May 31, 2016

Via Email (rule-comments@sec.gov)
Mr. Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Security-Based Swap Data Repositories; ICE Trade Vault, LLC; Notice of Filing of Application for Registration as a Security-Based Swap Data Repository Release No. 34–77699; File No. SBSDR– 2016–01; 81 Fed. Reg. 25475 (Apr. 28, 2016)[1]

Dear Mr. Fields:

The Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA AMG" or "AMG")[2] appreciates the opportunity to comment on the Application for Registration of ICE Trade Vault, LLC ("ICE") as a Security-Based Swap Data Repository ("SBS DR") with the Securities and Exchange Commission ("SEC" or "Commission").

Security-based swaps ("SBS") are important investment and risk management tools for asset managers, whose clients include registered investment companies, endowments, public and private pension funds, unit investment trusts and private funds.[3] Given this importance, AMG previously expressed its support for robust segregation standards for cleared SBS, voluntary clearing of single-name credit default swaps to improve market structure, and increased transparency through SBS reporting.[4]

While AMG continues to support SBS reporting and believes that ICE is well-equipped to serve the role of SBS DR, AMG believes that ICE should revise its on-boarding requirements to

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[1] Application *available at*: https://www.sec.gov/rules/other/2016/ice-trade-vault-form-sdr.htm.

[2] SIFMA AMG members represent U.S. asset management firms whose combined assets under management exceed $34 trillion. The clients of AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, unit investment trusts and private funds such as hedge funds and private equity funds.

[3] While SIFMA AMG is providing comments from the perspective of asset managers and their clients, AMG also agrees with the comments of the Investment Company Institute who has submitted a separate comment letter on behalf of registered investment companies.

[4] *See* 25 Investment Management Firms Commit to Single-Name CDS Clearing, *available at*: http://www.sifma.org/newsroom/2015/25_investment_management_firms_commit_to_single-name_cds_clearing/, SIFMA AMG and ICI Submits Comments to the SEC on Standards for Covered Clearing Agencies, *available at*: http://www.sifma.org/issues/item.aspx?id=8589960399 and SIFMA AMG Submits Comments to the SEC on Regulation SBSR, *available at*: http://www.sifma.org/issues/item.aspx?id=8589957770.

provide a mechanism for non-reporting parties, such as asset managers' clients, to serve their limited role without fully on-boarding and restrict requirements to those set forth in Commission Regulation. Further, AMG believes that ICE should clarify that certain unique identification codes ("UICs") and parent/affiliate fields are not required for SBS transactions executed by an asset manager as execution agent.[5] Finally, AMG asks that the Commission provide clarity on the schedule for SBS reporting compliance and, prior to the compliance date, impose a cap on the reporting of notional amounts for block trades so that the market can transition without disruptions.

I.   **ICE Should Permit Non-Reporting Parties to Fulfill Their Limited Statutory Obligations Without Requiring Full On-Boarding and Should Not Impose Requirements Beyond Those Set Forth in Commission Regulation**

Non-reporting parties play a limited and passive role in SBS reporting. The non-reporting party does not control where the reporting party reports the trades and only interacts with the SBS DR to correct errors pursuant to Rule 905 and, to the extent applicable under Rule 906, identify missing UIC information and parent/affiliate information.

Non-reporting parties should be able to fulfill these limited statutory obligations without having to fully on-board to the SBS DR. ICE's registration application, however, provides no route for the non-reporting party to do so without full on-boarding by subscription.[6] The subscription agreement requires, among other things, that the non-reporting party indemnify ICE, specifically that:

> Participant shall indemnify, protect and hold harmless ICE Trade Vault, its directors, officers, affiliates, employees and agents from and against any and all losses, liabilities, judgments, suits, actions, proceedings, claims, damages, and costs (including attorney's fees) resulting from or arising out of (i) any act or omission by any person obtaining access to the ICE Trade Vault Platform through the Passwords (other than through the fault or negligence of ICE Trade Vault), whether or not Participant has authorized such access; and (ii) any act or omission of any agent acting under authorization of Participant in connection with the use of the ICE Trade Vault Service.[7]

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[5] 80 Fed. Reg. 14740 (March 19, 2015) (proposal to amend 17 CFR Part 242); SIFMA AMG Submits Comments to the SEC on Regulation SBSR (Nov. 30, 2015), *available at*: http://www.sifma.org/issues/item.aspx?id=8589957770.

[6] ICE Registration Application, Exhibits U.2 through U.5, *available at*: https://www.sec.gov/rules/other/2016/ice-trade-vault-form-sdr.htm.

[7] Registration Application, Exhibit U.2, Section 6.b, *available at*: https://www.sec.gov/rules/other/2016/ice-trade-vault-form-sdr.htm.

On-boarding also imposes other requirements not appropriately placed on a non-reporting party, including agreement to an on-site audit, to resolution of any controversy by arbitration and to be bound by the ICE SBSDR Guidebook. Requiring the non-reporting party to agree to these terms with an SBS DR that it did not select and has only minimal reasons with which to interact is inconsistent with the requirements and aim of Regulation SBSR and should be rectified.

Likewise, the non-reporting party should not be required to pay reporting fees, particularly when the reporting party is already tendering payment to ICE. ICE has offered a pricing structure that is an improvement on some existing models, proposing to only charge the CCP (and not counterparties) for cleared trades and not to charge maintenance fees for open swaps positions.[8] However, ICE's requirements that each participant (including the non-reporting party) must pay a minimum monthly invoice and that *both* counterparties (reporting and non-reporting) to bilateral SBS and options will be charged is not appropriate. Again, the non-reporting party does not choose the SBS DR and is not the primary party utilizing the SBS DR's services.

In addition, AMG believes that the ICE registration application should clarify that, to the extent some limited relationship between ICE and the non-reporting requirement is required, an asset manager can establish that relationship once on behalf of its many clients. Although we understand from ICE that asset managers would be able to on-board and submit information on behalf of their clients, the participation agreement is framed in terms of the counterparty to the SBS (*i.e.*, the asset manager's client), and not at the asset manager level.[9] While we do not believe that an asset manager should be required to fully on-board on behalf of its non-reporting clients, any limited relationship should be available at the asset manager level.

Finally, ICE should not impose requirements on the non-reporting party beyond those required by Commission Regulation. ICE has included fields "Ctrpty 1 Contact Email" and "Ctrpty 2 Contact Email" to collect contact information of the non-reporting party.[10] Providing this information at the counterparty level (*i.e.*, the asset manager's client) would be burdensome. Even if provided at the asset manager/executing agent level, the fields would impose a requirement not established by Commission Regulation. While we have no concerns with providing this field as optional, it should not be required.

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[8] *See* Registration Application, Exhibit M.2, *available at*: https://www.sec.gov/rules/other/2016/ice-trade-vault-form-sdr.htm.

[9] *See* Registration Application, Exhibit U.2, Section 3.n (representations that the participant is a counterparty, platform or registered clearing agency; no representation for an asset manager acting as an executing agent), *available at*: https://www.sec.gov/rules/other/2016/ice-trade-vault-form-sdr.htm.

[10] *See* Registration Application, Exhibit N.5, *available at*: https://www.sec.gov/rules/other/2016/ice-trade-vault-form-sdr.htm.

II. **ICE's Application Should Clarify that Certain UICs and Parent/Affiliate Fields are Not Applicable for Security-Based Swaps Facilitated by Asset Managers as Execution Agents**

A. **Trading Desks and Trading IDs**

AMG does not believe that trading desk IDs and trader IDs are applicable for trades entered into by asset managers as execution agents for their clients. Regulation SBSR's Section 906(a) requires the SB SDR to "identify any security-based swap reported to it for which the registered security based swap data repository does not have the counterparty ID and (if applicable) the broker ID, branch ID, execution agent ID, trading desk ID, and trader ID *of each direct counterparty*."[11] An execution agent, defined as "any person other than a broker or trader that facilitates the execution of a security-based swap on behalf of a direct counterparty,"[12] includes asset managers that execute trades on behalf of client accounts. AMG believes it is clear that where an asset manager acts as the execution agent for a trade in a client account, by definition the trade would not have been executed by a trader or trading desk *of a direct* counterparty and, therefore, the fields would be "Not Applicable" or "N/A." [13]

Given that ICE's Registration Application does not specify that these fields are "Not Applicable" for trades executed by an execution agent, AMG does not believe that the Application precludes such "N/A" designations from triggering missing field reports that the SB SDR is required to send once a day to participants (both the reporting side and non-reporting side), upon receipt of which the participants are required to provide the missing information. AMG requests that ICE clarify in its Registration Application that, for trades for which an execution agent is reported, the trading desk ID and trader ID fields are correctly completed where the reporting side populates the fields with "N/A."

B. **Parent and Affiliate**

AMG believes that the parent and affiliate fields should not be applicable ("N/A") for a trade if the trade report includes an execution agent's ID. Regulation SBSR's Section 906(b) requires each participant of an SB SDR to report to the SB SDR its ultimate parent(s) and any affiliate(s) that are also participants of the SB SDR. In the case of trades facilitated by asset managers, the participant would be the asset manager's client, not the asset manager itself.

Aggregating swap positions across affiliates or at the parent level for separate accounts managed by asset managers would provide a misleading impression. Aggregation across affiliated

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[11] 17 CFR § 242.906(a) (emphasis added).

[12] 80 Fed. Reg. 14583.

[13] For additional background on why this field should not be required when an executing agent executes the transaction, see SIFMA AMG's November 30, 2015 letter to the Commission on Regulation SBSR, *available at*: http://www.sifma.org/issues/item.aspx?id=8589957770.

entities under a common parent makes the most sense from a regulatory or systemic risk perspective where there is coordinated trading activity and/or the risk of such swap positions is borne by the parent under an explicit or implicit guarantee. In the context of asset management, however, neither is typically present. For separate account clients, virtually all the asset management assignments undertaken by our members are on a discretionary basis (subject to investment and trading guidelines). Further, it is very common for an asset manager transacting for a client account to do so under swap and clearing agreements that limit the recourse of the swap counterparty or clearing member to just the client assets managed by that asset manager. As a result, the separate account client (let alone its affiliates or parent) would not be responsible under its trading contracts for trading losses incurred by a manager acting on its behalf beyond the assets it has provided to that manager. As a practical matter, it is not realistic to expect separate account clients to provide parent and affiliate information directly to an SB SDR. Separate account clients typically look to the asset manager to handle transactional matters arising from investment activity. They are not set up or prepared to engage contractually or operationally with an SB SBR.

Further, the identity of a separate account client's parent and affiliates is not information that asset managers have traditionally collected or maintained. Creating the infrastructure necessary for systematically obtaining parent and affiliate information from clients; updating the information as it changes; and providing and updating the information reported to the SB SDR would be a mammoth undertaking for the asset management industry.

In addition to issues raised by these fields for separately managed accounts, there is even less reason to require identification of the affiliates or parent of a collective investment vehicle. While funds in the same complex could be viewed as affiliated for certain purposes, aggregating swap positions across funds where recourse is legally and contractually limited would be misleading from a systemic risk and regulatory oversight perspective.

Also, for many clients managed by AMG members, it may not be straightforward to determine who the affiliates and/or ultimate parent(s) for such clients are, or whether it would be appropriate to aggregate swap positions across such ultimate parent(s) and affiliates from a regulatory oversight perspective. For certain types of clients, identifying an ultimate parent or its affiliates could be complex and potentially misleading in practice. Multi-employer pension plans, for example, would likely need to be viewed as having multiple "ultimate parents" under Regulation SBSR even though each employer only represents a portion of the funds invested and exposure. Further, it is not clear that a plan sponsor should be treated as an ultimate parent of a pension plan for purposes of these rules, or that swap activities undertaken by subsidiaries of the plan sponsor – or by other pension plans established by that sponsor – should be viewed as trading done by "affiliates" of the plan. Identifying the parent and affiliates of state and local pension plans may be equally difficult and misleading.

In light of the foregoing, AMG requests that ICE's Registration Application is clarified so that, where transactions are reported to an SB SDR as having been executed by an execution agent

on behalf of a counterparty, the SB SDR would not be required to collect parent or affiliate information from such counterparty and should enter N/A in the applicable data fields.[14]

III. The Commission Should Confirm the Compliance Date for SBS Reporting and Cap Notional Amounts Reported for Block Trades Prior to the Compliance Date

A. Compliance Date

AMG members are concerned with the uncertainty of when SBS reporting will commence and whether the date will be set near year end. Upon registration of an SBS DR, the Commission has proposed (but not finalized) that the reporting side of the SBS transaction will be required to begin reporting certain SBS six months after the first SB SDR begins accepting reports.[15] The proposed schedule for this phase 1 compliance combined with the Commission's grant of a temporary exemption from compliance until, at the latest, June 30, 2016[16] means that SBS reporting could commence around year end. This timing would cause problems for many market participants who have policies or practices restricting changes during this time of year when staff may be unavailable or reduced. As such, finalization of the compliance schedule with phase 1 requirements commencing well after January 1, 2017 would provide much needed clarity to assist market participants in planning for this transition.

B. Block Trade Reporting

AMG believes that the Commission should cap the notional amount for block trades prior to the reporting compliance date. Under Regulation SBSR's Section 902, an SB SDR must, immediately upon receiving a transaction report of a security-based swap, publicly disseminate the

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[14] To the extent the Commission continues to want parent and affiliate information for trades executed by asset managers as execution agent for their clients, AMG believes that ultimate parent and affiliate relationships should be provided through the Global Legal Entity Identifier System ("GLEIS") and not piecemeal through asset managers and/or buy side clients.

[15] See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Proposed Rule, 80 Fed. Reg. 14740, 14763 (Mar. 19, 2015), which states in pertinent part:

> *Phase 1,* six months after the registration date: (1) Reporting parties would have been required to report any transitional security-based swaps to the registered SDR; (2) reporting parties would have been required to report all newly executed security-based swaps to the registered SDR; (3) participants and the registered SDR would have been required to comply with the error reporting rule (except with respect to dissemination) and the requirements of Rules 906(a) and 906(b); and (4) security-based swap dealers and major security-based swap participants would have been required to comply with Rule 906(c).

[16] See Order Granting a Temporary Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934 from Compliance with Rules 13n-1 to 13n-12 under the Securities Exchange Act of 1934 (Mar. 18, 2016), *available at*: https://www.sec.gov/rules/exorders/2016/34-77400.pdf.

primary trade information of that transaction including the notional amount of the trade.[17] Although Section 13(m)(1)(E) of the Security Exchange Act of 1934 ("Exchange Act") requires the Commission rules to specify criteria and time delays for block trades, the Commission adopted final Rule SBSR without providing an exclusion for block trades during the interim period during which no block trading rules have been proposed or finalized.[18]

AMG is concerned that requiring reporting by the SB SDR without capping notional amounts—with or without a reporting delay—will have negative consequences for asset managers' clients and the SBS market. Trades and related positions that should be anonymous may be easily identified by other market participants. For example, only a small number of single-name CDS market participants trade in larger size. With no masking of notional amounts, asset managers' positions and direction in trading may be revealed in a manner contrary to the intentions of the Exchange Act. Disclosing this information creates market risks, which may inhibit a dealer's ability to hedge or increase the dealer's costs, which in turn will increase prices for asset managers' clients.

In recognition of similar concerns, the Commodity Futures Trading Commission ("CFTC") promulgated a final block trade reporting rule with "measures to protect the identities of swap counterparties and to maintain the anonymity of their business transactions and market positions in connection with the public dissemination of publicly reportable swap transactions," including "cap sizes for notional and principal amounts that mask the total size of a swap transaction based upon a 75-percent notional amount calculation for a given swap category" and "limits on the public dissemination of certain publicly reportable swap transactions in the other commodity asset class, which have specific delivery or pricing points."[19] The CFTC took this approach notwithstanding the absence of a notional cap on public dissemination of futures block trades.[20]

Given that anonymity concerns arise regardless of whether block transactions are reported to the public under CFTC rules for swaps of ten or more securities or Commission rules for swaps of fewer than ten securities, AMG requests that the Commission cap notional amounts for block trades that SB SDRs report to the public pursuant to Regulation SBSR. The capping of notional

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[17] Participants have a day to report trades to the SB SDR, after which the SB SDR immediately disseminates the information; however, the reporting party, which usually is the dealer in the case of block trades, controls when trades are reported and may rely on systems that promptly report all trades to the SB SDR.

[18] 80 Fed. Reg. 14568.

[19] Commodity Futures Trading Commission, Fact Sheet: Final Rulemaking on Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades; Further Measures to Protect the Identities of Parties to Swap Transactions, *available at:* http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/block_factsheet_final.pdf.

[20] *See, e.g.,* CME Group, Market Regulation Advisory Notice re: Block Trades (Oct. 26, 2015) at 9 ("Dissemination of Block Trade Information," stating that "The date, execution time, contract month, price and quantity of block trades are reported upon receipt of the block information"), *available at:* http://www.cmegroup.com/rulebook/files/RA1515-5.pdf.

amounts on public reports should be applied consistently across the entirety of the SBS market, whether it falls under the Commission's jurisdiction or the CFTC's. AMG recommends that the Commission 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 support a "size-plus" approach, similar to TRACE reporting in the cash bond market–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+"–[21] effectively balances the need for post-trade price transparency with the need to protect liquidity.

AMG requests that the Commission consider interim relief until the Commission's block trading rules are proposed and become effective.

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For these reasons, AMG requests that the ICE Application permit non-reporting parties to submit any limited information required without fully onboarding, restrict requirements to Commission regulation and clarify that certain UICs and parent/affiliate fields are not required for SBS executed by an execution agent. Further AMG requests that the Commission confirm phase 1 compliance requirements to start well after January 1, 2017 and cap notional amounts reported for block trades before the compliance date.

Should you have any questions or wish to discuss these matters further, please do not hesitate to contact Tim Cameron (████████████ or ████████████████) or Laura Martin (████████ or ████████████████).

Respectfully submitted,

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cc: The Honorable Mary Jo White
       The Honorable Kara M. Stein
       The Honorable Michael S. Piwowar

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[21] *See* TRACE^{SM} Trade Reporting and Compliance Engine^{SM} 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.