

September 26, 2017

Via Electronic Submission

The Honorable Jay Clayton,
Chairman Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. SBSDR-2017-01; ICE Trade Vault LLC Request for Exemptive or Interpretive Relief from Certain Provisions of Section 13(n)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) and the Rules and Regulations Thereunder

Dear Chairman Clayton,

On September 20, 2007, ICE Trade Vault, LLC (“ICE Trade Vault”) formally submitted an amended application for registration by the Securities and Exchange Commission (“SEC” or the “Commission”) as a security-based swap data repository (“SBSDR”). ICE Trade Vault seeks to operate an 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 Security-Based Swap Data Repository Registration, Duties and Core Principles (the “SBSDR Rule”) and applicable provisions of Regulation SBSR-Reporting and Dissemination of Security- Based Swap Information (“Regulation SBSR”).

On September 22, 2017, DTCC Data Repository (U.S.) LLC (“DDR”) submitted a letter (“DDR Letter”) to the Commission citing their continued concerns that the Commission or other parties could, at a future date, question whether the methods that DDR intends to use to satisfy certain aspects of the SBSDR Rule and Regulation SBSR are fully compliant. Over the past few years, ICE Trade Vault has worked closely with SEC Staff to formulate a complete application which will allow ICE Trade Vault to operate an SBSDR in conformance with the SBSDR regulations. In addition, as Staff has reviewed both the DDR and ICE Trade Vault SBSDR applications, Staff has often made efforts to align the applications and consistently apply certain rule interpretations for both applicants. As a result, ICE Trade Vault shares the same concerns and continued reservations cited by DDR and is in complete support and alignment with the concerns and issues raised in the DDR letter. To that end, ICE Trade Vault respectfully requests that the Commission issue the same limited exemptions or interpretive guidance to ICE Trade Vault– which could be through concurrence with the following analysis in the approval order – regarding the specific elements of the SBSDR Rule and Regulation SBSR raised in the DDR letter. As the SBSDR applications are similar in many respects and Staff’s rule interpretations are uniform across

the SBSDR applicants, ICE Trade Vault requests equivalent exemptions or guidance from the Commission.

ICE Trade Vault would, however, like to further expound on one point raised in the DDR Letter regarding compliance with Rule 906(a). Rule 906(a) requires the non-reporting counterparty to a swap transaction to provide uniform identification codes (“UICs”) -- such as Ultimate Parent and Affiliate UICs -- as well as other applicable UICs (Trader ID, Trading Desk ID, Branch ID)¹. With respect to the parent/affiliate missing information, SEC Staff has specifically directed and required SBSDR applicants to accept such information from non-onboarded and non-reporting side participants via email². Staff has also directed the SBSDRs to house the parent/affiliate information and provide the emailed parent/affiliate information to Staff upon request.

As discussed with Staff, ICE Trade Vault strongly disagrees with this position. ICE believes that all entities that wish to access the ICE Trade Vault platform and services in order to fulfill their regulatory obligations must execute a “Participant Agreement” in order to become a “Participant” (as such terms are defined in the Guidebook³) 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 to 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”⁴ manner and that its technology is appropriately protected.

In addition, by requiring all entities seeking to access or report information to the ICE Trade Vault SBSDR Service to become onboarded participants, ICE Trade Vault is able to securely establish methods to report SBS data and to vet market participants to ensure they have the right to access or report SBS data. Accepting emailed information from non-onboarded and non-verified participants is fraught with issues including cyber-security related concerns. ICE has significant concerns that receiving confidential participant data via unencrypted email is not a secure method to transmit information. In addition, inviting non-onboarded participants to email data to the SBSDR opens the door to spoofing and potentially malicious users. An email from an external, unidentified and unvetted participant could contain viruses or other malware attacks which could have damaging effects on the SEC systems. It is ICE’s belief that all entities requesting access to the ICE Trade Vault platform and services in order to

¹ 17 C.F.R. §242.901(d)(2)(2016).

² Although ICE Trade Vault’s Application allows for non-users to send in an email with the required information, such data will not be verified, will not be input into the system, and will not be associated with a swap, but will be maintained in email form and provided to the Commission when requested. The SBSDR is not in a position to input email submitted trade information into the system due to the risk of potentially corrupting reported data and the audit trail to the counterparties’ own books and records of the trade.

³ ICE Trade Vault LLC, Security-Based Swap Data Repository Guidebook. <https://www.sec.gov/rules/other/2016/ice-trade-vault/ice-trade-vault-form-sdr-ex-gg.2.pdf>.

⁴ 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”).

fulfill their regulatory obligations should execute a “Participant Agreement” and submit data via the prescribed SBSDR methods.

We believe that the Commission’s issuance of a limited exemption or interpretive guidance on these issues would enable both DDR and ICE Trade Vault to operate in accordance with a clear and effective policy and procedures framework to maintain accurate records of security-based swap transactions, and to provide these records to the Commission. We appreciate your consideration of this request. We would welcome any opportunity to further discuss these concerns.

Sincerely,



Kara Dutta
General Counsel
ICE Trade Vault, LLC

cc: The Honorable Michael S. Piwowar, Commission
The Honorable Kara Stein, Commission
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