. As a result, no other person has complete information about the resulting beta and gamma swaps and the subsequent downstream clearing processes that affect these swaps than CAs.

Question 4: *Do you agree with the Commission’s preliminary assessment of the data elements under Rules 901(c) and 901(d) that will be available to a platform and required to be reported for a platform-executed security-based swap that will be submitted to clearing? If not, what information would the platform find difficult to obtain? For example, could a platform be reasonably be expected to know of guarantors of*

⁵ See page 14746 of Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information (17 CFR Part 242 [Release No. 34-74245; File Number S7-03-15]).

direct counterparties transacting on its facilities (if the guarantors are clearing members who guarantee platform participants who are not themselves direct members of the clearing agency)?

Response: Platforms could reasonably be expected to gather and report the primary trade information contained under Rule 901(c); however, requiring platforms to report a subset of the secondary trade information contained under Rule 901(d) will be problematic. The current platform systems do not readily gather and store secondary trade information as demonstrated when Swap Execution Facilities (“SEFs”)⁶ attempted to implement the CFTC reporting rules⁷. In addition, platforms could not reasonably be expected to know the guarantors of direct counterparties particularly if these guarantors are not a member of the CA accepting the SB swap. This information is not part of current operational practices.

Question 5: *If the Commission were to adopt the basic requirement that a platform must report transactions executed on its facilities that are submitted to clearing but, as discussed above, would not require the platform to report certain data elements in Rule 901(c) or 901(d), what data elements should be exempted? Can you suggest an alternate mechanism—besides requiring the platform to report—for such data elements to be reported to the registered SDR?*

Response: Please reference the response to Questions 4.

Question 10: *Rule 901(d)(2), as adopted, requires the reporting side to report—“as applicable”— the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID with respect to the direct counterparty on the reporting side. As described above, the Commission is proposing that the registered clearing agency would be the reporting side for all clearing transactions to which it is a counterparty. Would the branch ID, broker ID, execution agent ID, trader ID, or trading desk ID ever be applicable to a registered clearing agency? Why or why not?*

Response: These fields are not applicable to the CA side of the transaction since these fields are associated with the upstream platform workflows or alpha swaps; please reference the response to Questions 4. As such, CAs should not be required to report these fields which are not germane to the clearing process.

Question 12: *Will registered clearing agencies be able to leverage existing reporting processes to report data to registered SDRs? What additional reporting processes might registered clearing agencies need to develop to ensure accurate reporting in accordance with the proposed amendments to Rule 901? What costs might registered clearing agencies incur to adopt these processes?*

⁶ Letter from Bruce A. Tupper - President ICE Trade Vault, Marisol Collazo - CEO DDR and Jonathan Thursby - President CME Repository to David Van Wagner, Chief Counsel CFTC and Nancy Markowitz, Deputy Director Division of Market Oversight, dated September 26, 2013.

⁷ 17 CFR Part 43 Real-Time Public Reporting of Swap Transaction Data and 17 CFR Part 45 Swap Data Recordkeeping and Reporting Requirements.

Response: CAs will be able to leverage both existing CFTC reporting processes and the existing infrastructure with market participants and their vendors to comply with Proposed Regulation SBSR. Please note however that the systems underpinning these processes will need modifications in order to comply with Proposed Regulation SBSR.

Question 13: *Would other market participants be able to report clearing transactions or terminations of transactions submitted to clearing more efficiently or cost effectively than the registered clearing agency? What costs might counterparties incur if one of the sides of the alpha were assigned the duty to report a clearing transaction rather than the registered clearing agency?*

Response: Please reference the response to Questions 3. As concluded by the Commission's analysis of reporting alternatives⁸, other market participants are not able to report clearing transactions or alpha terminations. CAs are the sole reporting side that can discharge this reporting obligation.

Question 14: *Should the proposed reporting requirements for registered clearing agencies apply only to registered clearing agencies having their principal place of business in the United States rather than to all registered clearing agencies (which could include registered clearing agencies having their principal place of business outside the United States)? Why or why not? Would U.S. persons, registered security-based swap dealers, and registered major security-based swap participants be in a better position to report transactions with non-U.S. person registered clearing agencies? Why or why not?*

Response: Registered CAs with their primary place of business inside the U.S. should be required to report all SBSs they accept for clearing. Registered CAs with their primary place of business outside of the U.S. should be required to report all SBSs involving a U.S. person.

Question 15: *Under proposed Rule 901(e)(1)(ii), a registered clearing agency would be required to report whether or not it has accepted a security-based swap for clearing. Should this information be required to be reported to the same registered SDR that receives the transaction report of the alpha? If not, how would the Commission and other relevant authorities be able to ascertain whether or not the alpha had been cleared? If so, what costs would be imposed on registered clearing agencies for having to report this transaction information to a registered SDR not of their choosing?*

Response: Upon acceptance for clearing, CAs should be required to report the alpha termination to the appropriate SDR storing the alpha swap. This SDR should immediately accept and process the alpha termination since this termination is a confirmation the CA accepted the SBS for clearing. These actions are essential in order to accurately maintain the collective record of SBSs stored by SDRs. CAs should not incur costs to report alpha terminations since the alpha reporting sides already incurred SDR costs to initially report these swaps. Subsequently, CAs will be required to report the successive beta and gamma swaps and CAs will incur SDR fees for these swaps.

⁸ See page 14746 of Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information (17 CFR Part 242 [Release No. 34-74245; File Number S7-03-15]).

Question 16: *Is it appropriate to require a registered clearing agency to become a participant of the alpha SDR solely as a result of reporting whether or not it has accepted an alpha for clearing? What costs would be imposed on registered clearing agencies as a result of this requirement? If a registered clearing agency did not become a participant of the alpha SDR solely by virtue of reporting the disposition of an alpha, in what other way should the registered clearing agency be required to report the disposition of an alpha such that the systems of the alpha SDR can accept and understand that report?*

Response: The Commission correctly assumed that CAs are not a party to the alpha swap.⁹ It would be inconsistent with CAs' duties for them to become a participant to the alpha swap since this swap needs to be terminated and replaced with two new swaps (beta and gamma) in order for CAs to assume their central counterparty role. CAs should execute an agreement outlining the requirements to report termination messages; however, CAs should not incur SDR fees to report alpha termination messages. Requiring CAs to become a full 'participant' of alpha SDRs, is unnecessary and overly burdensome for CAs.

Question 18: *Should platforms and registered clearing agencies be participants of the registered SDRs to which they report? If not, how would a registered SDR ensure that these persons provide data in a format required by the registered SDR?*

Response: Yes, CAs and platforms should be required to sign the relevant participant agreements of SDRs in their capacity as reporting sides (e.g., reporting of beta and gamma). An SDR participant agreement outlines the terms and conditions of access to the repository service and the underlying rights and obligations of these parties.

Question 19: *How might the policies and procedures of a registered SDR address the circumstance where the registered SDR receives a termination report of an alpha pursuant to proposed Rule 901(e)(1)(ii) before it receives the initial report of the alpha? What costs would registered SDRs incur to implement policies and procedures addressing this scenario?*

Response: In the situation where a termination message to an alpha swap is not found, the SDR should queue this message and attempt to reapply the termination message to newly submitted SBSs. This process should continue until the end of the current business day at which time an error message should be reported back to the CA since the termination message could not be applied to a corresponding alpha.

Question 21: *Is the Commission's discussion of how Regulation SBSR—under the amendments proposed in this release—would apply to different steps in the process for reporting the betas and gammas that result from clearing a bunched order alpha sufficiently clear and complete? If not, please provide detail*

⁹ See pages 14742 -14743 of Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information (17 CFR Part 242 [Release No. 34-74245; File Number S7-03-15]) where the Commission notes that, under the Regulation SBSR, an alpha is not a "clearing transaction", even though it is submitted for clearing, because it does not have a registered clearing agency as a direct counterparty.

about particular steps that you believe the Commission has not adequately addressed and how you believe they should be treated under Regulation SBSR.

Response: When a CAs receives allocation information after a bunched order is cleared, an offsetting beta/gamma is booked in the account containing the intermediate beta/gamma series. The allocated or offsetting beta/gamma is applied to the associated intermediate series during the CA's next netting cycle. The CA will continue this process of linking and offsetting intermediate series to allocated betas/gammas via the transaction ID of each new SBS in the series. A critical data element necessary to improve data quality is to include the pre-allocated USI on each allocation record as reference data.

Question 22: *Are there additional processes or workflows related to the clearing of bunched order alphas for which market participants need guidance? If so, please describe these situations and your recommendation for how Regulation SBSR should address them.*

Response: Please reference the response to question 21.

Question 37: *Do means exist for registered SDRs to recoup their operating costs other than by imposing fees on users for receiving and using the publicly disseminated transaction data? If so, please describe those means.*

Response: Swap data reporting is a new regulatory requirement that will unavoidably increase trading costs. To that end, SDR fees should be assessed in a uniform manner for SDRs to adequately fund their operations in accordance with Proposed Regulation SBSR and SDR core principles. All participants, whether they are the reporting side or non-reporting side, will need to be assessed fees for SDR services. Non-reporting sides should be charged a minimum monthly fee for system access. This minimum charge reflects the fact that non-reporting and small volume participants tend to require equal levels of support and other resources relative to moderate and high volume participants. ICE Trade Vault believes it is fair and equitable to charge participants in this manner. Nothing within the Dodd-Frank regulations or Regulation SB SDR prohibits SDRs from charging for systems access to view and download SBS data.

Question 41: *Would the proposed compliance timeline allow reporting parties and registered SDRs sufficient time to implement the requirements of Regulation SBSR? Why or why not? If not, why not and what alternative time period(s) of time would be sufficient?*

Response: ICE Trade Vault believes the proposed compliance timeline provides reporting sides and SDRs adequate time to implement Proposed Regulation SBSR.

Question 42: *Do you generally agree with the Commission's proposed approach to calculating the compliance dates based on the first registered SDR to accept security-based swaps in a particular asset class commencing operations as a registered SDR? If not, how should the Commission calculate compliance dates? If the Commission used an alternative method for calculating compliance dates, how could the Commission prevent or minimize evasion of the public dissemination requirement?*

Response: ICE Trade Vault is supportive of calculating compliance dates based on the first SDR approved approach; however, the Commission should accept and group applications together to assure no SDR is at a competitive disadvantage. For example, it is likely multiple SDRs will submit applications around the same time and the Commission should focus equally on each application. This will provide applicants equal opportunities to address the Commission's comments and amend their applications. ICE Trade Vault encourages the Commission to make best efforts to approve SDR applicants at the same time. This approach will avoid commercially disadvantaging an applicant since the effective reporting date initiates with the first approved SDR.

Question 43: *Do you believe that the proposed implementation schedule and SDR registration process would minimize potential "first mover" advantages for the first SDR to register? Why or why not? How could the Commission further minimize any potential "first mover" advantage?*

Response: Please reference the response to Questions 42. ICE Trade Vault urges the Commission to uniformly review and approve SDR applicants that are acting in good faith to complete the application process in order to minimize "first mover" advantages.

Question 49: *Do you believe that registered SDRs will be able to time stamp and assign transaction IDs to pre-enactment and transitional security-based swaps even if they are reported prior to Compliance Date 1? Why or why not? If not, would registered SDRs require additional time to comply with the requirements to time stamp and/or assign transaction IDs?*

Response: SDRs will be able to assign timestamps and transaction IDs to pre-enactment and transitional SBSs on the effective reporting date. ICE Trade Vault recommends the Commission allow reporting sides to report these SBSs prior to the effective reporting date.

Question 52: *Do commenters agree with the Commission's preliminary belief that persons likely to apply for registration as SDRs with the Commission would already be registered with the CFTC as swap data repositories? If so, how easily and how quickly could the systems and processes that support swap data dissemination be configured to support security-based swap data dissemination? Would this process take more or less than the 3 months that is proposed? Why or why not?*

Response: Yes, it is likely that the same SDRs registered with the CFTC will also seek registration with the Commission due to similarities in the service offerings and clients. SDRs will require more than three months to support the SBS data dissemination obligations. Six months is a more appropriate time period to accommodate the differences between CFTC and SEC data dissemination requirements.

Other Comments

1. *The Commission should clarify the reporting obligation (if any) for firm trades.*

Response: Currently, Proposed Regulation SBSDR does not contemplate the reporting of firm trades (e.g. trades which are part of CAs' end of day pricing process). ICE Trade Vault recommends the Commission address reporting firm trades in Proposed Regulation SBSR; these trades should be reported by CAs. As previously stated, CAs are the sole party who holds the necessary information to report trades resulting from downstream clearing processes.