

August 3, 2015

VIA EMAIL

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Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Letter on the sequential timing of compliance with the reporting and registration regulations; Proposed Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information; File No. S7-03-15

Dear Sirs:

Thank you for taking the time on June 8th to meet with representatives from the International Swaps and Derivatives Association, Inc. (“ISDA”)¹ to discuss our concerns with respect to *Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information; Final Rule* (“Final SBSR”), *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information; Proposed Rule* (“Proposed SBSR”) (collectively “SBSR”) and additions thereto as proposed in *Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected with a Non-U.S. Person’s Dealing Activity That Are Arranged, Negotiated, or Executed By Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent* (the “PCR”). In particular, we appreciate you listening to our views as to the challenges that will be associated with reporting security-based swaps (“SBS”) in advance of registration by security-based swap dealers (“SBSD”) and major security-based swap participants (“MSBSP”)². Given the magnitude of this sequencing issue, ISDA very much appreciates your invitation to respond further in writing to the issues that were discussed at our meeting.

We stress that commencing reporting in advance of registration would impose a reporting obligation on U.S. buy-side market participants where the obligation would be with the dealer post-registration. When facing a U.S. dealer or a non-U.S. dealer engaging in SBS activity using U.S. personnel for arranging, negotiating or executing (“ANE”), the U.S. Person will need to enter into an agreement with the dealer to select the latter as the reporting side; such an arrangement is only necessary pre-registration. Even more importantly, when facing a non-U.S. dealer, the U.S. Person may be in a situation where it is the side with the sole reporting obligation under the rule pre-registration. In such case the buy-side U.S. Person might satisfy its reporting obligation on these trades by delegating its responsibility to its dealer counterparty or service provider, but the buy-side U.S. Person will be responsible under SBSR if its agent reports late or

¹ Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 68 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association’s web site: www.isda.org.

² For convenience hereafter often referred to collectively as “SBSD”.

inaccurately on its behalf. Efforts will be needed across the industry to negotiate agreements to (i) select the reporting side and (ii) delegate reporting prior to SBSR go-live. Additionally, for delegated reporting arrangements, buy-side U.S. Persons will need to develop mechanisms to transmit to its reporting agent the data fields that a reporting side is responsible to report under Rule 901(d)(2) on each reportable SBS (i.e., broker ID, execution agent ID, trader ID and trading desk ID of the direct counterparty on the reporting side). This is a significant burden on buy-side U.S. Persons as well as their dealer counterparties for a mere stopgap measure to be used only until SBSD registration.

Within this letter, we elaborate on the following challenges:

- **Unanticipated Buy-Side U.S. Person Reporting Obligations:** Buy-side U.S. Persons will share or assume a non-assignable regulatory obligation to report SBS if reporting under SBSR takes effect ahead of SBSD registration. It is unclear whether they are aware of these obligations and whether they have even considered how they would fulfill these requirements (e.g. using delegated reporting or by building out their own SBS reporting infrastructure).
- **Complex Exchange of Transaction Level Party Data:** As a general matter, satisfaction of SBSR requirements should not require counterparties to exchange transaction level party data on a trade by trade basis (either before or after SBSD registration). In this regard, associated challenges will be magnified if reporting commences prior to dealer registration, as the scope of SBS transactions that will require exchange of transaction level party data will be significantly increased.
- **Burden on SBS Market Participants to Create Interim Solutions:** Significant, unanticipated cost and effort to create temporary solutions would be incurred by all SBS market participants, including buy-side U.S. Persons, to establish, negotiate and execute new forms of agreements to delegate reporting obligations or to select the reporting side. These agreements are only required if reporting starts ahead of SBSD registration and would only be relevant to SBS executed prior to SBSD registration. **Transfer to Different Reporting Side Determination after SBSD Registration:** The reporting side for numerous SBS between two particular counterparties may not be the same for SBS entered into before registration as SBS entered into after registration. A second set of reporting logic and maintenance would need to be built, tested and applied for SBS entered into post-registration (while the initial set of logic will need be maintained for pre-registration and pre-enactment and transitional SBS (“historic SBS”). This approach is prone to cause duplicate reporting, reporting gaps or other errors.
- **Reporting of Historic SBS:** The reporting of historic SBS ahead of SBSD registration places the bulk of the burden and liability on U.S. Persons, including buy-side U.S. Persons, and the difficulty of retroactively determining whether the PCR’s ANE requirements apply would undermine the data quality.
- **TIW:** Existing market infrastructure, like DTCC’s Trade Information Warehouse (“TIW”), cannot be leveraged to facilitate and mediate the challenges of reporting in advance of SBSD registration.
- **Cost Benefit Analysis for Implementation of Interim Reporting Side Determination:** The cost of out-of-sequence interim market-wide efforts was not considered in the Cost-Benefit Analysis, and a fortiori would significantly exceed the estimates.

The added complexity of reporting in advance of SBSD registration paired with a transition to post-registration reporting side determination logic will undoubtedly compromise the completeness and quality of the SBS data. In addition, given the complexity surrounding the identification of the reporting side before registration, it is probable that the Staff of the applicable rulemaking and examination divisions of the Commission and the public will not know what data is missing or inaccurate. As such, the significant additional costs imposed by scheduling the commencement of reporting under SBSR ahead of SBSD registration will result in limited benefit.

ISDA's broad membership, which includes numerous buy-side firms and commercial end-users, makes it particularly well-positioned to articulate these concerns. That said, we would encourage you and/or your colleagues to also consult with the other representatives of this marketplace including the buy-side, funds, advisors and managers as many in those groups may (for reasons explained in detail later in this letter) be unaware of the new and proposed regulations, their attendant responsibilities and liability as "U.S. Persons" and the changing nature of those responsibilities if registration does not precede reporting.

In order to confine this comment letter to the sequencing issue, ISDA incorporates by reference its previous comment letters on Proposed SBSR³ and the PCR⁴. However, because of the interconnected nature of these rulemakings, ISDA will at times in this letter need to reference those issues. In addition, though the in-face meeting preceded the closure of the comment period of the PCR, ISDA will assume in this document that the PCR could be finalized substantially as proposed. However, ISDA reiterates its concerns with the PCR, particularly that the reporting requirements of the PCR create additional complex reporting side determinations with minimal reporting benefit.

Putting aside the issues that have been addressed elsewhere—including the benefit of global and U.S. regulatory harmonization of OTC derivatives reporting requirements —ISDA again respectfully suggests to the Commission and the Staff that SBSR registration must precede SBS reporting.

A. PCR Impact on SBSR

On July 13, 2015, ISDA submitted a letter to the Commission with its comments regarding the PCR, including the concerns of its members regarding the proposed amendments to SBSR. We are particularly concerned about the impact of the PCR on SBSR because it would affect both sides of SBSs and require the complex exchange of transaction level party data in order to determine whether a particular SBS must be reported, whether it is subject to public dissemination, and which side is the reporting side.

The challenges associated with applying the PCR to SBSR will be magnified if Compliance Date 1⁵ precedes registration because the reporting hierarchy will be limited without SBSRs and MSBSPs. For example, as further discussed below, in certain cases the buy-side U.S. Person will need to understand whether non-U.S. Person dealer counterparties used U.S. personnel for ANE. We encourage the Commission to consider ISDA's request in its letter pertaining to PCR to eliminate the application of PCR to SBSR altogether.

B. Impact on Buy-side U.S. Persons

Based on Final SBSR and the PCR, if Compliance Date 1 precedes registration, then SBSR will impose reporting obligations on buy-side U.S. Persons in the following instances:

- (i) those in which the buy-side U.S. Person is the sole entity with reporting obligations:
- The buy-side U.S. Person trades versus a non-U.S. dealer and U.S. Personnel were not engaged for ANE;
 - The buy-side U.S. Person has an historic SBS versus a non-U.S. dealer and U.S. Personnel were not engaged for ANE; and

³ See letter submitted May 4, 2015 by ISDA and SIFMA (http://www2.isda.org/attachment/NzU3NA==/ISDA_SBSRProposed_S7-03-15_FINAL_4May2015.pdf)

⁴ See response to PCR submitted by ISDA on July 13, 2015.

⁵ The compliance date for Rules 901, 902, 903, 904, 905, 906 and 908 of SBSR.

- (ii) those in which the buy-side U.S. Person is required to select the reporting side with the other side:
- The buy-side U.S. Person trades versus a U.S. dealer
 - The buy-side U.S. Person trades versus a non-U.S. dealer engaging ANE
 - The buy-side U.S. Person has an historic SBS versus a U.S. dealer
 - The buy-side U.S. Person has an historic SBS versus a non-U.S. dealer engaging ANE.

The buy-side U.S. Person would also be responsible for any life cycle reporting for the life of the transactions referenced above for which it is the reporting side.

On the other hand, if Compliance Date 1 does not occur until after SBS registration, the buy-side U.S. Person would have no reporting obligations at all in these instances (assuming the dealer counterparty were to register with the Commission). Nor would the buy-side U.S. Person have any need to determine whether its non-U.S. Person dealer counterparty arranged, negotiated or executed the SBS using its U.S. personnel.

It is unclear whether buy-side U.S. Persons are aware of these obligations no less making efforts to discharge obligations under SBSR/PCR. They would need to engage their counterparties to agree to take responsibility as reporting side and/or agree to delegated reporting agreements⁶, as applicable; otherwise they would need to build reporting mechanism themselves or engage third party vendors. These costs and efforts are substantial and generated solely due to such person's responsibility as the reporting side for SBSs entered into prior to SBS registration and far outweigh the benefit of beginning reporting prior to SBS registration.

Entering into reporting side designation and delegation agreements with both their U.S. and foreign dealers would be necessary for buy-side participants in the U.S. SBS market to obtain certainty that their reporting obligations are being met. In addition, delegated reporting arrangements would likely be required by the SDRs to order to permit a party to report as agent on another's behalf. Such engagement will require substantial unanticipated time and effort from these market participants for a stop-gap measure that would not be necessary if reporting commenced after SBS registration. Please see section D for further discussion regarding the agreements that would be necessary for the industry to affect reporting in advance of SBS registration.

Once a buy-side U.S. Person has been designated the reporting side, liability and risk of compliance will be borne by the buy-side U.S. Person for the life of the SBS transactions. This is the case even where the buy-side uses its counterparty or a service provider to report on the buy-side U.S. Person's behalf. This situation could be avoided by commencing reporting after SBS registration when the registered SBS would be the reporting side.

⁶ We note that the Commission's reporting rules do not require that a legal agreement be entered into when the rule provides that the reporting side should be "selected" by the sides. However, the fact is that market participants aspire to have legal certainty which of the two sides (having to select the reporting side) will comply with the reporting obligation in order for the side that has not been "selected" to avoid potential regulatory consequences, hence the need for a legal agreement.

C. SBSR Reporting Side Determination

Reporting after SBSR registration carries substantially less reliance on transaction level party data to determine reporting scope and reporting side, a substantially more significant ability to leverage party level static data, a greater ability to leverage existing CFTC reporting party logic for reduced cost and complexity of implementation and a substantive improvement in the quality of reported data.

For our comparative analysis, see Table 1 in Appendix A regarding which side(s) would have the reporting obligation if reporting starts ahead of SBSR registration and Table 2 in Appendix B which shows our understanding of which side(s) would have the reporting obligation if reporting starts after SBSR registration.⁷ We would welcome the Commission's feedback, if any, on the correctness of the results reflected in Table 1 and Table 2 as to which side has the obligation as the reporting side for relevant SBS transactions set forth in the tables.

i. Reliance on Transaction Level Party Data

The established reporting architecture of market participants and market infrastructure providers is heavily reliant on the use of persistent party level static data to consistently determine which trades are subject to reporting in a particular jurisdiction and which party or parties have an obligation to report. Party level static data is based on either publicly available information (e.g. dealer registration status) or privately exchanged representations (e.g. U.S. Person). Such information can be obtained once and applied consistently to all transactions executed between the relevant parties.

SBSR, as amended by the PCR, would impose a greater need for data that is not static, but rather must be specifically determined and communicated between the parties for each SBS. Determining, communicating and applying such transaction level party data to reporting side determination logic is challenging and carries a much greater risk of error, ultimately impacting the completeness and accuracy of the reported data. Eliminating reliance on transaction level party data, including for determining whether a SBS is reportable, subject to public dissemination, or determining the reporting side, would decrease the complexity of complying with SBSR and increase the quality of the data.

In advance of SBSR registration all SBS that do not include a U.S. Person on *both* sides would require one or both of the sides to provide SBS transaction level party data to establish whether U.S. personnel was used for ANE of a SBS in order to determine the reporting side. This would apply to the following situations:

- Direct counterparty U.S. Person vs. non-U.S. Person with SBS dealing activity engaging U.S. personnel for ANE
- Indirect counterparty U.S. Person vs. non-U.S. Person with SBS dealing activity engaging U.S. personnel for ANE
- Non-U.S. Person with SBS dealing activity engaging U.S. personnel for ANE vs. non-U.S. Person with SBS dealing activity engaging U.S. personnel for ANE

In addition, if a guarantee is provided by an indirect counterparty for a particular SBS, such information would also need to be communicated between the parties on a transactional basis:

- Direct counterparty U.S. Person vs. indirect counterparty U.S. Person
- Indirect counterparty U.S. Person vs. indirect counterparty U.S. Person
- Indirect counterparty U.S. Person vs. non-U.S. Person with SBS dealing activity engaging U.S. personnel for ANE

⁷Please note that Table 1 and Table 2 intentionally exclude clearing transactions and SBS executed on a platform for submission to clearing.

In contrast, in order to determine the reporting side for an SBS post-registration, only pairings in which both direct counterparties are non-registrants would require one or both sides to provide SBS transaction level party data regarding an indirect counterparty's U.S. Person status or advise whether U.S. personnel was used by a non-U.S. Person with SBS dealing activity. In addition, the exchange of transaction level party data will also be necessary for Non-U.S. SBSDs to determine whether a SBS is subject to public reporting:

- Non-SBSD/MSBSP vs. Non-SBSD/MSBSP
- Non-U.S. SBSDs vs. non-U.S. SBSDs

Since the vast majority of SBS are expected to include a registered SBSD on at least one side, the volume of SBS transactions which would require the exchange of SBS specific information regarding the indirect counterparty's U.S. Person status or use of U.S. personnel by a non-SBSD, non-U.S. Person would be limited after SBSD registration. However, we reiterate our view that PCR should not require the sides to exchange transaction level party data, including to determine if a SBS is subject to public dissemination after registration.

If both sides have an obligation to report, in order to ensure one and only one of the sides reports, the sides must consistently apply reporting side logic. This has been done successfully under the CFTC's reporting regulations because the parties to a swap can independently determine which of them held the reporting party obligation based on publicly available party level static data and industry standard tie-breaker logic published by ISDA⁸ (the "tie-breaker logic"). The same tie-breaker logic is leveraged by market infrastructure providers which facilitate reporting (e.g. MarkitSERV).

In comparison, consistently and accurately determining the reporting side is greatly complicated under SBSR and the PCR due to the need to bilaterally exchange and apply additional transaction level party data for each and every SBS other than those involving a U.S. Person on each side. The burden of exchanging and using this data is much greater in advance of SBSD registration since instead of relying on party level static data (such as for registration status) to apply the reporting hierarchy in SBSR in most cases, the parties may instead need to obtain and rely on transaction level party data for the U.S. Person status of the indirect counterparty or an indication of whether a non-U.S. Person with dealing activity has used U.S. personnel for ANE on each SBS.

The need to rely on transaction level party data will be greatly reduced after SBSD registration since sides will instead rely primarily on SBSD status to determine the reporting side for the majority of trades.

ii. Scope of SBS Transactions Requiring a Reporting Side Selection

Prior to SBSD registration, 6 side pairings would require the sides to select the reporting side:

- Direct counterparty U.S. Person vs. direct counterparty U.S. Person
- Direct counterparty U.S. Person vs. indirect counterparty U.S. Person
- Direct counterparty U.S. Person vs. non-U.S. Persons with SBS dealing activity engaging U.S. personnel for ANE
- Indirect counterparty U.S. Person vs. indirect counterparty U.S. Person
- Indirect counterparty U.S. Person vs. non-U.S. Persons with SBS dealing activity engaging U.S. personnel for ANE
- SBS dealing activity engaging U.S. personnel vs. non-U.S. Persons with SBS dealing activity engaging U.S. personnel for ANE

⁸http://www2.isda.org/attachment/NzUyOA==/CFTC%20Reporting%20Party%20Requirements%20updated%20%20Apr%20202015_FINALDRAFT_clean.pdf

All but the first pairing above may rely on the exchange and application of transaction level party data rather than the use of party level static data.

After SBS registration the need to select the reporting side would almost entirely be limited to SBS transactions involving registrants, greatly reducing reliance on transaction level party data:

- SBS to SBS
- SBS vs. non-SBS/MSBSP guaranteed by a SBS
- MSBSP vs. MSBSP (including with SBS guarantee on both sides)
- MSBSP vs. non-SBS/MSBSP guaranteed by a MSBSP
- Non-SBS/MSBSP vs. Non-SBS/MSBSP (where both sides include a U.S. Person, U.S. Person guarantee or non-U.S. Person SBS dealing activity engaging U.S. personnel for ANE)

Selection of the reporting side for the SBS between sides with registrants of equal status (i.e. SBS vs. SBS or MSBSP vs. MSBSP) and those engaging the services of a certain market infrastructure providers can likely be accomplished through application of the existing tie-breaker logic, as adjusted to suit SBSR. These solutions involve comparatively more limited additional effort and cost for SBS market participants and market infrastructure providers and can be implemented consistently. However, that simplicity is dependent on primary application of publicly available SBS registration status, as further discussed below, and no reliance on transaction level party data to make the necessary determinations.

Reliance on the simpler, higher levels of the reporting hierarchy that can be based on party level static data that is publicly available will result in more consistent reporting side determinations which in turn lead to more complete and accurate reporting. Additionally, the application of these principles would be transparent to the Commission.

iii. Reporting Side Pre vs. Post-Registration

Even with the application of interim industry solutions discussed in the following section, the reporting side for SBS involving certain types of entities would not be the same before and after SBS registration. One example is where both sides of the trade involve a buy-side U.S. Person and a dealer U.S. Person: prior to SBS registration both sides need to agree who will be the reporting side, after SBS registration the reporting obligation is solely with the SBS. Another example is for SBS transactions between a buy-side U.S. Person and a non-U.S. Person engaging in dealing activity but not using U.S. personnel for ANE. In advance of SBS registration, the U.S. Person would have the sole obligation to report new and historic SBS and their corresponding life cycle events, after SBS registration the non-U.S. SBS would bear the sole obligation in accordance with the reporting hierarchy in SBSR.

Reporting sides and market infrastructure providers will need to have separate reporting logic for SBS transactions entered into before and after registration since the criteria for determining the reporting side will have changed. In addition, they will need to retain the reporting side determination for SBS entered into prior to SBS registration since the obligation and liability for reporting such transactions would not and should not shift between the parties during the remaining term of the SBS. Any ambiguity or inconsistency as to which SBS falls into the group of SBS with the reporting side determination pre SBS registration or post SBS registration could impact data quality; for instance there could be situations where neither side actually takes up the obligation for reporting life cycle events.

The need to build and maintain parallel reporting side determination mechanisms adds greatly to both the cost and complexity of SBSR reporting and is prone to error or inconsistent implementation which would affect data quality.

As a precautionary matter, we would like to note that it would not be a good alternative to “switch” the reporting side from one side to the other side - for a trade which has been reported prior to SBS registration and which is still alive and involves an SBS on one side of the SBS - once SBS registrations are in effect. Switching the reporting side during the term of a trade is in every respect an enormous challenge (requiring involving, inter alia, precise coordination among the sides to the trade as well as with other relevant market participants such as vendors and SDRs). Any switching of the reporting side during the term of an SBS transaction will very likely have a significant impact on the completeness, integrity and correctness of reported SBS data.

D. Industry Arrangements Required for Reporting Side Determination Prior to SBS Registration

i. Existing Asset Class I Tie-Breaker Logic Not Sufficient

We anticipate that in the scenarios where the sides need to select the reporting side that registered SBSs will choose to use the tie-breaker logic, amended for certain SBSR specific changes as necessary, to determine the reporting side. However, this logic cannot be automatically used to determine reporting side ahead of SBS registration since the logic is dependent on (i) both parties knowing that they each have an equal obligation to report under the reporting hierarchy in the rule (i.e., it can only be used when the rule provides that the sides have to select the reporting side) and (ii) the technological capability for both sides to apply the tie-breaker logic⁹.

In advance of the public availability of SBS registration status to determine that the sides have an equal reporting obligation, ISDA would need to work with market participants to develop a standard form of agreement that parties could execute on a bilateral or multilateral basis to select the reporting side via the application of the tie-breaker logic. The effort and cost to develop and execute such a form of agreement is entirely extraneous and would only have application for the limited timeframe ahead of SBS registration. In addition, some parties may prefer to negotiate individual agreements, which would be more time-consuming.

Such agreement would not be an equal substitute to application of SBS registration for the reporting side determination because, in many cases, (a) the sides to SBSs would not have an equal obligation to report or (b) one side would not know whether or not the other side has an obligation to report. Non-U.S. dealers with SBS dealing activity who do not engage U.S. personnel for ANE for a particular SBS would not have a reporting obligation for such SBS in advance of SBS registration so would not be a reporting side under SBSR or according to the tie-breaker logic. Instead, transaction level party data regarding the U.S. Person status of an indirect counterparty and verification of whether U.S. personnel were used for ANE would still need to be exchanged for each SBS, requiring complicated reporting logic to be built and applied differently for each SBS.

Most buy-side U.S. Persons have not already built the tie-breaker logic nor would it be cost effective for them to build a tie-breaker logic which will work for SBSR reporting prior to SBS registration only to share in the reporting obligation for an interim period. Buy-side U.S. Persons will not wish to invest in building for the tie-breaker logic if they expect to have little or no reporting obligation after SBS registration since they trade primarily with parties which they anticipate will be subject to the registration requirement. Therefore an alternative solution to be used only prior to SBS registration would need to

⁹If in advance of SBS registration a side to an SBS assumed for purposes of their reporting side determination logic that the other side is applying the tie-breaker logic and that assumption was incorrect, there would be a gap in reporting.

be developed and implemented to select the reporting side for SBS transactions between dealing entities and buy-side market participants.

ii. Reporting Side Designation and Delegated Reporting Agreements

Many buy-side U.S. Persons are likely not aware they have reporting side obligations for their SBS transactions if reporting goes live prior to SBS registration. Understandably, buy-side U.S. Persons will desire to transfer that reporting side effort since they likely do not have the capacity to report to an SDR.

Two types of agreements would be necessary – one that covers SBS transactions where both sides have an equal responsibility to report and a second that covers SBS transactions for which only one of the sides has a reporting obligation¹⁰. The same pair of sides may have SBS transactions that fall into each category (i.e. depending on whether the non-U.S. Person direct counterparty side involves a U.S. Person indirect counterparty or was (or was not) SBS dealing activity involving U.S. personnel for ANE). The distinction between these scenarios is important since the ultimate liability for complying with SBSR obligations can be selected between the sides in the former, but would not be transferred from one side to the other side in the latter.

Delegated reporting is in use in other jurisdictions and in limited cases for CFTC reporting, but carefully negotiated delegation agreements set important limits that restrict the transfer of liability to the party agreeing to conduct the reporting on behalf of the party responsible for the reporting. Without such protections, parties without a responsibility to report under SBSR will be unwilling to offer delegated reporting services due to the potential financial and reputational cost of any associated compliance issues. In addition, the SDRs generally require certain documentation in order to facilitate delegated reporting arrangements.

These agreements will take considerable time and effort to be developed and get executed by all impacted SBS market participants, yet are only necessitated by the commencement of reporting in advance of SBS registration.

iii. Outreach

In addition to the burden on buy-side U.S. Persons previously discussed, outreach to execute SBSR specific agreements discussed above for reporting in advance of SBS registration would require tremendous effort and cost on the part of each dealing entity, most of whom have hundreds or thousands of U.S. clients to whom they would need to individually request execution. Such outreach could not be limited to clients which currently have SBS positions, but rather would need to encompass all U.S. clients in order to accommodate any SBS transactions which may precede SBS registration.

Since many clients may not be fully aware of their potential obligations under SBSR created commencement of reporting ahead of SBS registration, dealing entities will need to educate some clients on the SBSR requirements and the rationale and necessity for such agreements. Market participants have needed to participate in a number of protocols, execute agreements or provide representations in relation to derivatives regulation globally, including transaction reporting, over the past three years. As such, we anticipate that smaller SBS market participants will be very reluctant to engage additional time and resources for further, jurisdiction-specific agreements with each of their dealers,

¹⁰It is important to note that the situation in Canada was different. The pure exchange of certain counterparty representations clarified that certain trades were dealer to non-dealer trades with the reporting obligation (as per the Canadian rules) to be solely on the dealer. Under SBSR, where the reporting obligation is solely on one side of the SBS (as per the rule), a delegated reporting agreement would be needed to have the other side conduct reporting of SBS data.

especially ones that are only necessitated by the scheduling of the Commission's rules and will have limited application.

Regardless of the publication of industry standard agreement(s) to facilitate reporting ahead of SBS registration, some clients will seek to negotiate the agreements or enter into separate bilateral agreements. These requests greatly increase the time, effort and cost to complete the necessary agreements. In some cases agreements may not be completed ahead of SBSR's Compliance Date 1, creating uncertainty that would result in missing or duplicated reporting.

E. Historic SBS

Reporting historic SBS in advance of SBS registration places the bulk of the reporting burden on U.S. Persons, including buy-side U.S. Persons, and is significantly more challenging, impacting the completeness and reliability of the historical data.

First, if historic SBS are required to be reported in advanced of SBS registration, U.S. Persons, including buy-side U.S. Persons, would be the reporting side for all historic SBS against non-U.S. Person SBS dealing activity which did not involve U.S. personnel for ANE. After SBS registration, both U.S. and non-U.S. SBS would be responsible for reporting historic SBS regardless of whether U.S. personnel were involved.

Second, whether U.S. personnel were used to engage in SBS dealing activity cannot be reliably determined for historic SBS since parties were not required to capture or exchange such transaction level party data when these SBS were executed. Parties with historic SBS cannot easily or reliably retroactively determine, exchange and apply such transaction level party data for the enormous volumes of historic SBS that have amassed since the enactment of The Dodd-Frank Wall Street Reform and Consumer Protection Action, especially for historic SBS which are no longer live. The cost and resources required to do so would be tremendous and the results unreliable. Gaps and duplications in reporting of historic SBS would be inevitable.

In sharp contrast, the SBS registration status of the direct counterparty can easily be applied retroactively to its historic SBS and such information need not be exchanged between parties to be applied consistently since we assume the information will be publicly available. Since it is anticipated that vast majority of historical SBS involve a direct counterparty which will ultimately register as a SBS, it would be significantly easier to report historic SBS subsequent to SBS registration and the data provided would be more complete, accurate and reliable.

In addition, the responsibility and liability for reporting historic SBS would fall predominantly on registered SBSs, both foreign and U.S., instead of being foisted heavily on U.S. Persons, dealers and non-dealers alike.

F. Trade Information Warehouse

Commission staff indicated in our meeting an expectation that the SBS market could leverage existing mechanisms from the TIW to comply with reporting in advance of SBS registration. ISDA has confirmed with MarkitSERV that there are no aspects of the TIW functionality that can be leveraged or transferred to help the industry comply with SBSR. There is no equivalent of a reporting side nor a mechanism to determine which jurisdiction(s) may have oversight of the corresponding transactions. Rather a single version of all credit trades confirmed via MarkitSERV's DSMatch platform is

automatically sent to the TIW based on the associated Operating Agreements that apply to all participants so that the transactions may be subject to post-trade processing (e.g. payment settlement and credit event processing). DTCC also uses the data to provide its aggregated and anonymized reports to the public¹¹. In addition, a limited set of dealers that made voluntary commitments to the OTC Derivatives Regulators' Forum to report transactional data send weekly CSV files (referred to as "copper reports") for certain credit transactions but both dealers submit reports and there is no reporting side determination.

Separately, MarkitSERV offers optional services to report transactions confirmed via DSMatch to DTCC's Swap Data Repositories to help firms comply with their reporting obligations in a number of jurisdictions. Firms that use these services must provide additional static data and additional reportable transactional data to MarkitSERV, including the jurisdiction(s) to which the trade is reportable and an indication that they are the reporting party. MarkitSERV has built logic to determine the reporting counterparty for the CFTC regulations that parties can defer to; however, such logic is dependent on static data, including swap dealer ("SD") and major swap participant ("MSP") registration status, so cannot be leveraged to create corresponding logic for SBSR reporting ahead of a SBSR registration requirement. Please contact Simon Todd of MarkitSERV (simon.todd@markitserv.com) if you should require any further clarifications regarding their services or the TIW data.

Since existing TIW functionality cannot be leveraged to accomplish reporting in advance of registration, the industry (including dealers, buy-side firms and market infrastructure providers) would need to undertake significant effort and cost to develop appropriate new industry agreements, conduct significant outreach to U.S. Persons and build interim reporting logic. Since the bulk of these initiatives would not be needed if reporting commenced after SBSR registration, both the effort and the cost are wasted. These resources would be better spent preparing for a single approach to reporting SBS that aligns primarily with the reporting side hierarchy in SBSR and results in more complete and accurate SBS data.

G. Cost-benefit analysis

In Proposed SBSR, the Commission states its belief that in advance of registration "having the parties choose who reports should not complicate reporting."¹² We strongly dispute that assertion and contend that the need to select the reporting side through alternative, interim methods not only adds a great deal of complexity to reporting for the aforementioned reasons but adds a great deal of cost as well.

The Commission clearly did not understand that existing infrastructure, like the TIW, could not be leveraged for reporting ahead of registration and it underestimated the necessity and complexity to exchange transaction level party data, develop a new approach to use the tie-breaker logic, enter into reporting side agreements and delegation agreements, and build dual sets of reporting side logic to develop an organized industry approach to comply with SBSR. Therefore the significant cost of such efforts is not included in the Programmatic Costs and Benefits of Regulation SBSR; rather this analysis contemplates a one-time effort for a reporting side to establish "reporting mechanisms" and does not consider the cost for interim solutions necessitated by the scheduling of Compliance Date 1 ahead of SBSR registration.¹³

¹¹ <http://www.dtcc.com/repository-otc-data.aspx>

¹² 80 Fed. Reg. 14768

¹³ As an aside, after SBSR registration a U.S. person (or U.S. person guaranteed) SBSR would have no need to track on a transaction by transaction basis whether or not its counterparty to the trade is a non-U.S. person dealer with SBS dealing activity engaging U.S. personnel for ANE, as the involvement of a U.S. person on the SBSR side makes the SBS already subject to reporting by the SBSR (or the other side if involving an SBSR as well) and subject to public dissemination. This means, that infrastructure built by a U.S. person (dealing) entity for reporting prior to SBSR to find out whether the counterparty to the SBS is a non-U.S. person with SBS dealing activity involving U.S. personnel for ANE, would seem redundant (pure throw-away) functionality once SBSR registrations are in place.

The cost to develop, execute and implement these solutions for use for an interim period would be significant and would not be justified by earlier regulatory access to SBS data. The Commission is one of the last major regulators in the G20 jurisdictions to publish its reporting requirements. We anticipated that promulgating its rules after reporting had commenced in other jurisdictions would allow the Commission to leverage the achievements of its predecessors and improve on their challenges. However, in this case, the Commission is not following the success of the CFTC's rule ordering in which SD/MSP registration was an important aspect of an organized reporting commencement and the reporting of historic swaps, nor avoiding the significant hurdles in Canada where registration rules have not been finalized, necessitating extraneous and costly agreements and outreach.

These potential costs and issues can be avoided entirely by the Commission scheduling Compliance Date 1 under SBSR after SBS registration. By doing so, SBS market participants and market infrastructure providers would be able to focus their time and resources on a single, simpler approach to SBSR implementation and the Commission would receive more complete and accurate SBS data. In addition, buy-side U.S. Persons would be spared the cost, effort and liability of reporting SBS ahead of SBS registration.

Conclusion

ISDA and its members strongly encourage the Commission to schedule the compliance date for Rules 901, 902, 903, 904, 905, 906 and 908 of SBSR and any applicable amendments imposed by the PCR *after* the compliance date for SBS registration for the mutual benefit of SBS market participants and the Commission.

Please contact me if you have any questions or if we can provide any additional information that may be helpful to your consideration of this important issue.

Sincerely,



Tara Kruse
Director, Co-Head of Data, Reporting and FpML
International Swaps and Derivatives Association, Inc.

cc: Mary Jo White, Chair
Luis A. Aguilar, Commissioner
Daniel M. Gallagher, Commissioner
Michael S. Piwowar, Commissioner
Kara M. Stein, Commissioner

Appendix A - Table 1 – SEC SBS Reporting Hierarchy Pre-SBSD Registration

		Side B				
		Direct US Person (includes branches of US Banks)	Non US Person, Guaranteed by US person	Non US Person, Not Guaranteed by US person, SBS dealing activity Engaging US Personnel	Non US Person, not guaranteed by US Person, SBS dealing activity Not Engaging US Personnel	Non US Person, not guaranteed by US Person, not SBS dealing activity Engaging US Personnel
Side A	Direct US Person (includes branches of US Banks)	Sides to Select RS (FR)	Sides to Select RS (FR)	N/A (FR) Sides to Select RS (PCR)	N/A (FR) Side A (PCR)	N/A (FR) Side A (PCR)
	Non US Person, Guaranteed by US person	Sides to Select RS (FR)	Sides to Select RS (FR)	N/A (FR) Sides to Select RS (PCR)	N/A (FR) Side A (PCR)	N/A (FR) Side A (PCR)
	Non US Person, Not Guaranteed by US person, SBS dealing activity Engaging US Personnel	N/A (FR) Sides to Select RS (PCR)	N/A (FR) Sides to Select RS (PCR)	N/A (FR) Sides to Select RS (PCR)	N/A (FR) Side A (PCR)	N/A (FR) Side A (PCR)
	Non US Person, not guaranteed by US Person, SBS dealing activity Not Engaging US Personnel	N/A (FR) Side B (PCR)	N/A (FR) Side B (PCR)	N/A (FR) Side B (PCR)	N/A (FR) N/A however reporting obligation may apply to platform with PPB in U.S. or registered broker- dealer ("BD") if SBS affected through BD, as applicable (PCR)	N/A (FR) N/A however reporting obligation may apply to platform with PPB in U.S. or registered broker- dealer ("BD") if SBS affected through BD, as applicable (PCR)
	Non US Person, not guaranteed by US Person, not SBS dealing activity Engaging US Personnel (End User)	N/A (FR) Side B (PCR)	N/A (FR) Side B (PCR)	N/A (FR) Side B (PCR)	N/A (FR) N/A however reporting obligation may apply to platform with PPB in U.S. or registered broker- dealer ("BD") if SBS affected through BD, as applicable (PCR)	N/A (FR) N/A however reporting obligation may apply to platform with PPB in U.S. or registered broker- dealer ("BD") if SBS affected through BD, as applicable (PCR)

"RS" means reporting side.

"FR" means Final Rule, i.e. "Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information; Final Rule" (80 FR 14564).

"PCR" means Proposed Conduct Rule, i.e. "Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Proposed Rules." (80 FR 27444).

Appendix B – Table 2 – SEC SBS Reporting Hierarchy Post-

SBSD/MSBSP Registration

	SBSD Entities		MSBSP Entities		Side B				
	SBSD (all of - U.S. - non-U.S. guaranteed by U.S. person - non-U.S. involving U.S. personnel for ANE)		MSBSP (all of - U.S. - non-U.S. guaranteed by U.S. person - non-U.S. involving U.S. personnel for ANE)	MSBSP guaranteed by a U.S. or Non-U.S. SBSD	Non-SBSD/MSBSP (U.S. person; or, non-U.S. person guaranteed by U.S. Person other than SBSD or MSBSP) ["U.S. End-User or U.S. guaranteed End-User but no SBS/MSBSP guarantee"]	Non-SBSD/MSBSP (non-U.S. person, not guaranteed, no U.S. personell for ANE) ["Pure Non-U.S. End User"]	Non-SBSD/MSBSP (U.S. person or non-U.S. person guaranteed by U.S. or non-U.S. SBSD) ["End User SBSD Guaranteed"]	Non-SBSD/MSBSP (U.S. person or non-U.S. person guaranteed by U.S. or non-U.S. MSBSP) ["End User MSBSP Guaranteed"]	Non-SBSD/MSBSP (non-U.S. person) with SBS dealing activity involving U.S. personnel for ANE
SESD Entities	(all of - U.S. - non-U.S. not guaranteed - non-U.S. guaranteed by U.S. person - non-U.S. involving U.S. personnel for ANE) [US/non-US/non-U.S. guaranteed by U.S. person]	Sides to Select RS (FR)	Side A (FR)	Sides to Select RS (FR)	Side A (FR)	Side A (FR)	Sides to Select RS (FR)	Side A (FR)	Side A (FR)
MSBSP Entities	(all of - U.S. - non-U.S. - non-U.S. guaranteed by U.S. person - non-U.S. involving U.S. personnel for ANE)	Side B (FR)	Sides to Select RS (FR)	Side B (FR)	Side A (FR)	Side A (FR)	Side B (FR)	Sides to Select RS (FR)	Side A (FR)
	MSBSP (guaranteed by a U.S. or non-U.S. SBSD)	Sides to Select RS (FR)	Side A (FR)	Sides to Select RS (FR)	Side A (FR)	Side A (FR)	Sides to Select RS (FR)	Side A (FR)	Side A (FR)
Side A	Non-SBSD/MSBSP (U.S. person; or, non-U.S. person guaranteed by U.S. Person other than SBSD or MSBSP) ["U.S. End-User or U.S. guaranteed End-User but no SBS/MSBSP guarantee"]	Side B (FR)	Side B (FR)	Side B (FR)	Sides to Select RS (FR)	Side A (PCR)	Side B (FR)	Side B (FR)	Sides to Select RS (PCR)
	Non-SBSD/MSBSP (non-U.S. person, not guaranteed, no U.S. personell for ANE) ["Pure Non-U.S. End User"]	Side B (FR)	Side B (FR)	Side B (FR)	Side B (PCR)	N/A however reporting obligation may apply to platform with PPB in U.S. or registered broker-dealer ("BD") if SBS affected through BD, as applicable (PCR)	Side B (FR)	Side B (FR)	Side B (PCR)
Non-SBSP/MSBSP Entities	Non-SBSD/MSBSP (U.S. person or non-U.S. person guaranteed by U.S. or non-U.S. SBSD) ["End User SBSD Guaranteed"]	Sides to Select RS (FR)	Side A (FR)	Sides to Select RS (FR)	Side A (FR)	Side A (FR)	Sides to Select RS (FR)	Side A (FR)	Side A (FR)
	Non-SBSD/MSBSP (U.S. person or non-U.S. person guaranteed by U.S. or non-U.S. MSBSP) ["End User MSBSP Guaranteed"]	Side B (FR)	Sides to Select RS (FR)	Side A (FR)	Side A (FR)	Side A (FR)	Side B (FR)	Sides to Select RS (FR)	Side A (FR)
	Non-SBSD/MSBSP (non-U.S. person) with SBS dealing activity involving U.S. personnel for ANE	Side B (FR)	Side B (FR)	Side B (FR)	Sides to Select RS (PCR)	Side A (PCR)	Side B (FR)	Side B (FR)	Sides to Select RS (PCR)

"RS" means reporting side.

"FR" means Final Rule, i.e. "Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information; Final Rule" (80 FR 14564).

"PCR" means Proposed Conduct Rule, i.e. "Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Proposed Rules." (80 FR 27444).