



May 4, 2015

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

Re: Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; File No. S7-03-15

To Whom It May Concern:

Better Markets, Inc.<sup>1</sup> appreciates the opportunity to comment on the above-captioned proposed rule regarding the reporting and dissemination of security-based swap (“SBS”) information (the “Proposed Rule”) of the Securities and Exchange Commission (“Commission”).<sup>2</sup> The Proposed Rule would detail who must report security-based swap trade data to swap data repositories (“SDR”), and would also require SDRs to make their data publicly available on a non-fee basis. The Proposed Rule is generally sound, but it should be strengthened in several respects, as detailed below.

## **INTRODUCTION**

At the core of the financial crisis was a shadow market where financial institutions and their commercial clients took on enormous risks subject to little, if any, transparency or scrutiny from regulators or other market participants. AIG’s trading in hundreds of billions of dollars of complex, high-risk, Triple-A rated derivatives was little known in September 2008. No one had any idea of its massive exposures, its lack of adequate reserves, or its interconnectedness with the entire U.S. and global banking and financial systems.

AIG’s failure helped precipitate the worst financial crisis and economic downturn since the Great Depression, necessitating massive taxpayer bailouts, costing America alone over \$13 trillion in lost GDP, and inflicting widespread misery on the millions of workers and families who lost jobs, homes, and savings.

As a result, a central purpose of the Dodd-Frank Act is to bring transparency to the large and complex derivatives market. SBS trade data is a critical element of these new reforms and its importance cannot be overstated. Complete, accurate, timely, and fairly

---

<sup>1</sup> Better Markets, Inc. is a nonprofit organization that promotes the public interest in the capital and commodity markets, including in particular the rulemaking process associated with the Dodd-Frank Act.

<sup>2</sup> Securities and Exchange Commission, *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Proposed Rule*, 80 Fed. Reg. 14740 (Mar. 19, 2015), henceforth “Proposal.”

accessible data is the cornerstone of any regulatory framework. Without this information, regulators cannot do their job, which is to understand market activity, address abuses and risks, and design new protections as markets evolve.

The Commission initially proposed Regulation SBSR to govern SBS reporting requirements in November 2010,<sup>3</sup> and it re-proposed the entirety of the initial proposal in May 2013 in connection with its proposal regarding the application of the new SBS rules to cross-border transactions.<sup>4</sup> On January 14, 2014 the Commission finalized a majority of the rules governing SDRs and governing the reporting and dissemination of SBS trades **not** traded on a platform and submitted for clearing.<sup>5</sup> Among other things, those rules imposed a hierarchy for determining which party to a trade has the duty to report it to an SDR, detailed what information must be disclosed, and specified a 24-hour timeframe line as the boundary for supposedly “real-time” reporting.

The Proposed Rule addresses additional provisions of Regulation SBSR, and would govern the reporting of SBS trades **conducted on a platform and submitted for clearing**. It additionally provides guidance as to the Commission’s finalized rules, such as reporting of SBS involving allocation and prime brokerage transactions.

### **SUMMARY OF COMMENTS**

We generally support the Commission’s proposal on reporting by registered clearing agencies and platforms. The reporting regime is simple in that the same party in each and every transaction will be the party with the reporting requirement. There will be no confusion as to who has the obligation to report the initial trades and different life-cycle events. However, we are concerned that allowing the clearing agency to report data to a different SDR than the one to which the initial alpha trade was reported could cause potential complications, such as double-counting or bifurcated data.

Additionally, market participants and the public must have equal access to data disseminated from SDRs. The Proposed Rule is a step in the right direction by requiring the data to be free, but the rule must also ensure that access to the data is equal in terms of timeliness and accessibility.

Finally, for all participants who are required to report data, the Commission must specify the policies and procedures they must have in place, and set minimum floors for the quality of such policies and procedures. Such policies and procedures must cover how participants obtain and maintain their data, transform those data to the standard the Commission requires, and protect the privacy and security of the data.

---

<sup>3</sup> See Securities Exchange Commission, *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information*, 75 Fed. Reg. 75207 (Dec. 2, 2010).

<sup>4</sup> See Securities Exchange Commission, *Reopening of Comment Periods for Certain Proposed Rulemaking Releases and Policy Statements Applicable to Security-Based Swaps*, 78 Fed. Reg. 30800 (May 23, 2013).

<sup>5</sup> Securities and Exchange Commission, *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Final Rule*, 80 Fed. Reg. 14564 (Mar. 19, 2015).

## **OVERVIEW OF THE PROPOSED RULE**

The Proposed Rule would assign reporting duties for platform-executed SBS that will be submitted to clearing (the alpha trade), as well as the SBS resulting from clearing (the beta and gamma trades.)

Under the Commission's proposal, if a SBS is executed on a platform and will be subsequently submitted for clearing, the platform would be the "reporting side" of the transaction, and would be required to report the alpha trade data to the SDR of its choice.<sup>6</sup> The platform would also have the responsibility of providing the transaction ID of that alpha trade to the clearing agency. Once the trade is submitted to the clearing agency, the agency must report to the initial SDR whether or not it has accepted the trade for clearing.<sup>7</sup> If the clearing agency accepts the alpha trade for clearing, it has the responsibility to report the subsequent cleared beta and gamma trades to the same or a different SDR.<sup>8</sup> For any life cycle events, the party who initially reported the trade (alpha, beta, or gamma) also reports those events, and reports them to the same SDR as the trade was originally reported.<sup>9</sup>

The Commission proposed three alternatives to the above framework, but dismissed each in turn as adding additional and unnecessary steps prior to reporting:<sup>10</sup>

- Maintain "the reporting hierarchy in Regulation SBSR, as re-proposed," making the clearing agency the lowest in the hierarchy.<sup>11</sup>
- Modify the hierarchy to "place registered clearing agencies above other non-registered persons but below registered security-based swap dealers and registered major security-based swap participants."
- Require "the reporting side of the alpha to report both the beta and gamma transaction."

As the proposal would require both clearing agencies and platforms to report trade data, the proposal makes a number of technical changes to the rules to incorporate these new reporting participants. Such changes include extending the requirement to maintain written policies and procedures for complying with reporting obligations to these parties, omitting the requirement to collect parent and affiliate data for clearing agencies, requiring

---

<sup>6</sup> Proposal at 43 ("The Commission is proposing a new subparagraph (1) of Rule 901(a), which would require a platform to report to a registered SDR any security-based swap that is executed on that platform and that will be submitted to clearing..."); 17 C.F.R. § 242.901(e)(1)(i).

<sup>7</sup> Proposal at 43 ("Thus, proposed Rule 901(e)(1)(ii) would require a registered clearing agency to report to the registered SDR that received or will receive the transaction report of the alpha...whether or not it has accepted the alpha for clearing.").

<sup>8</sup> Proposal at 46 ("the most direct and efficient way of reporting clearing transactions to a registered SDR is to assign to a registered clearing agency the duty to report all clearing transactions to which it is a counterparty.").

<sup>9</sup> Proposal at 43 ("Rule 901(e)(2), as adopted, requires a life cycle event to be reported 'to the entity to which the original security-based swap transaction will be or has been reported.'").

<sup>10</sup> See Proposal at 45.

<sup>11</sup> See 17 C.F.R. § 242.901(a)(2)(ii).

these parties to correct information, and applying the rules extraterritorially to these domestic platforms or clearing agencies who operate abroad.

Finally, the proposal would amend the rules to require the trade data disseminated by SDRs to be provided on a non-fee basis.<sup>12</sup>

### **COMMENTS ON THE PROPOSED RULE**

- A. The Proposed Rule adds clarity as to reporting obligations, but would create a risk of fragmented data collection by allowing the components of a single trade to be reported to different SDRs.

At the inception of the Commission's SBS rule writing process, we expressed the need for clear guidelines detailing who reports swap data to SDRs. Specifically, we wrote that the Commission must not create a scenario where the parties "may not be able to determine who bears the obligation to report the transaction," and where data may not be adequately reported, or may not be reported at all.<sup>13</sup> With respect to swaps traded on a platform and cleared, the Commission's proposal ensures that the reporting party is specified and has all requisite information.

This reporting regime is simple in that the same party in each and every transaction will be the party with the reporting requirement. There will be no confusion as to who has the obligation to report the initial trades and different life-cycle events.<sup>14</sup>

Further, the party with the most information will always be the one to report the trades. It is for this reason that we agree the Commission's alternate reporting proposals are less desirable. As the Commission stated:

Each of the three alternatives could require a person who does not have information about the clearing transaction at the time of its creation to report that transaction. The only way such a person could discharge its reporting duty would be to obtain the information from the registered clearing agency or from the counterparty to the registered clearing agency. This extra and unnecessary step could introduce more opportunities for data discrepancies, errors, or delays in reporting.<sup>15</sup>

The Commission's rules should ensure as few opportunities for errors to occur as possible.

As such, we are concerned that allowing the clearing agency to report data to a different SDR than that to which the initial alpha trade was reported could result in bifurcated data. The Commission must ensure it is easy to comingle and use data from two

---

<sup>12</sup> See Proposal at 60 ("the Commission is proposing new Rule 900(tt), which would define the term 'widely accessible' as used in the definition of 'publicly disseminate' in Rule 900(cc), as adopted, to mean 'widely available to users of the information on a non-fee basis.'").

<sup>13</sup> Letter of Better Markets, Jan 18, 2011.

<sup>14</sup> Proposal at 43 ("Rule 901(e)(2), as adopted, requires a life cycle event to be reported 'to the entity to which the original security-based swap transaction will be or has been reported.'").

<sup>15</sup> Proposal at 45.

different SDRs, and enable beta and gamma trades to be traced back to the alpha trade. If it is not, the Commission must require the alpha, beta, and gamma trades to all be reported to the same SDR, impose penalties for insufficient reporting, or otherwise act to ensure alpha, beta, and gamma trades can be traced to each other. It is only through accurate and complete information about all legs of a trade that the Commission and market participants can get a clear-eyed view of the marketplace.

B. “Widely accessible” must include equal access in terms of cost, timeliness, and accessibility.

The Commission’s regulations currently require SDRs to “publicly disseminate” swaps transaction reports,<sup>16</sup> and they define that phrase as “to make available through the Internet or other electronic data feed that is **widely accessible** and in machine-readable electronic format.”<sup>17</sup> The Proposed Rule would define “widely accessible” as “widely available to users of the information on a non-fee basis.”<sup>18</sup>

Mandating that all trade data be provided on a non-fee basis is critical, as it will help ensure that the public and all market participants have equal access to the data. However, the Commission’s rules should go further and require that the data be readily available to the public on an equal basis, in terms of cost, timeliness, and accessibility. Equal basis means that the entity or entities responsible for disseminating the data must not be permitted to offer advantageous data access to any market participants, whether or not such advantage is based on fees, other forms of direct or indirect compensation, direct or indirect relationships, or any other motivation. This approach is necessary not only as a matter of fairness to all market participants, but also as a means of preventing (or at least mitigating) a number of abusive trading practices that are growing in the world of high-speed, algorithmic trading.

In the release, the Commission states its belief that the rule “necessarily implies that a registered SDR would not be permitted to impose—or allow to be imposed—any usage restrictions on the security-based swap transaction information that it is required to publicly disseminate, including restrictions on access to or further distribution of the regulatorily mandated public security-based swap data.”<sup>19</sup>

However, regulation by “implication” is insufficient. As currently framed, the Proposed Rule would merely require that the information be provided in a machine-readable electronic format for free. Under this language, an SDR could still provide direct feeds to certain privileged market participants, which bypass the aggregation and general dissemination process. This in turn will create information asymmetries that favor some market participants over others and reduce efficiency in the marketplace. Unless the final rule expressly prohibits any preferential access to the data, the potential for evasion, unfairness, and abuse will remain.

---

<sup>16</sup> 17 C.F.R. § 242.902.

<sup>17</sup> 17 C.F.R. § 242.900.

<sup>18</sup> Proposal at 02.

<sup>19</sup> Proposal at 61.

C. The rule must specify minimum policies and procedures.

Registered SBS dealers and registered major SBS participants are currently required to “establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with any obligations to report information to a registered [SDR].<sup>20</sup> The Commission’s proposal would extend this requirement to cover registered clearing agencies and platforms.

Extending this requirement is important, as clearing agencies and platforms will have a responsibility to report data to SDRs, and should have policies and procedures in place so they are compliant with the regulations.

However, the Commission should go further, and specify what areas those policies and procedures must, at a minimum, incorporate. Such floors are necessary to serve multiple purposes: they minimize evasion among firms inclined to circumvent the rule; they provide useful guidance to firms that wish to comply fully with the reporting requirements; and they provide explicit, clear-cut standards that the Commission can more easily enforce.

It should be a relatively easy to craft such requirements. The Commission itself suggested seven areas that these procedures should address (currently applicable to SBS dealers and major SBS participants):<sup>21</sup>

- (1) the reporting process and designation of responsibility for reporting security-based swap transactions;
- (2) the process for systematizing orally negotiated security-based swap transactions;
- (3) order management system outages or malfunctions, and when and how backup systems are to be used in connection with required reporting;
- (4) verification and validation of all information relating to security-based swap transactions reported to a registered SDR;
- (5) a training program for employees responsible for security-based swap transaction reporting;
- (6) control procedures relating to security-based swap transaction reporting and designation of personnel responsible for testing and verifying such policies and procedures; and
- (7) reviewing and assessing the performance and operational capability of any third party that carries out any duty required by Regulation SBSR on behalf of the registered security-based swap dealer or registered major security-based swap participant.

---

<sup>20</sup> 17 C.F.R. § 242.906(c).

<sup>21</sup> Securities and Exchange Commission, *supra* note 5 at 48.

In addition to these seven, we suggest the Commission enumerate minimum standards for policies and procedures that cover how participants obtain and maintain their data and keep private information secure. Standards for these processes are necessary to ensure data is accurate, well-preserved, and safe from misappropriation.

**CONCLUSION**

We hope these comments are helpful in your consideration of the Proposed Rule.

Sincerely,



Dennis M. Kelleher  
President & CEO

Stephen W. Hall  
Securities Specialist

Todd Phillips  
Attorney

Better Markets, Inc.  
1825 K Street, NW  
Suite 1080  
Washington, DC 20006  
(202) 618-6464

[dkelleher@bettermarkets.com](mailto:dkelleher@bettermarkets.com)

[shall@bettermarkets.com](mailto:shall@bettermarkets.com)

[tphillips@bettermarkets.com](mailto:tphillips@bettermarkets.com)

[www.bettermarkets.com](http://www.bettermarkets.com)