

January 24, 2011

Ms. Elizabeth Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

Re: (1) Security-Based Swap Data Repository Registration, Duties, and Core Principles; and (2) Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information

Dear Ms. Murphy:

MarkitSERV<sup>1</sup> is pleased to submit the following comments to the Securities and Exchange Commission (“*SEC*” or the “*Commission*”) on the following proposed rulemakings to implement certain requirements included in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “*DFA*”):<sup>2</sup> (1) SEC Proposed Rule on Security-Based Swap Data Repository Registration, Duties, and Core Principles<sup>3</sup> (the “*SBS SDR Regulation*”); and (2) SEC Proposed Rule on Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information<sup>4</sup> (the “*Regulation SBSR*”) (collectively, “*Proposed Rules*”).

## 1. Introduction.

MarkitSERV provides trade processing, confirmation, matching, and reconciliation services for swaps and security-based swaps (“*SBS*”) across many regions and asset classes in order to reduce risk and improve operational efficiency in these markets. As a service and infrastructure provider to the global swaps markets, MarkitSERV supports the Commission’s objectives of increasing transparency and efficiency in the OTC derivatives markets and of reducing both systemic and counterparty risk.

In our comments below, MarkitSERV wishes to: (a) highlight some significant market consequences and impact of implementing the Proposed Rules as currently drafted; (b) identify potential deficiencies in the Proposed Rules; and (c) propose solutions and recommendations on paths to more effectively implement the Congressional intent in the Proposed Rules.

---

<sup>1</sup> MarkitSERV, jointly owned by The Depository Trust & Clearing Corporation (DTCC) and Markit, provides a single gateway for OTC derivatives trade processing. By integrating electronic allocation, trade confirmation and portfolio reconciliation, MarkitSERV provides an end-to-end solution for post-trade transaction management of OTC derivatives in multiple asset classes. MarkitSERV also connects dealers and buy-side institutions to trade execution venues, central clearing counterparties and trade repositories. In 2010, more than 19 million OTC derivatives transaction sides were processed using MarkitSERV. Please see [www.markitserv.com](http://www.markitserv.com) for additional information.

<sup>2</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> Security-Based Swap Data Repository Registration, Duties, and Core Principles [RIN 3235-AK79], 75 Fed. Reg. 77306 (proposed Dec. 10, 2010).

<sup>4</sup> Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information [RIN 3235-AK80], 75 Fed. Reg. 75208 (proposed Dec. 2, 2010).

## 2. Executive Summary.

As further explained below in detail, MarkitSERV believes that: (i) SBS SDRs and their affiliates should be permitted to offer a range of ancillary services in addition to their core services of data acceptance and data storage; (ii) the SEC should allow for various fee models for SBS SDRs, including the broadly established “sell-side pays” approach; (iii) the initial data submitted to the SBS SDR belongs to the market participants and can only be used for commercial purposes if allowed by those owners; (iv) the submission of bilaterally-confirmed or verified data to the SBS SDRs ensures accuracy and consistency, and should be strongly encouraged; (v) data consolidation should be promoted by: (X) mandating that all life-cycle events of a swap be reported to the same SBS SDR, (Y) mandating that SBS SDRs accept all swaps in the asset class in which they are active, and (Z) the Commission designating a single “consolidator / aggregator” SBS SDR per asset class or for all SBSs; (vi) only registered SBS SDRs, or their affiliates, should be allowed to serve as real-time data disseminators; (vii) the SEC’s approach of assigning reporting obligations to one of the counterparties, while allowing delegation to Third-Party Service Providers (as defined below) is preferable to the approach proposed by the Commodity Futures Trading Commission (“CFTC”); (viii) the SEC’s imposition of the 15-minute outer boundary for reporting real-time swap transaction data may be overly prescriptive in some cases, while the CFTC’s “as soon as technologically practicable” approach seems to afford appropriate flexibility; (ix) SBS SDRs themselves should be tasked with determining the set of specific reportable fields, although the Commission should establish a minimum set of reportable fields and appropriate data standards; (x) SBS SDRs should be able to set reasonable standards for reportable SBS data and to recoup their reasonable costs in verifying and accepting highly-customized and non-standard data; and (xi) the implementation of the SBS SDR Regulation and other rules should be phased in over time and in coordination with the G-20 international commitments and the timelines adopted in other jurisdictions, such as the E.U.

## 3. Description of the Existing SBS SDR Model.

Even though the concept of a SBS SDR – as a registered entity – was first articulated in the DFA in 2010,<sup>5</sup> several entities that already perform some or all of the SBS SDR functions have existed in U.S. and other markets for a number of years. Based on commitments from the G14 dealers to the New York Federal Reserve,<sup>6</sup> the OTC derivatives industry supported the establishment of trade repositories in the asset classes of credit derivatives, equity derivatives, and interest rate derivatives. Importantly, the NYFED Commitment Letter was promulgated and signed by the G14 group before the DFA passed either the House or the Senate in 2010 and before the DFA became law. Indeed the letter referenced herein and the five prior joint industry commitment letters thereto all laid out goals and were successful in establishing and meeting targets related to

---

<sup>5</sup> See DFA § 763, 124 Stat. at 1781 (adding Exchange Act Section 10B(n)).

<sup>6</sup> See the letter with certain commitments from the 14 buy-side and sell-side derivatives institutions addressed to the President of the Federal Bank of New York on March 1, 2010 (the “*NYFED Commitment Letter*”), signed by AllianceBernstein; Bank of America-Merrill Lynch; Barclays Capital; BlackRock, Inc.; BlueMountain Capital Management LLC; BNP Paribas; Citadel Investment Group, L.L.C.; Citi; Credit Suisse; Deutsche Bank AG; D.E. Shaw & Co., L.P.; DW Investment Management LP; Goldman Sachs & Co.; Goldman Sachs Asset Management, L.P.; HSBC Group; International Swaps and Derivatives Association, Inc.; J.P.Morgan; Managed Funds Association; Morgan Stanley; Pacific Investment Management Company, LLC; The Royal Bank of Scotland Group; Asset Management Group of the Securities Industry and Financial Markets Association; Société Générale; UBS AG; Wachovia Bank, N.A.; and Wellington Management Company, LLP (the “*G14*”). Commitments spelled out in the NYFED Commitment Letter include: (i) greater use of global derivatives repositories; (ii) promotion of clearable contracts and centralized clearing generally; (iii) promotion of processing and legal contract standardization; (iv) promotion of bilateral margining and collateral arrangements; (v) promotion and greater use of straight-through trade processing, electronification, trade date matching, affirmation and processing of trades. [http://www.newyorkfed.org/newsevents/news/markets/2010/100301\\_letter.pdf](http://www.newyorkfed.org/newsevents/news/markets/2010/100301_letter.pdf)

the implementation of a robust and resilient framework for OTC derivatives risk management and market structure.

The DTCC created the Trade Information Warehouse (“*TIW*”), a trade repository for credit derivatives, several years ago and, in a phased-in and industry-supported approach, launched the Equity Derivatives Reporting Repository (“*EDRR*”) with MarkitSERV in August 2010. MarkitSERV provides a gateway for the credit and equity trade repositories to provide the entire set of trade details as confirmed by the counterparties to the transaction. Confirmation of economic and legal terms, submitted and ultimately verified by parties to the transaction on a timely basis, is crucially important to ensure legal certainty, particularly in the event of financial crisis and economic duress, and accuracy for the creation and continuation of effective regulatory monitoring.

The concept of a swap data repository is not new and, although it continues to rapidly evolve, there is an established operational model applicable to these entities. Below we discuss how the mandate in the DFA to establish the SBS SDRs<sup>7</sup> and the SEC’s rules thereunder will impact the existing model.

#### **4. Proposed SBS SDR Regulation.**

On December 20, 2010, the SEC published the proposed rule on Security-Based Swap Data Repository Registration, Duties, and Core Principles - the SBS SDR Regulation.<sup>8</sup> This rule is intended to clarify how the SBS SDRs “are required to collect and maintain accurate [SBS] transaction data so that relevant authorities can access and analyze the data from secure, central locations to better monitor for systemic risk and potential market abuse.”<sup>9</sup> MarkitSERV respectfully submits the following comments for the SEC to consider before publishing its final rule.

##### **a. SBS SDRs Should Have the Flexibility To Perform Broader Functions Than Those Mandated in the SBS SDR Regulation**

As mandated by the DFA, an enormous amount of swaps data will be reported to the Commission, to SBS SDRs and ultimately to the public.<sup>10</sup> Ensuring the accuracy and quality of such data will be critical for the Commission’s achievement of the regulatory goals of transparency, efficiency and systemic risk mitigation.<sup>11</sup> Also, as envisioned by the DFA, SBS SDRs will play a pivotal role in ensuring the accuracy of swaps data both for public consumption and regulatory reporting purposes.

MarkitSERV believes that one of the critical components in ensuring the accuracy of swaps data is the degree to which such data is utilized by industry participants in other processes. The existence of a number of feedback loops and distribution channels through which data will flow will enable participants to identify, test and correct

---

<sup>7</sup> See DFA, §§ 763(i) and 766(a), 124 Stat. at 1779, 1797 (adding Exchange Act Sections 10B(m)(1)(G) and 13A(a)(1)(A), respectively). The DFA amends the Commodity Exchange Act (“*CEA*”) to provide for a similar regulatory framework with respect to reporting to SDRs of swap data that is regulated by the Commodity Futures Trading Commission (“*CFTC*”).

<sup>8</sup> 75 Fed. Reg. 77306.

<sup>9</sup> *Id.* at 77307.

<sup>10</sup> See 156 Cong. Rec. S5902-1, S5921 (daily ed. July 15, 2010) (statement of Sen. Blanche Lincoln) (explaining that, while there were some questions as to the capacity of the swaps market infrastructure to absorb and hold swaps data, “the conference report requires 100% of all swaps transactions to be reported. It was universally agreed that regulators should have access to all swaps data in real time.”).

<sup>11</sup> See SBS SDR Regulation, 75 Fed. Reg. at 77307.

inaccuracies and errors. Allowing SBS SDRs to offer an array of services that are ancillary (“*Ancillary Services*”) to those narrowly outlined in the SBS SDR Regulation (*i.e.*, basic receipt and storage of swaps data) will therefore promote greater efficiencies and greater accuracy of data.<sup>12</sup>

These Ancillary Services may include: asset servicing, confirmation, verification and affirmation facilities, collateral management, settlement, trade compression and netting services, valuation, pricing and reconciliation functionalities, position limits management, dispute resolution, counterparty identity verification and others. MarkitSERV believes that SBS SDRs should be encouraged to perform these services, including through the delegation or sub-contracting of the performance of these Ancillary Services to Third-Party Service Providers that may be non-registered entities provided that the Ancillary Services are not the core services that would subject the Third-Party Service Providers to the SBS SDR registration requirements.

We agree with the SBS SDR Regulation that industry participants should not be forced by SBS SDRs to use any of these additional Ancillary Services to comply with the requirements of the DFA or to use these services to gain access to the regulated services offered by the SBS SDRs and other regulated entities.<sup>13</sup> Instead, market participants’ decisions to use or not to use a given SBS SDR or its affiliates’ Ancillary Services should rest entirely with the market participant. These decisions should not be tied to any other service provided by a regulated entity or its affiliate (*e.g.*, by a clearing agency or a derivatives clearing organization (“*DCO*”), a swap execution facility (“*SEF*”), a designated contract market (“*DCM*”) or a SBS SDR and any related Third-Party Service Provider).

b. The SEC Should Endorse the Established SBS SDR Fee Model

MarkitSERV supports both of the requirements for the transparency of SBS SDR fees and for the unbundling of SBS SDR fees from the Ancillary Services that may be provided by the SBS SDRs. However, we have some concerns related to the provisions in the proposed SBS SDR Regulation that require non-discriminatory pricing of SBS SDR services.<sup>14</sup>

The fee structure that is most commonly used by existing trade repositories requires only sell-side (*i.e.*, dealer side) participants to pay for the costs of participating. Thus, buy-side participants are not charged any fees.<sup>15</sup> MarkitSERV believes that the use of such model was a key factor in the rapid emergence of trade repositories in the global swaps markets across various asset classes. This model has worked effectively to ensure broad utilization of core trade repository services as well as the Ancillary Services. Further, this fee model is sustainable in covering the costs that are incurred by the SBS SDRs in providing services for various classes of participants.

---

<sup>12</sup> See *id.* at 77320 (“Should the Commission impose any additional duties on SDRs? ... (*e.g.*, managing life cycle events and asset servicing?)”).

<sup>13</sup> See *id.* at 77320 (“Although an SDR should be allowed to bundle its services, including any ancillary services, this proposed rule would require the SDR to also provide market participants with the option of using its services separately. For instance, if an SDR or its affiliate provide an ancillary matching and confirmation service, then the SDR would be prohibited from requiring a market participant to use and pay for that matching and confirmation service as a condition of using the SDR’s data collection service.”).

<sup>14</sup> *Id.* at 77320 (“... [R]ule 13n-4(c)(1)(i) would require each SDR to ensure that any dues, fees, or other charges it imposes, and any discounts or rebates it offers, are fair and reasonable and *not unnecessarily discriminatory*.”) (Emphasis added).

<sup>15</sup> *Id.* at 77308. The Commission asked: “How would the rules proposed or that may be adopted affect potential revenue sources for SDRs, and their commercial viability? .... Would there be advantages or disadvantages to the market if SDRs were required to provide basic services on an at-cost or utility basis?”

Accordingly, MarkitSERV believes that requiring SBS SDRs to utilize the non-discriminative pricing model (as is currently proposed in the SBS SDR Regulation) will likely cause the costs for buy-side market participants to increase (from zero) and thus discourage the buy-side class of participants from using and further adopting SBS SDRs.

Therefore, MarkitSERV recommends that the SEC permit the established “sell-side-pays” commercial model to continue, or at least leave room for various SBS SDRs to choose to continue to use the existing model if such model continues to be acceptable by the counterparties and participants at the SBS SDR. While fee models may evolve over time, there should be an opportunity for existing market fee structures to remain in place if that is most conducive to broad market adoption.

Alternatively, to comply with the non-discriminatory mandate in the DFA,<sup>16</sup> the SBS SDR Regulation could permit SBS SDRs to establish different fee structures for classes of participants – the sell-side and buy-side, for example – to reflect the different cost of their usage of the SBS SDR. We believe that this would comply with the DFA’s non-discriminatory requirement<sup>17</sup> because SBS SDRs would be prohibited from discriminating *within* each class, while participants in *different* classes may be charged different fees. We believe that any other literal interpretation of “non-discriminatory access” would have the unintended consequence of significantly increasing the costs for buy-side participants and, by doing so, generally discouraging their use of SBS SDRs. Another alternative may be to require or permit only the reporting party to pay the SBS SDR fees; presumably this condition will again largely capture swap dealers (“*SDs*”) and major swap participants (“*MSPs*”).

c. The Use of Participant Data by SBS SDRs Should be Governed By User Agreements

The Commission has requested comment on whether SBS SDRs should be allowed to use the data that they receive from counterparties in a commercial manner,<sup>18</sup> whether such use should be permitted without the express consent of counterparties,<sup>19</sup> and whether SBS SDRs should be allowed to share such data with their affiliates.<sup>20</sup>

In the interest of ensuring minimal intrusion on commercial activity and optimal incentives for parties to support and encourage robust and accurate reporting, and the development of valuable commercial products, MarkitSERV believes that data provided to SBS SDRs should only be used as permitted by the relevant market participants in agreements between them and the SBS SDR. We agree with the SEC’s view that ownership of transaction data should at all times remain with the trade participants unless otherwise specifically agreed by them.

Furthermore, we agree with the Proposed Rule 13n-5(b)(5), which requires every SBS SDR to “establish, maintain, and enforce written policies and procedures reasonably designed to prevent any provision in a valid

---

<sup>16</sup> See DFA § 763, 124 Stat. at 1784 (adding Exchange Act Section 10B(n)(7)(A) (“Antitrust Considerations”); *see also*, SBS SDR Regulation, 75 Fed. Reg. at 77320 n. 70 (“The [DFA] refers to the first core principle as “antitrust considerations,” which the Commission believes include market access to services offered by and data maintained by the SDRs.”).

<sup>17</sup> See SBS SDR Regulation, 75 Fed. Reg. at 77320 (“Such dues, fees, other charges, discounts, or rebates shall be applied consistently across *all similarly situated users* of the SDR’s services, including, but not limited to, market participants, market infrastructures...”) (Emphasis added).

<sup>18</sup> See *id.* at 77326 (“Should the Commission restrict or prohibit an SDR’s use of data for commercial purposes?”).

<sup>19</sup> See *id.*

<sup>20</sup> See *id.*

SBS from being invalidated or modified through the procedures or operation of the SDR.”<sup>21</sup> The Commission goes on to state that “... SDRs, through their processes of substantiating the accuracy of the data or in their user agreements, may, and without the knowledge of the counterparties, cause the modification of terms of an SBS... [that] can be highly negotiated between the counterparties...”<sup>22</sup> Even though certain minimum data standards should apply to SBS transaction data that can be submitted (and accepted) by the SBS SDR, such standards should be able to accommodate a wide variety of SBS transactions submitted per asset class; provided, however, that SBS SDRs should be permitted to charge reasonable fees and recoup any additional costs that they may incur for processing any highly non-standard, albeit eligible, SBS transactions submitted to the SBS SDR for reporting by participants.<sup>23</sup>

d. SBS SDRs Should Ensure and Encourage Reporting of Bilaterally Verified Data to SBS SDRs and to the Public

We believe that the use of confirmed swaps data should be the preferred approach for all reporting in order to help promote accuracy and consistency in reporting. We acknowledge that requiring the use of confirmation data may not be practicable in some situations, but believe these can be specifically addressed.

First, the accuracy of the swap data that is received and stored by SBS SDRs is of great importance in ensuring that the SEC’s regulatory objectives can be achieved. Consistent with the mandate of the DFA articulated in the enumerated duties of SBS SDRs,<sup>24</sup> the Commission should encourage the use and reporting of trade data that has been confirmed or verified by both counterparties via an affirmation or a matching process. Separately from the SBS SDR Regulation, the Commission has proposed a rule which would require SBS SDs and MSPs to promptly verify the accuracy of the terms of a trade,<sup>25</sup> and MarkitSERV believes that the environment envisaged by the SBS SDR Regulation would greatly benefit from being connected with the confirmation requirement (such as the verified trade acknowledgement record).

Receiving verified trade acknowledgement data would consist of the receipt of a single record to which both counterparties have expressly agreed. Given both the economic and legal significance of the confirmation terms, the likelihood that such trade data would be accurate will be very high, and such accuracy was proven over time as a result of the NYFED industry commitments for confirmation submission and timeliness.

Second, while we believe that the use of confirmed swaps data should be the preferred approach for all reporting, we acknowledge that mandating full bilateral confirmation of trades as a means of ensuring the accuracy of trade records may come at the expense of expediency of reporting for real-time reporting purposes to the public. We note that the SEC’s proposed rule would only rely on single-sided trades for real-time reporting purposes

---

<sup>21</sup> See *id.* at 77331.

<sup>22</sup> See *id.*

<sup>23</sup> Note that the Commission recognizes that SBS SDR must remain commercially viable and recoup their reasonable costs on a non-discriminatory basis. “... The Commission is also aware that the regulatory framework for SDRs being developed by the Commission must take into account the commercial viability of SDRs, because realizing the benefits of SDRs requires that entities seek to engage in the business of being an SDR.” See *id.* at 77308.

<sup>24</sup> See DFA § 763, 124 Stat. at 1782 (adding Exchange Act Section 10B(n)(5)(B) ([SBS SDRs shall] “confirm with both counterparties to the security-based swap the accuracy of the data that was submitted.”); see also SBS SDR Regulation, at 77307 (“By maintaining transaction records that are accessible by both counterparties to an SBS, SDRs will provide a mechanism for counterparties to ensure that their records reconcile on all key economic details, which may decrease the likelihood of disputes.”).

<sup>25</sup> See Trade Acknowledgement and Verification of Security-Based Swap Transactions, (to be codified at 17 C.F.R. § 240.15Fi-1(e)(3)) (unpublished).

(i.e., these trades will be neither confirmed, nor affirmed, nor verified).<sup>26</sup> In the interest of efficiency and timeliness of real-time reported swaps data, one-sided submissions for confirmation may be used for real-time reporting purposes. Those could then be corrected if any discrepancies became apparent at the time of confirmation.

e. Access to SBS SDRs

MarkitSERV supports the open access requirement for SBS SDRs. However, we believe that the regulations should be understood to permit SBS SDRs to specify the methods and channels that participants need to use to connect to them, which will most commonly be provided in the form of the Application Programming Interfaces (APIs) and through setting of certain minimum standards.

SBS SDRs should also be permitted to outsource the function of providing connectivity to other specialized entities that may be either regulated or not ("**Third-Party Service Providers**"), without specifically requiring any specific services from such Third-Party Service Provider as a condition to gaining access to the SBS SDR.

**5. Real-Time Reporting of Swap Transaction Data.**

Many of the issues discussed above in connection with the SBS SDR Regulation are also related to the Regulation SBSR.<sup>27</sup> MarkitSERV would like to provide the following comments to the Commission for consideration in promulgating the final Regulation SBSR.

a. Data Must Be Consolidated in Order to Improve Transparency in the Market

MarkitSERV believes that, in order to most effectively increase transparency in the swaps markets, it will be important for the real-time swaps data to be available on a consolidated basis.<sup>28</sup> While the failure to achieve consolidated public reporting would affect all market participants, it could especially disadvantage the large number of less frequent and smaller users, as well as the general public; they would simply not be able to obtain an accurate view of activity in the swaps market given the cost associated with and the complexity of accessing multiple data sources. The statutory goals of increasing transparency in the swaps market would therefore not be achieved.

Consolidation of swaps data from multiple sources will increase both the cost and complexity of the transparency regime. Any unnecessary fragmentation should therefore be avoided at the outset. To achieve this goal we suggest that the Commission consider the following recommendations:

- i. ***Only Registered SBS SDRs Should be Authorized to Serve as Real-Time Trade Report Disseminators.*** To avoid unnecessary fragmentation of data, the use of Third-Party Services Providers, such as third-party information disseminators that are not SBS SDRs, should not be allowed.

---

<sup>26</sup> Note that there are three classes of quality of transaction data: (1) confirmed transaction data offers the highest level of accuracy and completeness because it is legally confirmed by both parties; (2) verified data, even if not confirmed, is also highly reliable since it has been approved and verified by both parties; and (3) single-sided data is least reliable since it is only provided by one party and not confirmed or verified by the other counterparty.

<sup>27</sup> See Regulation SBSR, 75 Fed. Reg. 75208 (proposed Dec. 2, 2010).

<sup>28</sup> See SBS SDR Regulation, 75 Fed. Reg. at 77307 ("... Without an SDR, data on SBS transactions is dispersed and not readily available to regulators and others.").

MarkitSERV is concerned with the CFTC's proposal to allow DCMs and SEFs to task unregistered Third-Party Services Providers with the real-time dissemination of swaps that were executed on their platforms.<sup>29</sup> MarkitSERV believes that little regulatory or market benefit would arise from using unregistered third-party real-time disseminators for such real-time reporting. Further, this may result in unnecessary fragmentation of swaps data that cannot easily be reversed. We support the SEC's proposed rules of allowing real-time dissemination only via registered SBS SDRs or via their qualified affiliates or other Third Party Service Providers to whom SBS SDRs have delegated their duties with respect to real-time data dissemination.<sup>30</sup>

- ii. ***Life Cycle Events Relating to a Swap Should be Reported to the Same SBS SDR.*** MarkitSERV supports the Commission's proposal to require a single SBS SDR to receive, store, and report where appropriate all relevant information related to a given swap transaction throughout its lifecycle. Such approach will both prevent fragmentation and ensure that corrections to previously reported data can be easily identified by the public.
- iii. ***SBS SDRs Must be Able to Accept all Swaps in Each Asset Class.*** Without specific requirements related to the range of products that can be reported to them, SBS SDRs may be tempted to limit their operating costs by only accepting the more standardized categories of swaps which also tend to trade in high volumes.<sup>31</sup> This would result in incomplete market coverage and an increased fragmentation of the reported data. MarkitSERV therefore recommends that the SEC give particular weight to the DFA provisions requiring SBS SDRs to accept all trades in a given asset class<sup>32</sup> as a means of ensuring broad coverage while guarding against fragmentation that could result from inadequate SBS SDR functionality.

We expect that some level of data fragmentation will be unavoidable. We believe the Commission should consider designating one SBS SDR per SBS asset class to act as the industry consolidator of SBS data for the Commission and for the purposes of public reporting.<sup>33</sup>

b. The SEC and CFTC Should Harmonize Rules Regarding Parties Responsible for Reporting Trades

The SEC and CFTC have taken somewhat different approaches in deciding which party is responsible for reporting data elements of a swap transaction. The SEC requires one of the counterparties to a transaction to be responsible for reporting but permits that participant to delegate its responsibility to Third-Party Service

---

<sup>29</sup> See Real-Time Reporting of Swap Transaction Data, 75 Fed. Reg. 76140, 76144 (proposed Dec. 7, 2010) (defining Real-Time Disseminator as including third-party service providers).

<sup>30</sup> See Regulation SBSR, 75 Fed. Reg. at 75227 (“[T]he Commission preliminarily believes that the best approach would be to require registered SDRs to disseminate SBS transaction information, and to require other market participants to report such information to a registered SDR in real time, so that the registered SDR can in turn provide transaction reports to the public in real time.”).

<sup>31</sup> See SBS SDR Regulation, 75 Fed. Reg. at 77327 (top 3<sup>rd</sup> column).

<sup>32</sup> See DFA § 763, 124 Stat. at 1782 (adding Exchange Act Section 10B(n)(5)(A)); see also SBS SDR Regulation, 75 Fed. Reg. at 77327 (requiring an SDR to accept all SBSs that are reported to it in a given asset class if the SDR accepts any SBSs in that asset class).

<sup>33</sup> Indeed, to echo this belief, the Commission asked whether “[i]f the Commission were to designate one SDR to be the consolidator of SBS data in an asset class or for all SBS data, are there requirements that should be imposed on such an entity that are different than those imposed on other SDRs?” SBS SDR Regulation, 75 Fed. Reg. at 77309.

Providers,<sup>34</sup> while the CFTC takes a more prescriptive approach, allocating responsibility for reporting specific data sets to different parties depending on the characteristics of execution or clearing.<sup>35</sup>

We believe that the most efficient approach to implementing reporting obligations will be to clearly assign reporting responsibility to one counterparty while providing this counterparty with the flexibility of choosing how to satisfy its obligation in the most timely and efficient manner, including potential delegation to Third-Party Service Providers such as a SEF or a DCO. We therefore agree with the SEC's approach because it is more flexible and would allow participants to establish procedures based on their individual business needs, and expect it to be ultimately more effective at meeting the regulatory objectives of establishing such obligations in a timely fashion.

Finally, MarkitSERV recommends that, for situations where a U.S.-based end user counterparty faces a non-U.S. SD/MSP, the SEC should provide further clarification on which party could report. In light of the end-user resources and the operational and technical challenges for reporting, MarkitSERV believes that the most efficient approach will often be for the U.S. counterparty to delegate the task of reporting to the non-U.S. SD/MSP, assuming that this party is willing to perform such function. We therefore recommend that the Commission explicitly allow such delegation.

c. The Outer Boundary Deadline for Real-Time Reporting Should Be Eliminated or Phased in Over Time

MarkitSERV believes that the requirement to report a swap transaction to a real-time disseminator "as soon as technologically practicable" will ensure the timeliness of the public reporting while providing sufficient flexibility to reflect product, execution, and processing characteristics. However, we believe that imposing a 15-minute outer boundary on real-time reporting is impractical.

For example, in some instances, a counterparty must review the transaction details that its counterparty, or the arranging broker, has submitted. Also, complying with a strict 15-minute deadline even for non-electronically executed or confirmed trades will require significant additional implementation efforts by the industry at a time when resources are already stretched in order to meet other requirements under the DFA.

MarkitSERV therefore recommends that the 15-minute outer boundary requirement either be removed or, at a minimum, phased in over time to allow the SEC to determine what timing deadlines are practicable before imposing any arbitrary limit.

d. SBS SDRs Should Determine Reportable Fields

Under the DFA, the SEC must determine which data fields should be reported both to SBS SDRs and to the public.<sup>36</sup> This task will likely be challenging for the Commission with respect to SBS and swaps because these

---

<sup>34</sup> See Regulation SBSR, 75 Fed. Reg. at 75211 (explaining Proposed Rule 901(a), which explains which party is the reporting party, and then stating "Rule 901(a) would not prevent a reporting party to a SBS from entering into an agreement with a third party to report the transaction on behalf of the reporting party.").

<sup>35</sup> See Real-Time Reporting of Swap Transaction Data, 75 Fed. Reg. at 76172 (to be codified at 17 C.F.R. § 43.3(a)(3)) (setting forth rules to determine which party is responsible for reporting based on whether either party is a swap dealer or major swap participant).

<sup>36</sup> See DFA, § 763, 124 Stat. at 1781 (adding Exchange Act Section 10B(n)(4)(A)(i) ("the Commission shall prescribe standards that specify the data elements for each security-based swap....").

contracts are complex products that can require a large number of data fields in order to be electronically confirmed,<sup>37</sup> highly customizable, and because new swaps products and electronic processing of existing products emerge on a continuous basis, for example, variations of total return equity and dividend swaps, as well as an envisioned accumulator equity derivative products.

Furthermore, any real-time reporting regime will be meaningfully transparent only if the users of the data can distinguish between: (i) reported transactions that they could have also entered into (the so-called “addressable flow,” “actionable” or “indicative” trades); and (ii) other transactions that, while reportable, do not represent the “addressable flow,” “actionable” or even “indicative” trades (*i.e.*, meaning that a third party cannot enter into such trade), but nevertheless constitute real transactions such as trade compressions, option exercises, or delta hedges. Similar to the established conventions in the bond or equity markets, so-called “condition flags” might therefore need to be established in the swaps markets, which will require significant technical expertise and understanding of market conventions.

As an expert in the data collection and processing industry, MarkitSERV believes that SBS SDRs, in dialogue with market participants and the Commission, will be in the best position to determine which fields could and should be reported to them as well as to the public. We do not believe that the alternative, *i.e.*, a prescriptive approach where the Commission provides market participants and SBS SDRs with a detailed list of reportable fields for each category of swap, is practical. This system will be outdated with every new product launch or change in market practice. The result would be a regulatory scheme that is continuously lagging behind the market. We therefore support the SEC’s proposal to provide SBS SDRs with the authority to define the relevant fields on the basis of general guidelines as set by the SEC. When setting these guidelines the Commission should take the experience in the European equity markets into account, where following the introduction of MiFID,<sup>38</sup> a significant amount of data fragmentation occurred in the equities markets; and to date, any efforts to consolidate such fragmented data have failed. The Commission must therefore also ensure that there is consistency between the fields that different SBS SDRs in the same asset class would collect and report in order to lay the foundation for the data to be consolidatable.

## **6. Other Issues.**

### **a. Implementation Should be Phased In Over Time**

The implementation of real-time reporting across all swaps markets will pose a significant challenge to the industry. We therefore believe that a phased-in approach would be appropriate in order to reduce execution risk and avoid loss of confidence in this vitally important regulatory structure. The Commission could phase-in these requirements by initially requiring real-time reporting only for the highest priority and most standardized products. This would realize important transparency objectives but would also provide sufficient time to develop the most effective regulatory mechanisms for the remaining, more complex products.

---

<sup>37</sup> The confirmation of a new “standard” Credit Default Swap, for example, would contain 35-50 fields, depending on structure. Confirmation of all Credit Default products and life cycle events combined will require a total of 160 fields.

<sup>38</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC; *see also* Directive 2008/10/EC, of the European Parliament and of the Council of 11 March 2008 amending Directive 2004/39/EC on markets in financial instruments, as regards the implementing powers conferred on the Commission.

In addition, MarkitSERV believes that, given the international nature of the swaps market, it would be most appropriate to aim for an implementation timing that is broadly consistent with the G20 commitments and the proposed European implementation. Such approach would improve the chances of consistent adoption across regions and minimize opportunities for regulatory arbitrage between the different jurisdictions.

### Summary Conclusions

For the reasons explained above, we welcome the adoption of the SBS SDR Regulation and the Regulation SBSR and appreciate the opportunity to provide our comments on these two regulations.

We thank the Commission for considering our comments. In the event you may have any questions, please do not hesitate to contact the undersigned or Gina Ghent at [gina.ghent@markitserv.com](mailto:gina.ghent@markitserv.com).

Sincerely,



Jeff Gooch  
Chief Executive Officer  
MarkitSERV

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

Division of Trading and Markets,  
Michael Gaw, Assistant Director  
David Michehl, Senior Special Counsel  
Sarah Albertson, Special Counsel  
Natasha Cowen, Special Counsel  
Yvonne Fraticelli, Special Counsel  
Geoffrey Pemble, Special Counsel  
Brian Trackman, Special Counsel  
Mia Zur, Special Counsel  
Kathleen Gray, Attorney  
John Ramsay, Deputy Director  
Jo Anne Swindler, Assistant Director  
Richard Vorosmarti, Special Counsel  
Angie Le, Special Counsel  
Miles Treakle, Staff Attorney  
Bradley Gude, Special Counsel