



January 18, 2011

Via Electronic Mail: rule-comments@sec.gov

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-1090

Re: Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information; File No. S7-34-10

Dear Ms. Murphy:

Managed Funds Association (“MFA”)¹ appreciates the opportunity to provide comments to the Securities and Exchange Commission (the “Commission”) on proposed Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information (the “Proposed Rule”), under Title VII² of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).³

MFA fully supports the objectives of the Dodd-Frank Act, and the Proposed Rule to improve accountability and transparency in the financial system.⁴ We acknowledge that the Commission needs access to a comprehensive data set with respect to security-based swap transactions (“SBS”) to monitor these markets for potential fraud, abuse and systemic risk. We also understand the need to require security-based swap data repositories (“SBSDRs”) to disseminate publicly a certain sub-set of this data to serve the goal of market transparency. The Proposed Rule, however, imposes requirements that may result in reporting and public dissemination of information beyond what the Commission needs to fulfill its oversight function and bring transparency to these markets, and, as drafted, these requirements could impair innovation, restrict investment and diminish market liquidity.

As a result, we recommend certain changes to the Proposed Rule that we believe balance the need for appropriate transparency with the need to protect adequately the information that market participants will provide to SBSDRs. We hope these comments serve as the beginning of an ongoing and constructive

¹ MFA is the voice of the global alternative investment industry. Its members are professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. Established in 1991, MFA is the primary source of information for policy makers and the media and the leading advocate for sound business practices and industry growth. MFA members include the vast majority of the largest hedge fund groups in the world managing a substantial portion of the approximately \$1.7 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

² Entitled “The Wall Street Transparency and Accountability Act”.

³ Pub. L. No. 111-203, § 701, 124 Stat. 1376 (2010).

⁴ *Id.* See also Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. 75208, 75208 (proposed Dec. 2, 2010) (to be codified at 17 C.F.R. pts. 240 and 242) (the “Proposed Rule Release”).

dialog between MFA and the Commission as the SBS market evolves and during the regulatory implementation phase of the Dodd-Frank Act.

I. Confidentiality of Participants to an SBS

MFA strongly opposes the public dissemination of any information that will compromise the identity or strategy of any SBS counterparty. Specifically, we believe that if participant identification numbers (“Participant IDs”) are included in any publicly disseminated transaction report, it will be impossible to protect the identities of the persons and entities assigned those Participant IDs.⁵ Since our members each employ a customized and proprietary trading strategy, disclosure of identifying information of an SBS participant could result in disclosure of the trading positions and strategies of our members. If regulation requires dissemination of participant identities, it could undermine confidence in the U.S. SBS market, damaging market liquidity and potentially causing SBS market participants to trade in jurisdictions outside the U.S. that may have different requirements for the public dissemination of transaction details. Moreover, the public dissemination of Participant IDs contravenes the Dodd-Frank Act, which clearly requires “the rule promulgated by the Commission [to provide for public availability of transaction and pricing data for cleared SBS to] contain provisions to ensure such information does not identify the participants.”⁶ We note that the Commission did not intend for the information reported under Proposed Rule 901(d) (which includes Participant IDs) to be publicly disseminated, and refer to the Proposed Rule Release which states that information reported under Proposed Rule 901(d) will not be publicly disseminated.⁷ Thus, we urge the Commission to revise Proposed Rule 902(c) (and to clarify certain language in Proposed Rule 902(a)) by prohibiting SBSDRs expressly from publicly disseminating Participant IDs or any other information or data elements reported by the reporting party under Proposed Rule 901(d) in any publicly disseminated transaction report.⁸ This approach is also consistent with Proposed Rule 902(b) in which the Commission requires public dissemination of a subset of publicly reported information under Proposed Rule 901(c) for block trades.

II. Confidentiality of Data for SBS Executed on Behalf of Multiple Funds

Investment managers often execute SBS on behalf of multiple private investment funds (“funds”) and allocate these transactions across funds managed by it. The Proposed Rule does not address whether the public dissemination of such SBS transaction detail is to be completed pre- or post-allocation. We believe the SBSDR should publicly disseminate such SBS transaction data pre-allocation to be consistent with how investment managers execute trades for their funds in the marketplace. Additionally, we are concerned that post-allocation SBS data, if publicly disseminated, will allow any of the fund’s counterparties to identify transactions that the fund executed with others. Counterparties are often aware of an investment manager’s standard fund allocation methodology and therefore, reporting transactions at the allocated level with trade execution time will make evident an allocation scheme that other

⁵ *Id.* at 75219. In comment request No. 45, the Commission asks whether reporting Participant IDs will be useful to regulators and how costly it would be for participants to report this information for each SBS.

⁶ Section 763(i) of the Dodd-Frank Act. Moreover, Section 763(i) of the Dodd-Frank Act, authorizes the Commission, with respect to uncleared SBS that are reported to an SBSDR, to require real-time public reporting in a manner that does not disclose the business transactions and market positions of any person.

⁷ Proposed Rule Release at 75212.

⁸ Proposed Rule 902(a) currently requires an SBSDR to disseminate publicly a transaction report of all data reported by the reporting party pursuant to Proposed Rule 901. This would include Participant IDs required to be reported under Proposed Rule 901(d). *Id.* at 75285.

participants can easily associate with a particular investment manager. This result would contravene the Dodd-Frank Act's stated objective of protecting the business transactions and market positions of any person.⁹ Also, utilizing the allocated trade sizes to reflect market transactions could distort the reported results of trading activity and provide users with misleading information. For example, an SBS transaction for 2 million notional may be priced differently from two SBS transactions for 1 million notional. We understand, and agree with the Commission, that an SBSDR should maintain SBS transaction data on a post-allocation basis to match how trades are legally confirmed and monitor the risk at each individual legal entity, but the SBSDR should not publicly disseminate such data.

III. Confidentiality of Customized SBS Information

We are very concerned with the Commission's interpretation of Congress' legislative mandate – *i.e.*, that virtually all SBS transaction data reported to an SBSDR must be publicly disseminated.¹⁰ Congress did not intend for the public reporting *and* dissemination of comprehensive data for customized SBS.¹¹ Moreover, such reporting undermines Congress's goal of enhancing price discovery through public reporting.¹² Price discovery only serves a purpose if there is a broad market for the relevant transaction. Customized SBS, by nature, are not widely transacted. Public dissemination of transaction information that does not provide all the material information necessary to identify such customized SBS or does not contain the data elements necessary to calculate the price of such SBS, will be incomplete and of limited use to the public. The Proposed Rule should require each SBSDR to withhold such information so as not to convey misleading or confusing price information to the market.¹³ To the extent the Commission requires comprehensive reporting of SBS data for customized transactions, we suggest excluding notional amount, payment terms and price from the information subject to the public dissemination requirements.

⁹ Section 763(i) of the Dodd-Frank Act.

¹⁰ The Dodd-Frank Act does not authorize the Commission to require *all* reported SBS transaction information to be publicly disseminated. *See Id.*, where Section 763(i) of the Dodd-Frank Act creates new Section 13(m) of the Securities Exchange Act of 1934, which distinguishes between public reporting and public dissemination of SBS data. Section 13(m)(C) sets out public reporting requirements for SBS transactions. Section 13(m)(D) addresses dissemination. It provides that the Commission *may* require an SBSDR to publicly disseminate the SBS transaction and pricing data required to be reported. In addition, Section 13(m)(C) shows that Congress intended a less restrictive standard of public reporting requirements for non-cleared SBS. Section 13(m)(C)(iii) makes clear that with respect to SBS not cleared at a registered clearing agency and that are reported to an SBSDR or to the Commission, the Commission shall require real-time public reporting for such transactions *in a manner that does not disclose the business transactions and market positions of any person*. This compares with Section 13(m)(C)(i) and (ii) which require real-time public reporting of SBS information without restriction for transactions that are subject to the mandatory clearing requirement or not subject to the clearing requirement but cleared at a registered clearing agency. Section 13(m)(C) shows that Congress intended a less restrictive standard of public reporting requirements for non-cleared SBS.

¹¹ *Id.*

¹² *Id.* Congress specified that the purpose of the public reporting requirement is to enhance price discovery. Section 763(i) of the Dodd-Frank Act, clearly states, “[t]he purpose of this subsection is to authorize the Commission to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.”

¹³ Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Proposed Rule, 75 Fed. Reg. 75208, 75215 (proposed Dec. 2, 2010). In request for comment No. 28 in the preamble to the Proposed Rule, the Commission asks whether real-time reports of custom SBS have price discovery value.

IV. Confidentiality of Block SBS Information

With respect to the determination of block trade sizes for SBS, we believe the Commission should complete a study and obtain empirical evidence supporting proper block trade definitions in each asset class to ensure any final regulation does not disrupt the markets or reduce liquidity.¹⁴ Upon completion of that study, the Commission should establish block trade levels specifically for each SBS instrument (*e.g.*, duration, underlying reference entity, etc.). If the Commission elects to set block trade levels prior to obtaining appropriate data, it should set the initial levels for all SBS asset classes sufficiently low such that they will not reduce market liquidity. The Commission could then adjust these levels over time as evidence supporting higher or lower thresholds becomes available.

V. Public Dissemination of Transaction Notionals

With respect to public dissemination of SBS transaction notional amounts, we believe the Commission should employ disclosure thresholds that are specific to each class or subclass of SBS, and are set at levels or ranges that do not threaten to reduce market liquidity. We think as the Commission examines these requirements, it should consider, where feasible, aligning disclosure standards for the cash and swaps markets. By way of example, in the market for credit default swaps, current liquidity for even the most frequently traded swaps is less than that of other asset classes. A recent analysis by DTCC¹⁵ of single name credit default trading volume over a 3-month period shows that 66 of the 89 U.S. single name credit default swap reference entities currently eligible for clearing at ICE Trust trade five or fewer times a day across the entire curve. Therefore, we support a “size-plus” approach, similar to TRACE reporting in the cash bond market. TRACE – whereby transactions greater than \$1 million notional on high yield issuers are reported as “1+” transactions and greater than \$5 million on investment grade issuers are reported as “5+” –¹⁶ effectively balances the need for post-trade price transparency with the need to protect liquidity. Without such a provision for limiting the notional disclosure of credit default swaps, we are concerned that liquidity will be impaired. An SBS dealer’s ability to hedge its risk may be compromised or more costly with full notional disclosure. This, in turn, could result in higher transaction

¹⁴ We note that Congress and the Commission both have acknowledged that real-time reporting of customized and block trade information may have an adverse impact on pricing and liquidity. Section 763(i) of the Dodd-Frank Act requires the Commission to provide for public availability of transaction and pricing data for cleared SBS contain provisions that take into account whether public disclosure will reduce market liquidity.

Also, in request for comment No. 111, the Commission solicits studies or empirical evidence to support the assertion that real-time reporting of block trade data has adverse price impact or long-term adverse impact on market liquidity. (Proposed Rule Release at 75233). At this time, we are not aware of any empirical evidence or studies on this point. Meanwhile, any adverse impact on pricing and liquidity may have a chilling effect on the SBS market. Therefore, we suggest the Commission proceed cautiously in requiring public dissemination of block SBS data, until such studies and empirical evidence are available. We are concerned that if the Commission requires disclosure of too much block trade information prior to acquiring proper empirical evidence, the markets may suffer irreversible long-term adverse effects on liquidity. We are also keenly aware that it will be much harder for the Commission to “retract” an over burdensome disclosure requirement than it will be to add disclosure requirements if the Commission’s regulations are not sufficiently protective.

¹⁵ See DTCC Quarterly Market Activity Report: Aggregated Transaction Data by Reference Entity of Single-Name Credit Default Swaps (CDS), The Depository Trust & Clearing Corporation, *available at* http://www.dtcc.com/products/derivserv/data_table_snap0002.php (last visited Jan. 18, 2011).

¹⁶ TRACESM Trade Reporting and Compliance EngineSM User Guide Version 2.0, The Financial Industry Regulatory Authority, (July 8, 2008), at 49, *available at* <http://www.finra.org/web/groups/industry/@ip/@comp/@mt/documents/appsupportdocs/p014513.pdf>

costs to the investor. While the previous example discusses credit default swaps, we understand that the disclosure rules relevant to each class of SBS will need to be considered, and may need to be subsequently revised to adapt to changing liquidity levels in each market.

VI. Timing of Reporting

Proposed Rule 901(c) sets forth the SBS information that market participants must report in real time. The Proposed Rule defines “real time” as “as soon as technologically practicable, but in no event later than 15 minutes after the time of execution of the security-based swap transaction.”¹⁷ Proposed Rule 901(d)(1) sets forth additional information that market participants must report: (i) no later than 15 minutes after the time of execution for an SBS that is executed and confirmed electronically; (ii) 30 minutes after the time of execution for an SBS that is confirmed electronically but not executed electronically; or (iii) 24 hours after the time of execution for an SBS that is not executed or confirmed electronically.¹⁸ We believe these timing requirements are impracticable and burdensome and that the policy benefits of providing SBS information within minutes of execution do not outweigh the costs in terms of the high likelihood of errors as well as the infrastructure costs to establish a mechanism to report SBS information in real time.

Section 901(d)(1) requires reporting of terms that the parties to the SBS may agree upon while negotiating the SBS confirmation. Therefore, we suggest that the Commission revised Proposed Rule Sections 901(d)(2)(ii) and (iii) to reflect that the “time of execution” means the time of execution of the confirmation. Thus, for an SBS that is confirmed but not executed electronically, we propose that market participants be required to report data required under Section 901(d) 30 minutes after the time of execution of the relevant SBS confirmation. For an SBS that is neither executed nor confirmed electronically, we propose that market participants be required to report such data 24 hours after the time of execution of the relevant SBS confirmation. Adjusting the reporting timeframe to align with the execution of confirmations comports with the practical realities of the timing for these SBS transactions.

VII. Dispute Resolution

Through Proposed Rule 905, the Commission recognizes the likelihood of discrepancies and errors in reported SBS data.¹⁹ We support the Commission requiring the reporting party to correct previously reported erroneous data. We also agree that a non-reporting counterparty should have the obligation to notify the reporting party of errors of which it is actually aware. However, we are concerned that a situation may arise where a reporting party and a non-reporting party disagree about whether the reporting party has reported erroneous data and where the reporting party refuses to correct a prior erroneous report. Thus, we believe the Commission’s final rule should provide that, if due to a dispute over whether an error exists, the reporting party does not promptly report corrected information to the SBSDR, the non-reporting party may itself report the disputed data to the SBSDR. In such event, the Commission should oblige the SBSDR to review promptly the disputed data with the parties.

We also support the Commission issuing a rule or statement in the final rule release clarifying that the reporting of a transaction to an SBSDR is for informational purposes only and will not affect the actual terms of the trade. Absent some mechanism to make the report nonbinding pending a dispute, the

¹⁷ *Id.* at 75284.

¹⁸ *Id.*

¹⁹ *Id.* at 75286.

correction mechanics in the Proposed Rule will result in the reporting party (typically the SBS dealer) prevailing in any dispute.

VIII. Phase-In

MFA strongly supports the Commission's plan, pursuant to Proposed Rule 910, to gradually phase-in any regulatory requirements to report and disseminate information regarding SBS transactions.²⁰ Many market participants will require a reasonable period of time to acquire or configure the necessary systems, engage and train the necessary staff, and develop and implement the necessary policies and procedures to implement the proposed rules. We note that the first phase of compliance begins six months after the SBSDR registration date. We would like some clarification that this six-month period will begin following registration of more than one SBSDR. If that is not the case, the first SBSDR to register will have a monopoly on SBS reporting and a competitive advantage over new entrants into this market, and we think it is to the benefit of the market and its participants to have a diverse range of options when reporting SBS data.

MFA appreciates the opportunity to comment on the Commission's Proposed Rule. If the Commission or its staff has questions, please do not hesitate to call Carlotta King or the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell
Executive Vice President, Managing Director & General
Counsel

cc: The Hon. Mary Schapiro, Chairman
The Hon. Kathleen L. Casey, Commissioner
The Hon. Elisse B. Walter, Commissioner
The Hon. Luis A. Aguilar, Commissioner
The Hon. Troy A. Paredes, Commissioner

²⁰ *Id.* at 75288.