May 4, 2015

Elizabeth M. Murphy
Secretary of the Commission
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comment Letter on the Proposed rules, rule amendments and guidance re: Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information; File No. S7-03-15

Dear Ms. Murphy:

The International Swaps and Derivatives Association, Inc. ("ISDA")[1] and the Securities Industry and Financial Markets Association ("SIFMA") [2] (hereinafter referred to as the "Associations") appreciate the opportunity to provide the Securities and Exchange Commission (the "Commission") with comments in response to the proposed rules, rule amendments, and guidance in Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information; Proposed Rule[3] ("Proposed SBSR") that are intended to supplement Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information; Final Rule[4] ("Final SBSR") (together, "SBSR"). The Associations and their members strongly support initiatives to promote and increase market transparency and accountability, and therefore recognize the importance of SBSR.

[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] SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the U.S., serving clients with over $16 trillion in assets and managing more than $62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[3] 80 Fed. Reg. 14740

[4] 80 Fed. Reg. 14564

I. INTRODUCTION

On November 14, 2014, ISDA submitted its comments[5] to the Commission regarding the last proposed version of SBSR[6]. This letter is referred to in Proposed SBSR and Final SBSR as "ISDA IV". ISDA IV was supported and its recommendations further supplemented by SIFMA in its January 13, 2015 letter to the Commission regarding rule sequencing and implementation[7] ("SIFMA Sequencing Proposal"). Since the rule text of Final SBSR and Proposed SBSR were finalized and approved by the Commission in advance of Commission staff's review of ISDA IV as a result of an administrative error[8], it is not clear that ISDA IV was actually given full and satisfactory consideration, as required by the Administrative Procedures Act, since any substantive changes would have necessitated subsequent Commission approval. In some cases, the market observations and suggestions made in ISDA IV regarding the reporting of security-based swaps ("SBS") are substantively and satisfactorily addressed in SBSR, perhaps in part due to separate conversations between Commission staff and the Associations on the relevant topics (e.g. platform and cleared transactions). In other cases, the recommendations in ISDA IV are not reflected in the requirements of SBSR and comments of the Commission in the preambles to Proposed SBSR and Final SBSR suggest that the impact of such decisions have not been fully appreciated by the Commission (e.g. sequencing of registration, reporting side, trader, trading desk and branch IDs and data privacy). In this letter, we will attempt to reiterate and further clarify our remaining concerns regarding compliance with the SBSR requirements. We respectfully request that the Commission reconsider provisions of SBSR that create enormous implementation and compliance challenges and cost for firms and would impact the quality of data available to the Commission.

Our recommendations are informed by the experiences of our members with reporting obligations under the CFTC's Part 43, Part 45 and Part 46 regulations (the "CFTC Rules") as well as other global trade reporting requirements that have preceded SBSR. Our members have invested a great deal of resources to comply with these global reporting requirements for the common good of the global marketplace, and it would be most efficient and cost effective for parties with reporting obligations under SBSR, integral market infrastructure providers and registered Swap Data Repositories ("SDRs") to leverage existing reporting architectures to the greatest extent possible. The Associations are committed to the global harmonization of data standards for reporting, as recently evidenced by the issuance of ISDA's paper *Improving Regulatory Transparency of Global Derivatives Markets: Key Principals*[9] ("ISDA Data Paper"). The harmonization of overlapping data requirements with the CFTC would allow for a better collective analysis of the derivatives marketplace in the U.S., promote efficiencies and reduce costs. The benefit of domestic data harmonization would in turn extend to better harmonization globally, facilitating global data aggregation and a more meaningful and accurate understanding of the global derivatives market.

[5] http://www.sec.gov/comments/s7-34-10/s73410-192.pdf
[6] 78 Fed. Reg. 30967
[7] http://www.sec.gov/comments/s7-05-12/s70512-22.pdf
[8] http://www.sec.gov/news/statement/021115-ps-cdmg-cmsp.html
[9] http://www2.isda.org/attachment/NzI4NQ==/Improving%20Regulatory%20Transparency%20FINAL.pdf

II. EXECUTIVE SUMMARY

As discussed in further detail in section III of this letter, the Associations request that the Commission revise SBSR or sequence the timing of its Title VII regulations in order to remedy the following areas of concern:

- Sequencing: Reporting under SBSR ahead of participant registration greatly increases the complexity of implementation and compliance, unfairly burdens and may disadvantage U.S. Persons (including asset managers, their clients and other U.S. end-users), and will impact data quality.
    - The compliance date for reporting under SBSR should succeed registration requirements for security-based swap dealers ("SBSDs") and major security-based swap participants ("MSBSPs").
    - Registration for clearing agencies and platforms should either precede reporting or impacted SBS should be excluded from reporting requirements in advance of such registration.
    - Ahead of dealer registration, buy-side U.S. persons will be burdened with a requirement to report unless they actively negotiate with their U.S. person counterparties to assume such obligation; potentially diverting business to non-U.S. dealers.
    - Limiting public disclosure of data to SBS involving a U.S. person on each side will likely lead non-dealer U.S. person to avoid trading with U.S. dealers, leading to less liquidity for U.S. market participants and an increased risk of unintended counterparty identification.
    - Commencement of reporting ahead of registration will greatly reduce the scope, and therefore the value, of reported SBS data.
    - Participants will need to expend resources to accommodate reporting side tiebreaker logic that will largely be discarded when registration of SBSDs, MSBSPs, clearing agencies and platforms is completed.
- Compliance Date: Significant differences between the CFTC Rules and other global reporting requirements versus SBSR will require a great deal of cost, effort and coordination for market participants to plan, build and test.
    - Differences should be minimized to reduce complexity, increase efficiencies, prevent market fragmentation and promote global data harmonization. International standards for identifiers must be adopted or developed in order to avoid the application of interim, regulator or SDR-specific standards[10].
    - A longer implementation period is necessary for the industry to plan, implement and test reporting approaches and data specific to SBSR and develop new identifiers.
    - Compliance Date 1 should be *nine* months after the later of (i) the date by which SBSD and MSBSP are required to register with the Commission and (ii) the date on which the Commission announces SDRs are ready to accept reporting in an asset class.
    - Non-live pre-enactment and transitional SBS should have an additional three month phased compliance date for reporting subsequent to reporting commencement and dealer registration.
    - Since concerns regarding the compromise of market anonymity for illiquid and large notional trades have not been adequately addressed during the interim period, Compliance Date 2 should be three months after the later of (i) Compliance Date 1 and (ii) the date on which the Commission has provided safeguards in its reporting rule for all

[10] See discussion in section 2. See also, ISDA Data Paper.

situations (see for instance the points raised in 2.2(f) below) where the public dissemination of data may risk the disclosure of the identity, business transactions and market positions of any person[11] (e.g. appropriate reporting delays, exclusions for some SBS from public dissemination requirements, notional caps).

- Reporting Side: Inclusion of the indirect counterparty in reporting side hierarchy at all levels is inconsistent with the CFTC Rules and the approach taken in any other jurisdiction, resulting in substantial compliance cost with no regulatory benefit. This is antithetical to the notion of adopting domestically and globally harmonized reporting rules.
    - The status of an indirect counterparty should not be relevant for reporting side determination as the cost of factoring the status of an indirect counterparty in the reporting side determination logic for SBS transactions far out-weighs its benefits.
    - If the Commission is not willing to take indirect counterparties out of the reporting side hierarchy, then the status of an indirect counterparty should only factor into reporting side determination if neither of the direct counterparties are registered SBSDs or MSBSPs.
- Cross-Border Scope: There is no jurisdiction for the Commission to require reporting of SBS transactions between two non-U.S. persons that are neither registered SBSD nor registered MSBSP, and which do not have a third party guarantee by a U.S. person.
    - The guarantee of a SBS transaction by a non-U.S. person regardless of whether such non-U.S. person is a registered SBSD or MSBSP does not implicate any U.S. concerns nor does it import any risk into the U.S.
    - The Commission should therefore limit the definition of Indirect Counterparties to encompass only U.S. person guarantors.
    - Cross-border differences between the CFTC Rules and SBSR should be minimized to reduce complexity and increase efficiencies. For example, currently the CFTC has provided time-limited no-action relief[12] from the reporting requirements for non-U.S. swap dealers to report their swap transactions with non-U.S. persons while CFTC is analyzing cross border implications. Similarly, SBS transactions of non-U.S. registered SBSDs with non-U.S. persons should not be required until a proper cross border analysis has been undertaken of reporting regimes implemented in other jurisdictions and relevant substituted compliance determinations have been made.
    - On April 29, 2015, the Commission proposed Cross-Border Security-Based Swap Rules[13] with intended application to SBSR. The Associations will consider these proposed rules in due course and respond separately to supplement the comments contained in this letter.
- Data Privacy: Legal barriers to disclosing counterparty identity will extend beyond the effective date of SBSR despite regulatory and market participant efforts to address.
    - Reasonable accommodations should be made such that parties are not forced to choose between compliance with conflicting jurisdictional laws.
    - The cessation of trading with parties in impacted jurisdictions would negatively impact the global SBS market.

[11] As required of the Commission under Sec. 272 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Sec. 13(m) of The Securities and Exchange Act.
[12] http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-141.pdf
[13] http://www.sec.gov/news/pressrelease/2015-77.html

In addition, we have provided feedback on certain other provisions of Proposed SBSR and ask that the Commission adopt, clarify or revise such requirements as provided in this letter. These include:

- Prime Brokerage:
  - Eliminate the reporting requirement for prime brokerage "Transaction 1" between an executing dealer and its client since this transaction does not exist.
  - Restrict public dissemination to the transaction between the executing dealer and the prime broker.
  - To preserve anonymity, prohibit public dissemination of a prime brokerage condition flag.
- Clearing Transactions:
  - Adopt proposal to assign the sole reporting obligation for clearing transactions to clearing agencies.
  - Adopt proposal to assign the obligation for the termination of bilateral SBS accepted for clearing ("alphas") to the clearing agency.
  - Clarify that a clearing agency holds the sole obligation for reporting historical clearing transactions.
  - Clarify that a non-clearing agency side has no reporting side obligation if a SBS is cleared with a clearing agency (i) in advance of notification of its registration, or (ii) which is either not required to register or has been exempted from registration by the Commission.
- Platform Trades:
  - Adopt proposal to assign the sole reporting obligation for alphas executed on a platform and intended for clearing to the platform.
  - Adopt proposal to assign the sole reporting obligation for SBS executed on a platform but not intended to be submitted for clearing to one of the sides to the transaction.
  - Adopt proposal to exempt a platform from the requirement to report trade data not available to it (e.g. trader ID, agreements incorporated by reference).
- Bunched Orders and Allocations:
  - Adopt the proposed requirement for public reporting of bunched orders and the exclusion of allocations.
  - Exclude all bunched orders from the requirement to report the title and date of agreements incorporated by reference.

III. COMMENTS

1. Sequencing of SBSR Reporting and Participant Registration

1.1. The Associations remain concerned about the sequencing of the Commission's Title VII regulations. We would like to reiterate and further expand on the comments made in ISDA IV[14] and the SIFMA Sequencing Proposal regarding the value of requiring the registration of SBSD and MSBSP ahead of the commencement of reporting under SBSR. Our concerns extend to the registration of platforms and clearing agencies as well. SBS data will be more comprehensive and useful if upon the first day that reporting is required under SBSR, broadly all participants that will be a reporting side will have those obligations and such obligation is evident to all other participants to covered SBS.

1.2. If any segment of participants is not yet subject to a registration requirement, then a party other than the one that would ultimately be responsible under SBSR for such a SBS may need to assume the reporting obligation in the meantime (e.g. a buy-side U.S. person). In such a scenario, the additional question arises whether there is transition of reporting responsibility once registration is in effect; a messy process which may lead to gaps or duplication in reporting and thus should be avoided. Reporting ahead of registration means market participants will be required to build reporting functionality for reporting hierarchy and tiebreaker rules twice, and even more than twice if SBSD and MSBSP registration, clearing agency registration and platform registration occur at different times. Even if responsibility for previously reported transactions does not change, any differences in the timing of static data updates by a reporting side or a market infrastructure provider pertaining to registration status will cause gaps or duplications in reporting. Unless *advance* and broad public notice is provided by the Commission that a participant has been granted registration as a platform, clearing agency, SBSD or MSBSP by the Commission, industry participants will be unable to affect a coordinated transition date.

1.3. Dealer registration is one example. Even if the Commission leverages the technology developed by The National Futures Association for the SD/MSP Registry[15] to provide a combined or parallel list of registered SBSD and MSBSP, problems will remain. For example, while this registry is useful, no push-out notifications are available to market participants regarding changes to the list, and no advance notification regarding registration is provided by the CFTC. In order to track changes in dealer registration, market participants have to proactively and regularly download the list of registrants, analyze for any changes or additions and then update their static data. Considering this manual process and any lead time parties may need to affect static data changes, there will inevitably be differences in static data between market participants for at least a matter of days and potentially longer depending on resourcing and systematic change requirements. These differences will result in gaps or duplications in reporting since the parties will not come to the same conclusion with respect to which SBS are subject to reporting, which side is the reporting side and which transactions involve a SBSD on both sides. Similar gaps, duplications or data inconsistencies would occur if market participants are manually updating their systems after receipt of a notification from the Commission that a platform or clearing agency has been granted registration with immediate effect.

1.4. In contrast, if the vast majority of such registrations were to be granted and notified well in advance of the commencement of reporting under SBSR, both the scope of SBS subject to reporting and the reporting side for such SBS could be more accurately and consistently determined, subsequent ad hoc

[14] ISDA IV at 2
[15] http://www.nfa.futures.org/NFA-swaps-information/regulatory-info-sd-and-msp/SD-MSP-registry.HTML

transitions could be avoided and the available SBS data would more holistically and accurately represent the SBS market.

1.5. Based on the current anticipated sequencing, only SBS involving a U.S. person on each side will be subject to reporting on the compliance date for reporting under SBSR. This also means that only historic SBS involving a U.S. person on each side will be subject to reporting prior to that compliance date. Dealer registration will greatly expand the scope of SBS subject to reporting at a later date, essentially creating additional individual compliance dates for registrants and their counterparties to report additional SBS activity and historic SBS. The existence of individual compliance dates will also trigger the question as to who has the reporting obligation for historical SBS (see further discussion under 2.3). These subsequent individual compliance dates will create a great deal of additional effort for market participants and will impact data quality.

1.6. Such staggered compliance will also unfairly burden U.S. persons who will need to mutually negotiate which party will report ahead of a registration requirement. U.S. persons that do not anticipate they will be subject to a registration requirement and which trade exclusively with parties which they assume will be required to register did not anticipate either having to report or having to negotiate the reporting side. Unless SBSD registration precedes the start of reporting under SBSR, non-dealer U.S. persons will need to negotiate with all their U.S. person counterparties in order to ensure they are not forced to build reporting architecture to comply with SBSR.

Although it is likely that parties traditionally viewed as transacting in the role of a dealer may be willing to be the reporting side when transacting with certain parties, this cannot be assumed and must be confirmed bilaterally and absorbed into parties' reporting architecture. The bilateral confirmation and absorption of the data into reporting systems will require significant time and cost for a short term use. In addition, some parties that are currently registered as a swap dealers or major swap participants with the CFTC that are not as active in the SBS market do not anticipate being required to register with the Commission, and therefore may not be willing to assume the exclusive reporting side obligation even if they have reported under the CFTC Rules for their swap activity.

1.7. Reporting prior to SBSD/MSBSP registration will have a negative impact on buy-side and end-user U.S. persons. Due to the fact that only SBS involving a U.S person on each side will be subject to reporting prior to dealer registration, U.S. person end-users may avoid trading with other U.S. persons until after dealer registration to avoid their data being publicly disseminated. Avoidance by U.S. end-users of other U.S. counterparties would disadvantage U.S. dealers and create less liquidity for U.S. person clients and end-users.

1.8. The Commission has purposely postponed a requirement for the reporting of SBS which only include a U.S. person on one side and non-SBSD or non-MSBSP on either side, presumably in an effort to prevent buy-side participants that are U.S. persons from having to report SBS for which they are the only party subject to SBSR. We support that aim and think it would be equally, if not more, burdensome to require reporting of SBSs with only one U.S. person prior to registration of SBSDs and MSBSPs. It is incongruous for the Commission to burden buy-side and end-user U.S. persons with an interim requirement to share reporting responsibility for their transactions with U.S. persons unless they negotiate otherwise.

1.9. If dealer registration does not precede Compliance Date 2, the date on which SDRs are required to publicly disseminate primary trade information, then only SBS involving a U.S. person on each side will be subject to public reporting. With a limited list of counterparties and an even narrower list of

dealers to such transactions, public dissemination of this smaller segment of SBS data bears the risk that counterparty identity could be disclosed to the public.

1.10. Without amending Final SBSR, the Commission can circumvent the challenges described above by timing the compliance dates for all reporting under SBSR to fall subsequent to the registration requirement for SBSD and MSBSP. With respect to platforms and clearing agencies, registration should either precede reporting, or otherwise impacted SBS should be excluded from reporting in advance of such registration. (See sections 6 and 7 for further discussion of SBS subject to platform execution and clearing.) Both the Commission and SBS market participants will benefit from such an approach as the reporting of SBS can be coordinated in a transparent fashion resulting in more complete and accurate SBS data, reducing the risk of counterparty disclosure and not disadvantaging U.S. person end-user counterparties. In addition, it would greatly reduce the complexity of industry-wide preparation and implementation to report under SBSR, as further explained in section 2.

2. Proposed Compliance Schedule for Regulation SBSR

2.1. In ISDA IV[16], it was suggested that a six month delay between SDR operation and reporting commencement would be sufficient if the requirements under SBSR were closely aligned with the CFTC requirements. Since Final SBSR and Proposed SBSR include major differences from the CFTC Rules, reporting sides and market infrastructure providers will need to engage in significant builds and development of new industry standards in order to comply. Therefore we do not concur with the Commission's assessment in Proposed SBSR that six months is adequate time for market participants to make the necessary preparations to connect with and report to an SDR, analyze its requirements and build or alter internal systems to comply with its policies and procedures and perform systems testing. Moreover, we respectfully reiterate our request that the Commission reconsider certain aspects of Final SBSR that are disharmonized and create a significant burden for market participants.

2.2. Areas where the SBSR requirements are substantively different from the CFTC requirements and will require either new build or significant changes to existing firm trade capture systems, market infrastructure data flows and reporting architectures include, but may not be limited to:

a) Indirect Counterparty. Determination of whether there is an indirect counterparty on either side of a SBS that is a registered SBSD, registered MSBSP and/or a U.S. person may not be determined by static data on a party level, but instead must be determined for each SBS. Significant changes will be required to trading practices, systems, workflows and reporting architectures across the industry to determine and capture indirect counterparty identity in order to leverage the status of such party to determine reporting eligibility, the reporting side and to report whether both sides of a SBS include a registered SBSD as required by Rule 901(c)(5).

   Any new information that must be determined, exchanged, consumed and applied on a trade by trade basis in time to meet a reporting deadline will require changes to countless different transaction flows involving a variety of market participants. Each party in the trade flow must implement new data fields and methods to pass the information to the potential reporting side(s) and any vendors they may use to facilitate their reporting. This is extensive and invasive work which will require a great deal of analysis, coordination and testing. Even if indirect counterparties are only relevant to a subset of SBS, the same amount of work is required to identify those transactions as would be required if an

[16] ISDA IV at 2

indirect counterparty applied to all SBS. See our additional comments under 2.2(b) Reporting Side below for further discussion of the challenges and impact of communicating and incorporating indirect counterparty information into reporting architectures.

Platforms will need to implement identification of an indirect counterparty as part of their post-execution workflow. As the determination of whether an indirect counterparty applies may be conditioned on the direct counterparty pairing, verification and identification of an indirect counterparty on either side may not be able to be advised until after execution since only then will the platform provide the identity of the counterparties.

In addition, we note that the Commission must consider the dependency on indirect counterparty data when determining changes to the timeframe for reporting to satisfy the Title VII requirement for real-time public dissemination. It will be challenging to implement mechanisms to exchange, consume and apply indirect counterparty information within the 24 hour interim deadline for reporting. Depending on the level of automation of the flows that apply to particular SBS, indirect counterparty involvement may not be able to be determined, communicated and applied to reporting in shorter periods which the Commission may require after the interim period. In essence, the dependency on indirect counterparty data plays a significant role in what timeframe is actually feasible for reporting. In Rule 908 of Final SBSR, the Commission limits SBS subject to public dissemination to those which involve a direct or indirect counterparty that is a U.S. person on either or both sides or a clearing agency with its principal place of business in the U.S. Further limiting public dissemination to SBS which involve a *direct* counterparty that is a U.S. person, including domestic clearing agencies, would reduce complexity and create the potential for earlier reporting timeframes for public dissemination.

b) Reporting Side. We appreciate the Commission's revision to Rule 901(a)(2) to clarify that the reporting hierarchy applies only to a "registered" SBSD or MSBSP. However, in accordance with our comments in section 1, we strongly disagree with the belief expressed in Proposed SBSR[17] that in advance of registration "having the parties choose who reports should not complicate reporting."

The reality is that a decision to precede a registration requirement with a reporting requirement greatly complicates reporting and creates unjustified additional costs to implement interim solutions. The scope of SBS subject to reporting initially may be limited by this sequencing choice, but in exchange SBS involving a U.S. person on each side will require bilateral agreement and/or new interim industry best practices to determine the reporting side. The results of such negotiations will need to be built into reporting architectures by reporting sides and market infrastructure providers that facilitate reporting on an interim basis. The cost and effort of such implementation will be wasted once dealer registration is required and the reporting hierarchy in Rule 901(a) supersedes.

After dealer registration, the Commission suggests in Final SBSR[18] that "documentation" for SBS could alert the direct counterparties to the fact that one of them is guaranteed by a registered SBSD or MSBSP in order to identity which side would be the reporting side. This is an over-simplification of the communication mechanisms that will need to be altered to exchange indirect counterparty information timely on a trade by trade basis. Depending on whether a SBS is executed, affirmed, and/or confirmed electronically, the effort to populate, extract, consume and apply indirect counterparty information could be manual, may not be accomplished by the deadline to report and

[17] 80 Fed. Reg. 14768
[18] Id.

may provide information pertaining to only one side of the trade. For instance, a paper confirmation is a sub-optimal vehicle for this disclosure since its transmission could only contain the indirect counterparty of the drafting party and in all cases may not be issued in time to manual scrape and process the indirect counterparty information. Bilateral counterparty documentation is not a viable method for providing indirect counterparty information that may vary on a trade by trade basis. Rather, an extensive analysis of counterparty workflows for SBS, including those involving a variety of market infrastructure providers, will need to be conducted and changes coordinated to try and affect the exchange of indirect counterparty identification in all cases.

The Commission states its belief[19] that "incorporating indirect counterparties into current reporting workflows is unlikely to cause substantial disruption to existing reporting logic because the status of an indirect counterparty likely will alter reporting practices in few situations" since most trades will involve at least one direct counterparty that is a SBSD. Unless both direct counterparties are registered SBSDs, based on the way the Commission has crafted the scope of SBS subject to reporting, the reporting hierarchy, and the need to report the involvement of SBSD on both sides as primary trade information will obligate the direct counterparties to confirm *on every trade* whether there is an indirect counterparty on either side and if so the identity of such party and its registration and U.S. person status. So regardless of how narrow the involvement of an indirect counterparty may be, the same complex systematic changes and trade by trade checks will be required. The Commission states that "Regulation SBSR is designed to reduce the reporting burdens on non-registered persons without imposing significant new costs on other market participants…"[20] Final SBSR fails to achieve this result as significant costs will be imposed on other market participants with no discernable benefit to non-registrants who could leverage the infrastructure of their registrant affiliates on their behalf in the limited cases where it may be necessary without other market participants overhauling reporting party determination architectures.

We agree with the Commission's suggestion[21] that the involvement of an indirect counterparty may alter the actual determination of the reporting side in limited cases; this is a point we argued in ISDA IV[22]. As such it is difficult to justify the additional complexity that has been added to the reporting hierarchy and the corresponding cost and effort to comply. We hope the Commission will reconsider including the status of the indirect counterparty in the determination of the reporting side in all cases, as the cost of factoring the status of indirect counterparty in the reporting side determination logic for SBS transactions far out-weighs its benefits. Alternatively, if the aim is to identify the party most capable of reporting SBS between two direct counterparties that are non-registrants, then the Commission should limit the inclusion of indirect counterparties that are U.S. persons[23] in the reporting hierarchy to those cases. To accomplish such result, the Commission could revise the definition of Indirect Counterparty as requested above and revise §242.901(a)(2)(ii) as follows:

[19] Id.
[20] Id.
[21] Id
[22] ISDA IV at 4
[23] As explained in more detail in the cross border section of this comment letter, we believe that the reporting of SBS transactions is not warranted where neither side includes a direct counterparty that is a registered security-based swap dealer or registered major security-based swap participant or a U.S. person and neither side includes an indirect counterparty that is a registered security-based swap dealer that is a U.S. person or registered major security-based swap participant that is a U.S. person.

Security-based swaps other than clearing transactions.
(A) If both direct counterparties to the security-based swap are registered security-based swap dealers, the sides shall select the reporting side.
(B) If only one side of the security based swap includes a registered security-based swap dealer as a direct counterparty, that side shall be the reporting side.
(C) If both direct counterparties to the security-based swap are registered major security-based swap participants, the sides shall select the reporting side.
(D) If one side of the security-based swap includes a registered major security-based swap participant as a direct counterparty and the other side includes neither a registered security-based swap dealer nor a registered major security-based swap participant as a direct counterparty, the side with the registered major security-based swap participant as a direct counterparty shall be the reporting side.
(E) If neither side of the security based swap includes a direct counterparty which is a registered security-based swap dealer or registered major security-based swap participant, and:

(1) only one side includes an indirect counterparty which is a registered security-based swap dealer, that side shall be the reporting side;
(2) neither side includes an indirect counterparty which is a registered security-based swap dealer and only one side includes an indirect counterparty which is a registered major security-based swap participant, that side shall be the reporting side;
(3) both sides include an indirect counterparty which is a registered security-based swap dealer or both sides include an indirect counterparty which is a registered major security-based swap participant, then the sides shall select the reporting side.

(F) If neither side of the security based swap includes a direct counterparty which is a registered security-based swap dealer or registered major security-based swap participant and neither side includes an indirect counterparty which is a registered security-based swap dealer or registered major security-based swap participant:

(I) If both sides include a U.S. person, the sides shall select the reporting side.

The above approach would eliminate the need for parties to consider the existence of an indirect counterparty in reporting side determinations for all SBS that have at least one direct counterparty that is a registered SBSD or MSBSP. Therefore direct counterparties which either are registrants or which exclusively trade with direct counterparties which are registrants, would not have to alter their reporting side logic to incorporate indirect counterparties.

c) Lifecycle Reporting. The CFTC Rules allow reporting of continuation data as either individual events or as end of day "state data". Since SBSR requires reporting of any adjustment due to a life cycle event, reporting sides that do not currently have the capacity to individually report life cycle events will need to make major changes to their internal reporting architecture.

d) Trader ID, Trading Desk ID and Branch ID. As expressed in ISDA IV[24], there are no industry standards for many of the Unique Identification Codes ("UICs") required by SBSR, including those for identifying traders, trading desks and branches. Although ultimately the responsibility of the SDRs to develop the standards, in reality the industry will need to converge on a single solution for each ID to promote consistency and coordinate implementation. Therefore, reporting sides, market infrastructure providers, and industry trade organizations will need to work together with SDRs to agree or develop and implement new standards.

[24] ISDA IV at 9

Reporting sides will need to invest a great deal of expense and effort to develop and support these standards in their trade capture systems. Firms will need to establish internal methods to tag traders against the new identifiers, determine and label the discrete units that meet the definition of a trading desk, and capture the relevant branch, as applicable. These identifications will require new robust procedures and policies in order for firms to establish and maintain these identification mechanisms.

Due to the requirement under Rule 906(a), an enormous burden will be placed on non-dealer U.S. persons who may otherwise not have to build to report under SBSR[25], but would nonetheless be compelled to implement new methods of identifying their traders, trading desks, etc., in order to respond to an information request issued by an SDR requesting missing UICs. Requiring the direct counterparty on the non-reporting side to provide broker ID, branch ID, execution agent ID, trading desk ID or trader ID, as applicable, to the SDR on a trade-by-trade basis would, in practice, translate into a reporting obligation for the non-reporting side since an SDR could not readily integrate such information into the cumulative transaction record for the SBS unless it was reported in the format required by the SDR and tagged with the transaction ID used by the reporting side.

We further note that a reporting side cannot and should not be expected to provide UICs for the direct counterparty on the non-reporting side beyond those it is required to maintain as party level static data (i.e. its Legal Entity Identifier). Implementing mechanisms to obtain and report a counterparty's UICs on a trade-by-trade basis would be extremely difficult, expensive, and could not be achieved in time to meet reporting deadlines. Importantly, certain UICs, like trader ID and trading desk ID, may be considered confidential and should not be exchanged by the parties or made available via SDR reporting to the other side.

We strongly encourage the Commission to delay the obligation to report trader ID, trading desk ID and branch ID until appropriate global standards can be developed and agreed instead of requiring the creation and implementation of interim solutions that are specific to the Commission or an SDR. Other global regulators, such as the Hong Kong Monetary Authority, have indicated an interest in identifying traders and branches in reporting, so any new data standards should be designed with intent for global application. As evidenced by the current challenges of the CPMI-IOSCO Data Harmonization Working Group to agree global standards for trade and product identifiers *after* the commencement of reporting in many jurisdictions, regulator-specific data standards should be avoided as they are not easily extensible as global data standards. Interim, regulator-specific and SDR-specific data standards lead to enormous costs and efforts to reporting sides, market infrastructure providers and SDRs that is wasted if such standards are not ultimately adopted as the global standard for derivatives data reporting and instead a subsequent transition to the global standard is required.

The Commission should delay the requirement for trader ID, trading desk ID and branch ID while it participants in efforts to develop international standards[26] with market participants and the global regulatory community.

e) Prime Brokerage. As described in detail in section 4 below, the proposed requirements under SBSR for PB transactions significantly depart from those in practice under the CFTC Rules. As such, EBs,

[25] Assuming they trade only with SBSDs or MSBSPs, or have agreed to have the other party be the reporting side.
[26] See ISDA Data Paper

PBs, and their clients, would need to implement new trade capture capabilities and reporting logic specific to SBSR.

f) Public Dissemination. From an operational perspective, report messaging will need to be altered to facilitate reporting of transaction types not subject to public dissemination under the CFTC Rules, including inter-affiliate transactions, additional PB related transactions, trades resulting from compression of non-clearing transactions and any other activity that would not be considered "price-forming" (i.e. changes the market risk position between two parties or changes the pricing of the transaction) under the CFTC's definition of a publicly reportable swap transaction[27]. We remain concerned about this failure to harmonize public dissemination standards domestically. The public dissemination of inter-affiliate SBS, for instance, aligns with neither the CFTC Rules nor practices in the cash markets, adding to the cost and complexity of implementation without providing a substantive contribution to public transparency.

With respect to market preservation, the Associations appreciate the Commission's decision to use an interim period of reporting to gather and analyze SBS data in order to determine appropriate block sizes and related delays in public dissemination that would preserve anonymity and protect the liquidity of the SBS market. In most cases, such as certain single name CDS which trade frequently, the 24 hour timeframe established for the interim period is sufficient to achieve these goals. However, as discussed in detail in ISDA IV[28] and SIFMA Sequencing Proposal[29], certain SBS products and transactions are customized, highly illiquid and may not be fully hedged within a 24 hour period. Such highly illiquid SBS should be excluded from public dissemination altogether. Such protection is warranted regardless of the notional of the transaction, i.e. SBS for which the notional may be below the "block threshold" determined by the Commission at a later stage. The Associations would be more than happy to work with the Commission to identity the SBS transactions which require this additional protection from public dissemination of data.

We consider the Commission's decision to allow SDRs to disseminate the full notional of publicly reportable SBS during the interim period highly problematic. The number of dealer and buy-side SBS market participants that may enter into extremely large SBS positions are limited and thus easily discernible. The Commission has indicated its willingness to consider the use of notional caps at a later stage, but we contend that notional caps must be applied during the interim period in order to protect the SBS market. By having the SDR publish for instance, a notional value of "250K+" instead of $1 billion, the Commission would greatly expand the universe of potential market participants and help preserve participant anonymity, business transactions and market positions. Initially, the Commission could leverage the TRACE thresholds for certain product (e.g. $5mm for credit investment grade and $1mm for credit high yield).

We reiterate our concerns expressed in ISDA IV[30] regarding the public dissemination of an indication that both parties are SBSDs. The requirement is likely to lead to counterparty identification, especially for illiquid trades, and could potentially expose funding rates between banks and other financing trades. Such information is not provided in the public tape for cash trade reporting, and any value which the Commission perceives may be derived from this requirement is overshadowed by its potential risks to the market. Our concerns also persist regarding the disclosure of proprietary

[27] 77 Fed. Reg. 1244
[28] ISDA IV at 14
[29] SIFMA Sequencing Proposal at 6
[30] ISDA IV at 16

baskets[31] which the (non-dealer) counterparty may consider proprietary information and the disclosure of which may also compromise anonymity and negatively impact trading activity. Footnote 67 of Final SBSR[32] acknowledges our comments but states price discovery as the reason for disregarding the potential implications of such disclosure. We ask that the Commission reconsider as part of its analysis of SBS transactional data, the need to identify such proprietary information as not subject to public dissemination.

Rule 902(c) provides that an SDR shall not disseminate either the identity of any counterparty nor any information disclosing the business transactions and market positions of any person. It is unclear how an SDR can be required to prevent a disclosure when the data which may cause such disclosure is required to be reported by a reporting side and subsequently disseminated by an SDR. Therefore, the Commission must provide measures to exclude such identifying information, as discussed above, from the requirement to be publicly disseminated.

We believe the Commission has not adequately addressed the potential impact of reporting illiquid trades in an abbreviated timeframe or disclosing the full notional of large SBS. In accordance with the Commission's obligations under Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank")[33] and the Securities and Exchange Act ("SEA")[34] to ensure that while fulfilling its mandate to enhance price transparency public reporting does not disclose the identity, business transactions and market positions of any person, we request the Commission postpone the commencement of public reporting until it is able to analyze reported SBS data to determine appropriate delays and notional caps that will protect the U.S. SBS market.

g) Condition Flags. Reporting sides will need to build internal mechanisms to determine, capture and report a variety of condition flags that would be required by an SDR, including but likely not limited to those suggested by SBSR (i.e. inter-affiliate, prime brokerage, off-market, compression, package trades, forced trades, etc.) This build represents a significant challenge because reporting sides will need to wait until the SDR develops and finalizes condition flags and related specifications.

h) Market Value. In order to be able to report the additional data elements necessary to determine the market value of the transaction required by Rule 901(d)(5), the industry will first need to agree what data elements may need to be reported to comply with this requirement, which is vague and may cause uncertainties as to what is reportable data for some SBS. Additionally, reporting sides will need to work with their SDRs to ensure the relevant data is supported by their messaging specifications.

i) Product IDs. In absence of an endorsed UIC for product ID, the Commission has given the SDR the responsibility to assign a UIC using its own methodology. We previously recommended that the Commission recognize the ISDA OTC Taxonomy[35] as an acceptable product ID since it is already supported by the majority of market participants and accepted by the CFTC and other global regulators. If an SDR assigns the ISDA OTC Taxonomy as its accepted method for product ID, then new implementation will not be necessary for most reporting sides, market infrastructure providers and SDRs. However, if an SDR requires another method, market participants would need to newly

[31] See ISDA IV at 17
[32] 80 Fed. Reg. 14575
[33] Sec. 727
[34] Sec. 13 (m)
[35] ISDA IV at 12

build to that approach. We acknowledge that in its current form the ISDA OTC Taxonomy may not meet the Commission's expectation that two SBS between the same direct counterparties with the same product ID could be compressed or netted together[36]. However, we believe the taxonomy could be the basis for a more granular product identifier that meets the needs of global regulators. Global regulatory consensus with respect to the way in which product identifiers will be used to analyze and understand reported data is essential to determine the optimal construct and granularity for global product identifiers.

The CPMI-IOSCO Data Harmonization Working Group expects to make recommendations for a global standard for product identification. In order to be considered compliant with their product ID obligations, SDRs should not act in advance of the global initiative by requiring an interim solution that meets all the Commission's specifications and may not be endorsed as the global standard. Doing so would create tremendous cost and effort that would be wasted if that interim solution is not also the global standard. Rather, existing industry standards for product identification, like the ISDA OTC Taxonomy, should be allowed until such time as the working group makes its recommendations, individual regulators adopt such standards under their rules and an industry transition can be coordinated, as required.

j) Governing Agreements. As advised in ISDA IV[37], only the title and date of Master Agreements are required for reporting in other jurisdictions, and we reiterate our request for the Commission to limit its requirement in accordance with other global regulations. In order to comply with the requirement to report other agreements incorporated by reference such as collateral agreements and master confirmation agreements, reporting sides will need to conduct significant internal work to extract these data elements and incorporate into their reportable data streams. Their market infrastructure providers will need to add the capacity to consume or hold and transmit these new data elements as well.

k) Timing Mechanisms. Final SBSR provides a reporting side up to 24 hours from the time of execution to report a SBS, and the SDR is required to disseminate immediately upon receipt. Although we appreciate that in establishing this interim deadline the Commission is both allowing time for the reporting side to meet its obligation and trying to preserve the anonymity of the participants, the requirement for an SDR to immediately disseminate creates a significant implementation burden for reporting sides who have built their reporting architectures to meet requirements in other jurisdictions to report "as soon as technologically practicable"[38] after execution or clearing. As a result, counterparties, platforms, clearing agencies and market infrastructure providers do not have mechanisms to hold reporting until the necessary period has passed and instead have relied on SDRs to apply any applicable and appropriate delays, such as those prescribed for block treatment under the CFTC Rules.

Our members would strongly prefer to report to an SDR as soon as the relevant data is available to them and it is systematically possible to report such data to the SDR within the 24 hour timeframe, and then leverage existing SDR mechanisms that could be altered to apply a delay to ensure that the SBS transaction is not publicly disseminated before 24 hours after execution. Having a handful of SDRs enhance their existing builds is much more efficient and cumulatively less costly than having all reporting sides and their market infrastructure providers build new methods to apply internal

[36] 80 Fed Reg. at 14571
[37] ISDA IV at 8
[38] 2(a)(13)(A) of the Commodity Exchange Act and Sec. 13 (m) of SEA

delays and later alter these methods if the Commission changes and staggers the deadline for reporting (i.e. based on block determination). A reporting side that reports ahead of the 24 hours due to their internal architecture or due to the need to report earlier in another jurisdiction should not be penalized with early dissemination for doing so. Inconsistent timing of public dissemination could result in counterparty identification and should not be determined inconsistently on a trade by trade basis or based on the reporting side's architecture.

Importantly, the need for the reporting side to apply the delay also undermines a reporting side's ability to send a single multi-jurisdictional report to an SDR. A large percentage of SBS will be reportable under the trade reporting regulations of more than one jurisdiction. Most parties use a global SDR to meet these obligations in an efficient, cost effective manner by sending a single report that meets the collective requirements of each applicable jurisdiction. Since other jurisdictions require reporting as soon as technologically practicable after execution or clearing and, where applicable, allow the SDR to impose any jurisdictional specific delays, a reporting side with an obligation under SBSR and another jurisdiction would not be able to send a single report that meets the respective reporting deadlines of each jurisdiction.

In accordance with our comments in the introduction, we respectfully request that the Commission consider the importance of aligning with existing market architecture for reporting that allows SDRs to apply a delay for public dissemination rather than adopting new rules than unintentionally result in major changes to reporting infrastructure, increasing the cost and complexity of complying with SBSR and undermining efficiencies for global market participants.

Both individually and cumulatively, the above list of implementation challenges would amount to an enormous cost, time and effort for reporting sides, non-reporting sides, market infrastructure providers and SDRs to implement. We respectfully request that the Commission reconsider these requirements of SBSR and seek to further harmonize with existing global reporting requirements, including the CFTC Rules, so that the industry can more directly leverage existing reporting infrastructures that minimize the cost and effort of preparing to comply with SBSR.

2.3. Proposed SBSR would require the reporting of pre-existing and transitional SBS ("historical SBS") no later than the compliance date for reporting new SBS or lifecycle events on historic SBS. We agree with this approach for historic SBS which are live and therefore may be subject to the reporting of lifecycle data that should supplement previously established data for the SBS. However, historical SBS which are non-live will not have this dependency. Due to the extended timeframe that will have transpired between the July 21, 2010 enactment date of Dodd-Frank and the compliance date for reporting under SBSR, the volume of non-live historic SBS will be enormous. Reporting over five years of SBS transaction data will require tremendous effort and coordination between reporting sides and their SDRs.

Since dealer registration is necessary to determine the full scope of historical SBS which will be subject to reporting under SBSR, an extended period for reporting non-live historical SBS after dealer registration is warranted. If reporting of historical SBS commences prior to dealer registration, reporting sides with an obligation on the initial compliance date (U.S. persons only) will bear the largest burden for meeting the obligations of Rule 901(i). The data reportable by a few of these U.S. entities (which could include U.S. end-users) will be much larger than what such entities would need to report if the reporting obligation started after dealer registration. Since we believe that the reporting side for a SBS should persist, the party with the earliest obligation to report live historical SBS would responsible for reporting of life cycle events as well until the end of the term of the relevant SBS, which could be years. The

Commission should level the burden for reporting historical SBS by ensuring it succeeds dealer registration.

2.4. We acknowledge that the Commission intends to use both live and non-live historic SBS data to form a baseline understanding of the SBS market. However, we contend that the value of non-live transactional data is not as substantial as that which can be derived from the live data, which supports an analysis of current market exposures and behavior and may also contribute to market surveillance. We believe the commencement of reporting under SBSR will be more effective if the reporting of non-live historic SBS can be done separately and subsequently. We reiterate our request from ISDA IV[39] that the Commission adopts a separate compliance date for a reporting side to complete its obligation to report historic SBS which are no longer live prior to the compliance date for reporting new SBS activity.

2.5. We appreciate that Commission has made the important distinction between SDR registration and the commencement of operations of a registered SDR at a capacity that assures prompt, accurate receipt and dissemination of SBS information ("SDR readiness"). We expect that registration of an SDR in an asset class will be announced by the Commission. However, Proposed SBSR does not address how the SBS market will be advised when the Commission recognizes that an SDR has commenced operations in order to establish the definitive date which precedes and begins the countdown to the date on which reporting in that asset class will commence. We request that the Commission formally announce any such determination.

2.6. Based on the above considerations and subject to the important suggestion that reporting should not commence prior to SBSD and MSBSP registration, the Associations request that the Commission adopt the following compliance schedule for Rules 901, 902, 903, 904, 905, 906 and 908 of SBSR:

a) Compliance Date 1: *Nine* months after the later of (i) the date by which SBSD and MSBSP are required to register with the Commission and (ii) the date on which the Commission announces SDR readiness in an asset class.
    i. *On* Compliance Date 1: Commence reporting of newly executed SBS
    ii. *On* Compliance Date 1: Commence reporting of life cycle events on previously reported newly executed SBS
    iii. *By* Compliance Date 1: Complete reporting of live historical SBS
    iv. *On or By* Compliance Date 1: Commence reporting of life cycle events on previously reported live historical SBS
b) Compliance Date 2: *Three* months after the later of (i) Compliance Date 1 and (ii) the date on which the Commission has determined appropriate exceptions, delays and/or notional caps to preserve the identify, business transactions and market positions of any person.
    i. *On* Compliance Date 2: SDR begins public dissemination of required primary trade information for publicly reportable SBS
c) Compliance Date 3: *Three* months after Compliance Date 1.
    i. *By* Compliance Date 3: Complete reporting of non-live historical SBS.

[39] ISDA IV at 18

2.7. We support the Commission's plan to exempt "covered cross-border transactions"[40] from public dissemination beginning on Compliance Date 2 and to instead seek public comment before determining if and when to include them in the scope of transactions subject to Rule 902.

2.8. Proposed SBSR provides that participants are not required to report to the first SDR that accepts SBS in an asset class that registers with the Commission (and importantly, starts the countdown to Compliance Date 1), but may report to any SDR that is registered and ready by Compliance Date 1. However, in the event there is a gap between the registration and readiness of SDRs in an asset class, a reporting side may not be able to freely select the SDR of its choice (e.g. a repository to which it is already connected to for CFTC reporting) if there is a risk that there is not enough time to build to such SDR for the relevant compliance date in the case that such SDR was not the first SDR ready for reporting in the relevant asset class. Connection to an SDR for reporting under the CFTC Rules involved considerable costs and efforts so such entity should be enabled to use the same SDR once registered with the Commission for SBSR reporting[41]. So even if SBSR allows it, we strongly encourage the Commission to coordinate its processing of SDR applications received within a reasonable window and time its announcement of SDR registration and readiness to include all SDRs for an asset class that will be approved ahead of Compliance Date 1.

2.9. The Commission proposes that, with respect to SBS in a particular asset class, its exemption from Section 29(b) of the SEA, in conjunction with Section 3(c)(e)(1) of the SEA, should terminate on proposed Compliance Date 1. As an initial matter, we ask that the Commission clarify the cross-reference to Section 3C(e)(1), as it is not clear how that provision relates to the Commission's Section 29(b) exemption.[42] Also, we understand that the Commission adopted its Section 29(b) exemption solely to promote legal certainty and avoid any doubt as to the applicability of that provision with respect to other SEA provisions for which the Commission determined not to require compliance as of July 16, 2011.[43] We further understand that, other than its view that Section 29(b) should not apply to those other SEA provisions, the Commission has not taken any view as to whether, when, or under what circumstances Section 29(b) might apply to any provision of Title VII of Dodd-Frank or rule or regulation thereunder, including SBSR. We ask that the Commission confirm our understanding.

Finally, in order to advance the Commission's stated objective of promoting legal certainty and avoiding unnecessary confusion for financial institutions and their customers, we ask that the Commission extend its exemptions from Section 29(b) for a period of six months after any applicable compliance date to allow sufficient time for all parties to avoid any potential negative consequences of the exemption's expiration. In the case of SBSR, the exemption would remain in place for a period of six months after Compliance Date 1.

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[40] 80 Fed. Reg. 14763

[41] Assuming the SDR intends to apply to the Commission to be a registered SDR for SBS.

[42] The Commission's Section 29(b) exemption applies to SBS contracts entered into on or after July 16, 2011, and it prevents those contracts from being void or considered voidable by reason of Section 29(b) because a party to such a contract violated any of those SEA provisions added by Subtitle B of Title VII of Dodd-Frank for which the Commission has taken the view that compliance will be triggered by registration of a person or by adoption of final Commission rules, or for which the Commission has provided an exception or exemptive relief. See 76 Fed. Reg. 36287, 36307 (June 22, 2011). Section 3C(e)(1), in contrast, applies solely to SBS entered into prior to July 21, 2010, and the Commission interpreted Section 3C(e)(1) solely to authorize/direct Commission action, as opposed to directly requiring compliance by market participants. See id. at 36290.

[43] See id. at 36305.

3. Cross Border and Substituted Compliance

3.1. Indirect Counterparty. We believe the way the Commission has finalized the definition of Indirect Counterparty is problematic because a registered indirect counterparty causes a trade to be reportable in cases where the direct counterparties would not lead to a conclusion that the trade is reportable. The definition of Indirect Counterparty as finalized by the Commission is not supported by the rationale provided by the Commission in the rule release. The Commission argued[44] that existence of a U.S. person guarantee causes the SBS at least in part to be in the U.S. but has not provide any justification for why the existence of only a guarantee by a non-U.S. registered SBSD or non-U.S. registered MSBSP should make the SBS transaction relevant for reporting. We believe that the definition of Indirect Counterparty should be limited to encompass only U.S. person guarantors and not any guarantor as currently drafted. The guarantee by a non-U.S. person of an SBS transaction between two non-U.S. persons, regardless of whether such non-U.S. person guarantor is a registered SBSD or MSBSP, does not implicate any U.S. concerns nor does it import any risk into the U.S. Thus, there is neither any rationale nor any U.S. jurisdiction to require reporting of SBS transactions between two non-U.S. person (neither of which is a registered SBSD/MSBSP) merely because of the existence of a guarantee provided by a non-U.S. registered SBSD/MSBSP.

We, therefore, recommend that the Commission changes the definition of "Indirect Counterparty" to encompass only U.S. person guarantors. In footnote 831 of Final SBSR, the Commission expressed its belief that the Final Rule reaches this result because Rule 908(a)(i) provides that a SBS will be subject to regulatory reporting and public dissemination if there is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction. However, we do not concur that the result is the same, since 908(a)(2) requires regulatory reporting if an Indirect Counterparty on either or both sides of the transaction is a registered SBSD or MSBSP irrespective of whether such registrant is a U.S. person or not. In order to accomplish this result and to be consistent with the rationale expressed in the preamble, the Commission should limit the definition of Indirect Counterparty to U.S. person guarantors.

3.2. Differences between the cross border application of the CFTC Rules and SBSR should be minimized to reduce complexity and increase efficiencies. Currently, CFTC has granted time-limited exemptive relief[45] for the obligations of non-US swap dealers to report their swaps transactions with non-U.S. persons while the CFTC is analyzing cross border implications. Similarly, SBS transactions of non-U.S. registered SBSDs with counterparties that are non-U.S, persons should not be required until a proper cross border analysis has been undertaken of reporting regimes implemented in other jurisdictions and relevant substituted compliance determinations have been made.

3.3. On April 29, 2015, the Commission proposed Cross-Border Security-Based Swap Rules[46] with intended application to SBSR. The Associations will consider these proposed rules in due course and respond separately to supplement the comments contained in this letter.

3.4. With reporting under SBSR falling subsequent to reporting requirements in many other major global jurisdictions, we ask that the Commission accommodate substituted compliance determinations for SBS and mixed swaps even if another regime's rules are not exactly the same as those of SBSR. As noted in section 2, some of the trade information requirements are unique to SBSR. We look to the Commission to limit these cases, and where unavoidable, not allow such distinctions to impact a reporting

[44] 80 Fed. Reg. 14652-55
[45] http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-141.pdf
[46] http://www.sec.gov/news/pressrelease/2015-77.html

side's ability to meet their obligation via reporting in their primary jurisdiction. An "outcomes" based approach is the only realistic path to substituted compliance. The Commission and its domestic and global counterparts should defer to the jurisdiction most directly subject to the risk of the derivatives transactions, trust its oversight and work to share data as needed. Any requested substituted compliance determinations should be made well in advance of Compliance Date 1 to the extent possible to save reporting sides the effort and cost of building to the SBSR requirements if their current builds will suffice.

4. Reporting and Public Dissemination of Prime Brokerage Transactions

4.1. The Associations strongly disagree with the assertion in Proposed SBSR that a prime brokerage arrangement typically results in three transactions including a transaction between the client and the executing dealer ("ED"), referred to in Proposed SBSR as Transaction 1. Although the ED and client negotiate the terms of the transaction the client wishes to enter into with the prime broker ("PB"), this engagement does not result in a transaction between the ED and client. As acknowledged by the Commission in Proposed SBSR, the arrangement between the ED and client is not subject to bilateral credit documentation, nor would it be subject to a Master Agreement. The value of a PB arrangement is that the client is not subjected to risk against a number of dealers and does not need to enter into Master Agreements and collateral agreements with multiple dealers in order to have access to competitive pricing. The existence of a Transaction 1 would negate the benefits of PB intermediation, and render these arrangements moot.

4.2. In footnote 95 of Proposed SBSR, the Commission states its belief that the agreement between the customer and the ED would constitute a contract for the sale of a security for the purposes of the federal securities law. While the application of the Securities Act of 1933 to SBS is beyond the scope of this comment letter, we note that the existence of a contract for sale for Securities Act purposes does not justify the Commission's "Transaction 1" construct. Under Section 13(m)(1)(A) of SEA, the SBS real-time reporting obligation is triggered, and its timeframe begins to run, at the "time at which the security-based swap *has been executed* [emphasis added]." Thus, the statutory mandate requires "execution" of a SBS and does not authorize the importation of the "contract for sale" concept into SBS reporting. Furthermore, under the methodology for reporting PB trades recommended by ISDA in ISDA IV[47], the commitment to terms between the executing dealer and PB client (which the Commission deems to constitute the "contract for sale") would be treated as the time of execution of the PB/ED transaction, and the Commission would have available to it in the report for that latter transaction the time of such commitment.

4.3. We believe that Proposed SBSR incorrectly states that the "transaction between [the ED and client] will be replaced by separate transactions between each of them and the prime broker"[48]. As noted in Proposed SBSR, PB transactions are only arranged if they align with a set of predetermined limits and parameters; therefore it is extremely rare for the PB to reject the trade. Rejections are more likely to be the result of a clerical error (i.e. input of an incorrect trade detail) than a credit issue, and subsequently remedied. The PB's acceptance results in the actual mirrored transactions between the PB-ED (referred to in Proposed SBSR as Transaction 2) and between the PB-client (referred to in Proposed SBSR as Transaction 3). In the rare event the PB does not accept the trade; this rejection does not result in an ED-client transaction. Rather, there would be no SBS to report.

[47] ISDA IV at 4, 5
[48] 80 Fed. Reg. 14755

4.4. Since there is no Transaction 1, there is also no termination of a Transaction 1 to report. Proposed SBSR refers to the necessity to terminate Transaction 1 in order that the market and Commission not conclude that the ED and client continue to have exposure to each other. This is an incorrect justification for the report as the parties never had mutual exposure on the SBS as reporting and public dissemination of Transaction 1 would incorrectly imply. Further, because there is no termination of Transaction 1, we do not concur with the Commission's assertion in Proposed SBSR that Rule 901(d)(10) of Final SBSR requires the reporting of Transaction 1's transaction ID as part of the secondary trade information for both Transaction 2 and 3.

4.5. A Transaction 1 should not be publicly disseminated since it does not represent actual SBS exposure; but as previously raised in ISDA IV[49], we still contend that the PB-client leg should not be publicly disseminated either. The Commission states the reason for requiring all PB related transactions to be publicly reported is to provide transparency to the price of PB intermediation services. But such clarity is not likely to be derived from the public transaction reporting because in many cases PBs do not include their fees in the pricing of the transaction and instead may settle via a separate arrangement. Even if a PB includes pricing in the PB-client leg, a comparison of a set of related PB transactions would be difficult to achieve (even with a condition flag) since the transactions would be reported by different reporting sides at different times. More importantly, the cost of PB intermediation to the client is just a service fee and is not relevant to the price of the SBS. Therefore inclusion of such service fees in the publicly disseminated price of the PB-client transaction would provide misleading data on SBS pricing, without the benefit of providing discernable transparency on the costs of PB services.

4.6. If the pricing of PB intermediation services is useful to market observers, as the Commission suggests[50], then such information can be more reliably and accurately obtained by requesting it from a PB. If the purpose is to allow parties to compare the cost of clearing agencies services with those of PBs, then we contend that these are not comparable services and such comparison is not meaningful. The value that can be derived from this requirement is not clear, and we still believe that dissemination of a related set of PB transactions is more likely to confuse than assist the public.

4.7. In some cases, allocations of the PB-client transaction are provided upfront as part of PB acceptance. In such event, a Transaction 2 is regarded as the bunched order and would be mirrored with multiple Transaction 3s that tie out to the aggregate notional of Transaction 2. In furtherance of our statements above, the public dissemination of multiple Transaction 3s would not enhance price discovery and in accordance with the Commission's proposed treatment for allocations, we believe these prime brokered allocations should not be subject to public dissemination.

4.8. We ask that the Commission does not adopt any of the proposed requirements regarding Transaction 1, which does not exist and therefore cannot be booked in trade capture systems and reported, and instead limit all reporting requirements for PB transactions to Transaction 2 and Transaction 3 in accordance with our prior requests in ISDA IV[51].

4.9. One of those prior requests is for SBSR to accept current industry standard practice for designating the party which reports each PB transaction. The ED is best positioned to report Transaction 2, while the PB is best positioned to report Transaction 3. This approach was previously acknowledged by the CFTC in its No. Action Letter 12-53, and ISDA has asked that the CFTC codify this standard. A

[49] ISDA IV at 13
[50] 80 Fed. Reg. 14756
[51] ISDA IV at 4, 5 and 13

consistent reporting party approach is preferable and will promote efficiency in the event a mixed swap is entered into via a PB arrangement.

4.10. The examples of PB transactions in Proposed SBSR assume that both the ED and PB are registered SBSDs. If the compliance date for reporting under SBSR precedes registration as suggested by the Commission, this will not be the case and an ED or PB which is neither a U.S. person nor has on its side an indirect counterparty which is a U.S. person would not be required to report. In absence of a requirement by all parties to the PB transaction to report, the data will be incomplete.

To demonstrate, the following table shows the gaps that can be expected in the reporting of PB transactions in advance of a registration requirement:

	Client	**ED**	**PB**	**Reported PB Transactions**
U.S. person – (as direct or indirect counterparty)?	Yes	Yes	Yes	1*, 2 and 3
	Yes	No	No	None
	No	Yes	No	None
	No	No	Yes	None
	Yes	Yes	No	1*
	Yes	No	Yes	3
	No	Yes	Yes	2

*We provide these examples noting our separate expectation that a Transaction 1 does not exist and would not be reported in any event.

In furtherance of the concerns discussed in sections 1 and 2, we strongly encourage the Commission to reconsider the sequencing of its Title VII requirements in order to facilitate a more complete, accurate and meaningful gathering of SBS data.

4.11. Proposed SBSR establishes the Commission's expectation that SDRs should require PB-related transactions to be tagged with a condition flag under Rule 907(a)(4) and such flag would be required to be publicly disseminated per Rule 902(a). While we do not dispute the potential value to the Commission of a prime brokerage flag for regulatory reporting to the SDR, we feel strongly that it should not be subject to public dissemination. The SBS market for prime brokerage services is considerably smaller than in the foreign exchange market. A limited number of EDs and PBs participate, and even fewer may offer certain SBS products. Therefore, there is a high probability of compromising the anonymity of these dealers. This could result in higher costs to hedge which in turn may increase the cost of PB services to clients, reduce dealer participation in PB intermediation and limit clients' options. In accordance with the Commission's obligation to ensure that the public availability of transaction data does not disclose the business transaction any market positions of any person or identify the participants[52], we request that

[52] Sec. 13(m) of the SEA

SBSR be revised to prohibit the public disclosure of a condition flag denoting prime brokerage intermediation.

4.12. Finally, we assume that the rules in Proposed SBSR will be finalized well in advance of Compliance Date 1. If not, the reporting of PB intermediated SBS should not apply until the final rules specific to them are in effect and a sufficient implementation period to build and test both internal infrastructure changes and SDR functionality has transpired. We hope that the Commission will adopt guidelines pertaining to PB intermediated SBS as suggested above to promote consistency, efficiency and more accurate assessment of relevant data. If the rules pertaining to these transactions were adopted as proposed, extensive overhaul of existing system architectures would be required and an extended implementation period would be necessary.

5. Data Privacy

5.1. We appreciate the Commission's acknowledgement in Final SBSR[53] that a reporting side may face legitimate obstacles with respect to disclosing the identity of certain counterparties when reporting historical SBS due to privacy law restrictions or blocking statutes in foreign jurisdictions. The Commission has indicated[54] a willingness to consider related requests from reporting sides for exemptions pursuant to Section 36 of the SEA. However, that offer has been limited to "historical security-based swaps executed up to the last day before the effective date of the final rules"[55], which is May 17, 2015. Despite being on notice from the Commission that counterparty ID is expected beyond this date, it is unrealistic to expect that all data privacy restrictions in foreign jurisdictions will have been eliminated or that consent will have been obtained in all cases where it may be sufficient to overcome a restriction.

5.2. Historical SBS and SBS entered into on or after the effective date of Final SBSR may still be impacted by the same data privacy restrictions despite the efforts of market participants and global regulators, including the Commission, to address them. Thus a reporting side may still face the dilemma referred to by the Commission[56] – whether to comply with SBSR, report the identity of the counterparty and thereby violate the foreign law or comply with the foreign law by withholding the counterparty identity and thereby violate SBSR. As previously conveyed in ISDA IV[57], a reporting side should not be placed in the middle of conflicting regulatory requirements that it does not have the authority to resolve.

5.3. The Commission's cut-off date for identifying counterparties is a textual line in the sand that implies that a reporting side must either (i) chose to comply with SBSR and violate foreign law or (ii) cease trading SBS with counterparties in impacted jurisdictions where consent is either not sufficient or cannot be obtained. This approach contradicts the Commission's efforts as a member of the OTC Derivatives Regulatory Group and the key signatory to its August 12, 2014 letter[58] requesting the Financial Stability Board set a deadline for jurisdictions to enact the necessary legislative changes that would remove barriers to reporting counterparty identity. Despite these important efforts, such a deadline does not yet exist by which it is understood that all such barriers will be removed. Therefore it is

[53] 80 Fed Reg. 14667
[54] Id.
[55] Id.
[56] 80 Fed. Reg. 14592
[57] ISDA IV at 19
[58] http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/oia_odrgreportg20_0914.pdf; p. 8

inconsistent for the Commission to force market participants to proceed as if the problem will no longer exist. Market participants would like to see these barriers removed as much as regulators so they are not faced with these conflicts of compliance, but until that time some reasonable accommodation should be made that does not require parties to request an exemption from a conflict of law that can only be fully solved by regulators and legislators or otherwise be required to limit their party and jurisdiction participation to prevent violating either SBSR or the requirements of a foreign jurisdiction.

6. Reporting by Registered Clearing Agencies

6.1. The Associations support new proposed subparagraph (2)(i) of Rule 901(a), which would assign the sole reporting duty for a clearing transaction[59] to the registered clearing agency. In response to the Commission's query, we believe this obligation should apply equally to all registered clearing agencies regardless of whether the clearing agency has its principal place of business in the U.S. provided the SBS is subject to reporting based on the status of the reporting sides. Under the CFTC Rules and globally in jurisdictions like the European Union ("EU") and Canada, clearing agencies have demonstrated their ability and preference to report data for cleared transactions. A registered clearing agency with its principal place of business outside of the U.S. most likely has the reporting obligation for cleared transactions in its primary jurisdiction. Having the same party report a transaction in all relevant jurisdictions is efficient, cost effective and promotes global data consistency.

6.2. We can support the Commission's decision to allow the registered clearing agency to select the SDR to which it reports provided the Commission adopts its proposal to assign the clearing agency the sole reporting obligation for clearing transactions. We would like to note, however, that if the Commission plans to introduce now (or at a later stage) additional reporting obligations for a clearing transaction to be performed by the reporting side in relation to its obligation to report the alpha trade, such reporting side should have no obligation to report data an to SDR other than the SDR to which the data for the alpha was reported (the "alpha SDR"). We concur with the suggestion that the clearing agency must be a participant of the SDR it selects in order to ensure reports are submitted in the format required by the SDR. We understand that in this context participant means a registered user of an SDR, submitting data in the format as requested by an SDR, rather than a "participant" as defined in Final SBSR.

6.3. The Associations agree with the proposed addition of subsection (ii) to 901(e)(1) which would require a registered clearing agency to report whether it has accepted an alpha for clearing to the alpha SDR in the format required by such SDR. This requirement would prevent the "orphaning" of alphas that currently occurs under the CFTC Rules. Some Derivative Clearing Organizations ("DCOs") send a message to the alpha SDR but in a format that does not align with the requirements of the SDR, and thus despite having been replaced by the beta and gamma, the alpha may still appear as a live transaction in the alpha SDR. Therefore it is necessary that the clearing agency also be a registered user of the alpha SDR.

Since the SDR may receive a report from a clearing agency regarding the acceptance or rejection of the alpha in advance of receipt of the report from the reporting side or the platform for the alpha, we recommend that SBSR prohibit an SDR from publicly disseminating the rejection or acceptance report from the clearing agency ahead of the point at which the SDR receives and has publicly disseminated the report for the alpha.

[59] 80 Fed. Reg. 14728 "Clearing transaction means a security-based swap that has a registered clearing agency as a direct counterparty."

6.4. With respect to a clearing agency reporting that an alpha has *not* been accepted for clearing, we note that absent a mandatory clearing requirement that would void the transaction, the SBS may continue as a bilateral trade between the original counterparties, and the reporting side would retain the sole obligation for any continuing reporting obligation. Careful consideration needs to be made by SDRs as to how a report by the clearing agency that a trade has not been accepted for clearing would be reflected in the record for the SBS. Although it may be a helpful audit trail for the Commission, such report must not extinguish the SBS or otherwise impede the ability for the reporting side to comply with its subsequent obligation to report the uncleared alpha.

6.5. In consideration of the new requirement under 901(e)(1), we acknowledge the value of proposed subparagraph 901(a)(3) which requires the party required to report the alpha to provide the clearing agency with the transaction ID of the alpha and the identity of the alpha SDR. The Unique Transaction Identifier ("UTI")[60] of the alpha has already been incorporated into submission flows to clearing agencies for use in reporting in other jurisdictions so should be extensible to SBS, as needed. With respect to providing the identity of the alpha SDR, the most efficient approach would be for clearing agencies to gather the choice of alpha SDR for an asset class or product once from all reporting sides and platforms, and retain and maintain as static data rather than requiring a notification on a transactional basis.

6.6. The Commission's discussion of how SBSR would apply to the clearing process under the agency model is sufficient and clear. Although we do not have reason to believe the principal model will become prevalent in the U.S. market, it will be used in a percentage of SBS reportable under SBSR especially by non-U.S. parties registered as SBSDs or MSBSP which may be the direct or indirect counterparty to a SBS. Providing additional guidance on the treatment of SBS cleared via the principal model would be useful to promote data accuracy and consistency.

For example, an alpha cleared via the principal model that involves a clearing member ("CM") on behalf of both parties would have the following set of related transactions:

1. Alpha between Party A and Party B
2. CM1 to Clearing Agency
3. CM1 to Party A
4. CM2 to Clearing Agency
5. CM2 to Party B

In this model, we believe that the platform or the reporting side, if any, should report transaction 1, the reporting side, if any, should report transactions 3 and 5, and the clearing agency should report transactions 2 and 4. If the CM1 and Party A (or CM2 and Party B) are at the same level in the reporting hierarchy and need to agree which side is the reporting side, the reporting obligation should be with the CM. Including such clarity in SBSR would be useful to promote consistent, accurate reporting of SBS cleared via the principal model.

6.7. Further to that point, ISDA has expressed concern to the CFTC, the European Securities and Market Authority ("ESMA") and the OTC Derivatives Supervisors Group over the inconsistent approach to reporting cleared transactions in the U.S. and the EU. Since the agency model is most prevalent in the U.S., DCOs have been requested by the CFTC to report all cleared transactions in the agency style, regardless of whether the swap was executed via the principal model, thus misrepresenting the number of swaps in the flow and the parties to such transactions. Conversely, ESMA has instructed clearing

[60] Including a CFTC Unique Swap Identifier ("USI")

agencies to report all cleared transactions in accordance with the principal model, regardless of whether a transaction was executed via the agency model. This forces the clearing agency to report transactions that do not legally exist between itself and the parties. In the case of a swap that is reportable under both the CFTC Rules and European Market Infrastructure Regulation, the clearing agency is actually reporting the same set of related clearing transactions differently to each regime. As a result, in a review of global aggregated data the transactions would not be reconcilable nor could duplicates be accurately identified.

It is our view that a set of clearing transactions should be reported in accordance with the actual applied clearing model. This consistent approach across global reporting requirements would provide an accurate view of the counterparty and clearing agencies exposures for clearing related transactions and would facilitate global data aggregation and analysis. ISDA has mapped out a variety of transaction flows for both clearing models in its publication *Unique Trade Identifier (UTI): Generation, Communication and Matching*[61]. We would be happy to discuss these flows and the approach to reporting of SBS cleared via the principal model with the Commission.

6.8. We request the Commission provide clarity in SBSR that the non-clearing agency side to a cleared SBS has no reporting side obligation in the event that a SBS is cleared with a clearing agency (i) in advance of notification of its registration, or (ii) which is either not required to register or has been exempted from registration by the Commission. A reporting side would generally only be able to report its position against the unregistered clearing agency (either the beta or the gamma), and depending on the status of each side both the beta and gamma may not be reported. The reporting side would unlikely be capable of reporting whether the alpha was accepted for clearing since a non-clearing agency would not build this functionality and, if not the reporting side to the alpha, may not have connectivity to the alpha SDR.

6.9. In order to avoid a transition of reporting responsibility that could result in gaps or duplication of data, the reporting of clearing transactions should not be required ahead of Commission recognition of key clearing agencies in the U.S. SBS market. We note that some clearing agencies are deemed to be registered under Dodd-Frank [62] and ask for certainty as to whether those clearing agencies are considered "registered clearing agencies" as defined in SBSR, and would be expected to hold the inaugural reporting obligation for their clearing transactions ahead of a formal registration requirement.

6.10. Lastly, we request that the Commission make clear in SBSR that the clearing agency is solely responsible for reporting historical SBS that are clearing transactions. The clearing agency is best positioned to report both the beta and gamma, whereas a reporting side would only be able to report either the beta or the gamma to which it is a party. We note, however, that a clearing agency should not be expected to report the transaction ID of the alpha for an historical clearing transaction since such value may not be already available. Further, we note that in some cases a reporting side may be unable to report an historic alpha as before there was no regulatory need to distinguish the alpha from the beta or gamma and some firms may only have booked a position against the clearing agency. In that instance, our understanding is that the historical alpha would not be reportable.

[61] http://www2.isda.org/attachment/NzMzMQ==/2015%20Mar%2020%20UTI%20Best%20Practice%20v11.0_clean.pdf
[62] H.R. 4173 at 311

7. Reporting by Platforms

7.1. We support proposed subparagraph (1) of Rule 901(a) which would provide that SBS which are executed on a platform[63] and will be submitted to clearing shall be reported to an SDR by the platform. Based on the experience of our members with respect to reporting of alphas in other jurisdictions, a platform is well-positioned to report the key economic details agreed via its services. As suggested by the Commission, the platform must be a participant (i.e. a registered user) of the SDR to which it reports in order to ensure the data is provided in the format required by the SDR.

7.2. We agree with the Commission's approach in Proposed SBSR to limit the reporting duty of platforms to alphas and instead assign the responsibility for reporting SBS that are executed on a platform but not intended for clearing to one of the sides to the transaction. Under the CFTC Rules, we have experienced the difficulty of a shared obligation for reporting a swap. In order to have all data for a SBS reported to the same SDR, the party or parties to a SBS executed on a platform would need to onboard and build connectivity to every SDR chosen by the platforms they use and then divide their data into multiple reporting lines. The cost and complexity for the sides to a SBS would be tremendous. We ask that the Commission adopt new subparagraph (1) of Rule 901(a) as proposed.

7.3. Swap Execution Facilities ("SEFs") continue to struggle with how to comply with footnote 195[64] in the preamble to the CFTC's Part 37 requirements that implies an obligation for SEFs to obtain and interpret agreements incorporated by reference. The CFTC has acknowledged these issues, extending relief to SEFs[65] with respect to these requirements. Therefore, we appreciate the Commission's acknowledgement that a platform is not expected to report information that it does not have or that would be impractical to obtain (e.g. trader ID and trading desk ID). Equally helpful is the Commission's presumption that there will be no agreements incorporated by reference that would need to be identified by the platform in its report. Referencing such agreements provides no discernible value for an alpha since the risk between the counterparties is transferred to the clearing agency. We do not believe platforms should become warehouses for party agreements nor that platforms should be put in the position of having to glean information from bilateral party agreements. Such information was not integral to the services provided by execution venues prior to their registration under Dodd-Frank. We do not believe platforms should either be subject to such burden as a result of their registration nor is it necessary for them to be privy to (confidential) agreements between the counterparties.

7.4. A platform will not likely have advance access to complete information pertaining to whether there is an indirect counterparty on either side of the transaction that is a U.S. person, SBSD, or MSBSP. Since this would be determined on a trade by trade basis and may be dependent on the pairing of direct counterparties, the platform will need to obtain a verification of any indirect counterparties post-execution in order to accurately determine whether the transaction is subject to reporting and in order to report whether both sides of the SBS include a SBSD, as required by Rule 901(c)(5). This requirement to build a mechanism to obtain indirect counterparty information on a transactional basis must be factored into the implementation timeframe for platforms since a platform granted registration ahead of such capacity would be unable to comply. Alternatively, as suggested in section 2.2(a) of this letter, excluding the status of an indirect counterparty from determining whether a SBS is subject to reporting would greatly reduce the operational complexity of SBSR for all market participants, including platforms.

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[63] 80 Fed. Reg. 14729 "Platform means a national securities exchange or security-based swap execution facility that is registered or exempt from registration."
[64] 78 Fed. Reg. at 33491
[65] http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/15-25.pdf

7.5. With respect to the Commission's question as to whether there is any other trade information that a platform may be unable to report, this cannot be answered conclusively based on the trade information requirements of Final SBSR since the SDRs will have authority to require flags and other data elements it deems appropriate.

7.6. We request that the Commission clarify in SBSR whether an alpha SBS entered into via an execution venue in advance of its registration or exemption as a national securities exchange or security-based swap execution facility is required to be reported by one of the sides. Ideally the registration or exemption of platforms would precede the compliance date for reporting under SBSR. Otherwise, the industry will need to transition the reporting responsibility which may lead to gaps or duplications in reporting since the relevant static data and any system architectural changes will not occur simultaneously. Alternatively, the Commission should exempt alphas from reporting in advance of platform registration.

8. Reporting and Public Dissemination of Security-Based Swaps Involving Allocation

8.1. The Associations support the requirement for a reporting side to report a bunched order executed off-platform, proposed rule 901(a)(1) that would require a platform to report a bunched order alpha executed on its facility, and proposed rule 901(a)(2)(i) that would require a registered clearing agency to report a cleared bunched order, if applicable, and the allocations that result from the cleared bunched order. We also agree that a bunched order should be subject to public dissemination instead of the related allocations.

8.2. Since the execution agent is treated as the direct counterparty for a bunched order, the Commission should be aware that in advance of dealer registration determining whether a bunched order is subject to reporting under SBSR can only be based on the reporting side's understanding of the execution agent's status as a U.S. person. The U.S. person status of the funds to which the bunched order will be allocated will determine whether the allocations are subject to reporting and will have no bearing on whether the bunched order is reported. In furtherance of our comments in section 1, positioning dealer registration ahead of Compliance Date 1 will result in a more complete scope of U.S. SBS data.

8.3. The Commission should also understand that due to cross-border considerations the aggregate notional of a bunched order will not always tie out completely in reported SBSR data to the sum of the notional of its related allocations. In advance of dealer registration, if the execution agent is a U.S. person but all the funds to which the bunched order is allocated are not, some or all of the allocations may not be subject to reporting. Conversely, if the execution agent is a non-U.S. person, then the bunched order may not have been reported even if some or all of the allocations are determined to be against U.S. persons and are reported. Due to the nature of the process of bunched order execution, it is not possible to consider the status of the counterparties to the allocation when reporting the bunched order.

8.4. A party reporting a bunched order is expected to provide all the applicable primary and secondary trade information. In accordance with the treatment of other alphas, a platform would not be required to provide the title and date of agreements incorporated by reference for a bunched order alpha. Such exclusion must apply to all bunched orders, regardless of which party is responsible for reporting and whether or not the bunched order is intended for clearing or may be cleared in advance of allocation. The agreements which may be incorporated by reference can only be determined upon allocation as any reported values would refer to applicable agreements with each party to an allocation and not the

execution agent. SBSR should explicitly absolve platforms, clearing agencies and reporting sides from the obligation to report the information required by §242.901(d)(4) for bunched orders.

9. Additional Proposed Amendments

9.1. The Associations agree with the proposed amendment to Rule 905(a)(1) that requires non-reporting side notification of an error in reporting to "the person having the duty to report". We appreciate the clarity this revision provides that either a side or a platform retains the continuous obligation to report a SBS and correct such SBS report.

9.2. As we support the assignment of reporting duties to platforms and clearing agencies, the Associations also agree with the conforming changes to Rules 906(b), 907(a)(6), and 906(c).

9.3. We agree that a registered platform or clearing agency should be responsible for reporting SBS as specified in Proposed SBSR regardless of its U.S. person status, and thus agree with the proposed conforming amendment Rule 908(b).

10. Proposed Rule Prohibiting a Registered SDR from Charging Fees for or Imposing Usage Restrictions on Publicly Disseminated Data

10.1. As recommended in ISDA IV[66] and in accordance with the CFTC's regulation §43.3(d)(2), SBS data which is required to be publicly disseminated by an SDR should be freely available and readily accessible to the public. Therefore, we agree with the Commission's proposed definition of "widely accessible" as applied to the public dissemination requirement of Rule 902(a).

10.2. We believe an SDR should not be allowed to impose usage restrictions or impose fees on the SBS data which it is required to publicly disseminate, but an SDR should be allowed to offer value-added services to market participants using the data it has already disseminated.

[66] ISDA IV at 17

IV. CONCLUSION

In conclusion, ISDA, SIFMA and their members would like to thank the Commission in advance for its consideration of the comments on SBSR provided herein. We encourage the Commission to adopt, clarify or further revise SBSR and sequence the timing of certain Title VII regulations in accordance with the recommendations in this letter to promote more consistent and effective implementation and compliance that results in SBS data that is useful to the Commission, meaningful to the public and suitable for domestic and global data aggregation.

We welcome any questions you may have with respect to our recommendations and are happy to discuss the content of our letter or provide any additional information as may be helpful to the Commission's important task of finalizing SBSR.

Please contact either of us or our staff if you have any questions or require further input.

Sincerely,

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