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November 25, 2015

Submitted via (*http://www.sec.gov/rules/proposed.shtml*)

Secretary
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

The International Swaps and Derivatives Association, Inc. ("ISDA")[1] is writing to the Securities and Exchange Commission ("SEC" or "Commission") on behalf of its members which may have obligations under *Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information; Final Rule* ("Final SBSR") and *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 furtherance of our concerns regarding the scheduling of the compliance dates for these rules versus the compliance date for *Registration Process for Security-Based Swap Dealers and Major Security Based Swap Participants; Final Rule* (the "Registration Rule"). As discussed in conversations and meetings with SEC staff and as conveyed in previous letters from ISDA regarding SBSR[2] and the PCR[3], the process of complying with SBSR would be greatly more challenging and costly for both entities engaging in dealing activity and non-dealing U.S. Persons if the compliance dates for SBSR and PCR precede the compliance date for the Registration Rule. The complexity of industry implementation to report data regarding security-based swaps ("SBS") in advance of the registration of security-based swap dealers ("SBSDs") and major security-based swap participants ("MSBSPs")[4] would negatively impact the quality and completeness of data available to the Commission and impose significant obligations on U.S. buy-side counterparties.

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[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] http://www.sec.gov/comments/s7-03-15/s70315-34.pdf and http://www.sec.gov/comments/s7-03-15/s70315-7.pdf
[3] http://www.sec.gov/comments/s7-06-15/s70615-20.pdf
[4] For convenience, hereafter SBSDs and MSBSPs collectively referred to as SBSDs.

I. Introduction

We have concluded there are no simple or inexpensive alternatives for implementation of reporting ahead of SBSD registration, including those suggested by the Commission. Rather the potential but imperfect solutions to avoid market disruption involve a great deal of coordination among market participants, the development and exchange of custom agreements and the need for exemptive relief from the Commission. These steps cannot be achieved without significant cost and effort which would not be incurred if reporting should commence after registration. In addition, the complexity of interim solutions and the transition to a post-registration approach to reporting will undoubtedly result in gaps or duplication in reporting which will impact the quality of data available to the Commission, including for the large population of pre-enactment SBS and transitional SBS ("historic SBS").

Complying with transaction reporting requirements involves the expertise of both operational and legal/compliance experts within each impacted entity. The extent of the challenges of reporting in advance of registration are well-recognized by these practitioners who have helped their firms to prepare and comply with reporting obligations in global regimes. In every jurisdiction, static data regarding the parties to the transactions is integral to the accuracy and efficiency of automated reporting architectures which determine which transactions are subject to reporting and which parties are obligated to report. Final SBSR is based on this same premise, requiring the reporting of data and the selection of a reporting side primarily based on the involvement of U.S. Persons and registered SBSDs and MSBSPs on either side of a SBS. However, this static data cannot be fully determined and applied for SBSR reporting ahead of the finalization of the PCR and the requirement for SBSD registration. As a result, less reliable, less efficient and less consistent methods of assessing the sides to the SBS would have to be employed on an interim basis. In addition, the use of interim solutions developed by the industry alone cannot prevent the market disruption that would result from the inability to equalize and transfer reporting liability.

In the following sections we will discuss proposed interim solutions to address the reporting of SBS ahead of SBSD registration and the associated considerations, challenges and costs. Included in this is the significant challenge of identifying SBS where the other side involves non-U.S. Persons engaging in SBS activity using U.S. personnel for arranging, negotiating or executing ("ANE"). All of this reinforces our previously stated view that it would be significantly easier, more efficient and cost effective, and result in better data quality if the Commission scheduled Compliance Date 1 under SBSR *after* SBSD registration.

II. Comments

A. Leveling the playing field

The following fact pattern creates consequential impediments to SBSR reporting ahead of registration and would need to be addressed by any interim solution:

1. U.S. Persons that are not engaging in dealing activity (buy-side U.S. Persons) will necessarily incur an obligation to report.
2. Such buy-side U.S. Persons will request that the dealing entities they transact with conduct the reporting.
3. For commercial reasons, most dealing entities will wish to report for their clients.
4. Dealing entities that are U.S. Persons have an equal obligation to report as their U.S. buy-side clients so can assume both the responsibility and liability for reporting via reporting side agreements.

5. Non-U.S. Persons engaging in SBS dealing activity that does not involve ANE would not have an obligation to report and therefore could assume the responsibility, but not the liability, for reporting.
6. This creates a competitive disadvantage for non-U.S. Persons engaging in dealing activity and could lead to market disruption.

Any interim solution should level the playing field between dealing entities that are U.S. Persons and those which are not, allowing such parties to equally assume both the responsibility and the liability as the reporting side for their SBS with buy-side U.S. Persons ahead of SBSD registration[5].

We understand that the following options may be being considered by the Commission, and we discuss the potential challenges with each approach:

Option 1

Non-U.S. Person engaging in dealing activity self-declares that *all* its SBS activity against U.S. Persons involves ANE, thus creating an equal reporting obligation to that of its U.S. Person counterparties.

It would not be acceptable for a dealing entity to make an untrue representation regarding the involvement of U.S. personnel on particular SBS activity.

Option 2

Non-U.S. Person engaging in dealing activity enters into an agreement with its buy-side U.S. Person clients to report *and assume the liability for* all their mutual SBS activity regardless of whether or not it involved ANE.

Regardless of a party's willingness to assume such liability, SBSR does not allow a bilateral agreement to override the legal obligations of the parties under the regulations. In other words, even if non-U.S. dealing entities agree to report trades versus the buy-side U.S. Person, if the non-U.S. dealing entity does not involve ANE, the buy-side U.S. Person will be ultimately accountable under the rules for the completion, timeliness and accuracy of the reported data.

Thus, going live with SBSR prior to SBSD registration would require the buy-side U.S. Person to determine on a trade-by-trade basis whether its counterparty is either (i) a U.S. Person engaging in dealing activity; (ii) a non-U.S. Person engaging in dealing activity that is using U.S. personnel for ANE; or (iii) a non-U.S. Person engaging in dealing activity that is not using U.S. Personnel for ANE. In cases (i) and (ii), the buy-side U.S. Person would need to enter into an agreement with the SBS dealing entity that it is the reporting side. In case (iii), the buy-side U.S. Person would need to:

- Enter into a "delegated reporting" agreement with the non-U.Ss dealing entity whereby reporting obligation would be delegated to (but not assumed by) the dealing entity;
- Build infrastructure to transmit trade-level data to the dealing entity reporting on its behalf such that the dealing entity could satisfy Rule 901(d)(2) on the buy-side U.S. Person's behalf; and
- Maintain proper post-trade checks to ensure the dealing entity is satisfying the buy-side U.S. Person's reporting obligations.

[5] We acknowledge that SBS dealing entities below the deminimus threshold may not be required to register as SBSD, and therefore could face similar challenges after registration on a more limited scale.

<u>Option 3</u>
This option entails (i) both U.S. and non-U.S. Persons engaging in dealing activity entering into agreements with their buy-side U.S. Person clients to report all their mutual SBS activity regardless of whether (for Non-U.S. dealing entities) such activity involved ANE; and (ii) a Commission no-action letter providing that it will respect such bilateral reporting side arrangements and will not take enforcement action against the non-reporting side for failure to report.

This option could work, albeit with considerable effort and expense. With respect to trades between a non-U.S. Person with dealing activity and a buy-side U.S. Person, this combination of a bilateral agreement and a no-action letter from the Commission would at least level the playing field between U.S. Persons and non-U.S. Persons. This option might allow for the development and use of a single industry reporting side agreement between SBS dealing entities and their U.S. Person clients rather than separate or bifurcated agreements to address reporting side selection vs. delegated reporting arrangements. Though as history attests, an industry standard agreement does not preclude some buy-side counterparties from negotiating bilateral agreements.

Option 3 could also eliminate the initial need to identify whether ANE was involved on a SBS by SBS basis where at least one counterparty was a U.S. Person. However, where a non-U.S. SBS dealing entity must report SBS versus another non-U.S. Person, information regarding ANE on a SBS basis would be required when determining whether the SBS is subject to public dissemination. (See section D. for further discussion on this matter.)

Although we believe that the majority of Persons engaging in SBS dealing activity are likely to register as SBSD, some entities will not exceed the de minimis threshold to register but will still desire a mechanism to assume both the responsibility and liability for SBSR reporting from their U.S. Person clients in order to remain competitive. The Commission could address this by providing a permanent option in either SBSR, its final version of the PCR or the no-action letter suggested above to allow parties that wish to do so to engage in reporting side agreements that assign both the responsibility *and the liability* for reporting or alternatively hold a higher position in the reporting side hierarchy than their U.S. Person counterparties which are not SBS dealing entities. (See section C. for further discussion on this matter).

In addition, it is important to note that Option 3, as discussed above, would not address the additional challenge which exists for SBS trades between entities with SBS dealing activity, one being a U.S. person and one being a non-U.S. person:

(1) For trades not involving ANE, U.S. dealers would be required to report all such dealer to dealer trades (new and historical SBS). This would be a massive undertaking for the U.S. entities and would also create a discrepancy to the reporting side logic as it will apply after SBS dealer registrations (causing an unnecessary burdensome transition period and the need to maintain two separate sets of reporting infrastructure once SBS dealer registration is in place).

(2) For trades involving ANE, dealers would need to communicate on a trade by trade basis whether ANE applies, triggering that the dealers need to agree which side shall be the reporting side.

To address both challenges (i.e. level the reporting burden between non-U.S. and U.S. dealing entities ahead of SBSD registration and avoid the significant challenge of ANE exchange), under Option 3 the Commission should extend the proposed no-action letter to also cover any form of agreement between dealing entities (U.S. and non-U.S.) to select the reporting side ahead of SBSD registration which would apply regardless of whether the non-U.S. dealing entity involved ANE. This would facilitate an interim

solution that allows dealers to build for dealer to dealer trades a pre-registration reporting hierarchy (i.e. tie breaker logic) which then can be used prior to, as well as post, SBS dealer registration. This would level the reporting burden between U.S. and non-U.S. dealing entities for the reporting of new and historical SBS[6] facilitate an easier transition from the pre to post-registration hierarchy and have less impact on the quality of the reported data.

B. Cost and effort of an interim solution

Even if Option 3 above was supported by the Commission, we believe it is important to highlight that such an approach comes with enormous cost and effort to orchestrate and execute. Considering that for the vast majority of impacted SBS the issues discussed above are only relevant prior to SBSD registration, the complexity, effort and cost of such efforts is hard to justify.

Assuming a no-action letter would be provided by the Commission as described above, the following would still be necessary from an industry perspective:

1. The development of a standard reporting side agreement.
2. The ability to execute and deliver such agreement either bilaterally or electronically via ISDA Amend.
3. Industry education regarding the purpose and value of such agreements.
4. Outreach by each SBS dealing entity to all of its U.S. Person clients to complete all necessary agreements.
5. Engagement by non-dealing U.S. Persons with all their U.S. and non-U.S. dealing entities to complete the necessary agreements.
6. Population of interim party by party static data for the reporting side both by reporting side entities and market infrastructure providers that provide reporting services.
7. Management of a change in the reporting side hierarchy one registration is effective.

Baseline initiative

The baseline for assessing the cost and effort associated with the above steps is the initiative undertaken by ISDA and market participants regarding reporting obligations in Canada. As the SEC is aware, reporting in Canada is in effect in a number of provinces and is expected to be required in additional provinces all ahead of the completion of the dealer registration rules in Canada and the compliance date for such registration requirement.

The reporting party hierarchy in the finalized provincial 91-507 trade reporting rules in Ontario, Manitoba and Québec (the "TR Rules") includes "derivatives dealer"[7] or "dealer"[8]. Such terms do not require formal registration with the relevant securities commission. If parties were to incorrectly assume which of their counterparties accepts that it meets the definition of a dealer or derivatives dealer and the

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[6] The challenges of reporting of historical SBS ahead of SBSD registration could also be alleviated by postponing the deadline for the reporting of non-live historical SBS until after SBSD registration, even if live historical SBS are required to be reported. Alternatively, where applicable, the Commission could accept data already reported to the DTCC Trade Information Warehouse as the reported data for "dead" historical SBS under Final SBSR

[7] Under the Ontario and Manitoba TR Rules, a derivatives dealer is "a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives in [Ontario/Manitoba] as principal or agent".

[8] Under the Québec Derivatives Act, a "dealer" means a person who engages or purports to engage in the business of (1) derivatives trading on the person's own behalf or on behalf of others; or (2) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of an activity described in paragraph 1".

associated reporting obligation, there would be gaps or duplications in reporting. Rather, in accordance with our statement in the introduction - accurate and consistent party static data is essential. Ideally this would be publicly available static data, as with the SD-MSP Registry[9], but in advance of dealer registration such sources are not available.

In order to tackle this, ISDA collaborated with its members over a period of several months to develop the ISDA Canadian Representation Letter[10] (the "Canada Rep Letter") which, amongst other things, allows for either a foreign or domestic entity to represent that it "agree[s] to report as if it were a Dealer" under the reporting party hierarchy, without presupposing whether such entity meets the definition of a dealer in such province(s) or whether or not it may be subject to a future obligation to register as a dealer in the province(s). The representation effectively assigns both reporting responsibility and liability because of amendments to the TR Rules requested by ISDA and made by the provincial regulators to facilitate single-sided reporting without residual liability for the non-reporting party. ISDA had the Canada Rep Letter supported on ISDA Amend[11] for electronic delivery and made it available in both English and French for manual delivery.

ISDA held educational webinars[12] to explain the purpose and value of the Canada Rep Letter and both Canadian and foreign dealers engaged in an extensive outreach initiative to all of their clients that might be local counterparties[13] in Canada to deliver and obtain executed letters. Reporting parties in Canada then populated their static data based on the provided representations in order to determine which trades were reportable and which party held the reporting obligation.

The steps above involved a great deal of cost and effort on the part of the industry, ISDA, parties with reporting obligations in Canada, as well as Canadian local counterparties which did not themselves bear the reporting obligation but needed to obtain certainty that their counterparties were accepting the reporting role as a "derivatives dealer" or "dealer" under the reporting party hierarchy in the TR Rules.

Baseline cost

We estimate the cumulative industry cost of the above efforts related to the Canada Rep Letter to be as follows:

		Cost (USD)	Total Hours
Development of Canada Rep Letter[14] and two educational webinars re the application of the letter[15]			
	External counsel	46,670	
Development to support the electronic delivery of the Canada Rep Letter via ISDA Amend		76,408	
	Development (1 business analyst, 2 developers, 2 testers)	50,000	
	External counsel	26,408	

[9] http://www.nfa.futures.org/NFA-swaps-information/regulatory-info-sd-and-msp/SD-MSP-registry.HTML
[10] http://www2.isda.org/attachment/NjQ3Mg==/Cdn%20repletter2final.doc
[11] http://www.markit.com/Product/ISDA-Amend
[12] Replays available on ISDA's Canada page: http://www2.isda.org/regions/canada/
[13] As defined in the relevant provincial trade reporting rule.
[14] Estimate does not include time of ISDA staff and market participants to develop letter.
[15] Estimate does not include time of ISDA staff to prepare, present and support events.

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Outreach by industry participants to deliver and obtain Canada Rep Letter			
	Dealer outreach:		
	56 dealer groups[16] x 130 hours each to review agreements, produce letters, identify clients and distribute mailings to 4,750[17] clients		7,280
	56 dealer groups x 312 hours each to manually process responses, build mechanisms to capture data and update static data		17,472
	56 dealer groups each performing follow-up with 75% of clients [3,563] x .10 hours/client [356.3 hours]		19,953
	Client engagement with dealers:		
	4,750 clients x 9.25 hours to review agreements, complete letters and respond or outreach to dealers		43,938
	TOTAL	USD 199,486	88,643 Hours

Comparison

Non-dealers in Canada did not anticipate having to engage in these efforts or incur these costs since the reporting party hierarchy in the TR Rules puts the majority of the burden for reporting on dealers. Thus despite the availability of the Canada Rep Letter, the process was arduous, involving education and negotiation. But without a publicly available source categorizing which parties are dealers and which are not, the above efforts and costs were necessary to achieve some level of certainty for all parties with regard to who was required to comply with the TR Rule in each province.

The same circumstances apply to the prospect of reporting under SBSR in advance of SBSD registration. Specifically, (i) there will be no publicly available source for SBSD/MSBSP status and (ii) buy-side U.S. Persons that did not anticipate having a reporting obligation will have one and will wish to obtain certainty that they can transfer both the responsibility and the liability for reporting.

These hurdles sit in contrast to the relative ease of the commencement of reporting to the Commodity Futures Trading Commission ("CFTC") which began on December 31, 2012 ("CFTC Compliance Date 1"), the same day that 63 firms registered as Swap Dealers ("SDs")[18]. Due to the simultaneous occurrence of these interconnected processes, the industry collected and shared information on the swap counterparties that intended to register as SDs so that reporting counterparties could populate their static data and complete the reporting of live pre-enactment swaps and transitional swaps ("historic swaps") prior to CFTC Compliance Date 1. This allowed for the reporting of new swaps and continuation data on historic swaps to begin on CFTC Compliance Date 1. Ideally, registration would have occurred a few weeks prior to CFTC Compliance Date 1 so that parties could have relied on the SD-MSP Registry from day one. But in the alternative, at least it was possible to share the information since such registration

[16] Based on the numbers of dealer groups which adhered legal entities to the ISDA 2014 Multilateral Canadian Reporting Party Agreement (Deemed Dealer Version).
[17] Based on an approximated average of clients to which outreach was performed as provided by dealers, with Canadian dealers engaging with larger numbers of clients than non-Canadian dealers.
[18] See SD-MSP Registry in footnote 8.

would be effective on CFTC Compliance Date 1 so it could be used to determine both which swaps were reportable and which party was responsible for reporting. The Commission should improve on the process required for CFTC reporting (and avoid less effective and costly alternatives), by enabling the use of accurate and consist publicly available static data for SBSDs ahead of SBSR's Compliance Date 1.

In addition, the CFTC had phased compliance dates for reporting, such that non-dealers did not have an obligation to begin reporting or report historical transactions at the same time as dealers, lessening the urgency of obtaining certainty regarding which swaps non-dealers would be required to report and allowing time for the field of registered SDs to become transparent to all market participants. Provincial regulators in Canada also had phased-in compliance dates based on the status of market participants; again, allowing time after the commencement of reporting by dealers for non-dealers to obtain certainty regarding any residual obligations they may have.

Although an industry solution was employed in Canada, as demonstrated above the cost and effort was tremendous and does not warrant emulation in other jurisdictions. Our concerns are reinforced by our belief that implementing an industry solution would be more challenging for SBSR but deliver less value due to the following factors that did not need to be solved in Canada:

- A residual need to determine whether ANE applies on a trade by trade basis
- The inability to assign liability along with responsibility for reporting

In terms of a cost vs. benefit comparison between the jurisdictions, it is also very important to recognize that the solution in Canada is seen as a long-term one, since the reporting hierarchy in the TR Rules does not assign reporting party responsibility to registered dealers over non-registered dealers. The Commission recognized this valuable distinction for SBSR when it chose to qualify SBSD and MSBSP in the reporting side hierarchy as "registered" in the final text. But that conscious decision is negated if reporting commences ahead of SBSD registration and instead creates the necessity for an interim industry solution to determine a reporting side. For the vast majority of participating parties, such interim agreement would have little or no application after SBSD registration once they can rely on publicly available static data for SBSDs and the reporting side hierarchy in SBSR. Indeed, an industry standard reporting side agreement for SBSR would not be developed if reporting were to commence after SBSD registration due to limited demand.

In the Programmatic Costs and Benefits of SBSR, the Commission estimates that as part of the first-year burden for complying with SBSR each reporting side would spend 172 hours to establish SBS reporting mechanisms and 180 hours to establish methods and procedures for compliance and ongoing support. Such analysis does not consider the hours spent establishing interim reporting side solutions. In Final SBSR, the Commission estimates 50 reporting sides are likely to be required to register as SBSDs, 5 reporting sides are likely to register as MSBSPs and that these 55 reporting sides will account for the vast majority of recent SBS transactions and reports. If each reporting side spent only an average of 30 minutes[19] with respect to each of the 4,800 non-reporting side participants[20] to establish interim reporting side agreements, this amounts to 2,400 hours per registrant. These effort hours far exceed the total hours the Commission estimates that each reporting side would spend to prepare for SBSR, with such effort spent on work that is not relevant to reporting after SBSD registration.

If those 4,800 non-reporting side participants spent an average of 15 minutes engaging with each of 55 dealing entities to complete such agreements, it would require an additional 66,000 burden hours. Such

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[19] This estimate is very conservative considering the estimated per client engagement time in Canada, including initial outreach efforts and follow-ups, was approximately an hour per client.
[20] As estimated by the Commission in Final SBSR.

effort on the part of non-registrants to prepare for compliance with SBSR is entirely unaccounted for in the Programmatic Costs and Benefits of SBSR since, as stated therein, the Commission designed the reporting side hierarchy to "place the duty to report covered transactions on counterparties who are most likely to have the resources and who are best able to support the reporting function".[21] Therefore such efforts on the part of buy-side U.S. Persons to secure a transfer of their potential reporting side obligations is not included in the Commission's Baseline Burdens.

Further, the estimates above do not even include the time and associated cost that firms will spend to work as an industry to develop reporting side agreements and build and maintain bifurcated reporting side logic. In addition, it does not include the cost that market infrastructure providers would incur to duplicate efforts in order to support both pre and post-registration reporting side approaches. Markit derivatives processing platforms (i.e. DSMatch and MarkitWire), estimates the additional cost for such duplicative effort would be USD 250,000. As demonstrated and discussed above, the cost and effort of implementing interim reporting side agreements is significant and not justified by the Commission's cost-benefit analysis. We ask that the Commission avoids forcing the industry into the circumstance where such agreements are necessary by scheduling Compliance Date 1 after SBSD registration.

C. Interim reporting side hierarchy

As demonstrated above, a solution to determine reporting side that involves bilateral agreements is cost and resource intensive and is difficult to justify for limited application during an interim period. Although we still contend that it is most efficient, cost effective and would produce the best quality data if Compliance Date 1 succeeds SBSD registration, there is another alternative to address the designation of a reporting side that the Commission should consider if reporting will be required ahead of SBSD registration.

As a component of the final text regarding Compliance Date 1 in SBSR, the Commission could include an interim reporting side hierarchy that applies prior to the compliance date of the Registration Rule as follows:

1. If a U.S. Person engaging in SBS dealing activity is either the direct counterparty or indirect counterparty[22] to a SBS to which the other side involves either a direct counterparty and/or an indirect counterparty which is a U.S. Person (and neither the direct nor indirect counterparty is engaged in SBS dealing activity), the side with the U.S. Person engaging in SBS dealing activity is the reporting side.
2. If a non-U.S. Person engaging in SBS dealing activity is either the direct counterparty or indirect counterparty to a SBS to which the other side involves either a direct counterparty and/or an indirect counterparty which is a U.S. Person (and neither the direct nor indirect counterparty is engaged in SBS dealing activity), the side with the non-U.S. Person engaging in SBS dealing activity is the reporting side.
3. If on both sides of an SBS there is a Person engaging in SBS dealing activity as the direct or indirect counterparty to a SBS and at least one side includes a U.S. Person as the direct or indirect counterparty, then the sides shall select the reporting side.

[21] 80 Federal Register 14675
[22] Please refer to Section 3.1 of the earlier SIFMA / ISDA comment letter on Regulation SBSR dated 04 May 2015 (http://www2.isda.org/attachment/NzU3NA==/ISDA_SBSRProposed_S7-03-15_FINAL_4May2015.pdf) on our recommendations and suggested changes relating to the definition of "Indirect Counterparty" to encompass only U.S. Person guarantors.

In addition to the publication of an interim hierarchy by the Commission, the industry would need to develop a mechanism for parties to self-declare their willingness to assume the role of an entity with SBS dealing activity under such interim reporting side hierarchy in advance of SBSD registration and agree to apply the ISDA tie-breaker logic[23] to select the reporting side under the third prong above. Such declaration would not be indicative of whether or not such entity will register as a SBSD but such declaration would be superseded by an adhering party's SBSD registration to allow the reporting side hierarchy in Final SBSR to apply to SBS entered into after a party's SBSD registration, if applicable.

If such declaration was made publicly available (e.g. on ISDA's website), then parties would have certainty with respect to their respective obligations in advance of SBSD registration without the need for the costly effort associated with engaging in bilateral reporting side agreements.

The combination of a Commission published interim reporting side hierarchy and a publicly available industry declaration for entities willing to assume the role of a SBS dealing entity in such hierarchy for SBSR would be much more efficient and cost effective and would provide the following benefits over other alternatives:

- Avoids the necessity for the execution of bilateral reporting side agreements
- Levels the playing field between U.S. and non-U.S. entities engaging in SBS dealing activity to prevent market disruption
- Avoids the necessity for a separate agreement for SBS dealing entities to identify themselves to each other and agree to apply the ISDA asset-class tie-breaker logic
- Creates the potential for a single build for reporting party hierarchy that takes into consideration both the interim hierarchy and the hierarchy in Final SBSR
- Avoids the need for a buy-side U.S. Person to determine on a trade-by-trade basis whether its non-US dealer counterparty is using U.S. located personnel to ANE

As part of the finalization of Proposed SBSR and the PCR, we encourage the Commission to consider adopting the hierarchy proposed above for parties engaging in SBS activity as a permanent component of the reporting side hierarchy which sits below the obligations of registered SBSDs and registered MSBSPs. Doing so will eliminate the competitive disadvantage that SBS dealing entities that are not subject to the registration requirement will face by providing a mechanism for them to assume the reporting responsibility. Without this, U.S. Persons that are not SBS dealing entities are likely to shift their SBS activity to registered entities that can assume both the responsibility and liability for reporting SBS.

The above solution would be more efficient, cost effective and produce more consistent reporting side determination than other alternatives. However, such a solution is still dependent on Commission adoption of an interim reporting side hierarchy or an amendment to the reporting side hierarchy in SBSR to include SBS dealing entities. It also requires the industry development of a form of agreement SBS dealing entities can adhere to in order to self-declare their assumption of the role of a SBS dealing entity in the hierarchy and an adherence process. In addition, there will be a need for parties to build additional

[23] See pages 5-9 of ISDA's CFTC Swap Transaction Reporting Party Requirements, which could be adjusted and extended for application to SBSR:
http://www2.isda.org/attachment/NzUyOA==/CFTC%20Reporting%20Party%20Requirements%20updated%20%20Apr%202%202015_FINALDRAFT_clean.pdf

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layers into their reporting side logic and to maintain both pre and post SBSD registration static data. All of this is extraneous cost and effort as these steps would not be required if Compliance Date 1 of SBSR was scheduled after the Compliance Date for the Registration Rule.

D. Exchange of ANE data

As previously discussed with Commission staff and raised in letters from ISDA regarding SBSR and the PCR[24], the necessity to exchange data regarding whether a non-U.S. dealing entity has entered into SBS activity that involves ANE would be a requirement created by the PCR that is specific to SBSR. It would be extremely difficult and expensive to enhance communication channels between parties with respect to SBS execution in order to transfer this information timely for each SBS. The scope of SBS impacted by this challenge is drastically reduced after SBSD registration since we assume that most SBS dealing entities will register with the Commission, and therefore knowledge regarding ANE would not be necessary in most cases to determine if a SBS is reportable to an SDR.

However, since the PCR would require the public dissemination of SBS involving a Non-U.S. Person with SBS dealing activity and ANE, there would still be a need to exchange ANE on transactions between Non-U.S. Persons engaged in SBS dealing activity (including between non-U.S. registered SBSD) only so the reporting side will know that it needs to send a separate message or otherwise indicate to the SDR (in accordance with that SDR's requirements) that a SBS is subject to public reporting.

The Option 3 interim solution discussed in section A. and the interim or permanent solution proposed in section C. would reduce the dependency on an exchange of ANE information to determine which SBS are reportable and which side will report. However, neither can solve the substantive burden to distinguish SBS between Non-U.S. Persons which involve SBS dealing activity and ANE on either side solely for the purpose of the public dissemination requirements. We don't think that the proposed phase-in delay for public reporting solves the difficulty in exchanging of SBS transaction specific data, and if the Commission reduces the timeframes in which public reporting is required, this will increase the difficulty of communicating ANE in time for the reporting side to comply. We do not believe the public dissemination of SBS between non-U.S. Persons increases transparency to the public nor does it provide pricing this is primarily relevant to the U.S. market since such transactions will be subject to the transparency requirements of other jurisdiction(s) in which each non-U.S. Person is established. The duplication of such data does not add a material benefit which justifies the on-going challenge of exchanging ANE information for each relevant SBS, and we encourage the Commission to eliminate this requirement in order to reduce the burden this will add to preparations for, and on-going compliance with, SBSR.

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[24] See footnotes 2 and 3.

III. Conclusion

The concerns, costs and efforts discussed in sections A. and B. of this letter relate primarily to key challenges that SBS market participants will face if reporting commences ahead of SBSD registration and the finalization of the PCR. Section C. discusses a more comprehensive alternative to address the associated challenges. But in either case, these solutions (i) are dependent on collaborative action by the Commission (ii) involve significant costs and efforts to implement that would not be required if reporting under SBSR were to commence after SBSD registration and (iii) do not eliminate the challenge of exchanging data regarding ANE for public reporting. We understand that the Commission is working diligently to finalize the rules on which the compliance date for the Registration Rule is dependent. Assuming such efforts will result in a timeframe for SBSD registration that is within a year of the date the Commission may have anticipated establishing as Compliance Date 1 for SBSR, then the extraneous efforts and associated costs of both market participants and the Commission to provide for short-term interim reporting side solutions and the negative impact to data quality for both new SBS activity and the massive population of historical SBS simply cannot be justified.

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 SBSD 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
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International Swaps and Derivatives Association, Inc.