

May 31, 2016

Submitted via <https://www.sec.gov/rules/other.shtml>

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments regarding ICE Trade Vault's Form SDR; File No. SBSDR-2016-01

Secretary Fields,

The International Swaps and Derivatives Association, Inc. ("ISDA")¹ appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or "Commission") on behalf of its members which may have obligations under *Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information; Final Rule* ("Final SBSR") and *Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information; Proposed Rule* ("Proposed SBSR") (collectively "SBSR") with respect to the application of ICE Trade Vault, LLC ("ICE TV") to be a recognized as a security-based swap data repository ("SDR"). ISDA supports the SDR application of ICE TV, submitted in respect of the Commission's *Security-Based Swap Data Repository Registration, Duties and Core Principles; Final Rule* (the "SDR Rule"). ICE TV has proven its ability and reliability as a trade repository for the collection of derivatives data in a number of global jurisdictions, including the U.S., Canada and the European Union. Current participants of ICE TV will benefit from a more efficient and cost effective implementation by expanding their use of its trade reporting platform to comply with SBSR. Parties that are either not yet reporting in any jurisdiction and those which may be using another trade repository will benefit from the opportunity to choose between the services of different SDRs and select one that best meets their needs.

As a general matter, ISDA believes that the requirements of SDRs which are recognized by the Commission should be harmonized to the greatest extent possible in order to promote build efficiencies and mitigate costs for sides that are required to onboard to more than one SDR to comply with their obligations under SBSR. This includes harmonization of data fields among SDRs which will result in better aggregated data for the Commission and for global data aggregation and analysis. ISDA understands that the Depository Trust & Clearing Corporation ("DTCC") has also submitted an application to the Commission to become an SDR. As the Commission has not yet posted DTCC's SDR application and requested public comment, our members were unable to compare the services,

¹ Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 850 member institutions from 67 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: www.isda.org.

participation agreements and other documentation of ICE TV and DTCC in order to inform the comments contained in this letter². As such, if there are differences between the applications that we believe would materially impact security-based swap (“SBS”) market participants, ISDA reserves the right to raise those views in its response to the Commission’s request for comment on DTCC’s SDR application.

Following are ISDA’s specific comments regarding aspects of ICE TV’s SDR application, with primary focus on Exhibit GG.2 Security-Based Swap Data Repository Guidebook (the “Guidebook”).

Flags

Section 4.7 of the Guidebook details the flags that ICE TV would require, as applicable, in accordance with its obligation under 907(a)3 of SBSR. With respect to flag (3) for late transaction reporting, we suggest the addition of a clarification that this flag will be derived by ICE TV based on a comparison of the execution timestamp or the Lifecycle Event Timestamp³, as applicable, and the time ICE TV receives the report, as opposed to being submitted by the reporting side. We further note that based on the trade information required by SBSR, it is unclear to us how an SDR could accurately calculate the timeliness of a transaction report that is related to a life cycle event. In exhibit N.5, ICE TV includes the conditional requirement for a Lifecycle Event Timestamp when the Lifecycle Event Status is not null. Without a separate timestamp provided by the reporting side with respect to the time of execution of the life cycle event (which would be both publicly disseminated and used to calculate reporting timeliness), flag (3) would provide misleading information to the public regarding the pricing context and inaccurate information to the Commission regarding compliance with the reporting deadlines. We support the inclusion of this data field as part of the primary trade information for life cycle events.

We believe that flags (1) and (2) overlap in purpose and that the use of both flags will lead to inconsistent interpretations and applications as to when one or both apply, undermining their value to observers. ISDA expects that a SBS which is “bespoke” in accordance with flag (2) would by definition always also be a SBS for which flag (1) would apply since such bespoke terms would mean that all material information to identify the customized swap and/or calculate the price would not be included in the primary trade information. Some transactions may be considered “non-standard” rather than bespoke, such as a credit default swap for which the Obligation Category and Deliverable Obligation Category are Reference Obligation Only⁴. Such a transaction could be interpreted to require flag (1) only and not flag (2). However, the lines between a non-standard transaction and one which is customized or bespoke are not always clear and may not be capable of systematic delineation in order to facilitate automated reporting of the appropriate flag(s). Since the interpretation and reporting logic of reporting sides will not be consistent, the value of the flags is reduced. We suggest instead that use of flag (1) alone would provide the necessary data and pricing context for public reporting⁵.

² ISDA submitted a request to the SEC on May 24, 2016 requesting an extension of the deadline for File No. SBSDR-2016-01 to coincide with the deadline for public comment to DTCC’s SDR application. See: <https://www.sec.gov/comments/sbsdr-2016-01/sbsdr201601-2.pdf>

³ A data element required by ICE TV per exhibit N.5.

⁴ Capitalized terms in this sentence are as defined in the 2014 ISDA Credit Derivatives Definitions.

⁵ We also suggest that the description of flag (1) could be clarified in both sections 4.2.4.2 and 4.7 by adding the words “reported data subject to public dissemination” before “does not provide”, to better reflect the flag’s intention.

Missing UIC Information

Section 4.10 of the Guidebook provides that if a reporting side does not report the non-reporting side's UICs then the reporting side must inform the non-reporting side that it has not done so. Although we recognize that a reporting side may offer to act as an agent on behalf of the non-reporting side to report its UIC information, we also understand that the non-reporting side is ultimately responsible for its UIC information. Therefore we believe it is inappropriate to place responsibility on the reporting side to notify the non-reporting in such cases. It will be necessary for non-reporting sides to have mechanisms or arrangements in place to monitor and/or ensure the reporting of their UICs. Therefore a non-reporting side would know whether the reporting side (or another party) is reporting its UICs since such arrangement would need to be agreed in advance between the parties and may involve the transfer of data or applicable representations. In absence of such arrangements, a reporting side could not report the non-reporting side's UICs, and so it would be unnecessary for the reporting side to advise they have not done so.

Further, this requirement is redundant to the direct obligation of the SDR under §242.906(a) to send reports to its participants regarding missing UICs. ICE TV's procedure to meet that requirement is specified in the next paragraph of section 4.10. Such process alone should be deemed sufficient to meet ICE TV's obligation.

Exhibit N.5 includes conditionally required fields called "Ctrpty 1 Contact Email" and "Ctrpty 2 Contact Email" on each reported SBS. The information provided would be used by ICE TV to perform outreach to the non-reporting side to a SBS which is not an ICE TV Participant, requesting such party onboard to the SDR in order to meet its obligation to provide missing UICs. We do not believe the reporting side should be *required* to provide an email address for the non-reporting side for such purpose, but instead could optionally provide such information to assist ICE TV. Such assistance may be more easily accommodated on a counterparty level external to reported data rather than on a trade by trade basis. Developing and maintaining an accurate set of static data for this purpose would be challenging and onerous for a reporting side and may render them partially accountable for any issues related to outreach performed by ICE TV using the provided email contact. Separately, we note that a contact email should only be requested by ICE TV for the non-reporting side, since the reporting side is obviously already its participant and therefore ICE TV would have the relevant contact information. The conditional validation rules specified in the exhibit require a value for uncleared SBS for both counterparty 1 and counterparty 2 if each party is an SEC Participant⁶.

Unique Identification Codes (UICs)

Transaction ID Methodology

ISDA supports the Transaction ID methodology outlined in section 6.1 of the Guidebook. ISDA is a strong proponent of the use of a single Unique Trade Identifier ("UTI") for the global identification of a derivatives transaction for reporting and other regulatory and non-regulatory purposes. We anticipate that the UTI for reporting under SBSR will generally be created by the reporting side, but where a transaction is reportable in multiple jurisdictions, the UTI generating party may be determined accordance with the hierarchy in ISDA's publication "Unique Trade Identifier (UTI): Generation,

⁶ As defined in §242.900(u)

Communication and Matching”⁷, or a succeeding standard recommended by the Harmonisation Group established by the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commission IOSCO (IOSCO) and implemented by the industry.

Legal Entity Identifiers

ISDA firmly recognizes the value of Legal Entity Identifiers (“LEIs”) to precisely identify the parties involved in a transaction within derivatives transaction reporting. Despite the widespread adoption of LEIs for global regulatory reporting, there are still some jurisdictions in which derivatives market participants are not required by their regulator to obtain an LEI. We believe these exceptions will reduce over time, but until they are eliminated they will create a challenge for reporting sides in a limited number of cases.

We do not believe that SDRs should implement requirements regarding LEIs that go beyond those of the applicable regulatory requirements, as this places an unfair burden on a reporting side. A reporting side should be able to meet its reporting obligations even if its counterparty has not obtained an LEI, especially if it is not an SEC Participant which is required by the Commission to obtain an LEI.

In section 6.2 of the Guidebook, ICE TV proposes to require the reporting side to obtain LEI(s) for the Counterparty⁸ on the non-reporting side if it does not have them. Although third-party facilitation of LEI acquisition is allowed, it cannot be done without the cooperation and permission of the party to which the LEI will be assigned. For that reason, this sentence in Section 6.2 should be deleted. This would stay in line with the principle that the obligation to obtain and maintain an LEI is solely on the entity which needs to obtain an LEI.

In absence of an available LEI, ICE TV requires that the reporting side complete a document *before* it reports which describes why they are not reporting non-reporting side information with an LEI. Additional administrative burden should not be placed on the reporting side in such cases. This requirement could also impair the ability of the reporting side to comply with SBSR by meeting its reporting deadline. As a cautionary note, if the Commission approves the Guidebook with this requirement, then ICE TV should revise the text to limit the requirement for the specified document to Counterparties which are SEC Participants. If “N” is submitted in whichever of “Ctrpty 1 SEC Participant Ind” or “Ctrpty 2 SEC Participant Ind” applies to the non-reporting side, then an alternative identifier should be accepted to identify the Counterparty without a requirement for the document to be completed.

Branch ID, Trading Desk ID and Trader ID

In absence of an industry or global standard endorsed by the Commission, SBSR requires an SDR to assign UICs⁹. As no such standard currently exists for trading desk ID and branch ID, section 6.4 of the Guidebook requires reporting sides to submit the branch and desk information to ICE TV *before*

⁷http://www2.isda.org/attachment/NzczMg==/2015%20July%2020%20UTI%20Best%20Practice%20v11.6_final.pdf

⁸ As defined in section 1.15 of the Guidebook, this includes both the direct counterparty and the indirect counterparty.

⁹ §242.903(a)

reporting a SBS so that ICE TV can assign a unique ID. Although not explicitly addressed in the Guidebook, we understand the same approach would apply to trader ID.

We believe that for many market participants, it would be more timely and efficient for them to create and maintain their own UICs for inclusion in their reports for these data fields until such time as the Commission endorses a standard. Allowing a side to create and maintain its own UICs would facilitate consistent use of a UIC for a particular trader, trading desk or branch across SDRs, and potentially across regulations, that would ease the Commission's aggregation and analysis of these data elements. For instance, parties that have an obligation to identify their trading desks under the Volcker Rule¹⁰ could use the same value as the UIC when identifying the desk under SBSR. In addition, some sides will face data privacy limitations regarding disclosure of the identity of their traders to an SDR. The ability to create their own values and maintain their own mapping may alleviate such concerns.

For trading desk ID and trader ID, we request that the Commission give ICE TV the option to either accept UICs created and maintained by the side or assign a value for the side upon request. For branch ID, we request that the Commission allow ICE TV to either accept a value created by the side via an agreed industry standard and in accordance with §242.903(b) (e.g. the FpML businessCenterScheme) or else assign a value in accordance with the same approach.

UICs for Cleared SBS

SBS that are cleared by market participants via ICE Clear Credit LLC, ICE Clear Canada, Inc., ICE Clear Europe (collectively, "ICE") will be reported under SBSR to ICE TV by ICE as the reporting side¹¹. Since SBSR requires UICs to be reported for the direct counterparty on the non-reporting side, non-reporting sides that enter into cleared SBS with ICE would need to arrange to report, or have reported on their behalf, their UICs for these transactions. We believe that such arrangements on the part of non-reporting sides are unnecessary, as most of the UICs that may be applicable for uncleared SBS are not applicable to cleared SBS. Non-reporting sides should not have to onboard to an SDR solely for the purpose of indicating on a consistent basis that a set of data fields are "Not Applicable". Instead we request that the Commission include a rule clarification in SBSR as part of its finalization of Proposed SBSR that broker ID, branch ID, execution agent ID, trading desk ID and trader ID are not required to be reported for cleared SBS. With respect to branch ID, the legal entity to a cleared SBS is the clearing member with no delineation or recourse to specific branches. With respect to the execution agent ID, although some bunched orders of SBS may be cleared in advance of allocation, the standby Futures Commission Merchant (FCM) is specified by the clearing agency as the initial party to the clearing transaction and not the execution agent.

Including the above carve outs from the requirement to provide certain UICs for cleared SBS would allow the SDR to provide in its rules that it will default the value for these UIC fields to "Not Applicable" based on the clearing status, preventing unnecessary cost and effort for non-reporting sides that provides no material benefit to the Commission.

¹⁰ §619 (12 U.S.C. §1851) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")

¹¹ As proposed in Proposed SBSR.

UICs for SBS Transacted via an Execution Agent

ISDA believes that the trading desk ID and trader ID values do not apply on the side of SBS which have been transacted via an asset manager as execution agents for their clients since these transactions would not have been executed by a trader or trading desk of a *direct* counterparty in accordance with the requirements of section 906(a). We request that the Commission include a rule clarification in SBSR as part of its finalization of Proposed SBSR that trading desk ID and trader ID are not required to be reported for SBS for which an execution agent ID is reported by the reporting side. This would allow an SDR to adjust its validations and procedures and default these UIC fields to “Not Applicable”, preventing unnecessary outreach to non-reporting sides for missing UICs and fruitless onboarding to SDRs and implementation of workflows by non-reporting sides.

Confirmed

In order to comply with its requirement to confirm the accuracy of the data with both parties to a SBS, ICE TV has established a definition of “Confirmed”¹² which includes trade information that has been “documented in a confirmation that has been submitted to the System to evidence the terms that were agreed upon by the Counterparties”. Although not explicitly specified in the Guidebook, we understand that a transaction report which is deemed to be “Confirmed” in accordance with the definition in 1.13 would be considered by ICE TV to have met the requirement for Verification of Trade Data in section 4.2.4.6 and suggest this correlation should be explicit in the text¹³. ISDA feels strongly that data verification should not be achieved via the submission of electronic copies of paper confirmations, an onerous process for reporting sides that would result in an even more onerous task for Commission staff to manage the documentation.

There are numerous bilateral and regulatory mandated processes through which the parties agree to and verify the terms of a derivatives transaction that will be reported under SBSR. This occurs bilaterally at the point of trade execution, via trade affirmation and most importantly via the confirmation of the SBS which provide legal certainty to the parties. In order to manage their own risk, the parties are independently motivated to ensure the trade terms are agreed and confirmed timely and captured accurately in their systems. The reported trade data is sourced from those same systems, ensuring the reporting side is providing the terms of the SBS as it knows and has agreed with its counterparty. Regulatory mandates for trade acknowledgement, portfolio reconciliation and portfolio valuation and dispute resolution are additional avenues through which the accuracy of trade terms are substantiated. If a discrepancy in trade terms is discovered through any of these processes, a correction is made in the party’s trade capture system, automatically prompting a correction to any previously reported transaction data.

We believe the bilateral and regulatory processes described above are more than sufficient to ensure that the trade terms that are reported under SBSR have been “confirmed” by both parties to the SBS as required of SDRs under the SDR Rule and as prescribed by the Dodd-Frank Act. Such processes should not be duplicated by additional requirements specific to satisfy the conditions of the SDR Rule. Any additional requirements would be extraneous and would impose unnecessary cost and burden on reporting sides, non-reporting sides and SDRs without providing any material improvement to the accuracy of the

¹² 1.13 of the Guidebook

¹³ We suggest updating the language in Section 4.2.4.6. to provide desired clarity for ICE TV Participants on this point.

data.¹⁴ Instead, we believe that in the case of SBS that are neither cleared, executed on a platform nor electronically confirmed, the policies and procedures of ICE TV should allow them to deem that the trade terms reported by the reporting side for the SBS have been verified between the parties in accordance with existing bilateral and regulatory processes unless the non-reporting side flags the transaction data as “disputed” in the SDR and until such dispute indicator has been revoked by the non-reporting side to signal the dispute has been resolved. SDRs intend to make available such dispute mechanisms to their participants as required by §240.13n-5 of the SDR Rule, allowing a uniform approach to the verification of trade data across SDRs. By accepting such an approach in the policies and procedures of SDRs, the Commission would be allowing them to meet the requirements of the SDR Rule without replicating existing bilateral and regulatory processes and imposing unnecessary cost and burden on SBS market participants, including end-users.

Participation Agreement

ISDA would like to post the Commission that a few of its members are still considering the ICE Trade Vault Security-Based SDR Participation Agreement submitted as Exhibit U.2, and discussing certain aspects directly with representatives from ICE TV, including:

- Data Ownership / ICE Systems as Trade Secret (section 3b)
- (Commercial) Use of Reported Data (section 7b)
- On-Site Audit by ICE and Unauthorized Access (section 3h)
- Liability/Indemnity (section 6)
- Disclosure of Personal Data/Data Privacy (Annex A)

Conclusion

ISDA is committed to helping its members and the industry to prepare to meet their obligations under SBSR. We would like to thank the Commission for its consideration of the comments provided in this letter regarding the SDR application of ICE TV. ISDA reiterates its support for this application, and looks forward to the Commission’s recognition of ICE TV.

Sincerely,



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International Swaps and Derivatives Association, Inc.

¹⁴ See “Improving Derivatives Transparency: The Merits of an Entity-based Reporting Framework” issued by ISDA and 11 other industry associations for a further information:
[http://www2.isda.org/attachment/ODISOA==/Entity%20based%20reporting%20FINAL%20\(002\).pdf](http://www2.isda.org/attachment/ODISOA==/Entity%20based%20reporting%20FINAL%20(002).pdf)