



July 1, 2016

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. 22, 2016) (the "Solicitation of Comments")

Dear Mr. Fields:

ICE Trade Vault, LLC ("ICE Trade Vault") appreciates the opportunity to submit its comments to the Securities and Exchange Commission (the "SEC" or "Commission") on its application for registration as a Security-Based Swap Data Repository ("SBSDR"). As disclosed in its application document, under the ownership of Intercontinental Exchange, Inc. ("ICE"), a publicly traded company listed on the New York Stock Exchange, ICE Trade Vault operates trade repositories in the United States, Europe and the Canadian provinces of Ontario, Quebec and Manitoba. It currently offers its trade repository service in the credit, foreign exchange, interest rate and commodity asset classes.

ICE Trade Vault seeks to operate a SBSDR and seeks approval by the Commission to offer its SBSDR service ("ICE Trade Vault SBSDR Service") to participants in accordance with the Commission's rules. As the application materials reflect, ICE Trade Vault has the appropriate technology, structure, governance and policies and procedures in place to operate the ICE Trade Vault SBSDR Service, which will be available to all market participants that engage in security-based swap ("SBS") transactions and to all market venues from which data can be submitted to the service. Further, the ICE Trade Vault SBSDR Service will provide participants, the Commission and other appropriate regulators the ability to access SBS data. ICE Trade Vault is confident that, with its experience in operating a trade repository service, it will meet all applicable requirements under the Commission's rules.

In this letter ICE Trade Vault also responds to certain of the comment letters submitted by various market participants¹ (collectively, the "Comment Letters") to the Commission in

¹ Tara Kruse, Co-Head of Data, Reporting and FpML, International Swaps and Derivatives Association, Inc. ("ISDA"), Comment Letter on ICE TV Application (May 31, 2016); Timothy W. Cameron, Esq., Head & Laura Martin, Esq., Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association ("SIFMA AMG"), Comment Letter on ICE TV Application (May 31, 2016); Tod Skarecky, Vice President, Clarus Financial Technology ("Clarus"), Comment Letter on ICE TV Application (May 31, 2016); Jennifer S. Choi, Associate General Counsel, Investment Company Institute ("ICI"), Comment

response to the publication of ICE Trade Vault's Application for Registration as a Security-Based Swap Data Repository (such application, the "ICE Trade Vault Application"). In addition ICE Trade Vault takes this opportunity to address some of the questions raised in the Commission's Solicitation of Comments in Annex 1 to this letter.

As discussed below, the Comment Letters focus on four aspects of ICE Trade Vault's application which can be categorized as follows:

1. Non-Reporting Side Obligations/Onboarding
2. Data Reporting Requirements
3. Disclosure
4. Flags

1. Non-Reporting Side Obligations/Onboarding

The SIFMA AMG and ICI Comment Letters contend that a non-reporting side to an SBS should not be required to become a full participant of ICE Trade Vault in order to perform the various duties imposed by the SEC's Regulation SBSR (on "Reporting and Dissemination of Security-Based Swap Information") (the "SBSR Rules"). ICE Trade Vault strongly disagrees with this position. All entities that wish to access the ICE Trade Vault platform and services must execute a "Participant Agreement" in order to become a "Participant" (as such terms are defined in the Guidebook²) of ICE Trade Vault. The Participant Agreement is a form of license that grants access to the ICE Trade Vault platform, and ICE applies this license requirement consistently and uniformly across multiple ICE corporate entities that offer access to technological platforms. This approach not only has been broadly accepted by the marketplace at large but also has been deemed acceptable by a number of regulators across the globe (including the U.S. Commodity Futures Trading Commission). By requiring that all entities seeking to access the ICE Trade Vault SBSDR Service agree to the same terms of access, ICE Trade Vault ensures that its services are offered in a "fair, open and not unreasonably discriminatory"³ manner and that its technology is appropriately protected.

As the Commission is aware, in a comment letter to the Commission dated May 4, 2015⁴ (the "ICE Trade Vault Letter"), ICE Trade Vault took the position that a Clearing Agency

Letter on ICE TV Application (May 31, 2016) (available at <http://www.sec.gov/comments/sbsdr-2016-01/sbsdr201601.htm>).

² ICE Trade Vault LLC, Security-Based Swap Data Repository Guidebook, at 10 and 4. <https://www.sec.gov/rules/other/2016/ice-trade-vault/ice-trade-vault-form-sdr-ex-gg.2.pdf>.

³ Security-Based Swap Data Repository Registration, Duties, and Core Principles, 17 C.F.R. § 240.13n-4(c)(1)(iii) (2015). <https://www.gpo.gov/fdsys/pkg/FR-2015-03-19/pdf/2015-03127.pdf>. ("SBSDR Rule").

⁴ Kara Dutta, General Counsel, Bruce A. Tupper, President, Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information (17 CFR Part 242 [Release No. 34-74245;

“CA”) should not be required to “become a full ‘participant’ of alpha SDRs” as this would be “unnecessary and overly burdensome for CAs”⁵. ICE Trade Vault seeks to distinguish that scenario from that of a non-reporting side fulfilling its duties under the SBSR Rules.

The duties imposed by the SBSR Rules upon the non-reporting side to a SBS transaction include verifying and correcting information submitted by the reporting side, disputing misreported data and obtaining and submitting missing unique identification codes (“UIC”) (collectively, the “Non-Reporting Side Duties”). In contrast, the ICE Trade Vault Letter was addressing a scenario where a CA is reporting solely termination messages in respect of “alpha swaps” to an SBSDR as a means for the alpha SBSDR to properly identify that the alpha swaps were accepted by the CA for clearing. These termination messages will be accepted by ICE Trade Vault exclusively via an application programming interface (“API”) with limited fields, and the CA will not otherwise have access to the ICE Trade Vault platform. Given the lack of access to the ICE Trade Vault platform and the limited information to be reported via API, ICE Trade Vault maintains that the execution of a Participant Agreement is not warranted for CAs solely reporting a termination message to the alpha SBSDR but is necessary for non-reporting sides who access the ICE Trade Vault platform and perform the Non-Reporting Side Duties.

In a single-sided reporting regime, the parties to a trade can agree in advance on the SBSDR to which their trades will be reported; absent such pre-agreement, the reporting side will have to choose the SBSDR. The fact that the non-reporting side is unable to dictate the choice of SBSDR is a function of the applicable regulatory regime and has no bearing on how such party should access the SBSDR.

Furthermore, while the non-reporting side’s reporting role may be narrower in scope, the non-reporting side nonetheless needs equal access to the ICE Trade Vault SBSDR platform in order to fulfill its obligations under the SBSR Rules. ICE Trade Vault requires all parties that access the platform to execute the Participant Agreement to ensure the security of data it receives from the SBS counterparties and properly control access privileges. In order to grant access to a market participant, SBSDRs must verify the identity of the market participant and their right to view the data requested. Pursuant to Commission regulations, SBSDRs are required to have standard terms and conditions in place for providing access and must provide data through a secure means. These controls are necessary to protect data confidentiality and system integrity. As a result, the non-reporting side cannot be given what would amount to preferential treatment and gain access to the ICE Trade Vault SBSDR platform and services without also being bound by the terms of access and rules that apply to other Participants.

SIFMA AMG objects to a fee structure that would impose fees on the non-reporting sides in certain circumstances. However, according to the regulatory requirements, fees imposed on Participants of ICE Trade Vault must be “applied consistently across all similarly-situated users of [such] security-based swap data repository’s services”⁶. While ICE Trade Vault understands

File Number S7-03-15]) (May 4, 2015) (available at <https://www.sec.gov/comments/s7-03-15/s70315-3.pdf>).

⁵ ICE Trade Vault Letter at 6.

⁶ 17 C.F.R. § 240.13n-4(c)(1)(i) (the “SBSDR Rules”).

that the non-reporting side's use of the services may be narrower in scope, it is also our experience that the non-reporting side typically requires more support and resources from ICE Trade Vault, often because non-reporting parties are less familiar with the ICE Trade Vault SBSDR Services. These additional resources cause SBSDRs to incur material costs, and it would be unfair and inconsistent with the SBSDR Rules to allocate such costs solely to the reporting side.

In the ICE Trade Vault Letter, ICE Trade Vault states that "CAs should not incur costs to report alpha terminations since the alpha reporting sides already incurred SDR costs to initially report these swaps. Subsequently, CAs will be required to report the successive beta and gamma swaps and CAs will incur SDR fees for these swaps"⁷. Again, there is a clear distinction between the role of a CA reporting a termination message with respect to an alpha swap and the role of a non-reporting direct counterparty to an alpha swap. The CA would simply report the termination message and should not be deemed to be subject to any of the Non-Reporting Side Duties. The CA's interaction with the SBSDR is limited in that it does not require the SBSDR to create data for the SBS such as UICs because, upon initial reporting of the alpha trade, those will have been already created. In addition, since CAs are market participants that are proficient with the types of services offered by ICE Trade Vault, they typically require little to no support. Lastly, as mentioned in the ICE Trade Vault Letter, the CA will be required to pay the fees when reporting of the beta and gamma swaps; therefore, it would be punitive to require the CA to be subject to fees when it reports the termination of the alpha swap that has already been reported.

2. Data Reporting Requirements

Email Address of Non-Reporting Side

ICE Trade Vault confirms that it only requires the reporting side to provide the non-reporting side's email address when the non-reporting side is not an ICE Trade Vault Participant but is a "participant"⁸ as defined in SBSR Rule 900. SBSR Rule 906 requires that:

"Once a day, the registered security-based swap data repository shall send a report to each participant of the registered security-based swap data repository or, if applicable, an execution agent, identifying, for each security-based swap to which that participant is a counterparty, the security based swap(s) for which the registered security-based swap data repository lacks counterparty ID and (if applicable) broker ID, branch ID, execution agent ID, desk ID, and trader ID. A participant of a registered security-based swap data repository that receives such a report shall provide the missing information with respect to its side of each

⁷ ICE Trade Vault Letter at 5.

⁸ SBSR Rule 900 defines "participant" broadly as follows: "Participant, with respect to a registered security-based swap data repository, means a counterparty, that meets the criteria of § 242.908(b), of a security-based swap that is reported to that registered security-based swap data repository to satisfy an obligation under § 242.901(a)." This term therefore includes parties to SBS transactions that are not Participants of ICE Trade Vault.

security-based swap referenced in the report to the registered security-based swap data repository within 24 hours.”

Consequently, in order to fulfill this obligation, ICE Trade Vault will require the contact information of any non-reporting side that is a participant for purposes of the SBSR Rules but is not a Participant of the ICE Trade Vault SBSDR. ICE Trade Vault understands that, for the reporting side, having to provide the non-reporting side’s email address to ICE Trade Vault may be considered burdensome. However, so long as the Commission’s notification requirement remains in effect, ICE Trade Vault needs to obtain this information, and only the reporting side will be in a position to provide an appropriate email address to ICE Trade Vault.

Investment Managers as Participants

SIFMA AMG and ISDA seek clarifications as to how reporting by an investment manager on behalf of a client would work and whether some of the fields that are required to be completed when reporting trades are relevant in the context of the asset management industry.

ICE Trade Vault proposes to amend its Participant Agreement and Guidebook to expressly contemplate investment managers as “Participants”. Investment managers will then be able to execute a single Participant Agreement on behalf of multiple clients and review and correct trade information submitted in respect of their clients’ trades.

We understand that investment managers who access the ICE Trade Vault SBSDR Services on behalf of their clients are not the “direct counterparty” to a trade and we are sympathetic to the argument that investment managers should be able to complete the trading desk ID and trader ID fields as ‘Not Applicable’. We also understand that it may not be feasible or appropriate to populate the ultimate parent and affiliate fields on behalf of an investment manager’s clients. Nonetheless, ICE Trade Vault is bound by the SBSR Rules and will therefore await guidance from the Commission on these points.

Unique Identification Codes (“UICs”)

ISDA proposes that, in the absence of an international standards-setting system that has been recognized by the Commission, the Commission should allow market participants to create and maintain their own UICs. Although ICE Trade Vault generally supports allowing market participants to contribute to the process of generating UICs,⁹ SBSR Rule 903 specifically provides that the SBSDR must assign such UICs until a system for generating UICs has been recognized by the Commission (or in the event a system has been recognized but has not assigned a UIC “to a particular person, unit of a person, or product (or has not endorsed a methodology for assigning transaction IDs)”¹⁰). Therefore, ICE Trade Vault awaits guidance from the Commission on this point.

⁹ This approach should only apply where an international standards-setting system is not yet recognized. Because a system for legal entity identifiers has been recognized, ICE Trade Vault should generate a unique company identification code for any SBS party that does not have an LEI.

¹⁰ 17 C.F.R. § 242.903 (2015).

With respect to cleared trades, ISDA also suggests that the non-reporting side “should not have to onboard to an SDR solely for the purpose of indicating on a consistent basis that certain data fields are ‘Not-Applicable’” given the clearing agency is the reporting side and the direct counterparty the non-reporting side.¹¹ We support ISDA’s requests that broker, branch, execution agent, trading desk and trader ID fields not be required for the beta and gamma swaps of cleared trades, and we await guidance from the Commission on this point.

Legal Entity Identifiers (“LEIs”)

ICE Trade Vault strongly disagrees with ISDA’s position on missing LEIs. In order to validate trade data and maintain accurate records of all transactions submitted, ICE Trade Vault must have LEI information on both counterparties before a trade is reported. Without uniform and accurate LEIs, the information received from the reporting side will be materially incomplete and incapable of being accurately aggregated. Without knowing that the reporting side does not have the LEI of the non-reporting side in advance, ICE Trade Vault would not be able to confirm whether a party is reporting for an entity that has obtained an LEI or not. If ICE Trade Vault knows in advance that the non-reporting side does not have an LEI, ICE Trade Vault can assign a unique identification code to the legal entity concerned and thereby make the reported data useful and maintain accurate records for all parties.

3. Disclosure

ICI states that the Guidebook does not explain how market participants can view the primary trade information for SBSs or how ICE Trade Vault intends to comply with the rules that prohibit the use of coded information unless the information necessary to interpret the codes is widely available to users of the information. Clarus argues that additional data should be made public. In this regard, ICE Trade Vault will comply with the rules established by the Commission and can make any additional data fields public if and to the extent approved by the Commission.

4. Flags

ISDA raises the concern that the flags under prongs (1) and (2) in the Guidebook¹² overlap since it is unclear when a transaction is “non-standard” as opposed to “bespoke”.¹³ ISDA proposes only requiring flag (1). ICE Trade Vault has no objections to consolidating these two concepts into one general flag if the Commission believes it is appropriate.

ISDA also submits that the flag for late transaction report under prong (3) in the Guidebook may not be accurate based on the way ICE Trade Vault intends to collect the data. ICE Trade Vault agrees that the best way to ensure that this flag is invoked appropriately is to have the ICE Trade Vault platform derive when it applies rather than have it be a submittable field. Therefore, absent any Commission objection to this approach, the ICE Trade Vault platform will determine when the flag applies.

¹¹ ISDA Comment Letter at 5.

¹² Guidebook at 20.

¹³ ISDA Comment Letter at 2.

Conclusion

ICE Trade Vault looks forward to addressing the public comments with the Commission and obtaining the final approval as a SBSDR. Please contact the undersigned should you have any questions regarding ICE Trade Vault's comments.

Sincerely,



Kara Dutta
General Counsel
ICE Trade Vault, LLC

Tara Manuel
Director
ICE Trade Vault, LLC

cc: Trabue Bland, President, ICE Trade Vault, LLC
Melissa Ratnala, Chief Operating Officer, ICE Trade Vault, LLC
Takako Okada, Chief Compliance Officer, ICE Trade Vault, LLC

Annex 1

ICE Trade Vault Responses to Questions Included in the SEC's Solicitation of Comments

The following are responses to the Commission's request for comments on specific aspects of the ICE Trade Vault Application. Questions are numbered consistently with the SEC's notice and reprinted in italics below with ICE Trade Vault's responses immediately following.

Question 8: *Please provide your views as to whether ICE Trade Vault's policies and procedures are sufficiently detailed and reasonably designed to provide a mechanism for Participants and their counterparties to effectively resolve disputes over the accuracy of SBS data that it maintains, as required by Exchange Act Rule 13n-5(b)(6). Are ICE Trade Vault's policies and procedures relating to dispute resolution adequate? Why or why not? Should the policies and procedures specify timeframes in the dispute resolution process to facilitate timely and conclusive resolution of disputes? Why or why not?*

Response: ICE Trade Vault does not believe it is appropriate for a SBSDR to impose more specific dispute resolution procedures or timeframes as they would potentially conflict with the dispute resolution provisions included in the contractual terms of SBS transactions. To the extent that more detailed dispute resolution procedures or timeframes are deemed necessary by the SEC, we believe the SEC should address them in a future rulemaking or guidance while taking into account the potential for conflict with the agreement of the transacting parties.

Question 10: *Please provide your views as to whether the disclosures in ICE Trade Vault's Disclosure Document to a Participant prior to accepting any SBS data from that Participant or upon the Participant's request, as required by Exchange Act Rule 13n-10, are adequate. Specifically, the Commission is interested in receiving comments as to whether ICE Trade Vault's Disclosure Document contains adequate and sufficiently detailed information that would reasonably enable the Participant to identify and evaluate accurately the risks and costs associated with using ICE Trade Vault's services. Such information includes ICE Trade Vault's criteria for providing others with access to its services and data it maintains, its criteria for those seeking to connect to or link with it, its description of its policies and procedures regarding its noncommercial and/or commercial use of the SBS transaction information that it receives from a Participant, any registered entity, or any other person, its description of all the SBS data repository's services, including any ancillary services, and its description of its governance arrangements.*

Response: ICE Trade Vault's Disclosure Document contains appropriate and adequate information to enable market participants to identify and evaluate the risks and costs associated with using the ICE Trade Vault SBSDR Services. ICE Trade Vault's Disclosure Document also contains the full extent of information about ICE Trade Vault's SBSDR platform that can be made public without compromising ICE Trade Vault's intellectual property rights. In order to obtain further information regarding the ICE Trade Vault platform, market participants will need to sign a Participant Agreement.

Question 12: *Please provide your views as to whether ICE Trade Vault's policies or procedures could result in an unreasonable restraint of trade or impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.*

Response: ICE Trade Vault provides equal and non-discriminatory access to all market participants, including trading venues and central counterparties. Revocation of access to the ICE Trade Vault Services is subject to applicable Commission regulations. Revocations of access will be determined by the Chief Compliance Officer and reviewed by the President and General Counsel of ICE Trade Vault. ICE Trade Vault's policies and procedures will not result in an unreasonable restraint of trade or impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

Question 13: *Please provide your views as to whether ICE Trade Vault's proposed dues, fees, or other charges, discounts or rebates and the process for setting dues, fees, or other charges, discounts or rebates are fair and reasonable and not unreasonably discriminatory. Please address whether such proposed dues, fees, other charges, discounts, or rebates are applied consistently across all similarly situated users of ICE Trade Vault's services, including, but not limited to, Participants, market infrastructures (including central counterparties), venues from which data can be submitted to ICE Trade Vault (including exchanges, SBS execution facilities, electronic trading venues, and matching and confirmation platforms), and third party service providers.*

Response: ICE Trade Vault's proposed fee schedule will be applied consistently across all similarly situated users of ICE Trade Vault's services. As noted in our letter above, ICE Trade Vault has observed that non-reporting sides often require more support and resources from ICE Trade Vault, often because non-reporting parties are less familiar with the operation of SBSDR platforms. These additional resources come at a cost, and it would be unfair and inconsistent with the SBSDR Rules to allocate such costs solely to the reporting side.

Question 15: *Rule 903(a) of Regulation SBSR provides, in relevant part, that if no system has been recognized by the Commission, or a recognized system has not assigned a UIC to a particular person, unit of a person, or product, the registered SDR shall assign a UIC to that person, unit of person, or product using its own methodology. Is the methodology that ICE Trade Vault proposes to use to assign UICs as described in its application materials appropriate in light of the requirements under Rule 903(a) of Regulation SBSR? Why or why not?*

Response: Please see ICE Trade Vault's comments in the section of its letter above entitled "Unique Identification Codes".

Question 17: *For certain data fields, Exhibit N.5 indicates that the acceptable data format is the "standard data value" for the field, but Exhibit N.5 does not provide more specific information regarding acceptable data formats for such fields. ICE Trade Vault has indicated to Commission staff that it plans to make available to its Participants detailed specifications for reporting SBS*

information, and Participants will be permitted to download detailed descriptions of the acceptable data format for each “standard data value” from the ICE Trade Vault system. However, ICE Trade Vault stated in its discussions with Commission staff that it will make such additional specifications available only to Participants who have executed a Participant Agreement. Is it anticipated to be problematic for persons seeking to report SBS information to an SDR to be required to execute a Participant Agreement as a condition to ICE Trade Vault providing access to the additional data format specifications?

Response: Data formats and specifications form part of ICE Trade Vault’s intellectual property. For this reason, this information will be shared only with parties to ICE Trade Vault’s Participant Agreement.

Question 18: *Regulation SBSR imposes duties on various market Participants to report SBS transaction information to a registered SDR. Please provide your views as to whether the ICE Trade Vault application and the associated policies and procedures (including technical specifications for submission of data) provide sufficient information to potential Participants about how they would discharge these regulatory duties when reporting to ICE Trade Vault. In particular, please provide your views as to whether ICE Trade Vault’s technical specifications for submission of data are sufficiently detailed, especially with regard to historical SBSs and bespoke SBS. Please describe in detail what additional information you believe is necessary to allow you to satisfy any reporting obligation you may incur under Regulation SBSR.*

Response: ICE Trade Vault’s Disclosure Document and Guidebook contain the full extent of information about ICE Trade Vault’s SBSDR platform that can be made public without compromising ICE Trade Vault’s intellectual property rights. In order to obtain further information about the ICE Trade Vault platform, market participants will need to sign a Participant Agreement.

Question 19: *Rule 906(a) of Regulation SBSR provides, in relevant part, that a Participant of the registered SDR must provide the missing information with respect to its side of each SBS referenced in the report to the registered SDR within 24 hours. ICE Trade Vault has represented that a non-reporting-side participant must be fully onboarded before it may submit information that it is required to provide to a registered SDR by Rule 906(a) of Regulation SBSR. Please provide your views as to whether this form of access afforded to the non-reporting-side is fair, open, and not unreasonably discriminatory.*

Response: ICE Trade Vault must verify the identity of a market participant before allowing them to access or submit data to the SBSDR. Pursuant to Commission regulations, SBSDRs are required to have standard terms and conditions in place for providing access and must provide data through a secure means. These controls are necessary to protect data confidentiality and system integrity.

Question 23: *Please provide your views as to whether ICE Trade Vault has provided sufficient information about how an agent could report SBS transaction information to ICE Trade Vault on behalf of a principal (i.e., a person who has a duty under Regulation SBSR to report). Please describe any additional information that is necessary. In particular, please provide your views as*

to whether ICE Trade Vault should differentiate between agents who are Participants of ICE Trade Vault because they themselves at times are principals (i.e., they are counterparties to one or more SBSs that are reported to ICE Trade Vault on a mandatory basis) and agents who are never principals (e.g., a vendor).

Response: Please see ICE Trade Vault's comments in the section of its letter above entitled "Investment Managers as Participants".

Question 24: *Please provide your views as to whether ICE Trade Vault's policies and procedures for developing condition flags for transactions having special characteristics under Rule 907(a)(4) of Regulation SBSR are consistent with the goal of preventing market participants without knowledge of these characteristics receiving a distorted view of the market. Are there additional condition flags that you believe ICE Trade Vault should utilize? If so, please describe them and why you believe they are appropriate.*

Response: We believe that the SEC should address these considerations in a future rulemaking or guidance by taking into account commentary from market participants.