



UBS AG
Bahnhofstrasse 45
Zürich, Switzerland 8001
www.ubs.com

Michael Gaw
Assistant Director
Office of Market Supervision, Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

May 6, 2016

Re: Challenges related to the reporting of security-based swaps ("SBS")

UBS appreciated the opportunity to discuss with you and your colleagues UBS's approach to SBS dealer ("SBSD") registration and SBS reporting, as well as the issues and challenges that UBS faces in this regard, during our meetings on October 6, 2015 and October 29, 2015. As requested by you, we are hereby submitting to the Securities and Exchange Commission ("Commission") a summary of certain concerns related to the implementation of Regulation SBSR.¹ Some of the topics mentioned in this letter were discussed during the aforementioned meetings between UBS and the Commission, and this letter also includes certain other points that are of particular concern to UBS and other banks in the context of Regulation SBSR.

UBS supports the views and recommendations expressed in several comment letters related to the implementation of Regulation SBSR, which were submitted to the Commission by the International Swaps and Derivatives Association ("ISDA"),² the Institute of International Bankers ("IIB"),³ ISDA and SIFMA,⁴ and SIFMA and the Financial Services Roundtable ("FSR").⁵

¹ Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Final Rule, Exchange Act Release No. 74244 (February 11, 2015), 80 FR 14563 (March 19, 2015) ("Regulation SBSR").

² See Letter from ISDA, Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Proposed Rules (RIN 3235-AL 73), dated July 13, 2015 ("ISDA ANE Letter"); and Letter from ISDA, Letter on the sequential timing of compliance with the reporting and registration regulations; Proposed Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information; File No. S7-03-15, dated August 3, 2015 ("ISDA SBSR Sequencing Letter").

³ See Letter from IIB, Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent, Release No. 34-74834, File No. S7-06-15, dated July 13, 2015 ("IIB ANE Letter").

⁴ See Letter from ISDA and SIFMA, 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, dated May 4, 2015 ("ISDA/SIFMA SBSR Letter").

From these letters, UBS would like to specifically highlight the following issues related to (1) the timing of the implementation of Regulation SBSR; (2) the application of Regulation SBSR to SBS entered into by a non-U.S. person dealer with another non-U.S. person and that are arranged, negotiated or executed by personnel located in a U.S. branch or office of the dealer or its agent ("ANE");⁶ and (3) the fact that under Rule 242.908(a)(2) a SBS between non-U.S. persons is subject to regulatory reporting but not public dissemination if there is an Indirect Counterparty on either or both sides of the transaction that is a registered non-U.S. SBSD or a registered non-U.S. major security-based swap participant ("MSBSP").

1. Issues related to the timing of the implementation of Regulation SBSR

As outlined in the ISDA SBSR Sequencing Letter, requiring the reporting of SBS in advance of registration by SBSDs and MSBSPs would result in significant implementation costs in order to implement an interim SBS reporting solution that would only be utilized during the limited period of time until the compliance date for the registration of SBSDs and MSBSPs. As described in the ISDA SBSR Sequencing Letter, requiring the reporting of SBS in advance of registration by SBSDs and MSBSPs would also result in unnecessary complexities, *e.g.*, with regard to designating the reporting side of a SBS and the effect on open SBS when switching over from an interim pre-SBSD-MSBSP-registration solution to the permanent post-SBSD-MSBSP-registration solution. For these and the other reasons mentioned in the ISDA SBSR Sequencing Letter, we urge the Commission to schedule the compliance date for the implementation of Regulation SBSR after the compliance date for SBSD and MSBSP registration. As regards the finalization of the compliance date for Regulation SBSR, UBS thinks the nine-month implementation period suggested in the ISDA/SIFMA SBSR Letter for the reporting of new SBS following the later of (a) the date by which SBSD and MSBSP are required to register with the Commission or (b) the date on which the Commission announces SBS Swap Data Repository readiness in an asset class, as well as the twelve-month implementation period following such date for expired or terminated historical SBS, are a reasonable approach to ensure a sustainable and high-quality implementation of Regulation SBSR.⁷

⁵ See Letter from SIFMA and FSR, Comment Letter on the Proposed Rules on Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent (RIN 3235-AL73), dated July 13, 2015 ("SIFMA/FSR ANE Letter").

⁶ See Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception; Final Rule, Exchange Act Release No. 77104 (February 10, 2016), 81 FR 8597 (February 19, 2016) ("ANE SBSD Registration Rule").

⁷ See ISDA/SIFMA SBSR Letter at 8-17 and at 17/18.

2. Issues related to the application of Regulation SBSR to SBS entered into by a non-U.S. person dealer with another non-U.S. person and that are arranged, negotiated or executed by personnel located in a U.S. branch or office of the dealer or its agent ("ANE")

In line with the arguments stated in the ISDA ANE Letter,⁸ the IIB ANE Letter,⁹ and the SIFMA/FSR ANE Letter¹⁰ (together the "ANE Letters"), the public dissemination and regulatory reporting requirements of Regulation SBSR should not apply to ANE transactions. However, if the Commission decides to make such public dissemination and regulatory reporting mandatory for ANE transactions, such requirements should only apply to ANE transactions of registered SBSB or registered MSBSP and not to ANE transactions of entities that are not required to register as SBSB or MSBSP because of their *de minimis* activities in SBS. Requiring non-registrants to publicly disseminate and report ANE transactions seems unnecessary in light of the fact that only small numbers of ANE transactions do not involve a registered SBSB or registered MSBSP and would also be unduly burdensome for non-registrants that are only engaged in *de minimis* SBS activities.

UBS commends the Commission for its decision to only require the counting of ANE transactions towards an entity's threshold for SBSB registration from the later of (a) February 21, 2017 or (b) two months before the SBSB registration compliance date.¹¹ If the Commission decides to require regulatory reporting of ANE transactions despite the recommendations in the ANE Letters and herein to the contrary, reporting should be required only with respect to those ANE transactions that are relevant for SBSB registration (i.e., executed from the later of (a) February 21, 2017 or (b) two months before the SBSB registration compliance date).

3. Issues related to the fact that under Rule 242.908(a)(2) a SBS between non-U.S. persons is subject to regulatory reporting but not public dissemination if there is an Indirect Counterparty on either or both sides of the transaction that is a registered non-U.S. SBSB or a registered non-U.S. major security-based swap participant ("MSBSP")

UBS agrees with the ISDA/SIFMA SBSR Letter that the definition of Indirect Counterparty in rule 242.900(p) should be limited to include only U.S. person guarantors.¹² A SBS transaction between two non-U.S. persons, neither of which is a registered SBSB or registered MSBSP, should be outside the

⁸ See ISDA ANE Letter at 11.

⁹ See IIB ANE Letter at 14-17.

¹⁰ See SIFMA/FSR Letter at 11-13.

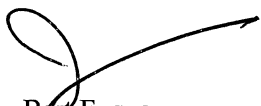
¹¹ See ANE SBSB Registration Rule at 8637.

¹² See ISDA/SIFMA SBSR Letter at 19.

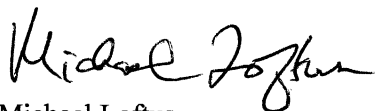
jurisdiction of Regulation SBSR even if one direct non-U.S. person counterparty to such SBS is guaranteed by a registered non-U.S. SBSB or registered non-U.S. MSBSP. Also, despite a guarantee from a registered non-U.S. SBSB or non-U.S. MSBSP, such SBS does not result in the importation of risk into the U.S., which is why the policy goals of Regulation SBSR are not implicated by such SBS either. UBS therefore recommends that the definition of Indirect Counterparty in rule 242.900(p) is changed to only include U.S. person guarantors.

UBS appreciates the opportunity to provide these comments. If we may provide further information, please do not hesitate to contact the undersigned. We look forward to continuing to discuss these important topics with the Commission.

Respectfully submitted,



Bert Fuqua
General Counsel
Investment Bank Americas Legal
UBS AG



Michael Loftus
Managing Director
Investment Bank Americas Legal
UBS AG

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

Comment File: No. S7-34-10 and No. S7-06-15