July 27, 2016

Submitted via email

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

Re: ***Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information; File No.* S7-34-10**

Mr. Fields,

The International Swaps and Derivatives Association, Inc. ("ISDA")[1] is writing to the Securities and Exchange Commission ("SEC" or "Commission") on behalf of its members with potential reporting responsibilities under the Commission's *Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information; Final Rule* ("SBSR"). Specifically, ISDA is writing to request that the Commission allow security-based swap data repositories ("SDRs") to temporarily delay the public dissemination of a security-based swap ("SBS") information under SBSR. Section 242.902(a) of SBSR requires an SDR to disseminate the SBS data specified in §242.901(c) immediately upon receipt. ISDA's members are very appreciative of the public dissemination delay available to reporting sides under §242.901(j) of SBSR. However, as discussed in greater detail below, the requirement for SDRs to immediately transmit such information effectively requires reporting entities to build new delay mechanisms into their reporting architectures in order to prevent their SBS data being publicly reported in advance of the 24 hour deadline or risk potentially significant commercial, liquidity, operational and global data quality issues. In addition, this requirement could have the perverse impact of further delaying the reporting of such information and negatively affecting overall data quality. These material consequences can be resolved to the mutual benefit of the Commission and SBS market participants through an amendment of §242.902(a).

A. Background

SBSR helpfully allows reporting entities a 24 hour delay from reporting to an SDR after the execution of a SBS transaction. ISDA believes that this delay is appropriate and is consistent with the desire to protect the liquidity of these often thinly traded instruments. §242.902(a), however, requires SDRs to disseminate trade information "immediately upon receipt." Under the rule, the SDR has no flexibility to

[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.

delay dissemination consistent with the previously noted 24 hour delay. As a result, reporting entities intending to utilize the 24 hour delay must independently adapt their internal reporting processes and policies to withhold transmission of trade information to the SDR, or risk the immediate public dissemination of this information. ISDA notes that this requirement is not consistent with the existing regulatory requirements for public transaction reporting established by the Commodity Futures Trading Commission ("CFTC") and the securities regulatory authorities in Canada. Nor is it consistent with the current functionality of SDRs which offer services in these regimes, and the regulatory reporting builds of all market participants that are subject to these jurisdictions.

One might expect that the Commission would obtain valuable insight into market perspectives on the liquidity of different types of SBS transactions based on the interval at which a reporting side sent data for its SBS to an SDR for immediate public dissemination. Such information might form part of the data that the Commission intends to collect and analyze during the interim periodto help it establish its block thresholds[2] and reporting delays for SBS transactions (the "Block Rules"). However, the practical reality is that the Commission is not likely to obtain the desired information regarding SBS liquidity as anticipated since reporting sides and the market infrastructure providers that facilitate reporting on their behalf (together, "reporting entities") will not be able to build sophisticated dissemination delays that take into consideration the relative liquidity of SBS transactions. Doing so would be very difficult and costly while creating a negative commercial impact and impairing market liquidity if done in an inconsistent manner.

As they have not needed them to date for any other jurisdiction, reporting entities have not built internal delay mechanisms for reporting. Instead, with reporting under the CFTC and Canada required "as soon as technologically practicable" ("ASATP") and no negative impact created by reporting early in other jurisdictions (e.g. under EMIR[3]), reporting entities have built their reporting architectures to send their reporting data as soon as: (i) their trade booking is finalized and (ii) the relevant data for the message is available. Market infrastructure providers report data at or prior to the point of trade confirmation. The SDR's requirement under §242.902(a) effectively obligates reporting entities to build new delay mechanisms into their reporting architectures in order to prevent their SBS data being publicly reported in advance of the 24 hour deadline for reporting allowed under §242.901(j).

B. Preserving anonymity and market liquidity

Although §242.901(j) does not *require* reporting entities to build internal delay mechanisms, the failure of a reporting entity to build such a mechanism will negate the beneficial impacts of the 24 hour delay, most notably the right to protect anonymity and preserve market liquidity. ISDA's members feel strongly that public dissemination delays are necessary to protect the stability and longevity of the SBS market.[4] In order to avail themselves of this important protection, it is therefore essential that reporting entities build internal delay mechanisms. The necessity to apply the available delay is exacerbated by the absence of notional capping in SBSR[5]. Without this important protection, market liquidity for large notional

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[2] As referenced in 80 Fed. Register at 14612

[3] European Markets Infrastructure Regulation

[4] The Commission has recognized this by allowing a delay for public reporting during the interim period while it analyzes SBS data and develops its Block Rule.

[5] ISDA and its members would like to reiterate our request that the Commission implement notional capping in advance of the Block Rule.

transactions may be impaired and reporting sides will need to rely on the full delay allowed under §242.901(j) to mitigate these risks.

Even if firms developed their own internal delay mechanism, the process of scaling products by liquidity based on staggered reporting intervals applied on a trade-by-trade basis is a complex task that may even depend on facts and circumstances of a single trade and/or more subjective views of a current market. Gray areas may also exist in which it may not be clear at the time of execution what would be the appropriate delay for reporting. For that reason, we expect each reporting entity to establish a single interval at which it reports its trades (e.g. (i) execution time plus 23 hours, or (ii) end of day). As a result, the Commission is unlikely to obtain information on the perspectives of reporting entities on the relative liquidity of SBS to aid the establishment of its Block Rules.

An equally important threat to anonymity will result from differences in the intervals at which a reporting entity sends SBS to the SDR for immediate public dissemination. Since the SBS data of each reporting entity will be publicly disseminated at a consistent point of delay after execution (e.g. 23 hours, 23.5 hours or at 11:00 p.m. each day), the identity of the reporting side would be discoverable by its counterparties who will recognize their SBS transactions against a party on the public report ("fingerprinting") and would able to deduce that other SBS disseminated at the same interval have been reported by, or on behalf of, that same reporting side. This could occur based on deductions related to individual reporting side builds or based on delays applied to SBS data reported via a market infrastructure provider on behalf of its users. Fingerprinting would compromise a reporting side's anonymity regarding its trading activity and impact its ability to hedge in a timely manner and at a fair price. This drives up the cost of trading SBS, impairing liquidity and negatively impacting end-users. There is no additional threat to anonymity and market liquidity when an SDR is allowed to disseminate transaction data at a designated point since the SDR can apply the delay equally to all of its participants.

C. *Commercial impact*

Reporting sides believe they would be at a commercial disadvantage if they send SBS data for public reporting ahead of their competitors, as market participants are concerned with having the data for their transactions publicly reported outside of any mandatory requirement or ahead of a regulatory deadline due to the potential implications of public disclosure. In order to remain competitive and avoid arbitrage, reporting entities believe that it will be necessary to send SBS data to an SDR at the latest point which is both allowed under §242.901(j) (i.e. 24 hours) and operationally feasible based on their system capabilities or those of their market infrastructure providers. There is no competitive impact when an SDR is allowed to disseminate transaction data at a designated point since the SDR can apply the delay equally to all of its participants.

D. *Data delay to Commission*

For the reasons discussed in sections B and C, unless the Commission provides the requested relief, reporting entities will build delay mechanisms for reporting SBS to the SEC, regardless of whether they are reporting the data for that same transaction earlier for other jurisdiction(s) (including those which either do not have a public reporting requirement or for which the SDR is allowed to apply the delay). For the reasons discussed in sections A and B, the SBS data being reporting by a reporting entity is likely to be reported as close to the 24 deadline under §242.901(j) as the reporting entity's system capabilities allow. So in addition to not having access to the data ahead of the public, the Commission will have delayed access to the data compared to other regulators despite the fact that its reporting deadlines precede those of many other jurisdictions[6]. This would not be the case if reporting entities could send SBS data for SBSR without an imposed delay to the SDR and the SDR could apply the delay for public dissemination of the relevant data. This approach has a proven track record in other jurisdictions where regulatory access to data is not impeded by requirements intended to preserve market liquidity. This delay in access to the data by the Commission is an unfortunate consequence of §242.902(a) that would not occur if the provision was amended to allow SDRs to accept data under SBSR without an immediate obligation to disseminate.

E. Operational

There are two major areas where §242.902(a) has operational impact on the reporting infrastructures of market participants. The first is the need to build new delay mechanisms and the second is the disabling of multi-jurisdictional reporting.

First, since all other jurisdictions that currently require public dissemination of transaction level data allow the trade repository to accept data ahead of the deadline for public reporting and apply the appropriate delay, neither reporting parties nor the market infrastructure providers they use to report have mechanisms to apply a delay to reported data.

This creates the following issues and inefficiencies:

- The cost and effort that SDRs have already incurred to establish mechanisms to delay reporting cannot be leveraged. Instead, in order to facilitate a delay for all SBS transactions as allowed by SBSR, each reporting side and each relevant service provider would need to build delay mechanisms. The cumulative cost of these builds far outweighs that cost of an ancillary implementation by two SDRs to extend existing capabilities.
- When the Commission issues its Block Rules, each reporting entity will need to alter its delay mechanisms to accommodate what may be a complex set of rules based on product type and trade terms. This additional cost and effort far outweighs that which would be borne by the SDRs to enhance their existing capabilities. Any subsequent, periodic amendments by the Commission to its Block Rules would again impose a burden and a coordinated implementation challenge for all reporting entities.
- As this is entirely new build for market participants that is only relevant to SBSR, the entire cost of the initial build and subsequent changes is attributable to a single jurisdiction and cannot be leveraged elsewhere.
- It may not be commercially viable for market infrastructure providers to build these delay mechanisms to support a single jurisdiction. If they do not, reporting sides will need to choose between the risks of early public dissemination and the cost and effort of redesigning their builds to report directly to the SDR (only for SBSR). If firms do not have existing builds to report directly to an SDR, they may not be able to mitigate their build cost for SBSR by using a market infrastructure provider if that entity does not offer a delay mechanism.
- Data reported through market infrastructure providers, such as confirmation platforms, has been agreed by both parties and is subject to validations that ensure uniformity of data. As a result, the data reported is both accurate and will not compromise party anonymity based on variables in data representation. Reducing the use of market infrastructure providers for reporting to SDRs would have a negative impact on the quality of the data available to the Commission.

[6] As demonstrated by the example in section F.

Secondly, since §242.902(a) differs materially from the requirements of other jurisdictions and has significant impacts to reporting sides, reporting entities will be unable to send multi-jurisdictional reports to satisfy the reporting requirements of all jurisdictions to which an SBS transaction may be reportable. Take for example an SBS transaction which is also subject to reporting requirements in Ontario where it is required to be reported ASATP. If a multi-jurisdictional report were sent for the Ontario Securities Commission ("OSC") and SEC immediately after execution in order to comply with the OSC's requirement, then the data would be immediately disseminated by the SDR under SBSR. Meanwhile data for the same transaction will not be publicly disseminated in Canada until 48 hours after execution. Similar issues would result from the reporting of a mixed swap to the SEC and CFTC in time to meet the CFTC's reporting deadlines. Because of the impacts of early public reporting discussed above, reporting entities will be forced to abandon the efficiency of the multi-jurisdictional reporting frameworks that have been developed and build mechanisms to report separately to the SEC instead.

As background, it is important to understand some further industry-wide practices and information regarding multi-jurisdictional reporting and its benefits to both market participants and regulators:

- Most market participants use a single primary trade repository to meet their reporting obligations in various jurisdictions.
- The ability for market participants (including reporting sides and market infrastructure providers) to submit multi-jurisdictional reports, and trade repositories to process and maintain a single position or trade record, creates efficiencies, controls reporting costs, and increases the level of consistency of data reported for the same transaction in different jurisdictions, benefiting global data aggregation and analysis.
- Delay mechanisms applied by the reporting side or a market infrastructure provider interfere with the ability of market participants to conduct multi-jurisdictional reporting to a single trade repository that complies with the reporting timelines and data requirements for each jurisdiction.
- SDRs provide global trade reporting services that are designed for multi-jurisdictional reporting. The data center associated with a trade repository legal entity contains a single position or primary trade record for a particular transaction which is updated regardless of which jurisdiction(s) the trade is, or becomes, reportable to. See below for further information on the impact to data quality created by reporting data for the same transaction at different times to for different regulators.

The operational issues discussed above do not exist if a reporting entity is allowed to report at the same time to an SDR for multiple jurisdictions and the SDR is allowed to apply the delay for public dissemination which is appropriate to each relevant jurisdiction. ISDA believes that the implementation of delay mechanisms by reporting entities specific to SBSR and the segregation of reporting flows for SBS data which is reported to the SEC runs counter to the SBSR goal of promoting efficiency in the SBS markets. Since there is no benefit realized by the Commission by prohibiting an SDR from delaying SBS data for public dissemination in a manner that supports efficient, global reporting, we believe an amendment to §242.902(a) which alters this requirement would better meet the goals of SBSR.

F. Data quality

The trade repositories that have applied to register with the Commission as SDRs already offer global trade reporting services that are designed for multi-jurisdictional reporting. The data center associated with an SDR's legal entity either contains a single position or links the trade records for particular transaction so that the transaction record gets updated regardless of which jurisdiction(s) the trade is, or becomes, reportable to. This approach to transactional data management is essential to maintaining the integrity of the data reported to the SDR and limits differences in data representation for a transaction to those required by the relevant ruleset. This improves the reliability of the data for regulators and is important to meaningful global data aggregation and analysis.

The data reported to an SDR for an SBS transaction in order to comply with SBSR cannot be entirely segregated from the data reported to the SDR for the same SBS which is reportable in other global jurisdictions. So even if a reporting entity creates a separate message to the SEC for reporting at a later time commensurate with §242.901(j), the data reported to the SDR previously for that same SBS transaction by a reporting entity for other jurisdictions will be reflected in the position report or trade records of the SDR. This means the activity reports and the position report or primary trade record for an SBS provided to either the SEC *or to other regulators* will be out of sync at certain points in time and until all activity is secondarily reported by the reporting entity to the SDR for the SEC. This negatively impacts the quality, accuracy and reliability of the data available not just to the SEC, but also to other regulators to whom the same SBS transaction is reportable. It will also interfere with the ability of a reporting side to reconcile its internal records against an SDR's end of day position reports and for a non-reporting side to verify that data since the cumulative record of the SBS transaction will not match the books and records of a reporting side or a non-reporting side on certain days.

The following example helps to demonstrate the impact to data in an SDR that is created by §242.902(a):

Example Scenario: Trade A is reportable under OSC, CFTC and SEC regulations[7]. Counterparty 1 (Cpy1) is the reporting counterparty under OSC and CFTC, and the reporting side under SEC.

T+0	T+1	T+2	T+3	T+4
	10:00ET: Cpy1&Cpy2 agree a Partial Termination (PT1) of US$5m. Cpy1 sends report to SDR for OSC & CFTC. *10:15ET:* SDR publicly disseminates data the US$5m PT1 data on its CFTC public tape.	*10:00ET (PT1+24hrs):* Cpy1 reports US$5m PT1 to SDR for SEC; SDR publicly disseminates data.	*10:00ET (PT1+48hrs):* SDR publicly disseminates the PT1 US$5m data for OSC.	
		12:00ET: Cpy1 & Cpy2 agree their 2nd Partial Termination (PT2) of US$3m. Cpy1 sends report to SDR for OSC & CFTC. *12:15ET:* SDR disseminates US$3m PT2 data as required per CFTC P43.	*12:00ET (PT2+24hrs):* Cpy1 reports US$3m PT2 to SDR for SEC; SDR publicly disseminates data.	*12:00ET (PT2+48hrs):* SDR publicly disseminates PT2 US$3m data for OSC.
14:00ET: Cpy1 & Cpy2 execute New Trade A for US$10m. Immediately after execution, Cpy1 sends report to SDR indicating OSC & CFTC reporting regimes. *14:15ET:* SDR disseminates trade data required per CFTC P43.	*14:00ET (T+24):* Cpy1 reports US$10m trade to SDR for SEC. Trade record updated from US$5m to US$10. SDR publicly disseminates trade data under SBSR.	*14:00ET (T+48):* SDR publicly disseminates data for the original US$10m trade for OSC.		

	T+0			T+1			T+2			T+3			T+4		
Intraday Activity Report:	**CFTC**	**OSC**	**SEC**	**CFTC**	**OSC**	**SEC**	**CFTC**	**OSC**	**SEC**	**CFTC**	**OSC**	**SEC**	**CFTC**	**OSC**	**SEC**
	$10m	$10m	Not yet designated	**($5m)**	**($5m)**	$10m	($3m)	($3m)	**($5m)**	_	_	($3m)	_	_	_
EOD Position Reports	**CFTC**	**OSC**	**SEC**	**CFTC**	**OSC**	**SEC**	**CFTC**	**OSC**	**SEC**	**CFTC**	**OSC**	**SEC**	**CFTC**	**OSC**	**SEC**
	$10m	$10m	Not yet designated	**$10m**	**$10m**	$10m	$2m	$2m	**$2m**	$2m	$2m	$2m	$2m	$2m	$2m

Key: US$ millions (m).

[7] ISDA recognizes that the universe of mixed swaps is limited, but has provided an example which includes the CFTC to demonstrate the ability of an SDR to manage SDR data and its public dissemination at different intervals for the same transaction for different regulators. The trade records/positions would be similarly impacted for SBS which are not mixed swaps but for which the SBS data is reported for multiple jurisdictions and is managed by the same SDR or processed through the same SDR data center.

As demonstrated by the above example, the trade record/position is not synchronized with the activity reports received by the CFTC and OSC on T+1 and not synchronized for the SEC on T+2. On T+1, the records of the reporting side and non-reporting side will not be reconcilable against the end of day trade record/position. ISDA, reporting sides and SDRs are concerned about this negative impact to data management that is caused entirely by the need to segregate SBSR reporting in order for a reporting side to avail itself of the delay for public dissemination. Regardless of whether the SEC is willing to accept the impact to data reconciliation in order to retain §242.902(a) as adopted, other regulators are not likely to accept the unpreventable impact to their data which may impair their ability to reconcile data and accurately assess current exposures.

In addition, as mentioned in section D., an inability for market infrastructure providers (like electronic confirmation platforms) to provide a delay mechanism for SBSR will preclude reporting sides from using them to meet their reporting requirements. This will reduce the amount of quality data that is being reported directly from sources where the data has been bilaterally verified by the counterparties. The use of these reporting infrastructures that ensure data is aligned with legally confirmed and agreed terms should be encouraged rather than deterred.

G. Summary

The requirement for SDRs to comply with §242.902(a) of SBSR creates a number of serious, unintended consequences that make it difficult and onerous for reporting sides to comply with SBSR, for market infrastructure providers to support SBSR and for SDRs to maintain data integrity.

The following summarizes key considerations regarding the impact of §242.902(a):

- Reporting entities should be able to use a multi-jurisdictional report to comply with the reporting deadlines in each jurisdiction while still benefitting from the protection afforded to them for a delay in public reporting in each jurisdiction. The inability to send multi-jurisdictional reports reduces efficiency, increases costs and negatively impacts data quality both to the SEC and to other global regulators.
- Firms should not have to give up their right to a public dissemination delay under SBSR in order to meet their obligations (i) to report timely in other jurisdictions and (ii) maintain data that is accurate and reconcilable.
- Since an SDR can apply the delay in public dissemination equally in accordance with the relevant rules for the transaction data reported to it by all parties subject to SEC or another jurisdiction, (i) there is no differentiation between dissemination intervals that will compromised party anonymity and (ii) there is no commercial impact between parties that have reporting obligations in the same jurisdiction.
- By allowing the SDR to apply the delay, the SEC would have earlier access to SBS data regardless of the delay that may apply for public dissemination and will have a more complete and accurate view of current exposures and trading activity. Because there is not a division between reporting to an SDR and public reporting under SBSR, if firms apply a delay of 24 hours to each SBS the SEC will not have access to the data ahead of when the data is available to the public as other regulators do.

H. Amendment request

The Commission had a specific purpose in mind when it adopted §242.902(a) and could not have anticipated all the consequences of this requirement. Due to the associated challenges discussed above, §242.902(a) is unlikely to produce reliable data for the Commission to use for establishing its Block Rule. Therefore, the significant commercial, anonymity, liquidity, operational and data quality issues created by §242.902(a) cannot be justified. Furthermore, reporting sides and SDRs cannot justify to other regulators the impact to the quality of the data they will receive and the misalignment between jurisdictional data and transactional position data or trade records as a result of complying with SBSR. These problems would be entirely eliminated if SDRs were allowed to accept SBS data without disseminating it to the public immediately and instead hold the data to be publicly disseminated per the reporting deadline in §242.901(j).

Therefore, ISDA respectfully requests that the Commission amend §242.902(a) SBSR to allow SDRs to publicly disseminate a transaction report of an SBS, or a life cycle event or adjustment due to a life cycle event, upon the deadline specified in §242.901(j) or as subsequently provided in the Block Rule.

Thank you in advance for your consideration of this important matter. Please let me know if you have any questions.

Sincerely,

Tara Kruse
Director, Co-Head of Data, Reporting and FpML
International Swaps and Derivatives Association, Inc.

cc: The Honorable Mary Jo White, Chair
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commisioner
Stephen Luparello, Director, Division of Trading and Markets
Michael Gaw, Assistant Director, Division of Trading and Markets
Tom Eady, Senior Policy Advisor, Division of Trading and Markets