

May 4, 2015

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information
(Release No. 34-74245, File No. S7-03-15)

Dear Mr. Fields:

The Wholesale Market Brokers' Association, Americas ("WMBAA" or "Association")¹ appreciates the opportunity to provide specific comments to the Securities and Exchange Commission ("SEC" or "Commission") regarding security-based ("SB") swap execution facility ("SEF") reporting obligations under proposed Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information ("Proposed Rules")² under the Securities Exchange Act of 1934 ("Exchange Act").³

The WMBAA is supportive of a regulatory regime for over-the-counter ("OTC") SB swap markets that improves regulatory transparency, promotes competition, and fosters access to a vibrant, affordable source of liquidity for all market participants. Each of the WMBAA member firms currently operates SEFs that are temporarily registered with the Commodity Futures Trading Commission ("CFTC"). We are pleased to offer the following comments, which are informed by the WMBAA member firms' collective experience thus far under the CFTC's swap data reporting regime.

As the Commission has yet to finalize its rulemaking for SB SEFs, however, it is difficult to provide a detailed response on the reporting obligations related to platforms without information about those requirements to guide these comments. While the WMBAA appreciates the Commission's deliberative approach to rulemaking, we are uncertain as to how SB SEF reporting requirements will fit into the overall regulatory framework for SB SEFs. For this reason, we urge the Commission to be open to reconsidering aspects of final Regulation SBSR related to SB SEFs following the promulgation of final rules for SB SEFs.

¹ The WMBAA is an independent industry body representing the largest inter-dealer brokers operating in the North American wholesale markets across a broad range of financial products. The five founding members of the group are: BGC Partners; GFI Group; ICAP; Tradition; and Tullett Prebon. The WMBAA membership collectively employs approximately 4,000 people in the United States; not only in New York City, but in Stamford, Connecticut; Chicago, Illinois; Louisville, Kentucky; Jersey City, New Jersey; Raleigh, North Carolina; and Houston and Sugar Land, Texas. For more information, please see www.wmbaa.org.

² See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 Fed. Reg. 14,740 (Mar. 19, 2015) ("Proposed Rules").

³ See 15 U.S.C. § 78a et seq.

Specifically, the WMBAA provides comments on several areas of the Proposed Rules, including the proposed reporting framework for platform-executed SB swaps; the specific reporting fields contemplated by the Proposed Rules, requiring a platform to become a participant of an SDR, correcting errors to previously-reported information; and the Commission's proposed compliance timeline.

SEF Perspective on Swap Reporting Pursuant to CFTC Rules

The SEC should strive to provide a standardized approach for reporting protocol among SB SEFs, reporting counterparties, and other reporting entities to prevent data reporting in different and incompatible formats. This inconsistency frustrates systemic risk oversight, complicates counterparty risk management capabilities, and diminishes the value of data received and maintained by swap data repositories ("SDRs"). The SEC should clearly outline the specific data fields, and permissible formats for reporting those data fields, required for post-trade reporting.

The Commission should also carefully review the current infrastructure that supports swap reporting and, to the extent possible, permit that framework to support SB swap reporting. This includes technology and solutions developed and used by market participants, platforms, clearing agencies, SDRs, and third-party service providers.⁴

The SEC should also strive to provide regulatory certainty with its rules. As WMBAA member firms proceed with the CFTC SEF registration process and contemplate SEC proposals for the SB swap market, the ability to clearly identify the regulatory costs and burdens associated with operating an SB SEF will help trading systems and platforms understand their regulatory obligations and develop appropriate business plans for the future. This will be even more important if the SEF and SB SEF regulatory obligations vary significantly, as the relatively low SB swap market volume may not offer sufficient revenue opportunities for a SEF to develop and operate a new trading infrastructure to meet a distinct, Commission-based rule set for SB swaps.

Proposed Reporting Obligations for Platform-Executed SB Swaps

Proposed Rule 901(a)(1) would require a platform to report an SB swap to an SDR only if the swap is executed on its platform and will be submitted to clearing. If a platform-executed SB swap will not be submitted to clearing, or the platform has no knowledge that the transaction will be submitted to clearing, the platform has no duty to report the trade to an SDR. Rather, the SEC's reporting "hierarchy" would determine which side of the transaction has the reporting obligation.

Contrary to the Commission's proposed approach, the WMBAA believes that a platform should report all trades executed on an SB SEF regardless of whether an SB swap will be submitted to clearing. Separating the reporting obligation for platform-executed SB swaps based on whether an SB swap will be cleared could lead to unnecessary confusion on reporting obligations, particularly for SB swaps where it is uncertain whether the transaction will be cleared upon execution. For real-

⁴ As noted in prior correspondence, the WMBAA urges the Commission to permit third-party service providers to contract with SB SEFs, allowing SB SEFs to use the "reasonable discretion" afforded by the Exchange Act to establish the manner in which they comply with the core principles. *See* Letter from WMBAA to SEC (July 31, 2012), *available at* <http://www.wmbaa.com/wp-content/uploads/2012/08/WMBAA-SEC-SBSEF-Letter-re-Service-Providers.pdf>.

time public reporting purposes, it is vitally important that trades are reported to the SDR as soon as technologically practicable after the time at which the SB swap transaction has been executed.

The Commission should adopt a rule that requires the platform to report primary trade information to the SDR upon execution for all SB swaps regardless of clearing status. Currently, at the time of execution on a platform, it is not uncommon for there to be uncertainty regarding whether a trade which is clearable, but not subject to a clearing mandate, will be cleared. While such uncertainty will likely remain the status quo until the Commission imposes a clearing mandate, at which point there may be more clarity regarding which transactions will be cleared, the WMBAA believes that the ambiguity related to clearing decisions would cause significant disruptions in the reporting of SB swaps to an SDR. Otherwise, it is likely that the SDR would either receive duplicate reports (*e.g.*, if the platform believes the transaction will be cleared and counterparties do not clear the trade) or the SDR will not receive any post-trade report (*e.g.*, if the platform believes the transaction will not be cleared and counterparties clear the trade). For uncleared SB swaps, as discussed below, the platform should provide all readily available information, and the reporting side should be responsible for reporting the information not provided to the SB SEF.

In terms of platform-incurred costs associated with proposed Rule 901(a)(1), platforms will need to develop, test, implement, and maintain technologies to ensure connectivity to registered clearing agencies, SDRs, and market participants. For reporting purposes, platforms may need to ensure connectivity to third-party vendors who provide confirmation and trade reporting functionality. The WMBAA encourages the Commission to allow the use of existing technology and reporting architecture to reduce the amount of additional technology investment required to comply with the Proposed Rules. In terms of efficiency, market participants (relying on third-party trade processing and workflow solutions) can easily report SB swap data, though some components of subsequent amendment or cancellation messages have proven to be more challenging for market participants.

With respect to the obligations in proposed Rule 901(a)(3), which would require the person with the duty to report an SB swap that has been submitted to clearing at a registered clearing agency to promptly provide that registered clearing agency with the transaction ID of the submitted SB swap and the identity of the alpha SDR, some platforms can readily perform that function through technology provided by third-party trade processing and workflow service providers. However, platforms would be forced to undertake a significant development investment if required to perform that function itself and to build functionality that replaces existing solutions. The WMBAA encourages the Commission to make clear in its final rules that platforms have discretion to determine the most appropriate technological manner in which they comply with the Commission's rules.

Reporting of Primary Trade Information, Secondary Trade Information, and Life Cycle Events

Commission Rule 901(c)(6) requires the reporting of "whether the direct counterparties intend that the security-based swap will be submitted to clearing." As noted previously, in some instances, platforms will not always know the intent of the counterparties, particularly if the Commission has not imposed a clearing mandate for certain clearable SB swaps.

Commission Rule 901(c)(7) requires a reporting side to report within the primary trade information any flags, if applicable, “pertaining to the transaction that are specified in the policies and procedures of the registered security-based swap data repository to which the transaction will be reported.” The WMBAA requests additional clarity on what information, from the perspective of an execution-only platform, the platform should be able to identify in particular situations that merit a “flag” pursuant to an SDR’s rules or Commission regulation. As operators of execution facilities, WMBAA members are constrained in the information readily available for reporting to an SDR. The final Commission rules should make clear that platforms are only responsible for reporting the information that is part of the platform’s transaction confirmation at the time of execution.

Commission Rule 901(d) includes among the secondary trade information, for an uncleared SB swap, the title and date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the SB swap contract. As evidenced by the CFTC’s recent no-action relief on this point,⁵ platforms “have been unable to develop a method to request, accept and maintain a library of every underlying previously-negotiated freestanding agreement between counterparties that is not cumbersome and cost prohibitive.” For these reasons, the Commission should make clear in the final rules that the reporting side responsible for reporting this information cannot be the platform.

Finally, platforms should not carry any obligation to report life cycle event information to an SDR under proposed Rule 901(e). Platforms are mere execution facilities; they match buyers and sellers of SB swaps and assist in providing transparent, stable venues for liquidity formation. The information contemplated in proposed Rule 901(e) would not be available to a platform, as it has no involvement in an SB swap after the trade is executed.

Platforms as Participants of a Registered SDR

In the preamble to the Proposed Rules, the Commission explains that “platforms and registered clearing agencies should be participants of any registered SDR to which they report [SB] swap transaction information,” as this would require such entities to report SB swap information to a registered SDR “in a format required by that registered SDR.”⁶ The Commission, therefore, proposes to amend the definition of the term “participant” under Rule 900(u) to include a “platform that is required to report a [SB] swap pursuant to Rule 901(a)(1).”⁷

While the WMBAA agrees that platforms should be required to report post-trade execution information to a registered SDR “in a format required by that registered SDR,” the WMBAA does not believe that it should be required to become a member of an SDR. Under the current swap data reporting framework, SEFs and SDRs have a contractual relationship whereby a SEF is a reporting

⁵ CFTC No-Action Letter No. 15-25 (Apr. 22, 2015), *available at* <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/15-25.pdf>.

⁶ 80 Fed. Reg. at 14,751.

⁷ However, under Proposed Rules 906(b) and 907(a)(6), a platform would be excluded from the requirement for each participant of a registered SDR to provide the SDR with information sufficient to identify any affiliate of the participant that is also a participant of the registered SDR and any ultimate parent of the participant.

agent on behalf of the counterparties to the trade. SEFs are able to report swap data to SDRs in the format required by SDRs through SDR-provided compliant data formats.

In terms of proposed Rule 906(b) concerning other duties of participants, the WMBAA does not believe that a platform should be required to provide an SDR with information related to its ultimate parent(s) or any affiliates(s) that are participants of the SDR. Final adoption of proposed Rule 906(b) should retain the carve-out for platforms and registered clearing agencies.

Error Correction and Additional Reporting Obligations

Under proposed Rule 905(a), any counterparty or other person having a duty to report an SB swap who discovers an error in information previously reported has an obligation to correct the error. The WMBAA believes that platforms should be included among the parties with such an obligation, as appropriate, and supports the inclusion of platforms in this provision.

Under proposed Rule 905(a)(2), a platform would be required to correct previously reported erroneous information if it discovers an error with respect to an SB swap or if it receives notification of an error from a counterparty. The WMBAA urges the Commission to provide discretion on how to amend errors, as well as an appropriate amount of time for the platform to cure any erroneous information. In addition, the Commission should provide additional clarity or guidance for instances where an error is identified by a reporting side after an SB swap has been cleared and the registered clearing agency declines or is unable to correct the record. This situation was recently addressed by the CFTC through staff no-action relief.⁸ The WMBAA encourages the Commission to address this scenario through rulemaking rather than staff action.

Proposed Compliance Schedule for Regulation SBSR

Given that the Commission has yet to finalize its regulations for SB SEFs, the WMBAA is uncertain as to how the reporting obligations for a platform under Regulation SBSR would be fulfilled if the compliance dates are triggered before the Commission implements SB swap trading rules.

The WMBAA is also concerned that the triggers under the proposed compliance schedule may give rise to unintended consequences. The ability of platforms to satisfy their obligations by proposed Compliance Date 1 will depend on the similarities or differences between the CFTC and SEC regulatory frameworks for swaps trading and swap/SB swap reporting and the amount of resources the platforms will need to devote to the Commission's regulations and post-trade reporting obligations. Furthermore, the ability of platforms, market participants, and clearing agencies to report to an SDR on Compliance Date 1 will be dependent on the technology and sophistication of the first registered SDR that commences operations. If the first registered operating SDR's capacity is not one of the incumbent trade repositories with significant connectivity and experience, additional time may be needed to ramp up functionality. The WMBAA recommends that the Commission consider a compliance schedule that bases the first compliance date on the registration of a critical mass of SDRs.

⁸ CFTC No-Action Letter No. 15-24 (Apr. 22, 2015), *available at* <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/15-24.pdf>.

Platforms' compliance with the Proposed Rules will depend on the permissibility or functionality of services provided by third-party vendors and SDRs. These vital infrastructure components will determine how quickly platforms and market participants can comply with the Proposed Rules. The Commission should also consider implementing compliance dates that are not tied to the commencement of operations by a registered SDR; rather, the SEC should consider, based on its evaluation of the industry's readiness to meet the Proposed Rules, establishing a compliance date that gives market participants adequate time to build, test, and implement infrastructure to satisfy these obligations.

Additionally, as evidenced by the lengthy CFTC SEF application process, the Commission should prepare alternative compliance regimes in the chance that all of the SB swap trading rules are not in place (and, as a result, market participants cannot meet the reporting obligations of Rule 901) by Compliance Date 1. Currently, the Proposed Rules tie Compliance Date 1 to the commencement of operations by a registered SDR, but that implementation could be disrupted without a finalized SB swap trading regime regime.

Conclusion

The WMBAA thanks the Commission for the opportunity to comment on the Proposed Rules. Please feel free to contact the undersigned with any questions you may have on our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'William Shields', with a stylized flourish at the end.

William Shields
Chairman, WMBAA